

**CITY OF KYLE, TEXAS DEPOSIT AND REIMBURSEMENT AGREEMENT
FOR PLUM CREEK PHASE II DEVELOPMENT**

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT (this "**Agreement**") is made and entered into as of November 20, 2013 by and between the CITY OF KYLE, TEXAS (the "**City**"), and PLUM CREEK DEVELOPMENT PARTNERS, LTD. (the "**Owner**").

WHEREAS, the Owner owns that certain approximately 967 acre tract of land in Kyle known as "Plum Creek Phase II" (the "**Property**") which would be included within the boundaries of a proposed PID; and

WHEREAS, the Owner has requested that the City create a Public Improvement District ("PID") regarding infrastructure funding for the Property; and

WHEREAS, the Owner has agreed to advance funds to be used by the City Manager of the City (the "**Manager**") to pay costs and expenses associated with retaining the Consultants (hereinafter defined) to assist the City with assessing the feasibility and desirability of creating a PID; and

WHEREAS, the parties hereto wish to enter into the Agreement to define the terms and conditions under which funds will be advanced by Owner and, used to pay the Consultants.

NOW THEREFORE, the parties, for mutual consideration, agree as follows:

SECTION 1. ADVANCEMENT OF FUNDS. The Owner shall advance funds (the "**Funds**") to the Manager as provided in Section 3 hereof, which Funds shall be used by the City exclusively to pay costs generally described in Section 2 hereof. If the Funds are not advanced in accordance with Section 3 hereof, the City shall not proceed with assessing the feasibility and desirability of creating a PID.

SECTION 2. USE OF FUNDS ON DEPOSIT. The City will retain its bond counsel and financial advisor (the "**Consultants**") to assist the City with conducting research and consultations with the City's financial and legal experts in assessing the feasibility or desirability of creating a PID and advising the City Council on any matter associated with the creation of a PID. The Manager shall use the Funds to pay costs and expenses of the Consultants that are incidental to or associated with the PID. The Manager shall maintain records of the payment of all costs and keep such records on file and available for inspection and review by the Owner in the Manager's Office, and will forward all invoices from the Consultants to Owner prior to paying the same.

SECTION 3. DEPOSITS. The Owner shall initially deposit with the Manager the amount of \$10,000.00 within ten (10) business days after this Agreement is executed and delivered to Owner by the City. The Manager shall cause all Funds received from the Owner to be accounted for in a separate account maintained by or at the direction of the Manager.

SECTION 4. ADDITIONAL DEPOSITS. The Manager shall provide written notice to the Owner when the initial deposit of \$10,000.00 is fully expended for costs incurred in conducting research and consultations with the City's financial and legal experts in assessing the feasibility or desirability of creating a PID and advising the City Council on the matter and additional deposit of funds by the Owner is required.

Within ten (10) days of receipt of written notice by the Manager, the Owner shall deposit the additional funds requested by the City and approved by Owner to complete its research and consultations with the City's financial and legal experts in assessing the feasibility or desirability of creating a PID and advising the City Council on the matter.

SECTION 5. REIMBURSEMENT. If proceedings for approval of the PID are terminated by Owner by written notice to the City, the Manager shall transfer to the Owner within thirty (30) days after notice of termination, all Funds, including any interest earnings thereon, then on deposit in the account established and maintained pursuant to Section 3 hereof, exclusive of Funds necessary to pay project costs or portions thereof that (i) have been actually incurred prior to the date of termination and (ii) are due and owing as of the date of such termination.

SECTION 6. RESERVED RIGHTS. This Agreement does not in any way create an obligation or commitment that the City will create a PID.

SECTION 7. BINDING EFFECT. This Agreement shall be binding on the successors and assigns of the parties hereto.

SECTION 8. SEVERABILITY. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

SECTION 9. EFFECTIVE DATE. This Agreement shall be effective upon the complete execution hereof by all Parties, which date shall be inserted on the first page of this Agreement as the Effective Date.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in Hays County, Texas, as of the date and year first herein above written.

EXECUTED and ACCEPTED this 20th of Nov. 2013.

CITY OF KYLE

BY: Lawry S. Lambert
Name: LARRY S. LAMBERT
Title: CITY MANAGER

AGREED TO and ACCEPTED this 25 of Nov 2013.

**Plum Creek Development Partners, Ltd., a
Texas limited partnership**

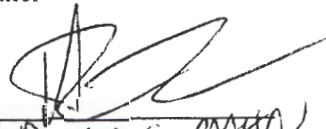
By: BGI Plum Creek Development, Ltd.,
general partner

By: Benchmark Land Development,
Inc., a Texas corporation, its
general partner

By:

Name:

Title:


DAVID C. MARTIN
Vice President