

DEVELOPMENT AND SETTLEMENT AGREEMENT
FOR THE BUNTON CREEK SUBDIVISION

This Development and Settlement Agreement for the Bunton Creek Subdivision (this "Agreement") is made and entered into, as of the 29 day of July, 2004 (the "Effective Date"), by and between the City of Kyle, a Texas municipal corporation (the "City"), and 151, Ltd. and RTM/HER #1 Limited (collectively the "Developers"). The City and Developers are sometimes referred to as the "Parties."

Whereas, on May 12, 2000, the then City Administrator of the City signed an "Intent to Provide Service" for approximately 350 homes sites on the 97.26 acres of land described in Exhibit "A" hereto;

Whereas, the Hays County Commissioners Court has approved a preliminary subdivision plan and the construction plans for Phase I and Phase II of the Bunton Creek Subdivision to be located on a portion of the 97.26 acres of land described in Exhibit "A";

Whereas, the land included in Phase I and Phase II of the Bunton Creek Subdivision was not within the extraterritorial jurisdiction of the City when the Developers filed the application with Hays County for approval of the preliminary subdivision plan;

Whereas, Phase I and Phase II of the Bunton Creek Subdivision, as approved by Hays County, have a total of 318 lots, and the Developers proposed a Phase III of the Bunton Creek Subdivision to have an additional 95 lots, to increase the total to 413 lots;

Whereas, the Developers and the City are in dispute regarding the size and number of permitted lots, and design requirements for streets and other required improvements within the subdivision;

Whereas, traffic flow will be served by the alignment of certain streets in the Subdivision with certain streets in the neighboring Twin Creek Estates Subdivision ("Twin Creek"), requiring a limited change of the pavement width of the streets in Twin Creek;

Whereas, the City will create a public improvement district ("PID") to provide economic incentives for certain improvements in the Subdivision and to fund changes to the streets in Twin Creek, with the PID terms being structured by and acceptable to the City;

Whereas, C4D-I, Ltd., the owner and developer of Twin Creek joins in this Agreement for the purposes set forth in Article 17; and

Whereas, the Parties desire to compromise and settle forever all claims or causes of action of any nature and kind whatsoever that Developers may have or may assert against the City, its officers, agents and employees, based upon any facts, events or circumstances whatsoever with respect to the Bunton Creek Subdivision;

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, including, but not

limited to, the following mutual agreements and covenants, it is understood and agreed by and between the parties hereto as follows:

Article 1.

Purposes, Term, Consideration and Definitions

- 1.01. The Developers own 97.26 acres, more or less, as more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes (the "Property"), that is now located in the extraterritorial jurisdiction ("ETJ") of the City. The Developers have submitted to the City a preliminary plan for Phases I and II of the subdivision and development of the Property to be known as the Bunton Creek Subdivision (together with Phase III as described below, the "Subdivision") and desire to develop the Subdivision and to obtain City wastewater service to the Subdivision. The Developers further desire to enter into this Agreement in consideration of the City's execution and acceptance of this Agreement, and Ten and No/100 Dollars (\$10.00) together with other good and valuable consideration in hand paid by the City to the Developers, the receipt and sufficiency of which is hereby acknowledged by the Developers.
- 1.02. The Developers will benefit from this Agreement by virtue of the wastewater services that will be made available to the Property, the authorization to connect to city streets, and the City's approval of the Subdivision. The City will benefit from this Agreement by virtue of the extension of its wastewater system, the expanded customer base and fewer units than Developers propose.
- 1.03. The benefits to the Parties set forth in Section 1.02 above, plus the mutual promises expressed herein, are good and valuable consideration for this Agreement, the sufficiency of which is hereby acknowledged by the Parties.
- 1.05. The term of this Agreement shall be ten (10) years from the Effective Date hereof (as hereinafter defined) and upon the expiration of this Agreement any and all rights pursuant to this Agreement shall expire; provided that this Agreement will terminate and expire earlier upon the Developers having constructed and obtained final acceptance by the City of the Subdivision, and the City having completed annexation of the Property; and provided further that, if the Developers shall not have completed construction and obtained final completion and acceptance of Phase I or II of the Subdivision within four (4) years from the Effective Date of this Agreement, this Agreement shall expire and terminate.

Article 2.

The Development and the Subdivision

- 2.01. The Subdivision shall consist of not more than three hundred eighty-one (381) lots, for single family homes, and amenities for the use and benefit of the residents in the Subdivision, and open

space, dedicated park and recreational areas for the use of residents within the Subdivision and the City. The lots shall be designed, laid out and used for built on the lot single family residences as above permitted, and no part or portion of the Subdivision or the Property shall be laid out for, used or zoned for manufactured homes, apartments, condominiums or any multi-family housing.

2.02. Phases I and II of the Subdivision will be laid out, installed and constructed in substantial compliance with the preliminary plan for the Subdivision as approved by Hays County, and in compliance with this Agreement. Phases I and II will have a total of not more than 318 single family lots except as may be approved pursuant to 4.01(r), and all streets, drainage, utility and other improvements in the Subdivision will be designed and constructed in compliance with all the City's rules, regulations and ordinances as per Sec. 7.03, and good engineering practices.

2.03. Phase III of the Subdivision will be laid out, installed and constructed in substantial compliance with a concept plan and a preliminary plan for the Subdivision hereafter filed with the City. Phase III will have a total of not more than 63 single family lots, comply with the City's ordinances and this Agreement, and all streets, drainage, utility and other improvements will be designed and constructed in compliance with all rules, regulations and ordinances of the City, and good engineering practices. The minimum size of lots in Phase III will be 60 feet by 110 feet, except as approved pursuant to Section 4.01(r).

Article 3. Project Engineer

3.01. A qualified engineering firm employed by the Developers (the "Engineer") will act as engineer for the Subdivision. The Engineer will prepare the design, construction plans and specifications, and supporting documentation for the Subdivision, and will work and coordinate with the City Engineer to obtain the review and approval by the City Engineer of the design, plans and construction of the Subdivision. All improvements within the Subdivision shall be designed, installed and constructed in compliance with good engineering practices, the rules, regulations, specifications of the City as in effect on the Effective Date, and all applicable state and federal rules and regulations. The Engineer will lay out and design Phase III of the Subdivision in compliance with the City's Subdivision ordinance, the foregoing provisions of this section and this Agreement.

Article 4. Plans, Specifications and Performance

4.01. The City hereby agrees:

(a) to coordinate with the Engineer on specific design requirements and specifications; and to review, approve and sign the plans and specifications for the Subdivision in a timely manner, as appropriate;

(b) after completion and final acceptance of the Subdivision as constructed, to accept the streets, and the wastewater system as part of the City's wastewater utility system;

(c) after final acceptance and dedication of the Subdivision, and the Developers having, at the Developers' cost and expense, completed the construction of the Subdivision and the streets, drainage, water and wastewater lines, facilities and improvements required to be constructed within the Subdivision, and the City having accepted the streets and wastewater lines, facilities and improvements as built within the Subdivision, to use the wastewater lines and improvements to provide wastewater service within the Subdivision on the same terms and conditions as the City serves similarly situated and occupied properties;

(d) to charge the Developers, its grantees, successors and assigns the impact fees and other fees, charges and rates that are established and charged for similarly situated properties within the geographic area of the Property, and occupancies within the corporate limits of the City;

(e) to promptly receive, consider and act upon petitions submitted by the Developers for the annexation of the Property into the corporate limits of the City, from and after the date the City is legally authorized to annex the Property;

(f) to prepare a proposed Service Plan for the Property, and, if the City Council annexes the Property, the City will serve the Subdivision in compliance with the Service Plan and on the same terms and conditions as it provides services to similarly situated areas of the City;

(g) to process and, as appropriate, approve the concept plan and the preliminary plan for Phase III of the Subdivision;

(h) to process a zoning application to zone the Subdivision in compliance with State law to "R-1-2" Residential District, as such zoning designation was defined by the City Zoning Ordinance as per Section 7.03 as of the date of the application by Developers with Hays County for the initial plat approval, or as permitted upon the final adoption of the ordinance zoning the Subdivision, allowing built on the lot, single-family residences with a minimum of 1,000 square feet of living space and otherwise complying with the requirements of the applicable zoning ordinance; provided that all lots in Phases I and II of the Subdivision shall be at least 40 feet in width by 110 feet in depth, all lots in Phase III shall be not less than 60 feet in width and 110 feet in depth except as

approved pursuant to 4.01(x), and a restrictive covenant will be filed of record providing that no lot in the Subdivision may be replatted into a smaller lot; or otherwise reduced in size;

(i) to collect and receive the wastewater impact fees for each lot, parcel or building site within the Subdivision prior to wastewater service being connected to such lot, tract or parcel of land within the Subdivision, which impact fees will be collected for each such lot or parcel when a building permit is applied for or otherwise when construction of a structure or building on such lot or parcel is first commenced; and

(j) to charge and collect wastewater impact fees that are the same fee or amount established by ordinance and applicable to other areas of the City and its wastewater service area;

(k) the preliminary plan for Phases I and II of the Subdivision approved by Hays County, and attached hereto as Exhibit "B", is hereby approved;

(l) the front yard set back line for the lots in the Subdivision may vary from fifteen feet (15') to twenty-five feet (25"), provided the setbacks are varied from lot to lot and the fifteen foot setback is not concentrated in any Phase or area;

(m) the side yard setback for all lots may be five feet;

(n) the back yard setback may be ten feet for all lots;

(o) no side yard public utility easements will be required, except for those specific lots (if any) where the easement is reasonably necessary to provide services within the Subdivision;

(p) to expedite review of the construction plans;

(q) to place this Agreement, plats and plat revisions on the agenda for the Planning & Zoning Commission and the City Council as reasonably soon as possible, as appropriate; and

(r) to permit some 60x110 foot lots in Phase III to be exchanged with some 40x110 foot lots in Phase II to create continuity of lots and block sizes, provided the plats are amended as required.

4.02. The Developers hereby agree:

(a) to contract with the Engineer for the design and preparation of the plans and specifications for the Subdivision, and the Construction Plans for the Subdivision, and the provision of the services anticipated to be performed by the Engineer pursuant to this Agreement;

(b) to review and approve the construction plans and specifications for the Subdivision;

(c) to contract with an appropriate contractor for construction of the Subdivision;

(d) to cause and obtain the design, construction and final acceptance of all the streets, drainage, utility lines and facilities, parks and other infrastructure according to the construction plans approved by the City Engineer;

(e) to present the City with a valid and legally sufficient petition, in the form attached hereto as Exhibit "C", requesting the annexation of the Property into the corporate limits of the City at the earliest time the Property may be lawfully annexed by the City, and the Developers agree the standard, draft Service Plan attached hereto as Exhibit "D" heretofore provided to the Developers is good, sufficient and acceptable to the Developers;

(f) to make application for the City to process a zoning application in the manner compliant with State law for the zoning of the Subdivision "R-1-2" Residential District, as such zoning designation is defined by the zoning ordinance referenced in section 7.03; provided that Developers agree that all lots in the Phases I and II of the Subdivision shall be at least 40 feet in width by 110 feet in depth, all lots in Phase III shall be not less than 60 feet in width and 110 feet in depth except as approved pursuant to section 4.01(x), and a restrictive covenant will be filed of record providing that no lot may be replatted into a smaller lot, or otherwise reduced in size;

(g) to design, install and construct the water lines and facilities in full compliance with all applicable rules and regulations of the County Line Water Supply Corporation ("CLWSC"), and to timely pay any and all fees required by CLWSC;

(h) to develop and construct all the improvements in the Subdivision and development in compliance with the City's standards, rules, regulations and ordinances as per Section 7.03, or better;

(i) the Developers, their grantees, successors and assigns shall pay the wastewater impact fees the City establishes by ordinance for each lot, tract, parcel or building site in the Subdivision, at the time the building permit for each building or structure is applied for, or, if no building permit is required, when construction of the building or structure is first commenced on any lot, tract, parcel or building site within the Subdivision;

(j) that it is reasonable and necessary for the roads and streets abutting the Property, and for the streets listed within the Subdivision to be widened as shown on the plats, and for the

streets in Twin Creek to be widened as listed in section 17.02;

(k) to install water lines with volume, capacity and pressure sufficient to comply with the applicable City and state regulations for fire protection, and to install fire hydrants on such lines in compliance with the City's rules, regulations and ordinances;

(l) the term, conditions and provisions set forth in 4.01 above to be performed by the City are valid and sufficient consideration to the Developers; and each such act set forth in 4.01 above to be performed by the City is accepted by and agreed to by the Developers;

(m) the duties and obligation of the Developers, their grantees, successors and assigns pursuant to this Agreement shall run with the title to the Property, and the Developers shall execute and file the document attached hereto as Exhibit "E" in the Deed Records of Hays County, Texas, as notice to all grantees, successors and assigns;

(n) to pay all fees, charges and costs required by city ordinance to be paid for or with respect to the development, platting and zoning of the Subdivision, save and except only that subdivision plat fees will not be paid for Phases I and II;

(o) the Developers and their grantees, successors and assigns will timely comply with and perform each and every duty and obligation of the Developers set forth in this Agreement;

(p) the agreements made by the City in 4.01 above are fully acceptable to and agreed by the Developers;

(q) to grant the City a public utility, park and recreation, conservation and general public use easement that is approximately 102 feet wide, along the west boundary of the Subdivision (from CR 151/Bunton Lane to Plum Creek), attached hereto as Exhibit "F";

(r) to deed to the City the area along Plum Creek for use as parkland, greenbelts and public utility easements;

(s) to increase the pavement width on the streets that are oriented north to south from the twenty feet (20') previously approved by Hays County to the thirty feet (30') from curb back to curb back required by the City;

(t) to construct the streets, curbs and gutters in compliance with the City's standards, rules and regulations;

(u) to increase the pavement width on the streets that are oriented east to west from the twenty-two feet (22') and twenty-four feet (24') previously approved by Hays County to the City standard collector width of thirty-six feet (36') feet from curb

back to curb back, except as provided below for Grist Mill Rd;

(v) to increase the pavement width of Grist Mill Rd. to forty feet (40') curb back to curb back;

(w) the land area in Phase III that is designated as Lot P-1 will be owned and maintained by the property owners association but will be subject to an easement granted to the City for the benefit of the general public to use Lot P-1 as parkland and for recreational purposes;

(x) to build a parking lot along the west property line of the Subdivision, at the east end of Quinault Trail, with at least twenty (20) parking spaces;

(y) to build a baseball field in the parkland that is available to the general public;

(z) to move the north-south collector street from Deschutes Blvd. on the west side to Okanogan Drive (a street that is also under construction in Phase I of the Twin Creek Subdivision) in the center of the Subdivision;

(aa) to rename the streets in cooperation with the City, with new names being easier spelling and pronunciation; and

(bb) to rename the Twin Creek Subdivision or the Bunton Creek Subdivision, to give both a common name which may be Bunton Creek in order to avoid confusion with a Twin Creek subdivision in Travis County.

Article 5.

Cost of the Subdivision

5.01. The Developers will finance, construct and install the Subdivision, and all water, wastewater, streets, drainage, utilities, parks and other amenities and improvements within the Subdivision or the Property, at the Developers's sole cost and expense. The Developers shall not receive any rebate or contribution from the City for any part or portion of any amenity or improvement constructed within or outside of the boundaries of the Property, unless the City shall require any line or facility to be oversized and agree in advance and in writing to pay the cost of oversizing such line, pump or other equipment.

5.02. The Developers, their grantees, successors and assigns shall pay impact fees for each lot, tract, parcel and building site developed within the Subdivision or Property. Such fees shall be payable by the Developers for each lot or site on the earlier of the date when a building permit application is made for the structure or building to be served, or, if building permits are not then required, the date when construction of the building or

structure is first commenced. The impact fee paid by the Developers for each such lot or site shall be the fee, rate and charge that is established by ordinance and that is in effect when the impact fee becomes payable.

Article 6.

Property Owners Association and Covenants

6.01. Developer will create a property owners association for the Subdivision (the "Association"), and shall establish bylaws, rules, regulations and restrictive covenants (collectively the "Association Regulations") to assure the Association performs and accomplishes the duties and purposes required to be performed and accomplished by the Association pursuant to this Agreement. The owner of each lot in the Subdivision shall be required to be a member of the Association, and unpaid dues or assessments shall be and constitute a lien on the lot for which they are assessed. The Developer agrees the Association Regulations will establish periodic assessments, to be charged and paid by the lot owners in the Subdivision, that are and will be sufficient to maintain (a) the drainage easements and improvements within the Property (the "Drainage"); (b) the park and recreational area ("Park"); and (c) all of the greenbelts, open space and flood plain, and all of the Property that is not included within the boundaries of a single family lot or public street within the Subdivision (the "Common Area"). The Association Regulations will require the periodic assessments to be increased from time to time as necessary to provide the funds required for the maintenance of the Drainage, the Common Area and the Park.

6.02. In addition to the requirements of Section 6.01 above and the assessments made by the Association to perform each duty and responsibility above referenced, the Developer will cause the Association Regulations to require the Association to annually assess each lot and amount equal to the funds required for its operating and maintenance budget and the assessments made by the PID established pursuant to Article 8. The Association shall contract with the PID, annually credit the individual property owners for the amount of the PID assessments paid by them, impose a lien on each lot for which such assessment is not timely paid, and enforce and cause payment of the assessment liens as necessary.

6.03. Developers will establish and record restrictive covenants applicable to the entire Subdivision that prohibit manufactured homes; require built on the lot single family houses; require each house in the Subdivision to have a minimum of a 1,000 square feet of heated and cooled living area; that include other provisions as necessary for the Developers to give full effect to this Agreement; and that contain such other provisions as the Developers may desire that are not inconsistent with this Agreement or city regulations.

Article 7.
Dedication of Rights-Of-Way and Property
Governing Subdivision and Zoning Ordinances

7.01. Upon completion and acceptance of the Subdivision, or of any Phase of the Subdivision, the streets, easements and rights-of-way for the Subdivision or the Phase of the Subdivision shall be dedicated to the City and the City shall accept the same for public ownership, subject to the terms and conditions of this Agreement.

7.02. The Developers will dedicate the following land, greenbelts, parks and open space to the City: (a) an easement will be granted to the City providing the general public with an easement for park and recreation use for Lot P-1; (b) a conservation, park, drainage and utility easement will be granted to the City for Lots P-2, P-3, P-4 and P-5; and (c) Lot P-6 will be dedicated to the City as parkland.

7.03. Notwithstanding any other term, provision or condition of this Agreement, gas pipeline set backs will meet HUD requirements and such other subdivision and zoning standards that were in effect on April 9, 2002; and the subdivision and zoning ordinances of the City in effect on that date shall be applicable to the Subdivision and govern all subdivision and zoning issues not specifically addressed otherwise in this Agreement.

7.04. The right-of-way for residential and local streets will be 50 feet; the right-of-way for collector streets will be 60 feet; the right of way for Grist Mill Road will be 70 feet; a 4 foot wide sidewalk will be required on only one side of the streets; and there will only be a 15 foot wide easement on corner lots on the side of the lot not accessing the streets.

Article 8
Public Improvement District

8.01. Public Improvement District. The Parties contemplate that development of the Property, as approved by this Agreement, will consist of not more than 385 lots. Such development will require substantial public improvements in compliance with the City's requirements, including, but not limited to, streets and associated storm water improvements, other on-site drainage improvements, and water and wastewater improvements. Such development will also require substantial improvements by the Developer such as open space, recreational facilities, and other amenities for the benefit of the residents. Development of the Property in accordance with this Agreement is possible with approval by the City of financial incentives that benefit the Developer and the Property. To provide such incentives, the City will create a public improvement district ("PID"), pursuant to the authority of Chapter 372 of the Local Government Code. The land and area within the PID will include and

consist of all of the Property, and Twin Creek. The PID shall have the authority to levy assessments against the Property and Twin Creek to reimburse the Developers for costs and expenses paid or incurred by the Developers for the design and construction of the the following improvements: (a) the streets and sidewalks in Phases I and II of the Subdivision; (b) the additional cost and expense incurred to increase the pavement widths and relocate drainage on the streets listed in section 17.02; (c) the parking lot, baseball field and other public improvements constructed on Lot P-1 (collectively, the "PID Improvements"). The scope of all PID Improvements will be constructed in accordance with all applicable regulations of the City, the County, and County Line WSC that are not in conflict with all the City's applicable ordinances, rules and regulations.

8.02. **Submission of Petition.** The Developers will submit to the City a petition requesting the creation of a PID covering the Property and Twin Creek. It is anticipated that the PID will be authorized and created by resolution of the City Council of the City concurrently within forty-five (45) days after the effective date of this Agreement. The PID will be created to reimburse the Developer and the City for the costs and expenses of creating the PID; to reimburse the Developers and the City for the ongoing costs and expenses of administering the PID; to reimburse the Developers for the costs and expenses paid or incurred by the Developers for the design and construction of the PID Improvements; and to reimburse the Developers for interest on all of the foregoing costs and expenses paid or incurred by the Developers at the rate of interest specified by the Code (the total amount, including interest, reimbursed for the foregoing costs and expenses is hereinafter referred to as the "PID Reimbursement Amount").

8.03. **City Cooperation.** The City will cooperate with the Developers to provide all notices, conduct public hearings, adopt resolutions, ordinances and orders, and otherwise take all steps required by the Code to (a) authorize creation of the PID; (b) establish the method of assessment and the apportionment of costs between the PID and the City; (c) prepare and file with the City secretary a proposed assessment roll; and (d) levy special assessments.

8.04. **Initial Costs.** The Developers shall fund the costs and expenses for installation of all public improvements. The PID assessment shall be levied for the purpose of reimbursing the Developer for costs and expenses incurred in the installation of the PID Improvements. The City shall not be responsible for issuing bonds, paying costs or expenses for installation of the improvements for the Bunton Creek Subdivision, Twin Creek or the PID Improvements. Any costs and expenses the Developers fail to recover shall not become the responsibility of the City.

8.05. **PID Management.** The City will establish a PID that includes

the Property and the Twin Creek Estates Subdivision, and through the agreement attached herewith as Exhibit "H" the City, the Developers and the owner of Twin Creek, will cooperate in the management and oversight of the PID.

Article 9.

Assignment of Commitments and Obligations

9.01. The Developers's rights and obligations under this Agreement may be assigned by the Developers to one or more purchasers of all of the Property and with City's written approval the Developers may assign a portion of the Developers's rights and obligations to a purchaser of a portion of the Property. The City shall not unreasonably withhold written approval.

9.02. This Agreement shall be binding upon the Parties, their grantees, successors and assigns.

Article 10.

Default

10.01. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of ten (10) business days after receipt by such party of notice of default from the other party. Upon the passage of ten (10) working days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement.

Article 11.

Force Majeure

11.01. The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority; insurrections; riots; epidemic; landslides; lightning, earthquakes; fires, hurricanes; storms, floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability.

11.02. If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.

11.03. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

Article 12.
Notices

12.01. Any notice to be given hereunder by any party to another party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed:

City of Kyle	with copy to:
Attn: City Manager	Barney L. Knight
200 W. Center Street	223 W. Anderson Lane, #A105
Kyle, Texas 78640	Austin, Texas 78752
Facsimile (512) 268-0675	Facsimile (512) 323-5773

Any notice mailed to the Developers shall be addressed:

151, Ltd. and RTM/HER #1 Limited
% Richard Jenkins
900 Congress Ave., Suite L-100
Austin, Texas 78701
Facsimile 512-478-5678

M. Roz
bbie Mayfield
Companies, Inc.
301 N. Capital
of Texas Hwy. - Suite J-220

RTM/HER #1 Limited	with copy to:
% Harlan Roberts General Partner	Terry Irion
225 S. McCampbell St. 746	3660 Stone Ridge Rd. #B-102
Aransas Pass, Texas 78336	Austin, Texas 78746
Facsimile (361) 758-3593	Facsimile (512) 347-7085
Suite J-220 (512) 476-2498/1919	

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

Article 13.
Entire Agreement

13.01. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties hereto, and may not be amended except by a writing signed by all Parties and dated subsequent to the date hereof.

Article 14.
Effective Date

14.01. This Agreement shall be effective as of date first written above upon this Agreement being approved by the City Council of the City and executed and delivered by all Parties to this Agreement; provided that in no event shall this Agreement be in effect unless the petition for annexation of the Property into the City is properly executed and filed with the City on or before the date the City Council approves and authorizes execution of this Agreement.

Article 15.
Texas Law Governs

15.01. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Hays County, Texas. Venue shall lie exclusively in Hays County, Texas.

Article 16.
Time of the Essence

16.01. It is acknowledged and agreed by the Parties that time is of the essence in the performance of this Agreement.

Article 17
Joinder of Twin Creek

17.01 The developer/owner of the Twin Creek Estates Subdivision, C4D-1, Inc., executes this Agreement for the purposes set forth in this Article 17. C4D-1 and Twin Creek shall be bound by all the terms and conditions of this Agreement as reasonably necessary to give effect to the general terms of this Agreement and Article 17.

17.02. Twin Creek will increase the pavement width of Snoqualmie Way, Grist Mill Road, Chehalis Road and Okanogan Drive to conform with the requirements of 4.02(r) and 4.02(t), respectively, and relocate the drainage inlets for such streets as required by the additional pavement width. The cost of such additional pavement widening, drainage and utility modifications will be eligible for reimbursement only by the PID as provided in Section 8.1.

17.03. Twin Creek will further:

- (a) petition to be included in the PID created pursuant to Article 8;
- (b) establish a property owners association in full compliance with the requirements of Article 6, including adopting the Association Regulations, and having all the obligations, duties and responsibilities provided in Article 6, including but not limited to Section 6.02;

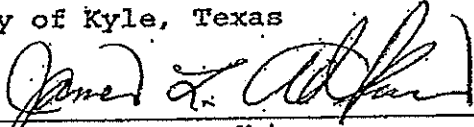
- (c) establish restrictive covenants for Twin Creek that specifically include the requirements in Sec. 6.02; and
- (d) through the agreement attached herewith as Exhibit "H" cooperate in the management and oversight of the PID.

Article 18.
Release of All Claims

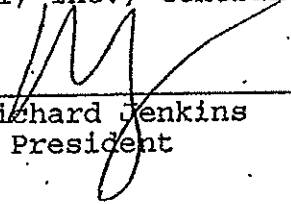
18.01. In consideration of the consideration, mutual covenants and agreements set forth herein, the Developers will execute and deliver to the City the Compromise, Release and Settlement Agreement attached hereto and incorporated herein for all purposes as Exhibit "G", releasing and waiving all claims and causes of action against the City, its officers, employees, agents and attorneys as set forth therein. The Parties agree that this Agreement shall be binding on the Parties and enforceable according to its terms and conditions, and that such release shall be final.

EXECUTED in multiple originals and effective as of the 29 day of July 2004.


City of Kyle, Texas

By: 
Name: James L. Adkins
Title: Mayor

151, Ltd.
by CAD-1, Inc., General Partner

By: 
Name: Richard Jenkins
Title: President

RTM/HER #1, Ltd.
Robbie Mayfield Companies, Inc., General Partner

By: 
Name: Robbie Mayfield
Title: President

IDENT BY: ;

5124788878;

MAR-2-06 5:48PM;

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"Exhibit A"

FIELD NOTES FOR 97.30 ACRES OUT OF THE

ROBERT CARSON SURVEY, ABSTRACT NO. 135
HAYS COUNTY, TEXAS

(List prepared to accompany field notes)

ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND SITUATED IN M.B. ATKINSON SURVEY, ABSTRACT NO. 21 IN HAYS COUNTY, TEXAS AND BEING SAME CALLED 97.266 ACRES DESCRIBED IN A WARRANTY DEED CONVEYANCE DATED DECEMBER 13, 1997 TO RTM/HER #1 AS RECORDED IN VOLUME 1366, PAGE 668 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2 inch iron rod found near a fence corner post in the apparent southwestern right-of-way line of County Road 151 (Banton Lane) for the northerly corner of the tract described herein, same being the easterly corner of the Louis E. Daugherty/Bobby J. Hagedorn 52.31 acre tract (DRHC V-248, P-297 and V-346, P-463);

THENCE, with the apparent southwestern right-of-way line of County Road 151, S 45d19'28" E for a distance of 1069.21 feet to a 1/2-inch iron rod found for the easterly corner of the tract described herein, same being the northerly corner of the Walter A. Schmeltzkopf, Jr. 100.38 acre tract (OPRHC V-113 I, P-335);

THENCE, S 44d44'52" W along the northwesterly line of said Schmeltzkopf 100.38 acre tract and the southeasterly line herein for a distance of 4366.03 feet to a 1/2-inch iron rod found for the southerly corner of the tract described herein, same being the westerly corner of said Schmeltzkopf 100.38 acre tract.

THENCE with the southwesternly line of the tract described herein in the following two courses and distances:

- (1) N 30d31'53" W for a distance of 156.86 feet to a 1/2-inch iron rod found near a wood fence corner post for an angle point herein;
- (2) N 49d23'44" W with the common northerly line of the FC Sunset Ridge, LP 199.346 acre tract (OPRHC, V-163 I, P-17) for a distance of 797.93 feet to a common iron rod found near a wood fence corner post for the westerly corner of the tract described herein, same being the southerly corner of the southeasterly corner of the Joe P. Franko 52.5 acre tract (DRHC, P-216, P-107);

THENCE with the northwesterly line of the tract described herein in the following two courses and distances:

- (1) N 44d47'17" E with the common southeasterly line of said Franko 52.5 acre tract and in part along the southeasterly line of said Louis E. Daugherty/Bobby J. Hagedorn 52.51 acre tract for a distance of 4263.08 feet to a 1/2-inch iron rod found near a wood fence corner post for an angle point herein;
- (2) N 12d12'10" E with the common southeasterly line of said Louis E. Daugherty/Bobby J. Hagedorn 52.51 acre tract for a distance of 204.87 feet to the PLACE OF BEGINNING and containing 97.30 acres of land in Hays County, Texas.

BEARING BASIS - Boundary record call S 45d19'28" E described in a conveyance of 97.266 acres to RTM/HER #1 as recorded in Volume 1366, Page 668 of the Official Public Records of Hays County, Texas.

The undersigned does hereby certify that the foregoing field notes represent the results of an on the ground survey made under my supervision and direction, completed on May 20, 2001 of the property legally described herein and said description is correct in the best of my knowledge and that there are no visible discrepancies, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, visible utility lines or roads in place except as noted herein or on the plat to accompany field notes.

Portions of this property is within an area designated as having a special flood hazard designation of AB and A according to the F.E.M.A. Flood Insurance Rate Map 48209C0203 F, dated February 18, 1998.

Date Survey Completed: May 20, 2001

Malvin B. Hodgins

Registered Professional Land Surveyor No. 2808

SENT BY: ;

5124785878;

MAR-2-06 5:49PM;

PAGE 19/43

EXHIBIT "B"
COUNTY APPROVED-PRELIMINARY PLAN
PHASES I & II, BUNTON CREEK SUBDIVISION

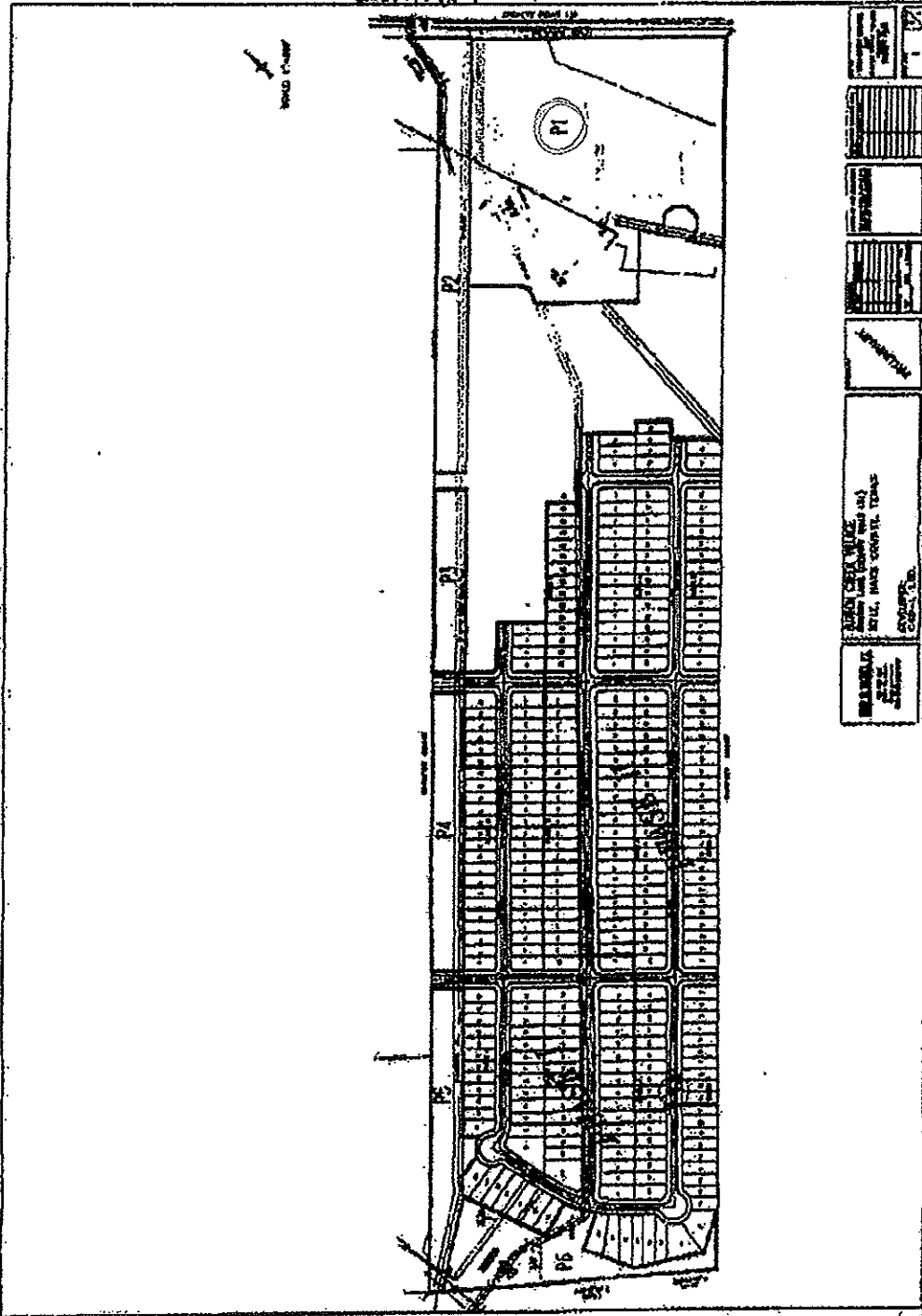
ENT BY: ;

5124786678;

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PAGE 20/43

Exhibit "B"



**EXHIBIT "C"
ANNEXATION PETITION**

STATE OF TEXAS §
§
COUNTY OF HAYS §

**REQUEST & PETITION TO THE CITY COUNCIL OF THE CITY OF KYLE
FOR ANNEXATION OF PROPERTY**

WHEREAS, the undersigned is the owner of a certain tract of property located within Hays County, Texas, such property more particularly described hereinafter by true and correct legal description (referred to herein as the "subject property");

WHEREAS, the undersigned seeks and requests the annexation of the subject property by the City of Kyle, Texas, (hereinafter sometimes referred to as "City") in order to obtain the benefits of City services to the subject property by the City;

WHEREAS, the undersigned agrees and consents to the annexation of the subject property by the City and further agrees to be bound by all acts, ordinances, and all other legal action now in force and effect within the corporate limits of the City and all those which may be hereafter adopted;

NOW THEREFORE, the undersigned by this Petition and Request:

Section One: Requests the City Council of the City to commence annexation proceedings and to annex into the corporate limits of the City of Kyle, Texas, the subject property, being 97.26 acres of land, more or less, being developed as the Buntzen Creek Subdivision, and more particularly described in Exhibit "A".

Section Two: Requests that after annexation the City provide such services as are legally permissible and provided by the City, including sanitation, wastewater and general governmental services.

Section Three: Acknowledges and represents having received, read and understood the attached "draft" Service Plan (proposed to be applicable to and adopted for the subject property) and that such "draft" Service Plan is wholly adequate and acceptable to the undersigned who hereby requests the City Council to proceed with the annexation and preparation of a final Service Plan and publish notice and hold the requisite public hearings thereon, in accordance with the applicable laws of the State of Texas; and,

Section Four: Acknowledges that the undersigned understands and agrees that all city services to the subject property will be provided by the City on the same terms and conditions as provided to other areas of the City and as provided in the Service Plan.

Section Six: Agrees that a copy of this Petition and Request may be filed of record in the offices of the City of Kyle and in the real property records of Hays County, Texas, and shall be notice to and binding upon all persons or entities now or hereafter having any interest in the subject property.

SENT BY: ;

5124785678;

NAR-2-08 6:50PM;

PAGE 22/48

FILED, this 13th day of August, 2004, with the City Secretary of the City of Kyle, Hays County, Texas.

151, Ltd.
by C4D-1, Inc., General Partner

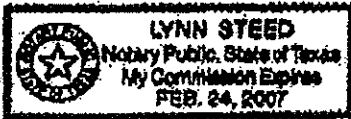
By: [Signature]
Name: Richard Jenkins
Title: President

RTM/HER #1, Ltd.
Robbie Mayfield Companies, Inc., General Partner

By: R. F. Mayfield
Name: Robbie Mayfield
Title: President

BEFORE ME, the undersigned authority, on this day personally appeared Richard Jenkins, President of C4D-1, Inc., General Partner of 151, Ltd., and acknowledged that he executed the foregoing petition, for the purposes and consideration therein expressed and in the capacity therein stated.

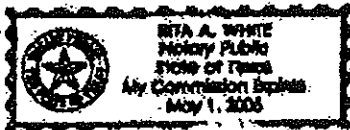
GIVEN UNDER MY HAND AND SEAL of office this 11th day of August 2004.



[Signature]
Notary Public-State of Texas

BEFORE ME, the undersigned authority, on this day personally appeared Robbie Mayfield, President of Robbie Mayfield Companies, Inc., General Partner of RTM/HER #1, Ltd., and acknowledged that he executed the foregoing petition, for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL of office this 12th day of August 2004.



Rita A. White
Notary Public-State of Texas

**EXHIBIT "D"
MUNICIPAL SERVICES PLAN
FOR PROPERTY TO BE ANNEXED TO THE CITY OF KYLE**

WHEREAS, the City of Kyle, Texas (the "City") intends to institute annexation proceedings for a tract of land described more fully hereinafter (referred to herein as the "subject property");

WHEREAS, Section 43.056, *Loc. Gov't. Code*, requires a service plan be adopted with the annexation ordinance; and

WHEREAS, it is found that all statutory requirements have been satisfied and the City is authorized by *Chapt. 43, Loc. Gov't. Code*, to annex the subject property into the City;

NOW, THEREFORE, the City agrees to provide the following services for the subject property on the effective date of annexation:

1. Police protection as follows:

Routine patrols of areas, radio response to calls for police service and all other police services now being offered to the citizens of the City.

2. Fire protection and Emergency Medical Services as follows:

Fire protection by the present personnel and equipment of the volunteer fire fighting force with the limitations of water available. Radio response for Emergency Medical Services with the present personnel and equipment.

3. Solid waste collection services as follows:

Solid waste collection and services as now being offered to the citizens of the City, unless the continuous owner elects to use a privately owned solid waste management service provider for not more than 2 years from the anniversary date of the annexation.

A. Water service and maintenance of water facilities as follows:

(1) Inspection of water distribution lines as provided by statutes of the State of Texas.

(2) Water service will be provided by the County Line Water Supply Corporation.

B. Wastewater service and maintenance of wastewater service as follows:

(1) Inspection of sewer lines as provided by statutes of the State of Texas.

(2) Sewer service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City, subject to all the ordinances, regulations and policies of the City in effect from time to time. The system will be accepted and maintained by the City in accordance with its usual policies.

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6. Maintenance of streets and rights-of-way as appropriate as follows:

- (1) Emergency maintenance of streets, repair of hazardous potholes, measures necessary for traffic flow, etc.
- (2) Routine maintenance as presently performed within City.
- (3) Reconstruction and resurfacing of streets, installation of drainage facilities, construction of curbs, gutters and other such major improvements as the need therefore is determined by the governing body under City policies.
- (4) Installation and maintenance of traffic signals, traffic signs, street markings and other traffic control devices as the need therefore is established by appropriate study and traffic standards.
- (5) Installation and maintenance of street lighting in accordance with established policies of the City.

7. Animal control as follows:

Service by present personnel, equipment and facilities or by contract with a third party, as provided within the City.

8. Maintenance of parks and playgrounds within the City, except as otherwise provided by agreement.

9. Inspection services in conjunction with building permits and routine City code enforcement services by present personnel, equipment and facilities.

10. Maintenance of other City facilities, buildings and service.

11. Land use regulation as follows:

On the effective date of annexation, the zoning jurisdiction of the City shall be extended to include the annexed area, and all property therein shall be grandfathered; and shall be temporarily zoned "R-1" pursuant to the Zoning Ordinance. The Planning & Zoning Commission and the City Council will consider rezoning the property "R-1-2" in response to requests submitted by the Developers, provided that the Developers plat the property in compliance with the Development Agreement. Subject to Planning & Zoning Commission recommendation, notices and public hearings the City Council intends to zone the property "R-1-2", in response to the Developers' requests.

CAPITAL IMPROVEMENTS

Construction of the following capital improvements shall be initiated after the effective date of the annexation, and shall be completed from the effective date of annexation as provided in the development agreements as follows:

The capital improvements planned for the subject property are set forth in the Development and Settlement Agreement for the Dunton Creek Subdivision, and on

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PAGE 25/48

the preliminary plat thereof.

TERM

If not previously expired, this service plan expires at the end of ten (10) years.

PROPERTY DESCRIPTION

The legal description of the subject property is as set forth in Exhibits "A" that are attached to the Annexation Ordinance to which this Service Plan is attached as Exhibit "B".

**EXHIBIT "E"
NOTICE AND RESTRICTIONS**

STATE OF TEXAS §

COUNTY OF HAYS §

Whereas, 151, Ltd. and RTMIER #1 Ltd. (the "Developers") and the City of Kyle (the "City"), entered into the Development and Settlement Agreement for the Bunton Creek Subdivision, dated as of ~~10/12~~ ¹² 2004 (the "Development Agreement");

Whereas, subject to the terms of the Development Agreement, the City has granted Developer, its grantees, successors and assigns, certain rights with respect to the design, platting, development and construction of the Bunton Creek Subdivision on the 97.26 acres, more or less, described in the attached Exhibit "A"; and

Whereas, the Development Agreement obligates the Developers, their grantees, successors and assigns as provided therein;

NOW, THEREFORE, the undersigned hereby execute this Notice and Restrictions and file the same of record in the Deed Records of Hays County, Texas, for the purpose of giving notice to all persons that:

- (1) Developers are required to perform as provided in the Development Agreement, and the rights, duties and obligations by their grantees, successors and assigns of lots within the Bunton Creek Subdivision are subject to the performance by Developers.
- (2) No part or portion of the Bunton Creek Subdivision or the Property shall be laid out for, used or zoned for manufactured homes, apartments, condominiums or any multi-family housing.
- (3) Section 6.01 of the Development Agreement reads as follows:

"6.01. Developer will create a property owners association for the Subdivision (the "Association"), and shall establish bylaws, rules, regulations and restrictive covenants (collectively the "Association Regulations") to assure the Association performs and accomplishes the duties and purposes required to be performed and accomplished by the Association pursuant to this Agreement. The owner of each lot in the Subdivision shall be required to be a member of the Association, and unpaid dues or assessments shall be and constitute a lien on the lot for which they are assessed. The Developer agrees the Association Regulations will establish periodic assessments, to be charged and paid by the lot owners in the Subdivision, that are and will be sufficient to maintain (a) the drainage easements and improvements within the Property (the "Drainage"); (b) the park and recreational area ("Park"); and (c) all of the greenbelts, open space and flood plain, and all of the Property that is not included within the boundaries of a single family lot or public street within the Subdivision (the "Common Area"). The Association Regulations will require the periodic assessments to be increased from time to time as necessary to provide the funds required for the maintenance of the Drainage, the Common Area and the Park."

- (4) The Developers have the obligation of placing additional restrictive covenants on the Property

SENT BY: ;

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and the Bunton Creek Subdivision, pursuant to the Development Agreement.

(5) Notice of the "Development and Settlement Agreement for the Bunton Creek Subdivision", dated as of ~~July 15~~ ^{July 15}, 2004, is hereby given. A copy of the Development Agreement is available for public inspection at the Kyle City Hall.

Executed this the ¹¹ day of August 2004.

151, Ltd.
by C4D-I, Inc., General Partner

By: [Signature]
Name: Richard Jenkins
Title: President

RTM/HER #1, Ltd.
Robbie Mayfield Companies, Inc., General Partner

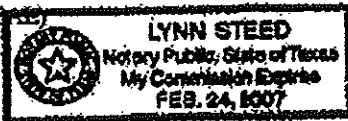
By: [Signature]
Name: Robbie Mayfield
Title: President

STATE OF TEXAS

COUNTY OF HAYS

This instrument was acknowledged before me on the 11 day of August, 2004, by Richard Jenkins, President of C4D-I, Inc., General Partner of 151, Ltd.

(SEAL)



[Signature]
Notary Public - State of Texas

SENT BY: ;

5124785678;

MAR-2-06 5:51PM;

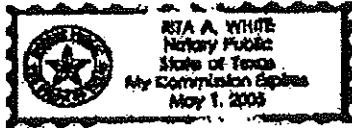
PAGE 28/43

STATE OF TEXAS §

COUNTY OF HAYS §

This instrument was acknowledged before me on the 12th day of August, 2004, by Robbie Mayfield, President of Robbie Mayfield Companies, Inc., General Partner of RTM/HER #1, Ltd.

(SEAL)



Rita A. White
Notary Public - State of Texas

After recording, Return To:
City of Kyle, Texas
300 W. Center Street
P. O. Box 40
Kyle, Texas 78640
Attention: City Secretary

SENT BY: ;

6124785678;

MAR-2-06 5:62PM;

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Exhibit "F"
CONSERVATION, PARK, DRAINAGE AND UTILITY EASEMENT

DATE: 13th day of August, 2004.

GRANTOR: 151, Ltd. and RTM/NER #1, Ltd.

GRANTOR'S MAILING ADDRESS: % % Richard Jenkins, 900 Congress Ave., Suite L-100, Austin, Texas 78701

GRANTEE: City of Kyle, Texas

GRANTEE'S MAILING ADDRESS (including County): P.O. Box 40, Kyle, Hays County, Texas 78640

LIENHOLDER:

CONSIDERATION: Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

PROPERTY: Lots P-1, P-2, P-3, P-4 and P-5 as set forth on the plat of Phases I and II of the Buntun Creek Subdivision, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Volume _____, Pages _____ of the Plat Records of Hays County, Texas, being the same property shown on such plat as follows: (1) Lots P-2, P-3, P-4 and P-5 being the one hundred two foot (102) wide strip of land, more or less, extending along the west side of the Buntun Creek Subdivision (hereinafter the "Common Area"); and (2) Lot P-1 at the northernmost part of the Buntun Creek Subdivision, platted as parkland (the "Park Area").

GRANTOR, for the CONSIDERATION of the mutual covenants and agreements set forth in that certain Development and Settlement Agreement for the Buntun Creek Subdivision dated as of the ___ day of July 2004, between GRANTOR and GRANTEE, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, sells, and conveys to GRANTEE, its successors, and assigns:

(i) The following easements and property rights are granted and conveyed to the Grantee for and with respect to Tract 1: (a) a non-exclusive, perpetual easement over, on and across the Common Area for the purpose of requiring the Common Area to be maintained, preserved and protected to conserve the natural processes, natural resources, water quality, habitats, ecosystems by requiring the Common Area be maintained as a natural greenbelt, water quality buffer and drainage area; (ii) a perpetual easement for the purpose of placing, constructing, operating, repairing, maintaining, rebuilding, replacing, relocating, and removing or causing to be placed, constructed, operated, repaired, maintained, rebuilt, replaced, relocated and removed structures or improvements (that are primarily underground) reasonably necessary for the supplying of electricity, natural gas, water, sanitary sewer, drainage and/or tele-communications or other such utility services, drainage and cable television in, under and across the Common Area; and (iii) a non-exclusive easement to install passive recreational facilities, e.g. pathways, trails, walkways and landscaping, and to maintain and replace only such facilities as are installed by Grantee (collectively the "City Easements") for use by the residents of the

Bunton Creek Subdivision and the general public.

(2) The Grantee is granted easements and property rights for and with respect to Tract 2, to use and occupy Tract 2 as a public park and recreational facility for the use and benefit of the general public, and the Grantee shall have all of the rights to use Tract 2 as Grantee has with respect to any parkland that is owned in fee by Grantee; provided that the maintenance of Tract 2 and the improvements thereon shall be the duty and obligation of the homeowners association created by the Developers for the Bunton Creek Subdivision.

The easements, rights and privileges hereby granted for Tract 1 are expressly made by GRANTOR and accepted by GRANTEE, subject to the following:

1. Save and except only for the improvements and permitted facilities (if any) installed within the Common Area by the Grantee under authority of the City Easements, the use of the Common Area shall be limited to use as a common area, park and recreational land, greenbelt, drainage easement and conservation area for the exclusive use and benefit of the owners of lots within the Bunton Creek Subdivision ("Lot Owners"), and the general public. Subject to the City Easements, the Common Area may be maintained by the Lot Owners in its natural state, or improved as permitted, provided that no improvements shall be constructed or placed within the Common Area, other than drainage, detention and/or water quality and related facilities, and such passive recreational facilities (such as trails, paths or accessways and related improvements), landscaping and/or underground public utility lines and systems and related improvements, that do not change the direction or flow of drainage channels within the Common Area or that may obstruct or retard the flow of stormwater runoff or drainage to or through such drainage channels. Mowing and trimming of grass, weeds and vegetation, and general maintenance of all parts or portions of the Common Area that are not within a passive recreational facility installed by the Grantee shall be the duty and responsibility of the Lot Owners; provided such areas may be permitted by the Lot Owners to remain in a natural state.

2. GRANTOR expressly retains and reserves unto GRANTOR and the Lot Owners, their respective heirs, executors administrators, legal representatives, successors and assigns, (i) the fee ownership of the Common Area, (ii) the right to place, construct, operate, repair, maintain, rebuild, replace, relocate, and remove passive recreational facilities (such as trails, paths or accessways, and related improvements) and landscaping in, on across the Common Area; provided, the same do not limit or interfere with any such facility or improvement installed by Grantee, or change the direction or flow of drainage channels within the Common Area or obstruct or retard the flow of stormwater runoff or drainage to or through such drainage channels.

The easement, rights and privileges granted hereby are made by GRANTOR and accepted by GRANTEE subject to any and all easements, covenants, rights-of-way, conditions, restrictions, mineral reservations and royal reservations, if any, relating to the Common Area and the Park, to the extent, but only to the extent the same may still be in force and effect, and shown of record in the Office of the County Clerk of Hays County, Texas, or that may be apparent on the Common Area as of the date this Conservation, Park, Drainage and Utility Easement becomes effective as to portions of the Common Area as provided herein and not inconsistent with the Development Agreement dated as of the ____ day of July 2004.

SENT BY: ;

5124785878;

MAR-2-08 5:53PM;

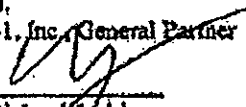
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TO HAVE AND TO HOLD the above-described easements and rights, together with all and singular the rights and appurtenances thereto in anywise belonging unto GRANTEE, and GRANTEE's successors and assigns forever; and GRANTOR does hereby bind themselves, their heirs, executors, administrators, grantees, successors and assigns to WARRANT AND FOREVER DEFEND all and singular the easements unto GRANTEE, its successor and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by through or under Grantor, but no further.

When the context requires, singular nouns and pronouns include the plural.

GRANTOR:

ISI, Ltd.
by CAD-1, Inc. General Partner

By: 
Name: Richard Jenkins
Title: President

RTM/HR #1, Ltd.
Robbie Mayfield Companies, Inc., General Partner

By: 
Name: Robbie Mayfield
Title: President

Accepted and Approved:

City of Kyle, Texas

Thomas Mattis, City Manager

SENT BY: ;

6124785876;

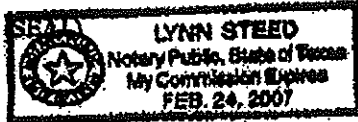
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PAGE 02/43

STATE OF TEXAS §

COUNTY OF HAYS §

This instrument was acknowledged before me on the 11th day of August, 2004, by Richard Jenkins, President of CAD-1, Inc., General Partner of LSI, Ltd.

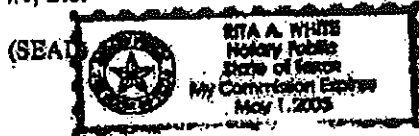


Lynn Steed
Notary Public - State of Texas

STATE OF TEXAS §

COUNTY OF HAYS §

This instrument was acknowledged before me on the 12th day of August, 2004, by Robbie Mayfield, President of Robbie Mayfield Companies, Inc., General Partner of RTM/HER #1, Ltd.



Rita A. White
Notary Public - State of Texas

After recording, Return To:
City of Kyle, Texas
300 W. Center Street
P. O. Box 40
Kyle, Texas 78640
Attention: City Secretary

SENT BY :

5124785678;

MAR-2-06 5:53PM;

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JOINDER OF MORTGAGEE

The undersigned ("Mortgagee"), being the present legal and equitable owner and holder of a deed of trust lien against the real property on which the Common Area (as defined above) is located pursuant to that certain Deed of Trust dated MAY 2, 2002, executed by RTM/HER #1 ("GRANTOR") and recorded in Volume 1773, Page 636 of the Official Records of Hays County, Texas (as the same may have heretofore been amended, the "Deed of Trust"), does hereby join in the execution of this Conservation and Utility Easement for the limited purpose of confirming Mortgagee's agreement that (a) the execution by Developer of this Conservation, Park, Drainage and Utility Easement will not constitute a default under the Deed of Trust, or any of the other collateral documents evidencing or securing the indebtedness secured by the Deed of Trust (collectively, the Deed of Trust and such other documents, if any, are referred to herein as the "Security Documents"), and (b) the liens, security interests, assignments and/or other encumbrances effectuated by the Security Documents shall, as to any interest in real property covered by the Security Documents and now or hereinafter considered to be a part of the Common Area as defined in this Conservation, Park, Drainage and Utility Easement, in all things be subordinate and inferior to the easement, rights and privileges granted by this Conservation, Park, Drainage and Utility Easement and the terms, provisions, covenants and conditions set forth herein.

By: [Signature]
 Name: Richard Taylor
 Title: President

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on this the 13th day of August, 2004, by William D. Taylor, President of First American Bank, N.A., a national banking association, on behalf of said national banking association.

(SEAL)

[Signature]
 Notary Public - State of Texas

After recording return to:

City of Kyle, Texas
 300 W. Center Street
 P. O. Box 40
 Kyle, Texas 78640
 Attention: City Secretary

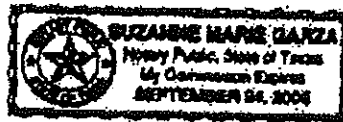


EXHIBIT "G"

STATE OF TEXAS §

COUNTY OF HAYS §

RELEASE, COMPROMISE AND SETTLEMENT AGREEMENT

This Release, Compromise and Settlement Agreement (this "Agreement") is made by 151, Ltd. and RTM/HER #1 Ltd. (collectively "Developers") and delivered to the City of Kyle, Texas (the "City"), with the advice of an attorney, or the opportunity to consult therewith.

Whereas, on May 12, 2000, the then City Administrator of the City signed an "Intent to Provide Service" for approximately 350 homes sites on the 97.26 acres of land described in Exhibit "A" hereto;

Whereas, the Hays County Commissioners Court has approved a preliminary subdivision plan and the construction plans for Phase I and Phase II of the Bunton Creek Subdivision to be located on a portion of the 97.26 acres of land described in Exhibit "A";

Whereas, the land included in Phase I and Phase II of the Bunton Creek Subdivision was not within the extraterritorial jurisdiction of the City when the Developers filed the application with Hays County for approval of the preliminary subdivision plan;

Whereas, Phase I and Phase II of the Bunton Creek Subdivision, as approved by Hays County, have a total of 318 lots, and the Developers proposed a Phase III of the Bunton Creek Subdivision to have an additional 95 lots, to increase the total to 413 lots;

Whereas, the Developers and the City are in dispute regarding the size and number of permitted lots, and design requirements for streets and other required improvements within the subdivision; and

Whereas, the Parties desire to compromise and settle forever all claims or causes of action of any nature and kind whatsoever that Developers may have by reason of any fact, event, action or failure to act prior to the date of this Release, Compromise and Settlement Agreement, or may assert against the City, its officers, agents and employees, based upon any facts, events or circumstances whatsoever with respect to the Bunton Creek Subdivision prior to this date, or regarding any other claim, injury, or loss of any nature or kind whatsoever, whether arising out of contract, tort, or the claims and allegations made, or any other facts, events or circumstances;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF the Agreement described above, the mutual covenants contained herein, and Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, which consideration includes but is not limited to the performance by the City of the legal duties and responsibilities of the City pursuant to the Development Settlement Agreement for the Bunton Creek Subdivision, 151, Ltd., RTM/HER #1 Ltd. and their officers, agents, employees and

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partners **HEREBY** execute and deliver this Release, Compromise And Settlement Agreement, and **RELEASE, ACQUIT, AND FOREVER DISCHARGE** the City, its officers, agents, employees, legal representatives, successors and assigns, from any and all claims, demands, and causes of action which have accrued or may accrue arising out of or related in any way to the Bunton Creek Subdivision and the 97.26 acres, more or less, on which such subdivision is located (collectively the "Subdivision"), or any other claims and allegations made as a result of or arising from the the development and platting of the Subdivision, and each and every cause of action of any nature or kind whatsoever, whether arising in contract, tort or otherwise, that they may now have, whether known or unknown, against the City, its officers, employees, agents, legal representatives, successors and assigns.

THE PARTIES ACKNOWLEDGE that this Release, Compromise and Settlement Agreement is not applicable to and does not release any claim or cause of action that arises from facts, events, actions or non-action occurring after the dated date of this instrument.

FURTHER, 151, Ltd., RTM/HER #1 Ltd, and their officers, agents, employees and partners understand that this is a **FULL AND FINAL RELEASE** and that they will not be paid any more monies by the City or by anyone else in connection with any claim or allegation by them, or any of them, whatsoever against the City, its officers, agents, employees, legal representatives, successors and assigns.

IN FURTHER CONSIDERATION of this payment, 151, Ltd., RTM/HER #1 Ltd, and their officers, agents, employees and partners, hereby agree to indemnify, defend and hold harmless the City and its officers, employees, agents, representatives, successors and assigns from any claims, demand, or suit based in whole or in part by reason of the development, platting or ownership of the Subdivision (including but not limited to ownership or any property rights or interest in the 97.26 acres of land), or of any other kind or character whatsoever, that may hereafter be brought by any person whatsoever, including, but not limited to their respective spouses, for any damages or claims alleged to be held, owned or accrued prior to the date hereof.

THE ACCEPTANCE OF THIS RELEASE AND PAYMENT OF THE CONSIDERATION by the City shall not be construed as an admission of liability by the City in any respect, and all such liability is hereby denied.

IT IS UNDERSTOOD AND AGREED that this Release and Compromise Settlement Agreement shall be governed by, construed and enforced in accordance with an subject to the laws of the State of Texas.

THE UNDERSIGNED, the undersigned partners and representatives of 151, Ltd., RTM/HER #1 Ltd., each individually and collectively represent that he/she has read the foregoing Release and Compromise Settlement Agreement and that he/she fully understands the same, and that the same has been read, understood, agreed to and accepted by all persons and legal entities that presently have any interest or rights with respect to the Subdivision, and that this document is executed for the consideration herein expressed, the receipt and sufficiency of which is hereby expressly acknowledged and confessed.

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Executed this the 11th day of August, 2004.

151, Ltd.
by CAD-1, Inc., General Partner

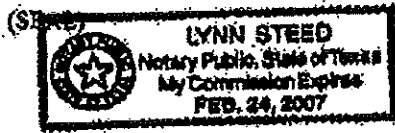
By: [Signature]
Name: Richard Jenkins
Title: President

RTM/HER #1, Ltd.
Robbie Mayfield Companies, Inc., General Partner

By: [Signature]
Name: Robbie Mayfield
Title: President

STATE OF TEXAS §
 §
COUNTY OF HAYS §

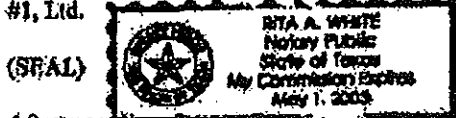
This instrument was acknowledged before me on the 11th day of August, 2004, by Richard Jenkins, President of CAD-1, Inc., General Partner of 151, Ltd.



[Signature]
Notary Public - State of Texas

STATE OF TEXAS §
 §
COUNTY OF HAYS §

This instrument was acknowledged before me on the 12th day of August, 2004, by Robbie Mayfield, President of Robbie Mayfield Companies, Inc., General Partner of RTM/HER #1, Ltd.



[Signature]
Notary Public - State of Texas

After recording, return to:
City of Kyle, Texas
300 W. Center Street
P. O. Box 40
Kyle, Texas 78640
Attention: City Secretary

EXHIBIT "H"

**BUNTON CREEK PUBLIC IMPROVEMENT DISTRICT
MANAGEMENT AGREEMENT**

This Management Agreement (this "Agreement") is entered into between the City of Kyle, Texas (the "City") and _____ (the "Manager") to be effective _____, 2004.

RECITALS

WHEREAS, on July ____, 2004, _____ (the "Developer") submitted to the City a petition (the "Petition") requesting the creation of the Bunton Creek Public Improvement District (the "District") pursuant to the authority of Chapter 372 of the Texas Local Government Code (the "Act"); and

WHEREAS, on July ____, 2004, the City Council of the City (the "City Council") held a public hearing on the advisability of creating the District and, upon closing of such public hearing, the City Council adopted a Resolution (the "Resolution") authorizing the creation of the District pursuant to the Act; and

WHEREAS, the Petition and the Resolution contemplate that the Developer will advance funds (the "Developer Advances") for the creation and administration of the District and for the design, acquisition, and construction of certain "District Improvements", which improvements are more particularly described in the Petition and Resolution, and are defined as the PID Improvements in the Development and Settlement Agreement for the Bunton Creek Subdivision; and

WHEREAS, the Resolution acknowledges that the District Improvements will confer a special benefit on property within the District; and

WHEREAS, the Resolution authorizes the levying and collection of special assessments upon property within the District to reimburse the Developer for the Developer Advances, together with interest (collectively, including interest, the "Reimbursement Amount"); and

WHEREAS, the Resolution contemplates that the City Council will adopt and approve an ordinance and order levying special assessments against property within the District (the "Assessment Order") in an amount that will repay the Reimbursement Amount to the Developer; and

WHEREAS, the City shall appoint a committee (the "Committee") to monitor, oversee and make recommendations regarding the fees, assessments, collections and distributions of District funds pursuant to this Agreement; and

WHEREAS, the Resolution authorizes the City to enter into this Agreement for the management of the District.

NOW THEREFORE, in consideration of the mutual promises of the parties contained in this Agreement, and for other consideration the receipt and adequacy of which are acknowledged, the City and Manager agree as follows:

I. Engagement of Manager

The City hereby engages Manager to manage the District as set forth in this Agreement, and Manager accepts such engagement.

II. Services by Manager

Manager will perform or provide or cause to be performed or provided all services necessary for the District to be administered, for the District Improvements to be designed, acquired, and constructed, and for the Developer to be repaid the Reimbursement Amount, all in accordance with the Act, the Resolution, and the terms and conditions of this Agreement. Such services by Manager will include, but not be limited to, the following:

- A. prepare each year an assessment roll that identifies all property within the District that is subject to assessment; and
- B. prepare each year (and submit to the City Council for its consideration and approval, as deemed appropriate) a five-year plan of service and budget that are consistent with the Assessment Order and that specifically identify additional revenue, if any, that is needed to pay for the ongoing administration of the District and for the provision of any other District services that, in the judgment of the City Council, confer a special benefit on property within the District; and
- C. prepare each year (and submit to the City Council for its consideration and approval, as deemed appropriate) a recommendation as to the amount of special assessments to be levied and collected by the City for such year, which recommended assessments shall be consistent with the Assessment Order and with any other District services (including ongoing administration costs of the District) that may be approved by the City Council as conferring a special benefit upon property within the District; and
- D. cause the Developer to maintain and submit reports confirming the status of the design, acquisition, and construction of the District Improvements and deliver such reports to the City; and
- E. maintain or cause to be maintained a full and accurate accounting of Developer Advances and the Reimbursement Amount and prepare or cause to be prepared periodic written reports of same for the City (with a final annual accounting report due no later than March 1 of each year); and
- F. maintain or cause to be maintained a full and accurate accounting of all costs and expenses used to calculate the Management Fee (hereinafter defined) (with a final annual accounting report due no later than March 1 of each year); and
- G. maintain a full and accurate accounting of all special assessments collected by the City within the District (with a final annual accounting report due no later than March 1 of each year); and
- H. after the City approves Manager's final annual accounting reports required by this

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Agreement ("Manager's Final Reports"), pay to the City no later than April 30th of each year, the actual costs in Manager's Final Reports from the District Account (hereinafter defined) to cover the costs of the City in administering the District and performing the duties and obligations of the City under this Agreement (the "City Costs"); and

- I. after the City approves Manager's Final Reports, pay to Manager no later than April 30th of each year, an amount from the District Account equal to total actual costs and expenses paid or incurred by Manager in performing its duties and obligations under this Agreement plus the additional sum of 15% of such total amount (collectively, the "Management Fee"); and
- J. after the City approves Manager's Final Reports, pay to the Developer no later than April 30 of each year all sums then remaining in the District Account after payment of the City Costs and the Management Fee and after the reservation of funds, if any, so required by the annual budget approved by the City Council; and
- K. based on delinquent property assessment reports prepared by Manager and approved by the Committee, prepare and file liens for such delinquent assessments and take such further action as Manager deems reasonable and prudent to collect such delinquent assessments.

Notwithstanding anything to the contrary contained in this Agreement, however, Manager shall have no responsibility or liability for funding all or any part of the Developer Advances.

III. Obligations of the City

The City shall appoint the Committee consisting of no more than five members, within 30 days after full execution of this Agreement and shall give written notice of each Committee member (including name, mailing address, telephone and fax numbers, and e-mail address) to Manager. The Committee will perform or provide or cause to be performed or provided services necessary to (i) assist Manager in administering the District, (ii) oversee the District Improvements being designed, acquired, and constructed, (iii) monitor and recommend Manager be paid the Management Fee, and (iv) monitor and recommend the Developer be repaid the Reimbursement Amount, all in accordance with the Act, the Resolution, and the terms and conditions of this Agreement. The City Council shall accept reports from the Committee and approve or disapprove such recommendations within 30 days after receipt of such a report by the Committee. City services shall be oversight and recommendation of the actions authorized by Manager and shall include, but are not limited to, the following:

- A. Review and make recommendations regarding Manager's Final Reports and provide recommendations and oversight for preparing an annual assessment roll that identifies all property within the District that is subject to assessment; and
- B. Review and make recommendations regarding Manager's Final Reports and provide recommendations and oversight for preparing the annual five-year plan of service and budget for the District and for preparing Manager's recommendations as to the amount of the special assessments to be levied each year; and

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- C. Oversee and make recommendations as to Manager's actions (including the preparation of assessment notices) that are necessary to levy and collect each year assessments upon property within the District in an amount that is sufficient to fund the obligations of the City pursuant to the Assessment Order and sufficient to fund any other District services (including ongoing administration costs of the District) that are approved by the City Council as conferring a special benefit upon property within the District; and
- D. Coordinate with the Bunton Creek Subdivision Property Owners Association to mail the assessment notices that are necessary to levy and collect each year assessments upon property within the District in an amount that is sufficient to fund the obligations of the City pursuant to the Assessment Order and sufficient to fund any other District services (including ongoing administration costs of the District) that are approved by the City Council as conferring a special benefit upon property within the District; and
- E. Establish a special account that is for the sole benefit of the District (the "District Account"), that does not commingle any other funds of the City, and that gives Manager the authority to manage the District Account, including, but not limited to, the authority to make payments from the District Account in accordance with the terms and conditions of this Agreement; and
- F. Deposit all assessments (including penalties and interest) that are collected by the City into the District Account; and
- G. Provide Manager with access to all financial records related to funds collected and deposited into the District Account; and
- H. Review and approve (or provide written comments to) Manager's Final Reports within 45 days after such reports are provided to the City, which approval shall be deemed given if the City fails to provide written comments within such 45-day period; and
- I. Make recommendations to the City to authorize Manager to make payments from the District Account for the City Costs, the Management Fee, for repayment of the Reimbursement Amount, and for any other purposes specifically authorized by the City; and
- J. Oversee the preparation of an annual report of delinquent property assessments.

IV. Amendments to Agreement

This Agreement shall not be modified or amended in any respect unless the same is done in writing and is signed by both the City (upon approval by the City Council) and Manager.

V. Term

The term of this Agreement shall begin on the effective date and shall continue until the Reimbursement Amount is paid in full.

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VI. Default

No party shall be in default for its failure to perform under this Agreement until notice of the alleged failure to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such party has had a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than 30 days after written notice of the alleged failure has been given). In addition, no party shall be in default under this Agreement if within the applicable cure period the party to whom notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. Any notice of any alleged failure to perform under this Agreement shall be in writing and shall be deemed given on the earlier to occur of (a) five business days after deposited in the U.S. Mail, Certified Mail, Return Receipt Requested, (b) when delivered by commercial delivery service (e.g., FedEx or UPS) as evidenced by a signed receipt from such delivery service, or (c) when actually received by the party to whom the notice is sent, including receipt by FAX or E-mail. For purposes of this Agreement, notices shall be sent as follows:

If to the City:

With a copy to:

City of Kyle
Attn: City Manager
200 W. Center Street
Kyle, Texas 78640
Facsimile (512) 268-0675

with copy to:
Barney L. Knight
223 W. Anderson Lane, #A105
Austin, Texas 78752
Facsimile (512) 323-3773

If to Manager:

With a copy to:

151, Ltd. and RTM/HER #1 Limited
% Richard Jenkins
900 Congress Ave., Suite L-100
Austin, Texas 78701
Facsimile 512-478-5678

RTM/HER #1 Limited
% Harlan Roberts *ROBARIE MAY FIELDS*
235-Strick Campbell St. *3801 N. CAPITAL INTERNS & J-220*
Academy Pass, Texas 78336 *AUSTIN, TX 78746*
Facsimile (361) 758-3593 *512-476-1919*

VII. Remedies

In the event of a default by either the City or Manager under this Agreement, Manager, the City or the Developer (which is a third-party beneficiary of this Agreement) shall have available all remedies at law or in equity, including, but not limited to, specific performance and mandamus relief. In the event Manager shall be in default under this Agreement, in addition to all other remedies, the City shall have the right to terminate this Agreement. Should such a termination occur, however, the City agrees pursuant to the Development Agreement between the Developer and the City (which agreement shall survive termination of this Agreement,

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subject to the term of such agreement) to enter into another agreement with another manager, the terms and conditions of which agreement shall be substantially the same as this Agreement. In no event shall a termination of this Agreement relieve or adversely affect the obligation of the City with respect to the ongoing administration of the District including, but not limited to, the obligation of the City to levy and collect assessments consistent with the Assessment Order and the obligation to repay to the Developer the Reimbursement Amount from such assessants.

VIII. Assignment

This Agreement shall be binding upon the parties hereto and their permitted successors and assigns. Manager shall have the right to assign this Agreement or any of its duties, rights, or obligations under this Agreement to any other person or entity with the written consent of the City. The City may not assign any of its duties, rights, or obligations under this Agreement without the prior written consent of Manager, which consent shall not be unreasonably withheld or delayed.

IX. Entire Agreement

This Agreement supersedes any and all other contemporaneous or prior agreements or understandings, whether oral or in writing, between the parties hereto with respect to the management and the procedures management issues provided for in this Agreement, and none of such prior or contemporaneous agreements or understandings shall be valid or binding upon the parties hereto.

X. Severability

If any provision of this Agreement shall be determined by a court to be invalid or unenforceable for any reason, such invalid or unenforceable provision shall be deleted from this Agreement, and the remaining provisions of this Agreement shall be interpreted and enforced to give effect to the intent of this Agreement as if such invalid or unenforceable provision had never been contained herein.

XI. Books and Records

Each party shall maintain complete and accurate records with respect to its obligations under this Agreement. All such records shall be maintained in the usual, regular and ordinary manner consistent with good accounting practices and shall be clearly identified and readily accessible. Each party shall provide representatives of the other party or its appointees free access to such books and records, at all proper times, in order that they may examine and audit the same and make copies thereof. Each party shall further allow the other party and its representatives to make inspections of all work data, documents, proceedings and activities related to this Agreement.

XII. Texas Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and performable in Hays County, Texas. Venue shall lie exclusively in Hays County, Texas.

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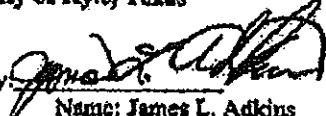
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EXECUTED this 12th day of AUGUST, 2004.

City of Kyle, Texas

By: 
Name: James L. Adkins
Title: Mayor

151, Ltd.
by C4D-1, Inc., General Partner

By: 
Name: Richard Jenkins
Title: President

RTM/HER #1, Ltd.
Robbie Mayfield Companies, Inc., General Partner

By: 
Name: Robbie Mayfield
Title: President