AIR-23-526
AGENDA REQUEST
BUSINESS OF THE CITY COUNCIL
CITY OF PEARLAND, TEXAS

AGENDA OF:	City Council - Oct 23 2023		
DATE SUBMITTED:	Oct 03 2023	**DEPT. OF ORIGIN:**	Legal Department
PREPARED BY:	Darrin Coker		

SUBJECT: **Consideration and Possible Action - Resolution No. R2023-265 -** A Resolution of the City Council of the City of Pearland, Texas, approving a 5th Amended Development Agreement with Savannah Development LTD., a limited partnership ("SAVANNAH").

ATTACHMENTS:
265-5th Amended Development Agreement.265
5th Amendment to Development Agreement CLEAN
5th Amended DA- MARKED
BC 21-22 - Letter in Support

FUNDING:

☐ Grant	☐ Developer/Other	☐ Cash
☐ G.O. Bonds To Be Sold	☐ G.O. Bonds - Sold	☐ Rev. Bonds to Be Sold
☐ Rev. Bonds - Sold	☐ C.O.'s To Be Sold	☐ C.O.'s - Sold

EXECUTIVE SUMMARY

BACKGROUND

This agenda item proposes a 5th Amended Development Agreement with the Lennar Homes (Savannah Development, LTD.) Earlier this year Council discussed the Lakes of Savannah development which is located in the southwestern portion of the City's ETJ. The discussion focused on the existing Development Agreement that requires the donation of an approximate 19-acre parcel to the city to be used as a city park. Recognizing that annexation of the development was unlikely, the developer and the Directors of Brazoria County MUDs 21 and 22 (collectively, the MUDs), requested an amendment to the Agreement to allow for the donation of the property to the MUDs for development of a neighborhood park in the Lakes of Savannah. At that time, Council asked staff to bring back an amendment to the Development Agreement for consideration.

In anticipation of this amendment, the MUDs have already approved a form of Joint Recreational Facilities Agreement for the park site, have solicited qualifications and received statements of qualifications from 6 landscape architect firms for the development of a master plan for the park site. To facilitate the development of the park, the Council also expressed a willingness to consent to park powers for the MUDs 21 which would allow them to use MUD bond revenue to develop the park. Park bonds to fund park improvements are limited to an amount not to exceed 2% of the total AV in the MUDs. The proposed consent resolution for park powers will be considered as a separate agenda item if the 5th Amended Development Agreement is approved.

Recommended Action

Consider the proposed 5th Amended Development Agreement with Savannah Development, LTD.

RESOLUTION NO. R2023-265

A Resolution of the City Council of the City of Pearland, Texas, approving a 5th Amended Development Agreement with Savannah Development LTD., a limited partnership ("SAVANNAH").

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS:

Section 1. That certain 5th Amended Development Agreement by and between the City of Pearland and Savannah, a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes, is hereby authorized and approved.

Section 2. That the City Manager or his designee is hereby authorized to execute and the City Secretary to attest that certain 5th Amended Development Agreement with Savannah.

PASSED, APPROVED and ADOPTED this the 23rd day of October, A.D., 2023.

_____
J. KEVIN COLE
MAYOR

ATTEST:

_____
FRANCES AGUILAR, TRMC, MMC
CITY SECRETARY

APPROVED AS TO FORM:

_____
DARRIN M. COKER
CITY ATTORNEY

FIFTH AMENDED AND RESTATED

DEVELOPMENT AGREEMENT

This **FIFTH AMENDED AND RESTATED DEVELOPMENT AGREEMENT** (this "Agreement"), is made and entered into as of the ____, October 2023, by and between the **CITY OF PEARLAND, TEXAS,** a municipal corporation and home-rule city of the State of Texas (the "City"), and **SAVANNAH DEVELOPMENT, LTD.,** (the "Developer").

RECITALS

This Fifth Amended and Restated Development Agreement is entered into to replace in its entirety, the original Development Agreement entered into by and between the City and the Developer, as amended, under the terms and conditions fully restated herein. Resolution R2000-89, dated July 24, 2000, authorized and approved the Original Development Agreement. Resolution No. R2002-163, dated November 11, 2002, authorized and approved the First Amended Development Agreement. Resolution no. R2005-75, dated April 25, 2005, authorized and approved the Second Amended Development Agreement. Resolution no. R2005-96, dated June 13, 2005 authorized and approved the Third Amended Development Agreement. Resolution no. R2017-223, dated October 23, 2017, authorized and approved the Fourth Amended and Restated Development Agreement.

The Developer has the right to own and develop certain property located in the general vicinity of State Highway 6 and Farm to Market Road No. 521, in Brazoria County, located entirely within the extraterritorial jurisdiction ("ETJ") of the City, more fully described in Exhibit A, attached hereto (the "Property"), and the Developer has determined that the creation of two municipal utility districts (the "Districts") over the Property is necessary for the provision of water, sewer and drainage facilities necessary to develop the Property. In accordance with applicable law, the consent of the City is required for the creation of municipal utility districts within the City's ETJ, and the City was willing to consent to such creations, as expressed in Resolution 2000-21, adopted by the City Council of the City on February 14, 2000, in lieu of the current annexation of the Property, subject to certain conditions. The City consented to the creation of Brazoria County Municipal Utility District No. 21 as expressed in Resolution 2000-127 and Brazoria County Municipal Utility District No. 22 as expressed in Resolution 2000-128 both which were dated October 23, 2000.

Section 43.0751, Tex. Local Gov't Code (the "Act") provides for the negotiation and implementation of "strategic partnership agreements" between cities and municipal utility districts, whereby the continued existence and various areas of governmental cooperation may be provided for by agreement, and the City is interested in entering into such agreements with the Districts immediately subsequent to their creation and organization. The fully executed Strategic Partnership Agreements between the City and the Districts are attached herewith as Exhibit "D".

The Developer and the City agree that the City's consent to the creation of the Districts is subject to the City's standard conditions relating to the creation of districts in its ETJ. The City and the Developer have determined that they are authorized by the Constitution and laws of the

State of Texas to enter into this Agreement and have further determined that the terms, provisions, and conditions hereof are mutually fair and advantageous to each.

AGREEMENT

For and in consideration of these premises and of the mutual promises, obligations, covenants, and benefits herein contained the City and the Developer contract and agree as follows:

ARTICLE 1
DEFINTIONS

The terms "Act," "City," "Developer," Districts," "ETJ," and "Property" shall have the meanings provided for them in the Recitals, above. Except as may be otherwise defined, or the context clearly requires otherwise, capitalized terms and phrases used in this Agreement shall have the meanings as follows:

CR58 Segment means the segment of Brazoria County Road 58 described in Section 3.03(a), below.

City Subdivision Ordinance means those regulations adopted by Ordinance 421, passed March 31, 1981, as amended.

Consent Ordinance means the ordinance or resolution to be adopted by the City evidencing the City's consent to the inclusion of land within each of the Districts in accordance with Tex. Local Gov't Code Section 42.042 and Tex. Water Code Section 54.016, each as amended.

Comprehensive Plan means the City's Comprehensive Plan for the location of streets, fire stations, libraries and other public facilities, adopted November 22, 1999, as amended subject to the rights of the parties hereto.

Developer's Road Contribution means the Developer's payment to the City for construction of roads defined in Section 3.03, below.

Fire Protection/ElYIS Agreement means the agreement effective September 19, 2002, between the City of Pearland, the Pearland Volunteer Fire Department and the Districts for the provision of fire protection services.

Plan of Development means the Developer's conceptual land plan and criteria for the development of the Property, attached hereto as Exhibit B.

SPA means a strategic partnership agreement between the City and one or more Districts pursuant to the terms of the Act.

ARTICLE 2
GENERAL STATEMENT

Subject to the specific terms and conditions stated in this Agreement, the City will defer annexation of the Property. The City and the Developer have cooperated to accomplish the creation of the Districts in the ETJ and will further cooperate in the inclusion of lands within the Property into boundaries of one or both of the Districts. The City and Districts have executed strategic partnership agreements relating to the provisions of services within the Districts and the terms and conditions under which the Districts will be annexed and then dissolved by the City are set out.

ARTICLE 3
OBLIGATIONS OF THE DEVELOPER

3.01 Fire station and library sites.

(a) The developer agrees to donate to the City 1.3 acres and 2.0 acres of land, respectively, for the purpose of construction and operation of a City fire station and a proposed public library. The location of such sites shall be consistent with the Plan of Development. The exact location of such sites shall be approved by the City. All utilities shall be provided at the property line of each site at no cost to the City. The Fire Station Reserve shall be eligible for use to serve the Districts in accordance with the fire plan described in Section 4.01 of the SPA. A fire station has been constructed by the Districts in conformance with Section 6.e. of the Fire Protection/EMS Agreement. Any agreement for the use of the City fire station and library with a third party shall terminate upon annexation of the District in which it is located, unless the City agrees otherwise.

i. The developer has platted and donated the fire station site. The 1.489-acre Fire Station site is out of the Savannah School Site & Fire Station Reserves, according to the plat thereof recorded under Clerk's File No. 2010006936 of the Official Public Records of Brazoria County, Texas. The fire station site has been donated to Brazoria County Municipal Utility District No. 21 by a Dedication Special Warranty Deed (Tract B, Fire Station Site) recorded under Clerk's File No. 2011002936 of the Official Public Records of Brazoria County, Texas. See attached Figure 10 and 11 of Exhibit “B” Plan of Development.

ii. The developer shall convey, by Special Warranty Deed, the library site to Brazoria County Municipal Utility District No. 22 for the purpose of developing parks and recreational facilities, as further described below in 3.02.

(b) The conveyances shall provide that (i) in the event the land is used for any purpose other than the specified purpose, without the written consent of the Developer, such site will revert to the Developer; and (ii) the Developer may make temporary use

of the land prior to the Districts' construction of the fire station and the City's construction of the library improvements, so long as the Developer vacates the land with all improvements within 60 days of receipt of notice from the District or the City, respectively, of its intention to commence construction thereon. Prior to the construction of any temporary improvements by the Developer, the Developer shall notify the City, and the City shall have the right to approve such improvements in advance.

3.02 Park Dedication. The Developer agrees to dedicate: (i) an approximately 19-acre tract, currently identified as "City Park" on Exhibit "B", Figure 2, and an approximately 2-acre tract, currently identified as "Library" on Exhibit "B," Figure 2, to Brazoria County Municipal Utility District No. 22 in place of conveyance to the City, for the purpose of developing parks and recreational facilities; and (ii) an off-site 45-acre tract (total 45 acres) consisting of 40.3 acres of park land and 4.7 acres of future McHard Road right-of-way to the City. In addition, the Developer shall pay $78.00 dollars per lot at the time the plat is recorded.

(a) The developer shall convey, by Special Warranty Deed, the approximately 19-acre park site and approximately 2-acre library site to Brazoria County Municipal Utility District No. 22 on or before December 31, 2024.

(b) The developer has deeded to the City, by a Dedication Special Warranty Deed recorded under Brazoria County Clerk's File No. 2008056574, a certain +/- 45.1-acre tract located on Cullen Boulevard (the "Cullen Tract") consisting of +/- 38.6-acres of park land and +/- 6.6-acres of road right of way for the Cullen Boulevard expansion and future McHard Road construction, as shown in Figure 9 of Exhibit "B" the Plan of Development.

(c) The developer has paid $1213.60 for each lot platted within the 31.42 Acre Tract "A" (land associated with the 4th Amended Development Agreement) at the time of plat recordation.

Developer shall have no other park land dedication requirements other than what is required in Exhibit "B", Table 1: Composition of Land Usage.

3.03 Street construction. The Developer agrees to comply with the minimum road design standards in the City's Subdivision Ordinance as amended and approved by City Council on July 11, 1983, and the thoroughfare plan shown on the Plan of Development, except to the extent that the standards for road construction are inconsistent with the Plan of Development. The City agrees to use its best efforts to cause such future thoroughfare construction in the traffic shed to comply with the minimum design standards of the Comprehensive Plan. In addition, the Developer shall provide a contribution for road construction (the "Developer's Road Contribution") toward the construction of portions of the County Road 58 outside the Property, as detailed below.

(a) County Road 58. County Road 58 will be planned as a major thoroughfare (120-foot right-of-way) as detailed in the Plan of Development. The Developer shall be

responsible for the construction of a four-lane boulevard section within the Property as shown on Figure 5 of the Plan of Development, and for a pro-rata share of a secondary thoroughfare outside the Property. As of the date of this agreement, the developer has constructed approximately 3,200 linear feet of the four-lane boulevard east of Savannah Parkway to the eastern boundary of the tract. The majority of County Road 58, within the ETJ, will be widened and constructed as development occurs adjacent to it under the City's Subdivision Ordinance. A portion of County Road 58, from County Road 48 west for approximately 2,560 feet (the "CR58 Segment") has already been developed with low-density housing and other similar uses that did not give rise to a requirement that a developer fund improvements to the CR58 Segment, and therefore future improvements thereto will not likely be funded by anyone under the Subdivision Ordinance; as a result, the CR58 Segment will need to be widened through the joint effort of the City, Brazoria County, and future development within the traffic shed. According to that certain traffic study carried out by Walter P. Moore, dated June 14, 2000, development of the Property will contribute 38 percent of the forecast traffic on the CR58 Segment. Subject to the contribution of other developers, and the timing of contributions described in Subsections (b) and (c), below, the Developer has paid to the City such percentage of the estimated construction costs of the CR58 Segment to be used for such purpose. The Developer's Road Contribution payment shall not exceed $93.40 per lot.

(b) Timing of contribution. The Developer's Road Contribution shall be phased to coincide with the development of the Property. The total amount of the Developer's Road Contribution shall be divided by the number of lots anticipated to be provided on the Property in accordance with the Plan of Development, and in connection with the recording of a plat within the Property, the Developer will deposit with the City the per-lot amount as determined above, multiplied by the number of lots platted. The Developer's Road Contribution obligations with respect to platted Property shall terminate upon payment to the City.

(c) Collection of funds from other developers. The parties understand that the City's Development Ordinance requires other developers to construct County Road 58 within or adjacent to their developments, in the same manner as the Developer will be required to construct County Road 58 within the Property. The City will require other developers to contribute to the CR58 Segment in accordance with applicable City development ordinances, and will credit the Developer's Road Contribution by the amount of such contributions, including the refund of any amounts already paid by the Developer with respect to applicable portions of the CR58 Segment.

(d) Construction costs attributable to the Developer. Construction Costs under this Section means costs associated with the actual construction costs and engineering fees and expenses directly relating to the CR58 Segment, but shall not include costs of City financing or other costs not directly related to the CR58 Segment.

(e) City construction of alternative street design. If the City determines that the traffic requirements of County Road 58 may be satisfied by a different, less costly design, and wishes to make use of the Developer's Road Contributions to construct such an alternate roadway section, the City shall notify the Developer and may do so without Developer's written consent. In such event, Developer's thoroughfare design standards within the Property shall be modified to match the City's revised plan, and the Developer's Road Contribution shall be decreased to an amount consistent with the revised thoroughfare design.

(f) Separate accounting. The City agrees to invest the Developer's Road Contributions in interest-bearing accounts, and to account for all principal and interest thereon, secured in the same manner and at the same interest rate that the City invests other City funds.

(g) Final accounting. Upon completion of the CR58 Segment, or upon the occurrence of an event described herein such that the Developer is entitled to a return of all or a part of the Developer's Road Contributions, the City shall prepare a final accounting of funds advanced by the Developer, the use of such funds, and the earnings thereon, Within 30 days of the completion of the accounting, any unused funds or earnings shall be returned to the Developer.

(h) County construction of alternate thoroughfare design. Because the subject portion of CR58 is not currently located within the City, it is possible that Brazoria County may wish to construct the CR58 improvements before the City does so. If, prior to the City improving CR58 east of the Property, Brazoria County elects to improve CR58 east of the Property as provided in the Comprehensive Plan, or to an alternate design standard from the design in the Comprehensive Plan, and such improvement will result in CR58 being improved to a minimum four-lane rural asphalt section road the City will make available to the County (the Developer's Road Contribution) on the same pro- rata share basis. In such event, the thoroughfare so constructed shall be considered to have complied with the Developer's financial obligations under this Section, and all provisions hereof relating to the City shall be construed to refer to Brazoria County.

(i) Savannah Parkway. Savannah Parkway will be planned as a secondary thoroughfare (100-foot right of way) as detailed in the Plan of Development. The Developer shall be responsible for the construction of a four-lane boulevard section within the Prope1ty as shown on Figure 6 of the Plan of Development. As of the date of this Fifth Amended and Restated Development Agreement, the developer has constructed four lanes of Savannah Parkway from State Highway Six to Laurel Heights Drive. The Developer shall be responsible for constructing the remaining segment of Savannah Parkway from north of Laurel Heights Drive to County Road 894.

The developer has no other roadway construction obligations under this agreement.

3.04 Cost reimbursement. The Developer has reimbursed the City for professional consulting fees reasonably incurred by the City in connection with the review and approval of this Agreement and the Strategic Partnership Agreement. Such cost shall be reimbursed within 30 days of notice thereof by the City, accompanied by copies of invoices therefor and appropriate backup documentation.

3.05 City gateway locations. The Developer agrees to make available to the City, at no cost, two locations along State Highway 6 (500 square foot minimum each) for City gateway sign locations. Such sites shall be mutually approved by the parties. The Developer shall have no funding obligation with respect to the gateway signs themselves, but shall cooperate to maintain their visibility.

(a) The Developer has dedicated, at no cost to the City, i) a City Gateway Easement within Restricted Reserve B of the plat of Savannah Ridge Section Two as recorded under Clerk's File No. 02 038082 and in Volume 23, Page 51-54 of the Plat or Map Records of Brazoria County, Texas, Savannah Parkway, and ii) a City Gateway Landscape Easement within Restricted Reserve A of the plat of Southern Oaks Lane & Commercial Reserve No. 1 as recorded under Clerks File No. 01 047888 and in Volume 22, Page 149-152 of the Plat or Map Records of Brazoria County, Texas.

3.06 Confirming City actions. The obligations of the Developer with respect to Sections 3.01, 3.02, 3.03, and Article 4 are conditioned upon the adoption of one or more ordinances by the City that will allow the provisions of the Plan of Development to prevail over applicable City provisions of the City's Subdivision Code, infrastructure design criteria, Land Use and Urban Design Code, flood plain ordinance, and other applicable City codes and regulations to the extent of a specific conflict.

ARTICLE 4
LAND AND DEVELOPMENT COVENANTS

4.01 City regulations applicable. The Developer agrees that, subject to the terms of this Agreement and the Plan of Development, it will abide by the terms of the City Subdivision Ordinance, infrastructure design criteria, the City Building Code, Land Use and Urban Design Code, and Flood Plain Ordinance, (collectively, the "Regulations") notwithstanding the fact that some or all of such regulations would not otherwise apply to the Property located outside the City. Plans and specifications for all public improvements shall be submitted to and approved by the City before the Developer awards a construction contract for such improvements. The Developer agrees that, at the time the Developer records a subdivision plat for any tract of land in the Property, and prior to the sale or conveyance of any land within the Property, it will record restrictive covenants on such land requiring all subsequent grantees to abide by the Regulations in the same manner, and providing that the City is a third party beneficiary to such covenants. Such covenants will be provided to the City Manager for review and comment at least ten days prior to recording thereof.

4.02 Land use. The Developer agrees to comply with the provisions of Land Use and Urban Development Ordinance, revised June 26, 2000, as amended subject to the rights of the parties, with such variations thereto as may be required to conform to the Plan of Development.

ARTICLE 5
CITY CONSENT TO CREATIONS AND STATEGIC PARTNERSHIP AGREEMENTS

5.01 City consent to creation. Subject to the provisions of this Development Agreement, the City consents to the creation of two Districts over the Property. Upon submission of a proper petition for consent, and subject to the consent conditions attached hereto as Exhibit C, the City will provide a written consent in a form acceptable under the rules of the TCEQ and the Attorney General of Texas.

(a) The City provided written consent to the creation of Brazoria County Municipal Utility District No. 21 (590.17 acres) as expressed in resolution no. R2000-127 and Brazoria County Municipal Utility District No. 22 (327.38 acres) as expressed in resolution no. R2000-128 both which were dated October 23, 2000. This creation was associated with the original development agreement.

(b) The City provided written consent to the annexation 34.78 acres of additional land into Brazoria County Municipal Utility District No. 21 as expressed in Ordinance No. 1151.

(c) The City provided written consent to the annexation of 294.93 acres of additional land into Brazoria County Municipal Utility District No. 22 as expressed in Ordinance No. 1493.

(d) The City provided written consent to the annexation of 31.42 acres of additional land into Brazoria County Municipal Utility District No. 22 as expressed in Ordinance No. 1565.

5.02 Strategic partnership agreements. Upon the creation and organization of each District, the Developer will present an SPA to the board of the District in substantially the form attached hereto as Exhibit D. The Developer shall use its best efforts to secure the approval of the SPA by the District as soon as practicable. Any revisions to the form of the SPA shall be made subject to the approval of the City, the Developer and the District's board of directors. The parties acknowledge that if the SPAs are not approved by the Districts, the provisions of Tex. Local Gov't Code, §43.052(h)(l) allow the City to annex the Districts prior to substantial development therein without regard to the requirements of a municipal annexation plan under such section.

ARTICLE 6
TERM AND DEFAULT

6.01 Term. This Agreement shall terminate 15 years after the date the ordinance authorizing and approving the consent to this Fifth Amended and Restated Development Agreement, unless terminated earlier as specifically provided herein.

6.02 Default.

(a) 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.

(b) Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, 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, subject, however, to the terms and provisions of Section 7.01, below. Upon a breach of this Agreement, the non-defaulting Party may be awarded actual damages for failure of pe1foimance. Except as otherwise set forth herein, no action taken by a party pursuant to the provisions of this Section pursuant to the provisions of any other section 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 patties shall have the affirmative obligation to mitigate its damages in the event of a default by the other party.

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.01 *Force majeure*. In the event either party is rendered unable, wholly or in part, by *force majeure* to carry out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such party, to the extent affected by such *force majeure* and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the *force majeure* relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such *force majeure* to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "*force majeure*," as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes,

fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply resulting in an inability to provide water necessary for operation of the water and wastewater systems hereunder, and any other inabilities of any party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care.

7.02 Approvals and consents. Approvals or consents required or permitted to be given under this Agreement shall be evidenced by an ordinance, resolution or order adopted by the governing body of the appropriate party or by a certificate executed by a person, firm or entity previously authorized to give such approval or consent on behalf of the patty. Approvals and consents shall be effective without regard to whether given before or after the time required for giving such approvals or consents.

7.03 Addresses and notice. Any notice to be given under this Agreement shall be given in writing, addressed to the party to be notified as set forth below, and may be given either by depositing the notice in the United States mail postage prepaid, registered or certified mail, with return receipt requested; by messenger delivery; or by telecopy. Notice deposited by mail shall be effective three days after posting. Notice given in any other manner shall be effective upon receipt by the party to be notified. For purposes of notice, the addresses of the parties shall be as follows:

If to the City, to:

City Manager
City of Pearland
3519 Liberty Dr.
Pearland, Texas 77581
Fax: (281) 652-1708

If to the Developer, to:

Friendswood Development Company
681 Greens Parkway, Suite 220
Houston, Texas 77067
Attention: Michael W. Johnson
Fax: (281) 582-5704

With a copy to:

Allen Boone Humphries LLP Phoenix Tower
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attention: Katie Carner
Fax: (713) 860-6682

The parties shall have the right from time to time to change the respective addresses by giving at least 15 days' written notice of such change to the other party.

7.04 Assignability; successors and assigns. All covenants and agreements contained by or on behalf of a party in this Agreement shall bind its successors and assigns and shall inure to the benefit of the other patties, their successors and assigns. The parties may assign their rights and obligations under this Agreement or any interest herein, only with the prior written consent of the other party, and any assignment without such prior written consent, including an assignment by operation of law, is void and of no effect; provided that, the Developer may make an assignment to a successor developer of the Land if such assignee specifically assumes all of the obligations of the Developer hereunder or may make a collateral assignment in favor of a lender without consent. This Section shall not be construed to prevent the Developer from selling lots, parcels or other po1tions of the Land in the normal course of business. If such assignment of the obligations by the Developer hereunder is effective, the Developer shall be deemed released from such obligations. If any assignment of the obligations by the Developer hereunder is deemed ineffective or invalid, the Developer shall remain liable hereunder.

7.05 No additional waiver implied. The failure of either party to insist upon performance of any provision of this Agreement shall not be construed as a waiver of the future performance of such provision by the other party.

7.06 Reservation of rights. All rights, powers, privileges and authority of the parties hereto not restricted or affected by the express terms and provisions hereof are reserved by the parties and, from time to time, may be exercised and enforced by the parties.

7.07 Parties in interest. This Agreement shall be for the sole and exclusive benefit of the parties hereto and shall not be construed to confer any rights upon any third parties.

7.08 Merger. This Agreement embodies the entire understanding between the parties and there are no representations, warranties, or agreements between the parties covering the subject matter of this Agreement.

7.09 Modification; exhibit. This Agreement shall be subject to change or modification only with the mutual written consent of the City and the Developer. The exhibits attached to this Agreement are incorporated by this reference for all purposes.

7.10 Captions. The captions of each section of this Agreement are inserted solely for convenience and shall never be given effect in construing the duties, obligations or liabilities of the parties hereto or any provisions hereof, or in ascertaining the intent of either party, with respect to the provisions hereof.

7.11 Interpretations. This Agreement and the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.

7.12 Severability. If any provision of this Agreement or the application thereof to any person or circumstances is ever judicially declared invalid, such provision shall be deemed severed from this Agreement and the remaining portions of this Agreement shall remain in effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, as of the date first given above.

[SIGNATURE PAGE FOLLOWS]

CITY OF PEARLAND, TEXAS

By:_____
Trent Epperson, City Manager

ATTEST:

By:_____
Frances Aguilar, City Secretary

APPROVED AS TO FORM:

By:_____
Darrin M. Coker, City Attorney

SAVANNAH DEVELOPMENT, LTD.,
a Texas limited partnership

By: **LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD.,** a Texas limited partnership, dba Friendswood Development Company, as Attorney-in-Fact

By: **Lennar Texas Holding Company,** a Texas corporation, its general partner

By: _____
Mark Sustana, Vice President

ATTEST:

By:_____
Kate Davis, Authorized Signator

~~FOURTH~~ FIFTH AMENDED AND RESTATED

DEVELOPMENT AGREEMENT

This **~~FOURTH~~ FIFTH AMENDED AND RESTATED DEVELOPMENT AGREEMENT** (this "Agreement"), is made and entered into as of the ____, ~~November~~ October 2023~~17~~, by and between the **CITY OF PEARLAND, TEXAS,** a municipal corporation and home-rule city of the State of Texas (the "City"), and **SAVANNAH DEVELOPMENT, LTD.,** (the "Developer").

RECITALS

This ~~Fourth~~ Fifth Amended and Restated Development Agreement is entered into to replace in its entirety, the original Development Agreement entered into by and between the City and the Developer, as amended, under the terms and conditions fully restated herein. Resolution R2000-89, dated July 24, 2000, authorized and approved the Original Development Agreement. Resolution No. R2002-163, dated November 11, 2002, authorized and approved the First Amended Development Agreement. Resolution no. R2005-75, dated April 25, 2005, authorized and approved the Second Amended Development Agreement. Resolution no. R2005-96, dated June 13, 2005 authorized and approved the Third Amended Development Agreement. Resolution no. R2017-223, dated October 23, 2017, authorized and approved the Fourth Amended and Restated Development Agreement.

The Developer has the right to own and develop certain property located in the general vicinity of State Highway 6 and Farm to Market Road No. 521, in Brazoria County, located entirely within the extraterritorial jurisdiction ("ETJ") of the City, more fully described in Exhibit A, attached hereto (the "Property"), and the Developer has determined that the creation of two municipal utility districts (the "Districts") over the Property is necessary for the provision of water, sewer and drainage facilities necessary to develop the Property. In accordance with applicable law, the consent of the City is required for the creation of municipal utility districts within the City's ETJ, and the City was willing to consent to such creations, as expressed in Resolution 2000-21, adopted by the City Council of the City on February 14, 2000, in lieu of the current annexation of the Property, subject to certain conditions. The City consented to the creation of Brazoria County Municipal Utility District No. 21 as expressed in Resolution 2000-127 and Brazoria County Municipal Utility District No. 22 as expressed in Resolution 2000-128 both which were dated October 23, 2000.

Section 43.0751, Tex. Local Gov't Code (the "Act") provides for the negotiation and implementation of "strategic partnership agreements" between cities and municipal utility districts, whereby the continued existence and various areas of governmental cooperation may be provided for by agreement, and the City is interested in entering into such agreements with the Districts immediately subsequent to their creation and organization. The fully executed Strategic Partnership Agreements between the City and the Districts are attached herewith as Exhibit "D".

The Developer and the City agree that the City's consent to the creation of the Districts is subject to the City's standard conditions relating to the creation of districts in its ETJ.

The City and the Developer have determined that they are authorized by the Constitution and laws of the State of Texas to enter into this Agreement and have further determined that the terms, provisions, and conditions hereof are mutually fair and advantageous to each.

AGREEMENT

For and in consideration of these premises and of the mutual promises, obligations, covenants, and benefits herein contained the City and the Developer contract and agree as follows:

ARTICLE 1
DEFINTIONS

The terms "Act," "City," "Developer," Districts," "ETJ," and "Property" shall have the meanings provided for them in the Recitals, above. Except as may be otherwise defined, or the context clearly requires otherwise, capitalized terms and phrases used in this Agreement shall have the meanings as follows:

CR58 Segment means the segment of Brazoria County Road 58 described in Section 3.03(a), below.

City Subdivision Ordinance means those regulations adopted by Ordinance 421, passed March 31, 1981, as amended.

Consent Ordinance means the ordinance or resolution to be adopted by the City evidencing the City's consent to the inclusion of land within each of the Districts in accordance with Tex. Local Gov't Code Section 42.042 and Tex. Water Code Section 54.016, each as amended.

Comprehensive Plan means the City's Comprehensive Plan for the location of streets, fire stations, libraries and other public facilities, adopted November 22, 1999, as amended subject to the rights of the parties hereto.

Developer's Road Contribution means the Developer's payment to the City for construction of roads defined in Section 3.03, below.

Fire Protection/ElYIS Agreement means the agreement effective September 19, 2002, between the City of Pearland, the Pearland Volunteer Fire Department and the Districts for the provision of fire protection services.

Plan of Development means the Developer's conceptual land plan and criteria for the development of the Property, attached hereto as Exhibit B.

SPA means a strategic partnership agreement between the City and one or more Districts pursuant to the terms of the Act.

ARTICLE 2
GENERAL STATEMENT

Subject to the specific terms and conditions stated in this Agreement, the City will defer annexation of the Property. The City and the Developer have cooperated to accomplish the creation of the Districts in the ETJ and will further cooperate in the inclusion of lands within the Property into boundaries of one or both of the Districts. The City and Districts have executed strategic partnership agreements relating to the provisions of services within the Districts and the terms and conditions under which the Districts will be annexed and then dissolved by the City are set out.

ARTICLE 3
OBLIGATIONS OF THE DEVELOPER

3.01 Fire station and library sites.

(a) The developer agrees to donate to the City 1.3 acres and 2.0 acres of land, respectively, for the purpose of construction and operation of a City fire station and a proposed public library. ~~If the City, in its sole discretion, determines that the proposed library site is best suited for alternative civic uses, the property may be used by City for such other municipal uses provided said uses are compatible with the adjacent residential uses.~~ The location of such sites shall be consistent with the Plan of Development. The exact location of such sites shall be approved by the City ~~and shall be donated to the City~~. All utilities shall be provided at the property line of each site at no cost to the City. ~~The City agrees to use its best efforts to cause a library to be constructed on the donated library site.~~ The Fire Station Reserve shall be eligible for use to serve the Districts in accordance with the fire plan described in Section 4.01 of the SPA. A fire station has been constructed by the Districts in conformance with Section 6.e. of the Fire Protection/EMS Agreement. Any agreement for the use of the City fire station and library with a third party shall terminate upon annexation of the District in which it is located, unless the City agrees otherwise.

i. The developer has platted and donated the fire station site. The 1.489-acre Fire Station site is out of the Savannah School Site & Fire Station Reserves, according to the plat thereof recorded under Clerk's File No. 2010006936 of the Official Public Records of Brazoria County, Texas. The fire station site has been donated to Brazoria County Municipal Utility District No. 21 by a Dedication Special Warranty Deed (Tract B, Fire Station Site) recorded under Clerk's File No. 2011002936 of the Official Public Records of Brazoria County, Texas. See attached Figure 10 and 11 of Exhibit “B” Plan of Development.

ii. The developer shall convey, by Special Warranty Deed, the library site to ~~the City~~Brazoria County Municipal Utility District No. 22 for the purpose

of developing parks and recreational facilities, as further described below in 3.02 ~~on or before December 31, 2018~~.

(b) The conveyances shall provide that (i) in the event the land is used for any purpose other than the specified purpose, without the written consent of the Developer, such site will revert to the Developer; and (ii) the Developer may make temporary use of the land prior to the Districts' construction of the fire station and the City's construction of the library improvements, so long as the Developer vacates the land with all improvements within 60 days of receipt of notice from the District or the City, respectively, of its intention to commence construction thereon. Prior to the construction of any temporary improvements by the Developer, the Developer shall notify the City, and the City shall have the right to approve such improvements in advance.

3.02 Park Dedication ~~Ordinance~~. The Developer agrees to dedicate: (i) an approximately 19-acre tract, currently identified as "City Park" on Exhibit "A" and an approximately 2-acre tract, currently identified as "Library" on Exhibit "A," to Brazoria County Municipal Utility District No. 22 in place of conveyance to the City, for the purpose of developing and parks and recreational facilities; ~~to the City a 19.4-acre park as shown on the Plan of Development~~ and (ii) an off-site 45-acre tract (total 45 acres) consisting of 40.3 acres of park land and 4.7 acres of future McHard Road right-of-way to the City. In addition, the Developer shall pay $78.00 dollars per lot at the time the plat is recorded.

(a) The developer shall convey, by Special Warranty Deed, the approximately 19~~19.4~~-acre park site and approximately 2-acre library site to Brazoria County Municipal Utility District No. 22 ~~the City~~ on or before December 31, 202~~418~~.

(b) The developer has deeded to the City, by a Dedication Special Warranty Deed recorded under Brazoria County Clerk's File No. 2008056574, a certain +/- 45.1-acre tract located on Cullen Boulevard (the "Cullen Tract") consisting of +/- 38.6-acres of park land and +/- 6.6-acres of road right of way for the Cullen Boulevard expansion and future McHard Road construction, as shown in Figure 9 of Exhibit "B" the Plan of Development.

(c) The developer ~~shall pay~~has paid $1213.60 for each lot platted within the 31.42 Acre Tract "A" (land associated with the 4th Amended Development Agreement) at the time of plat recordation.

Developer shall have no other park land dedication requirements other than what is required in Exhibit "B", Table 1: Composition of Land Usage.

3.03 Street construction. The Developer agrees to comply with the minimum road design standards in the City's Subdivision Ordinance as amended and approved by City Council on July 11, 1983, and the thoroughfare plan shown on the Plan of Development, except to the extent that the standards for road construction are inconsistent with the Plan of Development. The City agrees to use its best efforts to cause such future thoroughfare construction in the traffic

shed to comply with the minimum design standards of the Comprehensive Plan. In addition, the Developer shall provide a contribution for road construction (the "Developer's Road Contribution") toward the construction of portions of the County Road 58 outside the Property, as detailed below.

(a) County Road 58. County Road 58 will be planned as a major thoroughfare (120-foot right-of-way) as detailed in the Plan of Development. The Developer shall be responsible for the construction of a four-lane boulevard section within the Property as shown on Figure 5 of the Plan of Development, and for a pro-rata share of a secondary thoroughfare outside the Property. As of the date of this agreement, the developer has constructed approximately 3,200 linear feet of the four-lane boulevard east of Savannah Parkway to the eastern boundary of the tract. The majority of County Road 58, within the ETJ, will be widened and constructed as development occurs adjacent to it under the City's Subdivision Ordinance. A portion of County Road 58, from County Road 48 west for approximately 2,560 feet (the "CR58 Segment") has already been developed with low-density housing and other similar uses that did not give rise to a requirement that a developer fund improvements to the CR58 Segment, and therefore future improvements thereto will not likely be funded by anyone under the Subdivision Ordinance; as a result, the CR58 Segment will need to be widened through the joint effort of the City, Brazoria County, and future development within the traffic shed. According to that certain traffic study carried out by Walter P. Moore, dated June 14, 2000, development of the Property will contribute 38 percent of the forecast traffic on the CR58 Segment. Subject to the contribution of other developers, and the timing of contributions described in Subsections (b) and (c), below, the Developer ~~will pay~~has paid to the City such percentage of the estimated construction costs of the CR58 Segment to be used for such purpose. The Developer's Road Contribution payment shall not exceed $93.40 per lot.

(b) Timing of contribution. The Developer's Road Contribution shall be phased to coincide with the development of the Property. The total amount of the Developer's Road Contribution shall be divided by the number of lots anticipated to be provided on the Property in accordance with the Plan of Development, and in connection with the recording of a plat within the Property, the Developer will deposit with the City the per-lot amount as determined above, multiplied by the number of lots platted. The Developer's Road Contribution obligations with respect to platted Property shall terminate upon payment to the City.

(c) Collection of funds from other developers. The parties understand that the City's Development Ordinance requires other developers to construct County Road 58 within or adjacent to their developments, in the same manner as the Developer will be required to construct County Road 58 within the Property. The City will require other developers to contribute to the CR58 Segment in accordance with applicable City development ordinances, and will credit the Developer's Road Contribution by the amount of such contributions, including the refund of any

amounts already paid by the Developer with respect to applicable portions of the CR58 Segment.

(d) Construction costs attributable to the Developer. Construction Costs under this Section means costs associated with the actual construction costs and engineering fees and expenses directly relating to the CR58 Segment, but shall not include costs of City financing or other costs not directly related to the CR58 Segment.

(e) City construction of alternative street design. If the City determines that the traffic requirements of County Road 58 may be satisfied by a different, less costly design, and wishes to make use of the Developer's Road Contributions to construct such an alternate roadway section, the City shall notify the Developer and may do so without Developer's written consent. In such event, Developer's thoroughfare design standards within the Property shall be modified to match the City's revised plan, and the Developer's Road Contribution shall be decreased to an amount consistent with the revised thoroughfare design.

(f) Separate accounting. The City agrees to invest the Developer's Road Contributions in interest-bearing accounts, and to account for all principal and interest thereon, secured in the same manner and at the same interest rate that the City invests other City funds.

(g) Final accounting. Upon completion of the CR58 Segment, or upon the occurrence of an event described herein such that the Developer is entitled to a return of all or a part of the Developer's Road Contributions, the City shall prepare a final accounting of funds advanced by the Developer, the use of such funds, and the earnings thereon, Within 30 days of the completion of the accounting, any unused funds or earnings shall be returned to the Developer.

(h) County construction of alternate thoroughfare design. Because the subject portion of CR58 is not currently located within the City, it is possible that Brazoria County may wish to construct the CR58 improvements before the City does so. If, prior to the City improving CR58 east of the Property, Brazoria County elects to improve CR58 east of the Property as provided in the Comprehensive Plan, or to an alternate design standard from the design in the Comprehensive Plan, and such improvement will result in CR58 being improved to a minimum four-lane rural asphalt section road the City will make available to the County (the Developer's Road Contribution) on the same pro- rata share basis. In such event, the thoroughfare so constructed shall be considered to have complied with the Developer's financial obligations under this Section, and all provisions hereof relating to the City shall be construed to refer to Brazoria County.

(i) Savannah Parkway. Savannah Parkway will be planned as a secondary thoroughfare (100-foot right of way) as detailed in the Plan of Development. The Developer shall be responsible for the construction of a four-lane boulevard section within the Prope1ty as shown on Figure 6 of the Plan of Development. As

of the date of this ~~Fourth~~ Fifth Amended and Restated Development Agreement, the developer has constructed four lanes of Savannah Parkway from State Highway Six to Laurel Heights Drive. The Developer shall be responsible for constructing the remaining segment of Savannah Parkway from north of Laurel Heights Drive to County Road 894.

The developer has no other roadway construction obligations under this agreement.

3.04 Cost reimbursement. The Developer ~~shall~~ has reimbursed the City for professional consulting fees reasonably incurred by the City in connection with the review and approval of this Agreement and the Strategic Partnership Agreement. Such cost shall be reimbursed within 30 days of notice thereof by the City, accompanied by copies of invoices therefor and appropriate backup documentation.

3.05 City gateway locations. The Developer agrees to make available to the City, at no cost, two locations along State Highway 6 (500 square foot minimum each) for City gateway sign locations. Such sites shall be mutually approved by the parties. The Developer shall have no funding obligation with respect to the gateway signs themselves, but shall cooperate to maintain their visibility.

(a) The Developer has dedicated, at no cost to the City, i) a City Gateway Easement within Restricted Reserve B of the plat of Savannah Ridge Section Two as recorded under Clerk's File No. 02 038082 and in Volume 23, Page 51-54 of the Plat or Map Records of Brazoria County, Texas, Savannah Parkway, and ii) a City Gateway Landscape Easement within Restricted Reserve A of the plat of Southern Oaks Lane & Commercial Reserve No. 1 as recorded under Clerks File No. 01 047888 and in Volume 22, Page 149-152 of the Plat or Map Records of Brazoria County, Texas.

3.06 Confirming City actions. The obligations of the Developer with respect to Sections 3.01, 3.02, 3.03, and Article 4 are conditioned upon the adoption of one or more ordinances by the City that will allow the provisions of the Plan of Development to prevail over applicable City provisions of the City's Subdivision Code, infrastructure design criteria, Land Use and Urban Design Code, flood plain ordinance, and other applicable City codes and regulations to the extent of a specific conflict.

ARTICLE 4
LAND AND DEVELOPMENT COVENANTS

4.01 City regulations applicable. The Developer agrees that, subject to the terms of this Agreement and the Plan of Development, it will abide by the terms of the City Subdivision Ordinance, infrastructure design criteria, the City Building Code, Land Use and Urban Design Code, and Flood Plain Ordinance, (collectively, the "Regulations") notwithstanding the fact that some or all of such regulations would not otherwise apply to the Property located outside the City. Plans and specifications for all public improvements shall be submitted to and approved by the City before the Developer awards a construction contract for such improvements. The

Developer agrees that, at the time the Developer records a subdivision plat for any tract of land in the Property, and prior to the sale or conveyance of any land within the Property, it will record restrictive covenants on such land requiring all subsequent grantees to abide by the Regulations in the same manner, and providing that the City is a third party beneficiary to such covenants. Such covenants will be provided to the City Manager for review and comment at least ten days prior to recording thereof.

4.02 Land use. The Developer agrees to comply with the provisions of Land Use and Urban Development Ordinance, revised June 26, 2000, as amended subject to the rights of the parties, with such variations thereto as may be required to conform to the Plan of Development.

ARTICLE 5
CITY CONSENT TO CREATIONS AND STATEGIC PARTNERSHIP AGREEMENTS

5.01 City consent to creation. Subject to the provisions of this Development Agreement, the City consents to the creation of two Districts over the Property. Upon submission of a proper petition for consent, and subject to the consent conditions attached hereto as Exhibit C, the City will provide a written consent in a form acceptable under the rules of the TCEQ and the Attorney General of Texas.

(a) The City provided written consent to the creation of Brazoria County Municipal Utility District No. 21 (590.17 acres) as expressed in resolution no. R2000-127 and Brazoria County Municipal Utility District No. 22 (327.38 acres) as expressed in resolution no. R2000-128 both which were dated October 23, 2000. This creation was associated with the original development agreement.

(b) The City provided written consent to the annexation 34.78 acres of additional land into Brazoria County Municipal Utility District No. 21 as expressed in Ordinance No. 1151.

(c) The City provided written consent to the annexation of 294.93 acres of additional land into Brazoria County Municipal Utility District No. 22 as expressed in Ordinance No. 1493.

~~(c)~~(d) The City provided written consent to ~~Upon submission of a proper petition for consent, and subject to the consent conditions attached hereto as Exhibit C, the City shall consider~~ the annexation of 31.42 acres of additional land into Brazoria County Municipal Utility District No. 22 as expressed in Ordinance No. 1565. ~~in a form acceptable under the rules of the TCEQ and the Attorney General of Texas~~.

5.02 Strategic partnership agreements. Upon the creation and organization of each District, the Developer will present an SPA to the board of the District in substantially the form attached hereto as Exhibit D. The Developer shall use its best efforts to secure the approval of the SPA by the District as soon as practicable. Any revisions to the form of the SPA shall be made subject to the approval of the City, the Developer and the District's board of directors. The

parties acknowledge that if the SPAs are not approved by the Districts, the provisions of Tex. Local Gov't Code, §43.052(h)(l) allow the City to annex the Districts prior to substantial development therein without regard to the requirements of a municipal annexation plan under such section.

ARTICLE 6
TERM AND DEFAULT

6.01 Term. This Agreement shall terminate 15 years after the date the ordinance authorizing and approving the consent to this ~~Fourth~~ Fifth Amended and Restated Development Agreement, unless terminated earlier as specifically provided herein.

6.02 Default.

(a) 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.

(b) Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, 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, subject, however, to the terms and provisions of Section 7.01, below. Upon a breach of this Agreement, the non-defaulting Party may be awarded actual damages for failure of pe1foimance. Except as otherwise set forth herein, no action taken by a party pursuant to the provisions of this Section pursuant to the provisions of any other section 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 patties shall have the affirmative obligation to mitigate its damages in the event of a default by the other party.

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.01 *Force majeure*. In the event either party is rendered unable, wholly or in part, by *force majeure* to carry out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such party, to the extent affected by such *force majeure* and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the *force majeure* relied upon, the party

whose contractual obligations are affected thereby shall give notice and full particulars of such *force majeure* to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "*force majeure*," as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply resulting in an inability to provide water necessary for operation of the water and wastewater systems hereunder, and any other inabilities of any party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care.

7.02 Approvals and consents. Approvals or consents required or permitted to be given under this Agreement shall be evidenced by an ordinance, resolution or order adopted by the governing body of the appropriate party or by a certificate executed by a person, firm or entity previously authorized to give such approval or consent on behalf of the patty. Approvals and consents shall be effective without regard to whether given before or after the time required for giving such approvals or consents.

7.03 Addresses and notice. Any notice to be given under this Agreement shall be given in writing, addressed to the party to be notified as set forth below, and may be given either by depositing the notice in the United States mail postage prepaid, registered or certified mail, with return receipt requested; by messenger delivery; or by telecopy. Notice deposited by mail shall be effective three days after posting. Notice given in any other manner shall be effective upon receipt by the party to be notified. For purposes of notice, the addresses of the parties shall be as follows:

If to the City, to:

City Manager
City of Pearland
3519 Liberty Dr.
Pearland, Texas 77581
Fax: (281) 652-1708

If to the Developer, to:

Friendswood Development Company
681 Greens Parkway, Suite 220
Houston, Texas 77067
Attention: ~~John W. Hammond~~Michael W. Johnson
Fax: (281) 582-5704

With a copy to:

Allen Boone Humphries LLP Phoenix Tower
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attention: ~~James A. Boone~~Katie Carner
Fax: (713) 860-~~6401~~6682

The parties shall have the right from time to time to change the respective addresses by giving at least 15 days' written notice of such change to the other party.

7.04 Assignability; successors and assigns. All covenants and agreements contained by or on behalf of a party in this Agreement shall bind its successors and assigns and shall inure to the benefit of the other patties, their successors and assigns. The parties may assign their rights and obligations under this Agreement or any interest herein, only with the prior written consent of the other party, and any assignment without such prior written consent, including an assignment by operation of law, is void and of no effect; provided that, the Developer may make an assignment to a successor developer of the Land if such assignee specifically assumes all of the obligations of the Developer hereunder or may make a collateral assignment in favor of a lender without consent. This Section shall not be construed to prevent the Developer from selling lots, parcels or other po1tions of the Land in the normal course of business. If such assignment of the obligations by the Developer hereunder is effective, the Developer shall be deemed released from such obligations. If any assignment of the obligations by the Developer hereunder is deemed ineffective or invalid, the Developer shall remain liable hereunder.

7.05 No additional waiver implied. The failure of either party to insist upon performance of any provision of this Agreement shall not be construed as a waiver of the future performance of such provision by the other party.

7.06 Reservation of rights. All rights, powers, privileges and authority of the parties hereto not restricted or affected by the express terms and provisions hereof are reserved by the parties and, from time to time, may be exercised and enforced by the parties.

7.07 Parties in interest. This Agreement shall be for the sole and exclusive benefit of the parties hereto and shall not be construed to confer any rights upon any third parties.

7.08 Merger. This Agreement embodies the entire understanding between the parties and there are no representations, warranties, or agreements between the parties covering the subject matter of this Agreement.

7.09 Modification; exhibit. This Agreement shall be subject to change or modification only with the mutual written consent of the City and the Developer. The exhibits attached to this Agreement are incorporated by this reference for all purposes.

7.10 Captions. The captions of each section of this Agreement are inserted solely for convenience and shall never be given effect in construing the duties, obligations or liabilities of

the parties hereto or any provisions hereof, or in ascertaining the intent of either party, with respect to the provisions hereof.

7.11 Interpretations. This Agreement and the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.

7.12 Severability. If any provision of this Agreement or the application thereof to any person or circumstances is ever judicially declared invalid, such provision shall be deemed severed from this Agreement and the remaining portions of this Agreement shall remain in effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, as of the date first given above.

[SIGNATURE PAGE FOLLOWS]

CITY OF PEARLAND, TEXAS

By: _____
~~Clay Pearson~~Trent Epperson, City Manager

ATTEST:

By:_____
~~Young Lorfing~~Frances Aguilar, City Secretary

APPROVED AS TO FORM:

By:_____
Darrin M. Coker, City Attorney

SAVANNAH DEVELOPMENT, LTD.,
a Texas limited partnership

By: **LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD.,** a Texas limited partnership, dba Friendswood Development Company, as Attorney-in-Fact

By: **Lennar Texas Holding Company,** a Texas corporation, its general partner

By: _____
~~John Hammond~~Mark Sustana, Vice President

ATTEST:

By:_____
Kate Davis, Authorized Signator

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICTS NO. 21 AND NO. 22
c/o Allen Boone Humphries Robinson LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

October 3, 2023

VIA ELECTRONIC MAIL
Mayor and City Council Members
City of Pearland
c/o Mr. Darrin Coker
3519 Liberty Drive
Pearland, Texas 77581-5414
E-Mail: DCoker@pearlandtx.gov

Re: Brazoria County Municipal Utility District Nos. 21 and No. 22

Dear Honorable Mayor, Council Members, and Mr. Coker:

We the directors of Brazoria County Municipal Utility District No. 21 ("No. 21") and Brazoria County Municipal Utility District No. 22 ("No. 22") (collectively, the "Districts") write this letter in support of and respectfully requesting that the City of Pearland ("City") (1) approve an amendment to the Development Agreement with the developer for the Districts, Savannah Development, Ltd., (the "Developer") authorizing the Developer to convey to No. 22 an approximately 19-acre tract of land within the boundaries of No. 22 previously designated for a City park and an approximately 2-acre tract of land within the boundaries to No. 22 previously designated for a City library, for the benefit of both Districts; and (2) adopt a resolution consenting to the issuance by both Districts of recreational facilities bonds authorized by the qualified voters of each District.

As you know, the Districts collectively make up the approximately 1,250-acre master planned community of Lakes of Savannah. The Developer currently owns an approximately 21-acre undeveloped tract of land within the boundaries of No. 22, located east of Savannah Parkway and south of Laurel Heights Drive (the "Tract"). Under the Development Agreement between the Developer and the City, the Tract is required to be conveyed to the City for development of a City park and a City library; however, due to changes in circumstance and the desire by the Districts' residents to finance, develop, and construct joint parks and recreational facilities on the Tract, the Developer and the Districts now support conveying the Tract to No. 22 for the benefit of both Districts. We understand the City also may be amenable to the Tract being conveyed to No. 22 rather than to the City. We hereby wish to express that we fully

support the conveyance of the Tract to No. 22 on behalf of both Districts and would like to provide background and information in furtherance of our support of this matter.

We the directors of the Districts believe there is a need for additional parks and recreational facilities for our residents and are excited about the potential opportunity to benefit our community through a collaborative process to develop and implement a joint park plan for the Tract. We already have taken concrete steps to demonstrate our support.

In particular, at our August meetings, the Board of Directors ("Board") of each District authorized our attorneys to solicit for qualifications for landscape architect services to plan and develop the proposed joint parks and recreational facilities for the Tract. The Boards received statements of qualifications from six landscape architect firms in response, and we currently are reviewing those qualifications to determine which firms will proceed to the interview stage. The Boards are confident that, should the City approve the amendment to the Development Agreement, an appropriate landscape architect will be selected from the candidates to initiate the joint park plan development process.

Moreover, at our September meetings, the Boards each approved a form of Joint Recreational Facilities Agreement that would govern the development, construction, and operation of joint parks and recreational facilities on the Tract. A copy of the approved form of agreement is enclosed. We hope that these actions demonstrate our commitment on this matter.

As you know, the qualified voters of each District have authorized the issuance of recreational facility bonds. However, at this time, the City has not consented to each District's issuance of such bonds. We believe the City's consent to the Districts' issuance of recreational facilities bonds would benefit the Districts' efforts in development of the Tract by providing an additional financing source for such facilities. As such, the Districts fully support the City's consent of the Districts' recreational facilities bond powers. We acknowledge and agree that, pursuant to a financing agreement between each District and the Developer, and subject to approval by the Texas Commission on Environmental Quality, a portion of the bond proceeds from each District would be used to reimburse the Developer for District parks and recreational facilities that have already been constructed and conveyed to such District.

As evidenced by this letter and the actions of the Districts' Boards of Directors, we fully support and are hopeful that the City will agree to consent to the conveyance of the Tract to No. 22 for the benefit of both Districts, and to both Districts' issuance of recreational facilities bonds. Thank you in advance for your consideration of this matter.

Very truly yours,

Brazoria County Municipal Utility District No. 21

Fatiyauh Jones, President

Kiesha Curtis, Secretary

Renae Medlock, Vice President

Noel DSouza, Assistant Secretary

John Cacolice, Assistant Vice President

Brazoria County Municipal Utility District No. 22

Rufus Zeigler, President

Staci Posten, Vice President

Alfred Horace, Secretary

Joe White, Assistant Vice President

Ron Wefelmeyer, Assistant Secretary

Enclosure

JOINT RECREATIONAL FACILITIES AGREEMENT

This **Joint Recreational Facilities Agreement** (the "Agreement") is entered into as of this ___ day of October, 2023, by **Brazoria County Municipal Utility District No. 21** ("No. 21") and **Brazoria County Municipal Utility District No. 22** ("No. 22"), each a conservation and reclamation district and a political subdivision of the State of Texas, organized as a municipal utility district under the provisions of Article XVI, Section 59, Texas Constitution.

RECITALS

No. 21 and No. 22 (collectively, the "Districts" and, individually, a "District") collectively make up the approximately 1,250-acre master planned community of Lakes of Savannah and wish to cooperate in the conveyance, planning, development, financing, operation, and maintenance of land to serve as joint park and recreational facilities (the "Facilities") for the residents of both Districts.

Friendswood Development Company (the "Developer") currently owns an approximately 19-acre tract of land and an approximately 2-acre tract of land within the boundaries of No. 22, as shown on **Exhibit A** attached hereto (collectively, the "Tract").

Under the Development Agreement between the Developer and the City of Pearland (the "City"), the Tract was required to be conveyed to the City for purposes of developing a City park and City library. Due to changes in circumstance and the desire by the Districts' residents to finance, develop, and construct the Facilities on the Tract, the Developer, the City, and the Districts have determined it is in their respective best interests to convey the Tract to No. 22 for the benefit of both Districts.

[On October __, 2023, the City approved an Amended Development Agreement to provide for the conveyance of the Tract to No. 22 for the development of the Facilities.]

The Developer wishes to convey the Tract to No. 22 for the benefit of the residents in both Districts, and the Districts and their residents desire to develop, construct, maintain, and operate the Facilities on the Tract and share equally in the Tract and Facilities, and the associated costs.

The Districts now wish to enter into this Agreement to set forth the general terms and conditions for the Districts' joint conveyance, development, operation and maintenance of the Tract and the Facilities. The Districts have each determined that entering into this Agreement is in the best interests of each District and that each District is authorized to enter into this Agreement by the Constitution and laws of the State of Texas.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits herein set forth, the Districts contract and agree as follows:

ARTICLE I. RECITALS AND DEFINITIONS

Section 1.1. Recitals Confirmed. The matters set forth above in the recitals of this Agreement are found to be true and correct.

Section 1.2. Definitions. In addition to the terms defined elsewhere in this Agreement, and unless the context requires otherwise, the following terms and phrases used in this Agreement will have meanings as follows:

"City" means the City of Pearland, Texas.

"Commission" means the Texas Commission on Environmental Quality or any successor agency exercising supervisory jurisdiction over water conservation and reclamation districts such as the Districts.

"Facilities" means the proposed joint park and recreational facilities to be designed and constructed on the Tract shown on **Exhibit A**.

"Major Repair Cost" means any cost, other than Project Costs, over $50,000.00 for an improvement, betterment, repair, or replacement to or for the Facilities or any component(s) thereof.

"Operation and Maintenance Expenses" means all costs and expenses reasonably incurred in or allocable to the operation and maintenance of the Facilities, including, without limitation, lease costs; contractual payments for the services of a utility operator and/or an independent contractor performing maintenance or repair functions on the Facilities; supervision; insurance costs; power; material and supplies; permit fees, including costs of renewals of the permits; legal fees; auditing; engineering fees; testing; insurance; costs of billing the Districts; repairs and replacements of damaged or worn-out parts; administrative fines or penalties imposed regarding the operation of the Facilities; all other items and expenses of a like nature which may be reasonably required for the efficient maintenance and operation of the Facilities and to comply fully with all Regulatory Requirements.

"Project" means the design and construction of the Facilities. The Project may be undertaken in phases ("Phase" or "Phases"), and the use of the term Project includes any and all Phases, as applicable.

"Project Costs" means all costs associated with the conveyance, design, development, construction, acquisition, expansion, and improvement of the Tract and the

Facilities, including but not limited to, the costs of constructing, acquiring, equipping, modernizing, and improving the Tract and the Facilities; the costs of initially acquiring necessary licenses, permits or amendments thereto for the use of the Tract and the Facilities; fiscal, legal, administrative, advertising, engineering, and material soil and testing costs related to the foregoing; the cost of the acquisition of interests in real property and/or easements needed for the Tract and the Facilities; interest on sums advanced to or on behalf of a District by a developer, as allowed by the TCEQ rules; and all other costs and expenses directly relating to the foregoing.

"Regulatory Requirements" means the requirements and provisions of any state or federal law, and any permits, rules, orders, or regulations issued or adopted from time to time by any regulatory authority, state, federal or other, having jurisdiction concerning water quality standards or otherwise having jurisdiction over the Tract or the Facilities, or both of them.

ARTICLE II. CONVEYANCE OF THE TRACT

Section 2.1. General Statement. The Districts wish to acquire, develop, construct, own, operate, and maintain the Tract and the Facilities for the benefit of the residents of the Districts.

Section 2.2. Ownership of the Tract and Facilities. It is expressly agreed that, upon conveyance of the Tract to No. 22 by the Developer, No. 22 will be the owner of the Tract and the Facilities and will hold legal title to the Tract and the Facilities for the benefit of both Districts under the terms and conditions provided in this Agreement. The Districts further acknowledge and agree that each District shall have an undivided, equitable interest in the Tract and the Facilities.

ARTICLE III. DEVELOPMENT AND CONSTRUCTION OF THE FACILITIES

Section 3.1. Development of the Facilities. The Districts will work together to determine the design phases of Project related to the Facilities, including but not limited to, the hiring of a landscape architect to update the Park Plan required by Chapter 49, Texas Water Code for each District to incorporate the Tract and the Facilities. Before each phase of development of the Tract and the Facilities may begin, the Board of Directors of each District must authorize same.

Section 3.2. Disputes, Approval, or Consent. If a dispute arises out of or relates to this Agreement or the breach thereof, the Districts agree to use their reasonable best efforts to negotiate in good faith to resolve such disputes. Additionally, whenever this Agreement requires or permits approval or consent to be hereafter given by any District, the Districts agree that such approval or consent will not be unreasonably withheld.

Section 3.3. Landscape Architect. The Districts will cooperate to engage a landscape architect (the "Landscape Architect") to develop each District's amended

Master Park Plan and to design, bid, and construct each phase of the Project; to give notice to collect amounts owed for the phase pursuant to this Agreement; and to take such other actions as may be reasonably necessary to acquire, construct, and install such phase, subject to the terms and conditions of this Agreement. The Districts may, from time to time, agree to terminate the Landscape Architect and to engage a different landscape architect to provide such services for the Project.

Section 3.4. Design. Upon authorization by both Districts, as provided by Section 3.1. herein, the Landscape Architect will initiate design for the relevant phase of the Facilities. Once the Landscape Architect completes design of the plans and specifications for the relevant phase of the Facilities, the Landscape Architect will provide the plans to the Districts for review and comment, and each District will have 45 calendar days from receipt to review and submit comments on the plans to the Landscape Architect. The Landscape Architect will consider any comments timely received on the plans from the Districts, and the Districts will make the final determination regarding whether to revise the Plans prior to advertising based on any such comment received. After each District's Board approves the plans for the Project, No. 22 will authorize advertisement for competitive bids for the relevant phase of the Project. The Landscape Architect will ensure that the plans are in compliance with all Regulatory Requirements and are approved by all regulatory agencies having jurisdiction.

Section 3.5. Bidding and Contract Award. After approval of the plans and authorization to advertise for competitive bids in accordance with this Agreement, the Landscape Architect will advertise the relevant phase of the Project for bids in accordance with the general laws applicable to municipal utility districts in Texas. The Landscape Architect will receive and review the bids and make a recommendation for award of the contract(s) for the relevant phase to the Districts. If both Districts determine that a construction contract should be entered into, the Board of Directors of No. 22 shall review all bids received for the construction of the Project and shall authorize the award of contracts in accordance with state laws related to competitive bidding requirements for municipal utility districts. If one or both Districts fails to authorize the award of the contract, No. 22 shall reject the bids, and the Districts shall jointly determine whether to re-bid the relevant phase of the Project or postpone construction or installation of such phase of the Project.

Section 3.6. Construction of the Facilities. All phases of the Project shall be constructed or installed on the Tract or in easements or rights-of-way that are owned or dedicated to the public, one or both of the Districts, or another public entity. All phases of the Project shall be installed, the contracts shall be awarded, and payment and performance bonds shall be obtained, all in the manner provided by general law for municipal utility districts and in full compliance with all Regulatory Requirements. The Landscape Architect shall serves as the project manager on the Project. The Landscape Architect shall advise and make recommendations to No. 22's Board of Directors upon the award of contracts on the Project, shall make monthly reports to the Boards of

Directors of both Districts on the progress of construction or installation of the Project, shall approve all pay estimates and change orders and shall submit the same to both Districts for approval, and shall provide the appropriate level of inspection and observation during the construction or installation of the Project. No changes to the plans and specifications or change orders to any contracts shall be made without approval by the Board of Directors of both Districts, which approvals shall not be unreasonably withheld.

Section 3.7. Final Acceptance. Upon completion of each phase of the Facilities, the Landscape Architect shall conduct a final inspection. The Boards of Directors of both Districts shall have the right to attend such inspection. Subject to the Landscape Architect addressing any comments provided by the Districts and the Landscape Architect's written certification that the phase has been constructed in substantial compliance with the approved plans, specifications, and written recommendation of final acceptance, the Landscape Architect will approve final acceptance of the Phase on behalf of the Districts. Following acceptance, No. 22 shall operate and maintain the Facilities as provided in Article IV of this Agreement.

Section 3.8. Funding by the Districts. Prior to authorizing design for each phase of the Project, each District will discuss and determine how such District will pay for its 50% pro rata share of the costs associated with development and construction of such phase of the Facilities. Each month during the design and construction of any phase of the Facilities, No. 22's bookkeeper shall provide a detailed written invoice to both Districts itemizing the Project Costs incurred during the prior month. Each District shall be responsible for paying its 50% pro rata share of such costs as provided in Section 4.8 of this Agreement. Delinquencies in payment shall be handled in accordance with Section 4.9 of this Agreement.

Section 3.9. Use of Property. Each District will have the right of entry at reasonable times and upon reasonable notice in, over, and across the Tract and the Facilities. Each District will convey easements as are reasonably needed for the Districts to utilize any real property and/or rights in real property that are owned or held by such District, for the purposes of construction, operation, repair, and/or maintenance of the Facilities as provided in this Agreement and for the benefit of the Districts. Neither District may deny access to the Tract to the other District's residents.

ARTICLE IV. OPERATION AND MAINTENANCE OF THE FACILTIES

Section 4.1. Operation and Maintenance of the Facilities. No. 22 shall operate and maintain the Facilities (or cause them to be operated and maintained) in accordance with accepted practices for the operation and maintenance of similar type and size facilities. No. 22 is expressly authorized to enter into agreements with any person or entity to operate and maintain the Facilities in accordance with all Regulatory Requirements. Such persons or entities shall be licensed and qualified under the rules

and regulations of the Commission to operate such facilities of a type and size similar to the Facilities. The Districts recognize that the obligation of No. 22 to operate and maintain the Facilities as provided in this Agreement is subject to all present and future permits, rules, regulations and Regulatory Requirements issued or adopted from time to time by any regulatory authority having jurisdiction, and the Districts agree to cooperate to make such applications and to take such action as may be desirable to obtain compliance therewith. Notwithstanding any provision of this Agreement, neither No. 21 nor No. 22 shall have any obligation to share any costs or responsibilities for either District's facilities or property that is not the subject of this Agreement.

Section 4.2. Rules of Use. The Districts' Board of Directors will agree on reasonable rules for use of the Facilities. After the Boards of Directors for each District agree to the proposed Rules of Use, each District will adopt such rules. Any updates, additional, deletions, or any other modifications to such rules shall be subject to approval by both Districts before they are adopted.

Section 4.3. Operation and Maintenance Reports. On a monthly basis, No. 22 will create or cause to be created a report detailing the operation and maintenance events related to the Tract and the Facilities and will provide the same to No. 21.

Section 4.4. Agreement to Pay Operation and Maintenance Expenses. In consideration of the mutual benefits to be derived from the operation and maintenance of the Facilities, the Districts agree that each shall pay, at the time and in the manner set forth in this Agreement, their respective 50% pro rata shares of all Operation and Maintenance Expenses.

Section 4.5. Allocation of Operation and Maintenance Expenses. Unless otherwise specifically set forth herein, each District shall be responsible for 50% of all Operation and Maintenance Expenses.

Section 4.6. Major Repair Costs. If No. 22 determines it is necessary to incur a Major Repair Cost to properly operate, maintain, or repair the Facilities, it shall notify No. 21 of the work deemed necessary, the estimated costs of such work, including the applicable landscape architect or engineering fees fees and contingencies, and each District's pro rata share of such estimated costs. The proposed work will not be performed unless both Districts' Boards of Directors vote to approve such work; provided, however, that No. 22 may, subject to providing written notice to No. 21, proceed immediately with such work if No. 22's Board of Directors makes a reasonable finding that the proposed work must be performed to avoid an imminent public health emergency or violation of a federal, state, or local law, regulation, or permit regarding the Facilities. All Major Repair Costs will be allocated between the Districts in accordance with Section 4.5 of this Agreement.

Section 4.7. Billing. Each month, No. 22 shall provide a detailed written invoice to No. 21 for its 50% pro rata share of the Operation and Maintenance Expenses incurred during the preceding month (the "Monthly Bill"). The Monthly Bill will include a breakdown of Operation and Maintenance Expenses by category and a breakdown of the allocation of the Operation and Maintenance Expenses between the Districts. No. 22 also will bill itself for its 50% pro rata share of Operation and Maintenance Expenses, as set forth in this Section.

Section 4.8 Payment. Invoices shall be due and payable upon the earlier of: (i) forty-five (45) days after receipt by a District's bookkeeper, or (ii) forty-five (45) days after deposit into the U.S. mail, properly stamped and addressed to the District. No. 22 shall provide all No. 22 relevant data and records to No. 21 necessary to enable No. 21 to timely prepare and send the invoices to No. 22 that are required from No. 21 by this Agreement. The Districts shall make all payments when due at the office of the bookkeeper for No. 22 or at such other place as No. 22 may from time to time designate by sixty (60) days prior written notice.

Section 4.9. Delinquency in Payment. No. 21 shall pay interest on its past due bills to No. 22 at the lesser of ten percent (10%) per annum or the highest rate allowable by law, together with reasonable attorney's fees incurred in the collection thereof. If No. 21 fails to pay any bills on or before their due date, No. 22 may give notice of such delinquent bills to No. 21 in writing, and if all bills due and unpaid are not paid within thirty (30) days after deposit of such notice in the United States mail, properly stamped and addressed to No. 21, then No. 22 shall be authorized to institute legal proceedings for the collection thereof and to pursue any other available legal remedy which may be appropriate until all bills have been paid in full. No. 21 shall be liable to No. 22 and responsible for all reasonable and necessary costs of collection incurred by No. 22 as a result of such delinquency in payment.

Section 4.10. Revenues. Any revenues derived from the Tract and/or the Facilities will be shared equally between the Districts, and such revenues will be used to offset the Operation and Maintenance expenses under this Agreement.

Section 4.11. Availability of Records. Each District will keep records of all documents, plans, invoices, receipts, billing records, and other materials related to the Tract and the Facilities. Each District will have the right to inspect such records at any reasonable time upon reasonable notice.

ARTICLE V. INSURANCE

Section 5.1. Generally. During the Term of this Agreement, No. 22 will be responsible for obtaining and keeping insured such parts of the Tract and the Facilities as are customarily insured by municipal utility districts in Texas operating like properties in similar locations under the same circumstances with a responsible insurance company

or companies against losses and to the extent insurance is customarily carried by such municipal utility districts; provided, however, that at any time where a construction contractor is engaged in construction shall be fully responsible for the construction work, and No. 22 will not be required to carry insurance on that construction work. The cost of all insurance premiums for the Tract and the Facilities shall be considered Operation and Maintenance Expenses and shall be shared between the Districts are provided in Section 4.5. In the event No. 22 fails to obtain and maintain the required insurance coverage, No. 21 shall have the right but not the obligation to purchase such required insurance and thereafter receive credit for any premiums so paid against the Monthly Bills received from No. 22 until No. 21 has been reimbursed for its 50% pro rata share of such cost.

Section 5.2. Insurance Proceeds. In the event of any loss or damage to the Tract or the Facilities that prevents their operation in accordance with all Regulatory Requirements, No. 22 will apply the proceeds of the insurance policies covering such loss or damage toward the reconstruction or repair the destroyed or damaged portion of the Tract or the Facilities. Any surplus insurance proceeds shall be distributed to the Districts in accordance with Section 4.10. In the event that the cost of the repair or replacement of the damaged Facilities exceeds the insurance proceeds, the additional cost shall be shared equally by the Districts and shall be billed in accordance with Section 4.7; provided, however, that in the event that such excess cost constitutes a Major Repair Cost, the requirements of Section 4.6. of this Agreement shall apply.

ARTICLE VI. JOINT COUNCIL

Section 6.1. Purpose. The purpose of the Joint Council is to provide representation from both Districts on matters relating to the ongoing operation, maintenance, repair, and costs of the Facilities on an ongoing basis and to make recommendations on matters including, but not limited to, Facilities operations, Operation and Maintenance Expenses, Major Repair Costs, and any other matters regarding the operation, maintenance, repair, and costs of the Facilities. The Joint Council also may, from time to time, make recommendations regarding additional phases of development of the Tract and the Facilities.

Section 6.2. Membership. Each District will appoint two of its directors as members of the Joint Council and may appoint one other director as an alternate representative in the event of the unavailability of its primary representatives. A District may replace its appointed Joint Council members at any time, in its sole discretion.

Section 6.3. Meetings.

(a) Beginning with the completion of construction of the first phase of the Facilities, the Joint Council will meet quarterly, unless otherwise agreed by both Districts. Notice of a Joint Council meeting will be provided at least three days prior to the meeting to each member, as

well as to the Districts' Boards of Directors and consultants. If practicable, the Joint Council's regular meeting time will be within 10 days prior to No. 22's regular Board of Directors meeting so that No. 22 may receive any information and recommendations from the Joint Council on a timely basis.

(b) A minimum of one member per District must be present to constitute a quorum.

(c) The Joint Council may request any consultant engaged by No. 22 and providing services regarding the Facilities to attend any meeting of the Joint Council to provide information and reports to the Joint Council.

(d) The Joint Council may consider any matters relating to operations, maintenance, and costs for the Facilities. If the Joint Council determines to put a particular matter to a vote, to arrive at the position of the Joint Council regarding such matter, each member, or an appointed alternative member in place of the member, present at the meeting will have one vote and a simple majority of votes of the members, or alternates, present at the meeting, if such a majority occurs, shall prevail.

(e) The Joint Council shall have no obligation to meet, and the Joint Council members may determine, by a majority vote to alter the schedule of Joint Council meetings or not to meet at all.

Section 6.4. Effect of Vote. A concurrence of a majority of Joint Council members eligible to vote at a meeting with a quorum of members present shall be deemed to be a recommendation of the Joint Council to No. 22. A concurrence of 75% of the Joint Council

members eligible to vote at a meeting with a quorum of members present shall compel No. 22 to execute the decision of the Joint Council, so long as:

(a) sufficient funds are available for such purpose;

(b) no permit or license regarding the Tract or the Facilities and no Regulatory Requirements will be violated by such execution; and

(c) insurance coverage as required by this Agreement would not be adversely affected.

Provided, however, that in the event of a vote related to a Major Repair Cost, the provisions of Section 4.6. of this Agreement shall control. In the event of a tie vote, the Joint Council will be deemed to have made no recommendation on such matter.

Section 6.5. Costs. Any costs, including consultant fees and expenses, related to the Joint Council's meetings and activities shall constitute Operations and Maintenance Expenses; provided, however, any fees of office to be paid to a Joint Council member will not be an Operations and Maintenance Expense, but will be paid, if at all, by the District represented, in the sole discretion of the Board of Directors of the District represented.

Section 6.6. Annual Budget. Each year at least 60 days before the beginning of No. 22's fiscal year, No. 22 shall cause a proposed budget to be prepared and distributed to the Joint Council. The proposed budget will show all expenditures expected during the upcoming fiscal year. Each District will provide existing data that might be necessary for the preparation of the budget, upon request. Such proposed budget shall be subject to a vote of Joint Council, as provided by Section 6.4.

ARTICLE VII. MISCELLANEOUS

Section 7.1. Covenant to Maintain Sufficient Income. Each District recognizes its duty to, and covenants and agrees that at all times it will, establish and maintain, and from time to time adjust, the rates, fees, and charges for its services to its customers, to the end that the gross revenues and funds received from such rates, fees, and charges and any other lawfully available funds will be sufficient at all times to pay the District's share of the Operation and Maintenance Expenses as set forth in this Agreement.

Section 7.2. Term. Unless terminated by mutual agreement of the Districts, this Agreement shall continue in force and effect for a period of forty (40) years from its date. Thereafter, this Agreement automatically shall renew for successive five (5) year terms, unless earlier terminated by the Districts by mutual agreement.

Section 7.3. Audit. Each year after the end of No. 22's fiscal year, No. 22 shall engage a certified public accountant to audit and report on the books and records of No. 22 for the last fiscal year.

Section 7.4. Approval or Consent. Whenever this Agreement requires or permits approval or consent to be hereafter given by any District, the Districts agree that such approval or consent shall not be unreasonably withheld.

Section 7.5. Force Majeure. In the event any District is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such District, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the District whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other District. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other inabilities of any District, whether similar to those enumerated or otherwise, which are not within the control of the District claiming such inability, which such District could not have avoided by the exercise of due diligence and care

Section 7.6. Regulatory Agencies. This Agreement is subject to all rules, regulations and laws which may be applicable of the United States, the State of Texas, and any regulatory agency having jurisdiction.

Section 7.7. No Additional Waiver Implied. No waiver or waivers of any breach or default (or any breaches or defaults) by any District hereto of any term, covenant, condition, or liability hereunder, or the performance by any District of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

Section 7.8. Addresses and Notice. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (a) depositing same in the U.S. mail, addressed to the District to be notified, postage prepaid and registered or certified with return receipt requested; (b) by delivering the same in person to such District; or (c) by sending same by telefacsimile. Notice given by mail shall be effective three (3) days after deposit in the U.S. mail and notice delivered in person or sent by telefacsimile shall be effective upon receipt. For the purpose of notice, addresses and facsimile numbers of the Districts shall, until changed as hereinafter provided, be as follows:

If to No. 21 to:

Brazoria County Municipal Utility District No. 21
c/o Allen Boone Humphries Robinson LLP
Attn: Katie Carner
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Facsimile: 713-860-6682

If to No. 22, to:

Brazoria County Municipal Utility District No. 22
c/o Allen Boone Humphries Robinson LLP
Attn: Katie Carner
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Facsimile: 713-860-6682

Either District may designate another address or facsimile number for all purposes of this Agreement by giving the other District not less than fifteen (15) days advance written notice of such change.

Section 7.9. Assignability. This Agreement shall bind and benefit the Districts hereto and their successors but shall not otherwise be assignable, in whole or in part, by either District except by supplementary written agreement between the Districts.

Section 7.10. Modification. This Agreement shall be subject to change or modification only with the written mutual consent of the Districts.

Section 7.11. Districts in Interest. This Agreement shall be for the sole and exclusive benefit of the Districts, their legal successors, and shall not be construed to confer any rights upon any third District. Nothing herein shall be construed to confer standing to sue upon any District who did not otherwise have such standing and it is expressly agreed that nothing herein shall be construed to create any duty or obligation on the part of one District to the customers of another.

Section 7.12. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

Section 7.13. Merger. This Agreement, including the exhibits that are attached hereto and incorporated herein for all purposes, embodies the entire agreement between the Districts relative to the subject matter hereof.

Section 7.14. Remedies Upon Default. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all remedies, other than termination of this Agreement, existing at law or in equity, including specific performance and mandamus, may be availed of by either District and will be cumulative.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the Districts have executed this Agreement in multiple counterparts, each of which shall be deemed to be an original, as of the date and year first written above.

ATTEST:

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO. 21

_____
Secretary, Board of Directors

By:_____
President, Board of Directors

(SEAL)

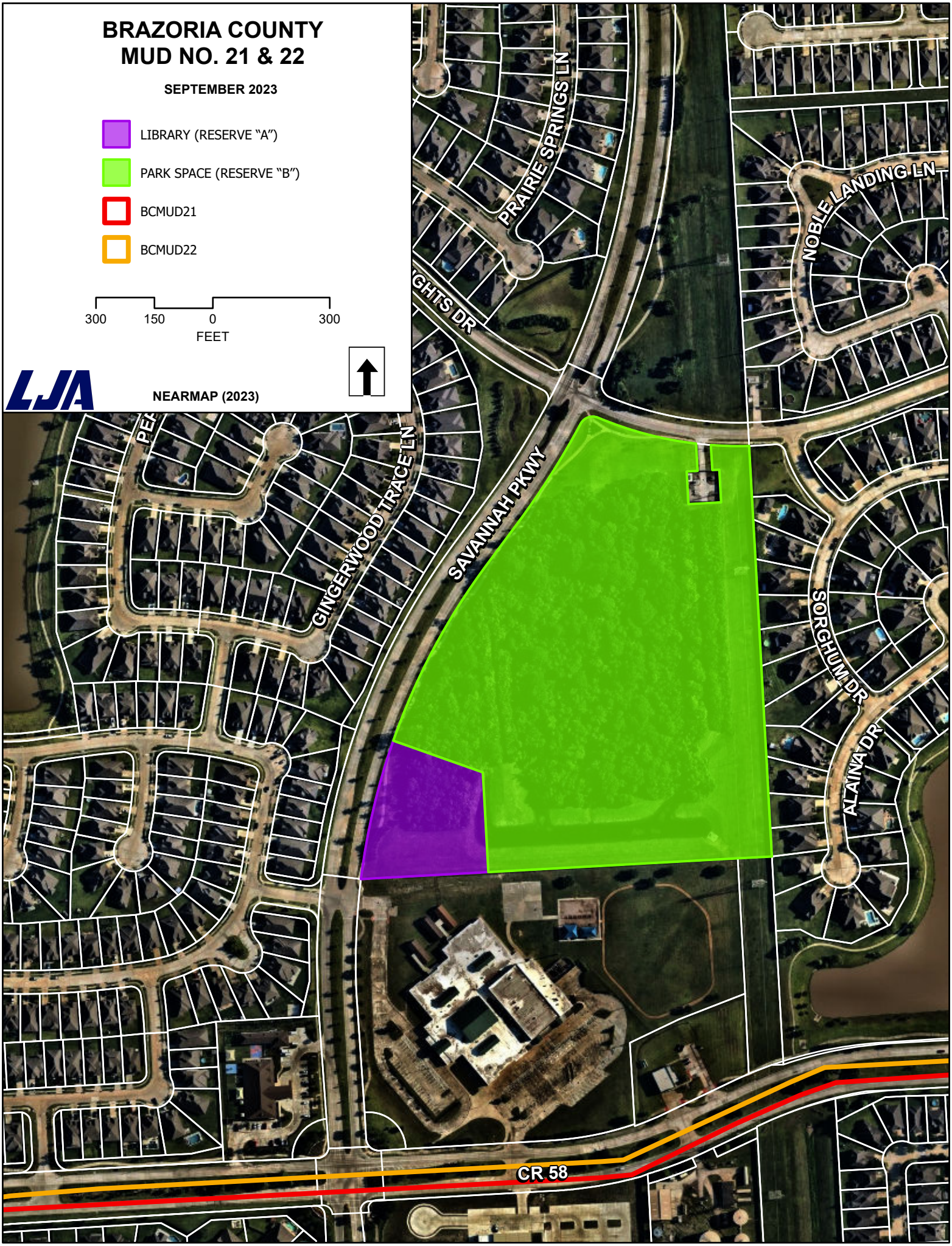
ATTEST:

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO. 22

_____
Secretary, Board of Directors

By:_____
President, Board of Directors

(SEAL)


BRAZORIA COUNTY
MUD NO. 21 & 22
SEPTEMBER 2023
LIBRARY (RESERVE "A")
PARK SPACE (RESERVE "B")
BCMUD21
BCMUD22
300
150
0
300
FEET
LJA
NEARMAP (2023)
PRAIRIE SPRINGS LN
NOBLE LANDING LN
GHTS DR
GINGERWOOD TRACE LN
SAVANNAH PKWY
SORGHUM DR
ALAINA DR
CR 58