

**CONSENT AGREEMENT BY AND AMONG
THE CITY OF KYLE, TEXAS,
NORTH HAYS COUNTY MUNICIPAL UTILITY DISTRICT NO. 2,
PLUM CREEK DEVELOPMENT PARTNERS LTD, and MOUNTAIN PLUM LTD**

This **AGREEMENT** (this "Agreement"), effective as of _____, the Effective Date, is made by and among **THE CITY OF KYLE, TEXAS**, a home rule municipality located in Hays County of the State of Texas (the "City"); **NORTH HAYS COUNTY MUNICIPAL UTILITY DISTRICT NO. 2**, a political subdivision of the State of Texas created by the Legislature under the authority of Article 16, Section 59, Article 3, Sections 52 of the State Constitution (the "District") once it is confirmed at a confirmation election; **PLUM CREEK DEVELOPMENT PARTNERS LTD, and MOUNTAIN PLUM LTD**, (collectively the "Developer").

RECITALS

WHEREAS, the District was created by SB 2245, 85th Legislative Session (the "Enabling Legislation"), and a copy of the enrolled bill is attached to this Agreement as **Exhibit "A"**, in order to evidence the identification of the land within the district as shown in SECTION 2 of the bill; and

WHEREAS, the District was created subject to the consent of the City and it is the intention of the parties that this Agreement shall evidence such consent, among other agreements; and

WHEREAS, the Developer intends to develop the land within the District as a master-planned, primarily commercial use community which will include commercial and residential uses along with roads and other facilities to serve the community, and the Parties acknowledge that the development will occur in phases under a master development plan and could take several years to accomplish; and

WHEREAS, the City and the Developer have entered certain development agreements concerning the land within the District and have agreed to amend those agreements prior to the commencement of early voting on October 20, 2017; and

WHEREAS, the District is located within the City's corporate limits, thus ensuring that the City never will be burdened with the District's debt; and

WHEREAS, the Developer intends to propose that the District, and the District intends to implement such proposal to, by imposition of an ad valorem property tax, reimburse the Developer for the costs paid by the Developer to provide utility infrastructure and roads within the boundaries of the District that will be conveyed to the City for ownership and maintenance; and

WHEREAS, the City, the District, and the Developer have determined that it is in their best interests to enter into this Agreement with each other to provide for certainty with regard to the benefits to be provided to the land within the District and to the City and to ensure efficient and effective implementation of development within the boundaries of the District for the benefit of the present and future residents;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, the City, the Developer and the District agree as follows:

ARTICLE I DEFINITIONS

The terms "Agreement," "City," "Developer," "District," and "Enabling Legislation" have the meanings set forth in the preamble hereof, and the following capitalized terms shall have the meanings provided below, unless otherwise defined or the context clearly requires otherwise. For purposes of this Agreement the words "shall" and "will" are mandatory, and the word "may" is permissive.

"Board" means the duly qualified and acting Board of Directors of the District.

"Bonds" means the bonds, notes and other indebtedness issued by the District in compliance with this Agreement.

"City Council" means the governing body of the City of Kyle.

"City Water System" means all the water production pumps, lines, meters, components, facilities, and equipment owned and used by the City to pump, treat, monitor, convey, supply, and distribute Water to the public.

"City Wastewater System" means all the wastewater treatment facilities, lines, components and equipment owned and used by the City to collect, convey, treat, monitor, regulate, and dispose of Wastewater.

"Confirmation and Tax and Bond Election" means the election called by the temporary Board of Directors who are named in the Enabling Legislation to present tax and bond propositions to the voters in the District.

"Development Agreement" means that certain Agreement Between the City of Kyle, Plum Creek Development Partners, Ltd., and William Negley, Trustee, for Development and Annexation of Phase I of the Plum Creek Ranch Property and the Addenda thereto, attached as **Exhibit "B"**.

“Development Plan” means the conceptual plan for the development within the MUD attached as **Exhibit “C”** and approved simultaneously herewith, which may be amended from time to time.

“Effective Date” means the latest of the execution of this Agreement by the parties, except that the Agreement shall be effective as to the City and the Developer on the last date of their executions; the Effective Date as to the District shall be the date its government body executes the Agreement.

“Engineering Reports” means the engineering report(s) that will be created at the request of the District’s Board of Directors in preparation for the District’s Tax and Bond elections.

“Facilities” means the water, wastewater and drainage utilities, streets and roads and other transportation improvements that the District is legally authorized to finance.

“Force Majeure” shall mean circumstances which are beyond the reasonable control of the applicable party (which circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, or tornadoes] labor action, strikes or similar acts.

“Gray Water” shall mean reclaimed domestic or municipal wastewater that has been treated to a quality suitable for landscaping irrigation.

“Notice to Purchasers” shall mean the Notice required in Section 49.452, Texas Water Code, intended to notify prospective District landowners of the facts associated with buying land within a taxing district.

“Reimbursement Agreement” means an agreement between the District and a developer within the District, including the Developer.

ARTICLE II CONSENT MATTERS

Section 2.01. The Consent. The City consents to the creation of the District as required by the Enabling Legislation and conditions its consent upon the faithful compliance by the District and the Developer to the terms of this Agreement.

Section 2.02. Enabling Legislation Incorporated into Agreement. The provisions of the Enabling Agreement, attached to this Agreement as **Exhibit “A”**, are incorporated into and made a part of this Agreement for all purposes. The Developer and the District agree not to request or consent to any amendment of the Enabling

Legislation without the prior consent and approval of the City. Developer agrees that it will not request the District to add land to the District either directly or indirectly without the prior approval of the City and District agrees that the District will not add land to District without the prior approval and consent of the City.

ARTICLE III

AGREEMENTS IN ADVANCE OF DEVELOPMENT

Section 3.01. Notice to Purchaser. The District will authorize drafting of a Notice to Purchasers substantially similar to that in the form attached to this Agreement as **Exhibit "C"**, in order to effectively notify persons prior to purchasing land within the District that ad valorem property taxes will be imposed by the District, that such tax will be in addition to the tax imposed by the City, and that the purpose of the District tax will be to provide planning, design, construction, of water, wastewater and drainage utilities, and planning, design, construction and maintenance and operation of streets and roadways and other transportation improvements within the District.

ARTICLE IV

DISTRICT GOVERNANCE

Section 4.01. District Board of Directors. The Enabling Legislation provides the names of five members of the Board of Directors of the District. The election and re-election of directors will be as governed by the Water Code.

Section 4.02. Fees of Office. Members of the Board may receive fees of office as provided in the Water Code for members of the boards of directors of municipal utility districts.

Section 4.03. Interlocal Agreements. The District is authorized to enter into interlocal agreements with any governmental entity

Section 4.04. Other Service Agreements. The District may enter into service agreements related to the purposes of the District.

ARTICLE V

AGREEMENTS RELATED TO FINANCING

Section 5.01. Reimbursements.

a. Developer Reimbursements. The Parties acknowledge that the Developer intends to seek reimbursement from the District for the organizational, administrative and capital improvements the Developer intends to make within the District as authorized by the Water Code and the Enabling Legislation. The District and the

Developer will enter into a Reimbursement Agreement at the meeting at which the Board canvasses the ballots of the confirmation Election.

b. **City Reimbursements.** Developer agrees to reimburse the City for its out of pocket professional fees, including but not limited to legal fees for the review and approval of this Agreement and related Development Agreement and for the issuance of Bonds. Such reimbursement is due within thirty days after receipt of invoice showing the amount due, but no later than the date that is no more than 30 days after the date the District Board of Directors canvasses the results of the election. The Developer and the District shall have an opportunity to review such fees for reasonableness, and shall be given an opportunity to object to charges for unreasonable amounts of the time spent on review. Such fees shall be charged at the same hourly rate that the professionals charge the City. . The City consents to the Developer seeking reimbursement for such expenses from the proceeds of District bonds.

Section 5.02. District Tax Rate. If authorized by its voters, the District will impose an ad valorem property tax rate that will support the debt issued to produce funding to reimburse the Developer for capital improvements made within the District.

(a) The District's ad valorem property tax rate will be limited to take into consideration the fact that the entire District will be within the corporate limits of the City. It is the parties' intention that the District's ad valorem property tax rate for debt service and operation and maintenance not exceed twenty (20) cents.

(b) The District will include the amount stated in Section 5.02 (a) on its ballot for authorization by the voters at the District's Confirmation, Directors, and Tax and Bond Elections.

Section 5.03. District Authority to Issue Bonds. The District has the authority to issue bonds for the purposes of purchasing, constructing, acquiring, improving, repairing, maintaining, and operating utility facilities, streets, roads and pedestrian walkways, and whatsoever other purposes the Parties agree to and the District is authorized to engage in pursuant to the Enabling Legislation (the "Facilities"); provided, however, the District shall not issue bonds payable from revenue from water or wastewater sales within the District or secured by deed of trust on water or wastewater facilities within the District. The City is not obligated to pay District or otherwise transfer any portion of the revenue received by the City for retail water or wastewater services within the District, including but not limited to paying any franchise fees or taxes to the District.

(a) The District has additional authority to issue bonds to reimburse the Developer for such items as allowed by the Water Code and the Enabling Legislation, including specifically the costs of creating organizing and organizing the District.

(b) The District has authority to issue bonds to reimburse the Developer for costs incurred dedicating land to the City.

(c) Unless and until the City shall dissolve the District and assume the properties, assets, obligations and liabilities of the District, the Bonds of the District, as to both principal and interest, shall be and remain obligations solely of the District and shall never be deemed or construed to be obligations or indebtedness of the City.

Section 5.04. City Approval of Bonds. (a) The District must give notice to the City of its intention to issue bonds when it files its application to the Texas Commission on Environmental Quality, or any successor agency, (the "Commission") for approval of its bond issuance. Upon request by the City, the District shall provide City a copy of the application, supporting material, and any and all correspondence between the District, and persons acting on behalf of the District, and the state agency authorized to review and approve District bond issues.

(b) Upon approval of the District application by the Commission, the District shall forward the Commission Order, its attached staff memo, and other documents describing the Commission approvals to the City Attorney's office. No less than thirty (30) calendar days prior to the date of sale, the District shall provide the City with a copy of the Preliminary Official Statement and the draft Bond Order for the proposed issue of Bonds. The District shall provide the City with an original copy of the entire bond transcript for each issue of Bonds within sixty (60) days after the District delivers the transcript to the representatives of the Bond purchasers.

(c) City may refuse to approve a District bond issue if the District is not in compliance with the consent requirements applicable to the District, as follows:

The city's consent to the inclusion of land in the district may also contain restrictions on the terms and provisions of the district's bonds and notes issued to provide service to the land and conditions on the sale of the district's bonds and notes if the restrictions and conditions do not generally render the bonds and notes of districts in the city's extraterritorial jurisdiction unmarketable.

1. The bonds are payable from or secured by a pledge on the revenue from water or wastewater services to or within the District or secured by a deed of trust on the water or wastewater facilities within the District.

2, The bonds are not fixed interest rate bonds.

- (3) The District shall not sell or issue any Bonds unless:
- (a) the terms of such Bonds expressly provide that the District reserves and shall have the right to redeem the Bonds on any date subsequent to the 10th anniversary of the date of issuance, without premium;
 - (b) the Bonds, other than refunding Bonds, are sold after the taking of public bids therefor;
 - (c) none of such Bonds, other than refunding Bonds, are sold for less than 95% of par;
 - (d) the net effective interest rate on Bonds, other than refunding Bonds, so sold, taking into account any discount or premium as well as the interest rate borne by such Bonds, does not exceed two percent above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the one-month period next preceding the date notice of the sale of such Bonds is given and bids for the Bonds will be received not more than forty-five (45) days after notice of sale of the Bonds is given;
 - (e) the resolution or order authorizing the issuance of the District's Bonds contains a provision that any pledge of the revenues from the operation of the District's facilities to the payment of debt service on the Bonds will terminate when and if the City takes over the assets of and assumes all of the obligations of the District (the bonds shall not contain a pledge of revenue from water or wastewater sales within the District);
 - (f) the terms of sale or issuance of the Bonds have been submitted to and approved, in writing, by the City Manager, provided, however, that if the City Manager fails to approve or disapprove the terms of the sale or issuance of any Bonds within 30 days after receipt by the City of a written application for approval, the sale or issuance of the Bonds shall be deemed to be approved and the conditions contained herein with respect to the approval shall be deemed to have been complied with;

- (g) The City Manager may refuse to approve the District's request for approval of the terms of the sale of the Bonds if at the time the request is submitted, the City Manager determines that the District is in breach of this Agreement or that the City or the Board has an unpaid claim owed by the District. The City Manager shall give the District notice of the determination and an opportunity to cure the alleged breach or explain why a breach has not occurred;
- (h) The City Manager may refuse to approve the District's request for approval of the terms of the sale of the Bonds if the City Manager determines, in his or her sole discretion, the District's projected tax rate after the Bonds are issued, exceeds a reasonable amount. The District's projected tax rate shall not be considered unreasonable if it is approved by the Commission at a projected tax rate equal to or less than \$1.00 per \$100 assessed valuation. The foregoing shall not be construed as a limitation on the District's authority to levy an unlimited tax rate; it being understood and acknowledged that the District's bonds shall be payable from and secured by a pledge of the proceeds of an ad valorem tax without limitation as to rate or amount;
- (i) The City holds at the time the Bonds are ready to be issued, the exclusive authority to provide water and sanitary sewer to and within the District.

Section 5.05. Other Funds. The District may use funds obtained from any available and lawful source to accomplish the purposes set forth in this Agreement. Such funds may include revenues from any lawful source and District maintenance taxes, loans, gifts, grants and donations from public and private sources.

Section 5.06. Contracts. All contracts, agreements or other undertakings for personal or professional services or supplies, entered into by the District, shall provide, that the District may terminate the contract, agreement, or other undertaking with thirty days notices, unless otherwise agreed to by the City in advance. The District shall not enter into any contract which contains any provision, other than the one described in the first paragraph of this section, which is or becomes effective upon the dissolution of the District by the City.

Section 5.07. Records and Inspections. The District shall allow, permit and assist the agents of the City to make reasonable inspections of the books and records of the District and shall deliver to the City, each year, at least one copy of any financial report or reports submitted to the State of Texas or any department or agency thereof. The District shall file a copy of its annual audit, and a copy of its proposed budget of the following year showing expenses and income and revenue sources with the City Clerk and the City Manager of the City. The annual audit shall be filed with the City within one hundred and thirty-five (135) days after the end of the District's fiscal year.

Section 5.08. City Taxes. It is understood and agreed by the parties hereto that the City shall have the authority to assess and collect ad valorem taxes at the City's full tax rate within the District.

ARTICLE VI
DISTRICT CONFIRMATION, DIRECTORS, TAX AND BOND ELECTION

Section 6.01. Confirmation Election Required. Pursuant to the Enabling Legislation, the District is required to call a confirmation election and the Board may do so at any time after the Effective Date of this Agreement, subject to the conditions of Section 6.03 hereof. The Board of Directors that is named in the Enabling Legislation shall meet and call the District's Confirmation, Directors, and Tax and Bond Election at a time that is compliant with the Election Code.

Section 6.02. Execution of the Consent Agreement by District. At the Board meeting at which the ballots of the Confirmation, Directors, and Tax and Bond Election are canvassed, the Board shall consider and execute this Agreement and be bound by the terms hereof. If the Board fails to approve and execute this Agreement at such meeting, the City may, in its sole discretion, but within sixty days of such meeting, terminate and cancel the city's consent to the creation of the District, this Agreement, and any and all other agreements between the City and the Developer relating to the District or the development of land in the District. The Developer and District agrees that the City may evidence its termination and cancellation of its consent by filing a notice in the public records of Hays County and upon the filing of such notice, the City's consent shall be null and void and all actions taken by, or on behalf of the District prior to the filing of such notice shall be null and void.

Section 6.03 Composition of the Ballot. The District agrees to place on the ballot:

- (1) a proposition that the District be confirmed by the voters;
- (2) a proposition that the temporary directors named on the ballot be elected as permanent directors;
- (3) a proposition that the District be authorized to issue a maximum amount of bonds not to exceed \$_____ that is exclusive of the principal amount of any refunding bonds;
- (4) a proposition that the District be authorized to impose an ad valorem property tax at a rate not to exceed _____cents for the payment of interest on the bonds;
- (5) a proposition that the District be authorized to impose an ad valorem property tax at a rate not to exceed _____cents for the maintenance of District roads and streets.

Section 6.04. City Consent Contingent on Development Agreement Amendment. The Parties acknowledge that the Development Agreement is being amended to more effectively reflect the agreements between the City and the

Developer. The Parties agree that if the City and the Developer have not executed the amendments to the Development Agreement by October 20, 2017, the District will cancel the election prior to the beginning of early voting for the election that otherwise would be conducted on November 7, 2017. The District will prepare to call the same elections described in Article V to be held on the May uniform election date in 2018, provided the Development Agreement amendment described in this section has been executed.

ARTICLE VII AGREEMENT CONCERNING WATER SUPPLY AND WASTEWATER SERVICES TO THE DISTRICT

Section 7.03 City's Obligation to Provide Services.

a. Subject to the District's satisfaction of the requirements of this Agreement, specifically including but not limited to Sections 7.06 and 7.07, the City agrees to provide Water Supply Services to the District. The City agrees to accept Wastewater from and to provide Wastewater Services to the District. The City's obligation to serve a retail customer within the District is subject to the retail customer complying with the City's requirements for service in effect at the time that service is requested. b. District grants City the District's irrevocable consent to the City provide retail water and wastewater service within the District's boundaries and agrees that the City shall be the exclusive retail water and wastewater service provider within the District. The Developer and the District both agree not to apply for, either directly or by or through another retail public utility, a certificate of convenience and necessity for water utility of sewer utility service within any portion of the District.

c. The City's obligation to provide Water Supply Services to the District or to accept Wastewater from and to provide Wastewater Services to the District shall be limited only to the territory described by the Enabling Legislation and the City is under no obligation to provide any such services to land subsequently added to the District's boundaries.

Section 6.04 Standard of Service. The Water Supply Services and Wastewater Services provided by the City to the District shall be equivalent in quality to the water supply and wastewater services the City provides to other City customers.

Section 7.05 Maximum Number of Connections. The City agrees to provide at least the number of connections approved in the Development Agreement to serve the District.

Section 7.06 Facilities. The Facilities, as described in the Engineering Reports, will be designed and constructed in compliance with all applicable requirements and criteria, including but not limited to the City's standards and criteria. The design and construction of the Facilities will be subject to the review and approval

of the City prior to submittal of the plans and specifications to the Board for approval or the advertisement for bids or solicitation of proposals. No change order revising the plans and specifications for water or wastewater facilities shall be issued prior to review and approval of the City, acting by and through the City Engineer, which approval shall not be unreasonably withheld. The City shall object to a change order within three business days after receipt of a request for approval, otherwise the change order shall be deemed approved by the City. The District shall design, construct or extend the Facilities in such phases or stages as the District, in its sole discretion, from time to time may determine to be economically feasible. All designs, design standards, construction plans and drawings for any plants, facilities, connectors or points of connection including all supporting facilities must be reviewed by and approved by the City Engineer before any implementation or construction shall occur as provided herein.

Section 7.07. Design and Construction of the Facilities; Right-of-Way. The Facilities shall be constructed by or on behalf of the District at the District's sole expense and shall be designed using the City's then-current standard criteria. All construction by or for the District, must be in compliance with the City's Building Codes, including electrical, plumbing, and other codes. The District shall provide the City with executed copies of payment and performance bonds that comply with all applicable requirements of law, specifically including the bond requirements of Texas Government Code Chapter 2253. Evidence of proper authority of all signing officers or representatives must be submitted. Additionally, the City shall be provided with a copy of a Certificate of Insurance reflecting that the contractor has general liability and/or excess coverage of at least \$1,000,000 per occurrence and \$2,000,000 aggregate coverage. All warranties and bonds shall be assignable to the City without the consent of the contractor or the surety for the water and wastewater Facilities. The City will be notified of construction and testing activity and have the right of access to observe construction and testing and District will upon demand, pay, or cause to be paid, City's fees and expenses then in effect for observing construction after the Developer and the City agree upon the fees for such observation, and upon receipt of an invoice, but the City's observation of construction shall not be a substitute of construction phase engineering services or inspection services engaged on behalf of the District or its engineer. The District shall not: (1) construct or install water or wastewater lines or facilities to serve areas outside the area described in the Enabling Act or (2) provide through then-existing facilities or capacity owned by the District water or wastewater service to areas outside the District.

Section 7.08. Subdivision and Plats. The City is not obligated to provide any form of water or wastewater service, directly or indirectly to any land within or without the District unless prior to the initiation of service to such land a subdivision plat or development plat has been filed with and finally approved by the City and, in the case of a subdivision plat, the plat has been filed in the public records.

Section 7.08. Ownership by City. As the Facilities are acquired and constructed, the District shall convey the water system improvements and the wastewater system improvements, but not the drainage, roadway, recreation-related, or security-related improvements, to the City including all warranties, reserving, however, the right to the receive service from the City in accordance with Section 7.01 of this Agreement. The conveyance to the City shall be subject to the acceptance by the City after inspection by the City and determination that the Facilities were designed in accordance with the City's standards and constructed in accordance with the plans and specifications approved by the City. In accordance with 30 Tex. Admin Code § 293.44(b)(3)(C) The District and the City acknowledge and agree that this Agreement and the Development Agreement, (i) specifies capacity or volume of flow into or from the City's Water System and Wastewater System; (ii) provides a method to quantify the contractual capacity rights; (iii) the term for such contractual capacity rights is not less than the projected maturity schedule of the District bonds; and (iv) contains no provisions that could have the effect of subordinating the contractual right to a preferential use or right of any other entity.:

Section 7.09. Operation by the City. (a) As construction of each phase of the Facilities is completed, representatives of the City shall inspect the same and, if the City finds that the same has been completed in accordance with the final plans and specifications as approved by the City, the City will accept the same, whereupon such Facilities shall be conveyed to the City as provided in Section 6.08 and operated and maintained by the City at its sole expense as provided herein. In the event that the Facilities have not been completed in accordance with the final plans and specifications, the City will advise the District in what manner said Facilities do not comply, and the District shall immediately correct the same; whereupon the City shall again inspect the Facilities and accept the same if the defects have been corrected. The City shall at all times maintain the Facilities or cause the same to be maintained, in good condition and working order and will operate the same, or cause the same to be operated, in an efficient and economical manner at a reasonable cost and in accordance with sound business principles in operating and maintaining the Facilities, and the City will comply with all contractual provisions and agreements entered into by it and with all valid rules, regulations, directions or orders by any governmental, administrative or judicial body promulgating the same.

(b) Drainage facilities shall be maintained by the District, and the District shall have complete access and the right to landscape as deemed appropriate by the Parties.

Section 7.10. Rates and Meters. The City shall bill and collect from customers of the City located in the District and shall from time to time fix such rates and charges for such customers of the City, that in its sole discretion, determines are necessary; provided that the rates and charges for services afforded will be equal and uniform to those charged other similar classifications of users in the City. All revenues from the water and wastewater customers in the District shall belong exclusively to the City. The

City shall be responsible for providing and installing any necessary meters with the individual customers; provided, however, the water facilities constructed by or on behalf of the District shall include the installation of service lines and meter box and provided, however, the applicant for service shall be responsible for payment of the City's fees and charges for the installation of the meter and other connection charges.

ARTICLE VIII DEVELOPMENT PLAN

Section 8.01. Development Plan. (a) The Developer's Development Plan for the overall development of the District is attached as **Exhibit "C,"** and as may be amended from time to time in accordance with the Development Agreement between the City and the Developer. The Developer understands and agrees that a portion of the consideration for the City to enter into this Consent Agreement is the Developer's obligation to develop the property consistent with the Development Plan. The creation of the District was predicated on the Developer's ability to develop the Property in conformance with the Development Plan and the Development Agreement. The City, the Developer, and the District agree that the Developer shall develop, and the City shall allow development of, the land within the District in accordance with the Development Plan and the Development Agreement. Any changes to the Development Plan shall be approved by all Parties.

ARTICLE IX FINANCING OF FACILITIES

Section 9.01. Authority of District to Issue Bonds. The District shall have authority to issue, sell and deliver Bonds from time to time, as deemed necessary and appropriate by the Board of Directors of the District, for the purposes, in such forms and manner and as permitted or provided as federal law, the general laws of the State of Texas and the Consent Agreement. Further, the City shall not make such an objection on any basis except non-compliance by the District with the conditions set forth in Section 5.04 (c).

Section 9.02. Bonds as Obligation of District. Unless and until the City shall dissolve the District and assume the District Assets and District Obligations, the Bonds of the District, as to both principal and interest, shall be and remain obligations solely of the District and shall never be deemed or construed to be obligations or indebtedness of the City.

ARTICLE X CITY, DISTRICT AND DEVELOPER COVENANTS

Section 10.01. The City. The City hereby represents and warrants to the District and the Developer that the City has full constitutional and lawful right, power

and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, is enforceable in accordance with its terms and provisions and does not require the consent of any other governmental authority. The City further represents that the City has made a capital contribution for the water supply and production facilities and wastewater transmission and treatment facilities required to satisfy the requirements of demand within the initial phase of the Development Plan. This Agreement is not intended to amend or supercede the Development Agreement and if an irreconcilable inconsistency between this Agreement and the Development Agreement exists, the Development Agreement shall prevail.

Section 10.02. The District. The District hereby represents and warrants to the City and the Developer that the District has full constitutional and lawful right, power, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary District proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the District, is enforceable in accordance with its terms and provisions and does not require the consent of any other governmental body.

Section 10.03. The Developer. The Developer hereby represents and warrants to the City and the District that the Developer has full lawful right, power and authority to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing have been or will be duly and validly authorized and approved by all necessary actions of the Developer. Developer further represent that, as of the Effective Date, Developer owns fee simple title to all of the land within the District's boundaries as described by the Enabling Legislation save and except the two parcels that have been sold by the Developer. Both purchasers consented to the inclusion in the District prior to the purchase, Developer further represents that. Developer's performance of its obligations under this Agreement is not a default under any financing agreement relating to the purchase of the land, or any portion thereof, within the District or the construction of the Facilities. The Developer represents that attorneys for the Developer and the District participated in the preparation and negotiation of this Agreement and that no condition or restriction in this consent and Agreement exceeds the City's powers.

Section 10.04. No Rebate of Taxes. District, Developer, and City each represent to each other that no portion of the City property taxes collected, or that will be collected within the boundaries of the District are or will be used by the City to finance elsewhere I the City services of the type the District proposes to provide, so an agreement regarding the rebate of City taxes is not required by 30 Tex. Admin. Code, § 293.11(d)(8)

ARTICLE XI GENERAL PROVISIONS

Section 11.01. Time of the essence. Time is of the essence of this Agreement. The parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 11.02. Default and Remedies.

(1) A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

(2) Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, (other than the Board's obligation to timely approve and execute this Agreement pursuant to Section ____) the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within 30 days of the receipt of such notice and thereafter diligently pursued until completion. Upon a breach of this Agreement, the non-defaulting party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Except as otherwise set forth herein, no action taken by a party pursuant to the provisions of this Article or pursuant to the provisions of any other Article of this Agreement shall be deemed to constitute an election of remedies; and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any party at law or in equity. Each of the parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other party.

(3) Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of Force Majeure the time for such performance shall be extended by the amount of time of such delay.

Section 11.04. Personal liability of public officials. To the extent permitted by State law, no public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.

Section 11.05. Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed or sent by rapid transmission confirmed by mailing written confirmation at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving party at the following addresses:

If to the City:

The City of Kyle, Texas
100 W Center Street
Kyle, Texas 78640
Attention: _____

With copies to the Law Department
Attention: Frank Garza
Davidson, Troilo, Ream & Garza
601 NW Loop 410
San Antonio, Texas 78216

If to the District:

North Hays County Municipal Utility District No. 2
c/o Allen Boone Humphries Robinson LLP
1108 Lavaca Suite 510
Austin, Texas 78701
Attn: President, Board of Directors

If to the Developer:
Plum Creek Development Partners Ltd
4040 Broadway Suite 501
San Antonio, TX 78209

AND

MG Realty Advisors, LLC, d/b/a Momark Development
c/o Terry Mitchell & Megan Shannon
P.O. Box 5654
Austin, TX 78763

With copies to:

Each Party may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this Section shall be deemed to be given when so mailed, any notice so sent by rapid transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when received for, or actually received by, an authorized as the case may be.

Section 11.06. Amendments and waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is approved by the Parties. No course of dealing on the part of the parties nor any failure or delay by the Parties with respect to exercising any right, power or privilege pursuant to this Agreement shall operate as a waiver thereof, except as otherwise provided in this Agreement.

Section 11.07. Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provisions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

Section 11.08. Successors and assigns. No party to this Agreement shall have the right to assign its rights or obligations under this Agreement or any interest herein, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 11.09. Exhibits, titles of articles, sections and subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

Section 11.10. Applicable law. This Agreement is a contract made under and shall, be construed in accordance with and governed by the laws of the United States of America and the State of Texas, and any actions concerning this Agreement shall be brought in either the Texas State Courts of Hays County, Texas or the United States District Court for the Southern District of Texas.

Section 11.11. Entire agreement. This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 11.12. Term and Termination. This Agreement shall be in force and effect from the effective date of this Agreement for a term expiring on the earlier of December 31, _____ or (ii) the date that the Developer has received the total amount of reimbursements permitted to be made to it by the Water Code and the Consent Agreement.

Section 11.13. Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the Parties, the Parties agree that such approval or consent shall not be unreasonably withheld or delayed.

Section 11.14. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 11.15. Interpretation. This Agreement has been jointly negotiated by the Parties and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

ARTICLE XII

DISSOLUTION OF THE DISTRICT

Section 12.01. Dissolution of District Prior to Retirement of Bonded Indebtedness. The City and the District recognize that, as provided in the laws of the State of Texas and the Consent Ordinance, the City has the right to abolish and dissolve the District and to acquire the District's Assets and assume the District's Obligations. The District will continue to exist until the City decides to dissolve the District. The City hereby agrees that it will not dissolve the District until the earlier of twenty (20) years from the date hereof or until ninety (90%) percent of the land within the District has access to retail water and wastewater service from the City. As of the time this Consent Agreement is executed, the City anticipate that assumption of the District's Bonds and Obligations debt is justified when both of the following conditions are satisfied: (1) the revenues from the sale of water and wastewater services to the residents and businesses within the District during a twelve month (12) period equals or exceeds an amount equal to two (2.0) times the District maximum annual debt service to be paid on the District's Bonds during any subsequent year; and (2) the principal and interest remaining to be paid on the District's then-outstanding Bonds,

and other District Obligations, is less than twenty five percent of the total principal and interest payments on the all the bonds issued by the District.

Section **12.02. Transition upon Dissolution.** Upon dissolution of the District, the City shall acquire the District's Assets and shall assume the District's Obligations. In the event all required findings and procedures for the dissolution of the District have been duly, properly and finally made and satisfied by the City, the District agrees that its officers, agents and representatives shall be directed to cooperate with the City in any and all respects reasonably necessary to facilitate the dissolution of the District and the transfer of the District's Assets to, and the assumption of the District's Obligations by, the City.

[EXECUTION PAGES FOLLOW]

IN TESTIMONY OF WHICH this instrument has been executed in multiple counterparts, each of equal dignity and effect, on behalf of the City, the District, and the Developer effective as of the date last written.

THE CITY OF KYLE

Mayor

ATTEST/SEAL:

City Clerk

**NORTH HAYS COUNTY MUNICIPAL
UTILITY DISTRICT NO. 2**

President, Board of Directors

ATTEST:

Secretary, Board of Directors

PLUM CREEK DEVELOPMENT PARTNERS, LTD.,
a Texas limited partnership

By: PCDP General Partner, LLC,
a Texas limited liability company,
its general partner

By: _____
_____, Manager

By: _____
_____, Manager

By: MountainCityLand, LLC,
a Texas limited liability company,

By: _____
Name: _____
Title: Manager

MOUNTAIN PLUM, LTD.,
a Texas limited partnership

By: MP General, LLC,

a Texas limited liability company,
its general partner

By: _____
_____, Manager

By: _____
_____, Manager

By: MountainCityLand, LLC,
a Texas limited liability company,
its manager

By: _____
Name: _____
Title: Manager