

ORDINANCE NO. 2017 - _____

AN ORDINANCE AUTHORIZING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF DENTON AND DW CARMEL, LLC (THE “DEVELOPER”); PROVIDING FOR THE PAYMENT BY THE DEVELOPER TO THE CITY OF FOUR HUNDRED THOUSAND DOLLARS AND NO CENTS (\$400,000.00) FOR THE CITY TO CONSTRUCT THE BALANCE OF THE EDWARDS ROAD PERIMETER PAVING IMPROVEMENTS REQUIRED BY PHASE 5A AND 5B OF THE VILLAGES OF CARMEL ADDITION(S) TO THE CITY OF DENTON, AS DEVELOPER’S CONTRIBUTION; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE. (EDWARDS ROAD PAVING IMPROVEMENTS – VILLAGES OF CARMEL SUBDIVISION)

WHEREAS, the City Council of the City of Denton hereby finds that the Development Agreement (the “Agreement”) between the City of Denton and DW Carmel, LLC (the “Developer”) providing for payment by Developer to City of \$400,000.00 for the City to construct approximately 1,670 linear feet of the perimeter paving improvements required for the Villages of Carmel, Phase 5A and 5B, serves a municipal and public purpose and is in the public interest; and

WHEREAS, the City of Denton and Developer have negotiated the Agreement for the mutual benefit of the parties and the general public, a copy of which is attached hereto as Exhibit “A” and made a part hereof by reference; **NOW, THEREFORE**,

THE COUNCIL OF THE CITY OF DENTON ORDAINS:

Section I. The City Council finds that the recitals made in the preamble of this Ordinance are true and correct, and incorporates such recitals into the body of this ordinance as if copied in their entirety.

Section II. The City Manager, or his designee, is hereby authorized to execute the Agreement and to carry out the duties and responsibilities of the City under the Agreement.

Section III. This Ordinance shall become effective immediately upon its passage.

PASSED AND APPROVED this the _____ day of _____, 2017.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY:  _____

Exhibit "A"
to Ordinance

**DEVELOPMENT AGREEMENT BETWEEN
CITY OF DENTON AND DW CARMEL, LLC**

This Development Agreement (this "Agreement") is made and entered into as of the _____ of _____, 2017 (the "Effective Date"), by and between the City of Denton, Texas, a Texas Municipal Corporation (the "City"), and DW Carmel, LLC, a Texas limited liability company, whose principle place of business is located at 5305 Village Creek Drive, Plano, Texas 75093 ("Developer"). The City and Developer are sometimes hereinafter referred to individually as "Party", and collectively as the "Parties".

WHEREAS, Sec. 212.071 of the Tex. Loc. Gov't Code authorizes the City to enter into a written agreement with a developer of a subdivision or land in the city to construct public improvements related to the development of the land and to participate in the cost related to same; and

WHEREAS, Developer is developing a residential subdivision by the name of Villages of Carmel located generally North of Pockrus Page Road, South of Edwards Road, East of Mayhill Road and West of Swisher Road in the City of Denton, Denton County, Texas (the "Development"); and

WHEREAS, the Development has been and continues to be constructed in several phases, namely Phase 1, 2, 2A, 2B, 2C, 2D, 3, 4A, 4B, 5A and 5B ("Phases"), and the Developer elected to phase its perimeter street requirements so that the perimeter paving improvements adjacent to each phase would be completed as each phase is platted pursuant to Sec. 35.20.2.L.3.c. of the Denton Development Code; and

WHEREAS, Phase 5A and Phase 5B of the Development (the "Property"), which Final Plats are attached as **Exhibit A** hereto and incorporated herein, are directly adjacent to Edwards Road, which is an unimproved perimeter street ultimately designated as a Commercial Mixed-Use Collector (73-foot total right-of-way width), so that a minimum of 36.5-ft from the centerline of the street to property line of Phase 5A and Phase 5B would be required to be dedicated as Right-of-Way along the Phase 5A and Phase 5B frontage, and 25-feet in width of asphalt pavement (including concrete curb and gutter), 8-feet in width of sidewalk, and related drainage improvements would be required to be constructed from the eastern edge of the Development's Phase 2C up to the Swisher Road and Edwards Road Intersection ("Edwards Improvements"); and

WHEREAS, TXDOT closed the Post Oak Road overpass at I-35E for improvements, resulting in a temporary increase in traffic along Edwards Road (the "TXDOT Improvements"), shortly after the approval of the Phase 5A plat on or about September 16, 2015; and, the Director of Engineering Services determined that for public safety and traffic efficiencies, the Edwards Improvements should not be constructed at the same time as the TXDOT Improvements because at least one street needed to be kept open for traffic flow to and from the Development and for benefit of City of Denton emergency services response timing to areas east of the Development; and

WHEREAS, the parties have agreed to the City's purchase of approximately 6.394 acres of the Development from the Developer for the amount of \$278,325.⁰⁰ dollars, the purchase of which being approved by the City on May 3, 2016, via Ordinance 2016-134, being the prospective purchase of Lot 1, Block KK, of the Villages of Carmel Phase 5B, an approved but yet to be recorded pending subdivision plat within the City of Denton, Texas (the "City Purchase Tract"), which Sales Contract is attached hereto as **Exhibit B** and incorporated by reference herein; and

WHEREAS, the Sales Contract requires that a Final Plat for the Development, Villages of Carmel Phase 5B, would be filed of record in the Real Property Records of Denton County, Texas within six (6) months of the Effective Date of the Sales Contract, and that the plat would conform with a Memorandum of Understanding between the parties dated July 31, 2015 (the "MOU"), which MOU is attached as part of the Sales Contract under **Exhibit B**; and

WHEREAS, the MOU requires that the Phase 5B Final Plat, Lot 1, dedicate 0.9 acre of right-of-way along Edwards and Swisher Roads, dedicate a 2.4 acre tract as "Upland Habitat Area," provide a Park Land Dedication Area on 1.2 acres, provide the extension of a 12 inch water main, and provide for the Edwards Improvements; and

WHEREAS, now that the TXDOT Improvements are completed in October 2016, the Edwards Improvements still require completion; and, since the proposed City Purchase Tract is adjacent to Edwards Road and the imposition by the City of a protracted schedule delay upon Developer, impacted the construction timing of Developer's required Edwards Improvements, the City wishes to participate in the construction and cost of the Edwards Improvements under the terms and conditions as stated herein, using the Construction Plans/Design already approved for the Developer; and

WHEREAS, the City has not filed the Final Plat for Phase 5B of the development pending the execution of a "3-way Development Agreement" to complete the construction of the Edwards Improvements; however, the parties agree that this Development Agreement will take the place of the 3-way Development Agreement requirements for Phase 5B; and

WHEREAS, the Development is now subject to Roadway Impact Fees pursuant to Ordinance No. 2016-189 as of July 6, 2017, which total amount for the Collection Rate of Phases 5A and 5B for 175 Dwelling Units is approximately \$350,000 (calculated by multiplying 4.9 vehicle trips per mile per dwelling unit by the Collection Rate of \$408.16) ("Impact Fee Collection Rate"), where perimeter system improvements may have been required up to the Maximum Assessable Rate of approximately \$1,921,657.50 absent this Agreement (calculated by multiplying 4.9 vehicle trips per mile per dwelling unit by the Maximum Assessable Roadway Impact Fee Rate of \$2,241.00) ("Impact Fee Maximum Assessable Rate"); and

WHEREAS, the parties executed a Development Contract for Public Improvements for Phase 5A on or about October 30, 2015, which was amended on or about November 18, 2016, and which contained a proposed cost estimate for the portion of the Edwards Improvements along Phase 5A frontage of \$146,667.70 by Developer, which is well under the Impact Fee Maximum Assessable Rate; and

WHEREAS, the parties agree that it would be more cost-effective, efficient, and in the overall best interests of the Parties for the City to construct the entire (Phase 5A and Phase 5B) Edwards Improvements using the design and engineering for the improvements completed by the Developer in the Construction Plans, and the Developer would contribute a lump sum fee as described herein to be paid prior to construction and which would be a credit toward all of the Impact Fee Collection Rate due for Phases 5A and 5B; and

NOW THEREFORE, the City and Developer, in consideration of the mutual covenants and agreements of the Parties herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE I

Terms

1.1 Governing Development Regulations. (a) Development of the Property shall be governed by: (i) the Final Plat(s) and construction plans; (ii) the Denton Development Code (the "DDC") in effect; and (iii) the Zoning Regulations for the Property within the City limits. These shall be hereinafter referred to collectively as the "Governing Regulations". The Governing Regulations shall control to the extent they do not conflict with the terms of this Agreement, in which case the Agreement controls. It is agreed and understood that no ordinance or regulation adopted by the City after the Effective Date shall in any manner impair Owner's rights under this Agreement provided that: (1) any ordinance or regulation exempted by Chapter 245 of the Texas Local Government Code may be enforced on the Property; and (2) ordinances or regulations adopted pursuant to a requirement of State or Federal law may be enforced on the Property.

1.2 Other City Ordinances. Except as expressly excluded or made inapplicable by the Governing Regulations or this Agreement, all other ordinances or criteria of the City shall apply to the Property.

1.3 Plat Approval. The Final Plat for Villages of Carmel Phase 5B was submitted to the City on January 6, 2016 in accordance with Sec. 35.16.12 of the Denton Development Code. The Final Plat for Villages of Carmel Phase 5B was approved by the Planning and Zoning Commission on April 13, 2016 and City staff is in possession of the fully-executed Phase 5B plat documents. Upon execution of this Agreement by the Parties, the City shall promptly file the approved Final Plat for Villages of Carmel Phase 5B in the Real Property Records of Denton County, Texas, once the payment of the lump sum fee as stated in Section 1.4 herein has been tendered to the City.

1.4 Developer's Responsibility. The Developer shall be responsible for the following:

- a. The Developer agrees that the City will use the Developer's construction, engineering, and design plans to construct the Edwards Improvements, and such plans will become property of the City on execution of this Agreement.

- b. The Developer shall pay to the City the lump sum of Four Hundred Thousand Dollars and No Cents (\$400,000.⁰⁰) within thirty (30) days of the execution of this Agreement by the City, in the form of a check, certified check, cashier's check, wire transfer or other immediately available funds, for Developer's contribution to the costs of the construction for Edwards Improvements ("Developer Contribution"). This payment together with dedication of the rights-of-way for Edwards Road, Swisher Road, and Post Oak Road, by the subdivision plats of Villages of Carmel, Phases 5A and 5B, will be accepted by the City as full credit against the Roadway Impact Fees due for 175 single family detached residents planned in Phases 5A and 5B, in accordance with plats either currently filed or currently submitted to the City.
- c. The Developer is required to follow the terms of the MOU and dedicate the required right-of-way, the required Upland Habitat Area, and the required Park Land Dedication Area.
- d. The Developer shall be responsible for any other costs and fees associated with roadway impact fees or perimeter improvements for any subdivision phases other than Phase 5A and 5B.

1.5 City's Responsibilities. The City agrees to the following:

- a. The City shall construct for the Developer that portion of Edwards Road described as the Edwards Improvements in accordance with applicable Governing Regulations.
- b. The City agrees to obtain any necessary permits at its own expense.
- c. The City agrees to obtain any additional licenses or easements needed for the Edwards Improvements at its own expense.
- d. The City will participate in the costs of the installation and construction of Edwards Improvements, which increases the capacity of the roadway system to anticipate other future development in the area, based upon the difference in the Developer's Contribution and the total construction costs of installing and/or constructing the improvements, including any overages, in an amount not to exceed Five Hundred and Fifty Thousand Dollars and No Cents (\$550,000.⁰⁰).

1.6 Dedication of Improvements. Any easements or rights-of-way required for facilities shall be assigned and dedicated to the City, if not taken in the City's name, prior to acceptance of the improvements.

1.7 CITY SHALL NOT, IN ANY CASE, BE LIABLE FOR ANY COSTS OR DAMAGES BECAUSE OF DELAYS IN BEGINNING, CONTINUING OR

COMPLETING CONSTRUCTION; UNFORESEEN OR UNANTICIPATED COSTS OR DAMAGE DONE TO OTHER PROPERTY IN THE DEVELOPMENT DURING CONSTRUCTION; OR ANY OTHER REASON OR CAUSE, SPECIFIED OR UNSPECIFIED, RELATING TO THE CONSTRUCTION OF THE FACILITIES. THE DEVELOPER SHALL INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, OFFICIALS, EMPLOYEES, AND REPRESENTATIVES HARMLESS FROM ANY AND ALL CLAIMS, DAMAGES, LOSS, OR LIABILITY OF ANY KIND WHATSOEVER, BY REASON OF INJURY TO PROPERTY OR PERSON OCCASIONED BY ANY ACT OR OMISSION, NEGLIGENCE OR WRONGDOING OF DEVELOPER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, CONTRACTORS, OR OTHER PERSONS WITH REGARD TO THE PERFORMANCE OF THIS AGREEMENT, AND DEVELOPER SHALL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT CITY AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS. THIS AGREEMENT DOES NOT INURE TO THE BENEFIT OF ANY THIRD PARTY.

1.8 Default. Notwithstanding anything herein to the contrary, no Party shall be deemed to be in default hereunder until the passage of thirty (30) business days after receipt by such party of notice of default from the other Party. Upon the passage of thirty (30) business days without cure of the default, such Party shall be deemed to have defaulted for all purposes of this Agreement. In the event of a non-cured default, the non-defaulting Party shall have all the rights and remedies available under applicable law, including the right to institute legal action to cure any default, to enjoin any threatened or attempted violation of this Agreement, or to enforce the defaulting Party's obligations under this Agreement by specific performance, or to cancel this Agreement in whole.

1.9 Rough Proportionality. Developer stipulates to the nexus and proportionality of the public improvements made subject of this Agreement, regardless of whether they were known, quantified or anticipated at the time this Agreement was executed.

ARTICLE II

Miscellaneous

2.1 Amendments. This Agreement may be amended at any time by mutual written agreement of the City and Developer.

2.2 Cooperation. The Parties agree to execute and deliver all such other and further documents or instruments and undertake such other and further actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

2.3 Litigation. In the event of any third-party lawsuit or other claim relating to the validity of this Agreement or any action taken by the parties hereunder, Developer and the City agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement.

2.4 Governmental Powers; Waiver of Immunity. It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers, immunities or rights. Nothing in this section shall waive any claims, defenses or immunities that the City has with respect to suits against the City by persons or entities not a party to this Agreement.

2.5 Applicable Law and Venue. This Agreement shall be interpreted in accordance with the laws of the State of Texas. Venue shall be in Denton County, Texas.

2.6 Attorney's Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees from the other Party. The amount of fees recoverable under this paragraph may be set by the court in the trial of the underlying action or may be enforced in a separate action brought for that purpose, and any fees recovered shall be in addition to any other relief that may be awarded.

2.7 Notices. Any notice to be given hereunder by any Party to another Party shall be in writing and may be affected by personal delivery or by sending said notice 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 to:

City of Denton
c/o Director of Engineering
215 E. McKinney St.
Denton, Texas 76201

With a Copy to:

Denton City Attorney's Office
Denton City Hall Main
215 E. McKinney St.
Denton, Texas 76201

Any notice mailed to Developer shall be addressed to:

DW Carmel, LLC
c/o _____
5305 Village Creek Drive
Plano, Texas 7509

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

2.8 Entire Agreement. The Sales Contract notwithstanding, this Agreement, together with any exhibits attached hereto, constitutes the entire agreement between the Parties and

supersedes any prior or contemporaneous oral or written understandings or representations of the Parties with respect to the subject matter herein contained.

2.9 Severability. If any sentence, section, subsection, clause, phrase, part or provision of this Agreement be declared by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect the same shall not affect any other provisions of this Agreement as a whole, or any part thereof, other than the part declared to be invalid, illegal or unenforceable.

2.10 Interpretation. This Agreement shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity hereof. Wherever required by the context, the singular shall include the plural, and the plural shall include the singular. Each defined term herein may be used in its singular or plural form whether or not so defined.

2.11 Authority. The City represents and warrants that this Agreement has been approved and duly adopted by the City Council of the City in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been authorized to do so. Developer represents and warrants that this Agreement has been approved by appropriate action of Developer and that the individual executing this Agreement on behalf of Developer has been authorized to do so. Developer further represents and warrants that the lien holder of record, if any, has consented to terms of the agreement.

The Parties hereto have executed this Agreement as of 30th day of October, 2017.

DEVELOPER:

DW CARMEL, LLC

BY: [Signature]
ITS: Pres / Manager

THE CITY OF DENTON, TEXAS:

By: _____
TODD HILEMAN
CITY MANAGER

ACKNOWLEDGMENTS

THE STATE OF TEXAS }
COUNTY OF DENTON }

This instrument was acknowledged before me on the 30th day of October, 2017, by Douglas M. Hickok, the Pres/Manager for DW Carmel, LLC.



[Signature]
Notary Public, State of Texas

THE STATE OF TEXAS }
COUNTY OF DENTON }

This instrument was acknowledged before me on the _____ day of _____, 2017, by Todd Hileman, City Manager, on behalf of the City of Denton, Texas.

Notary Public, State of Texas

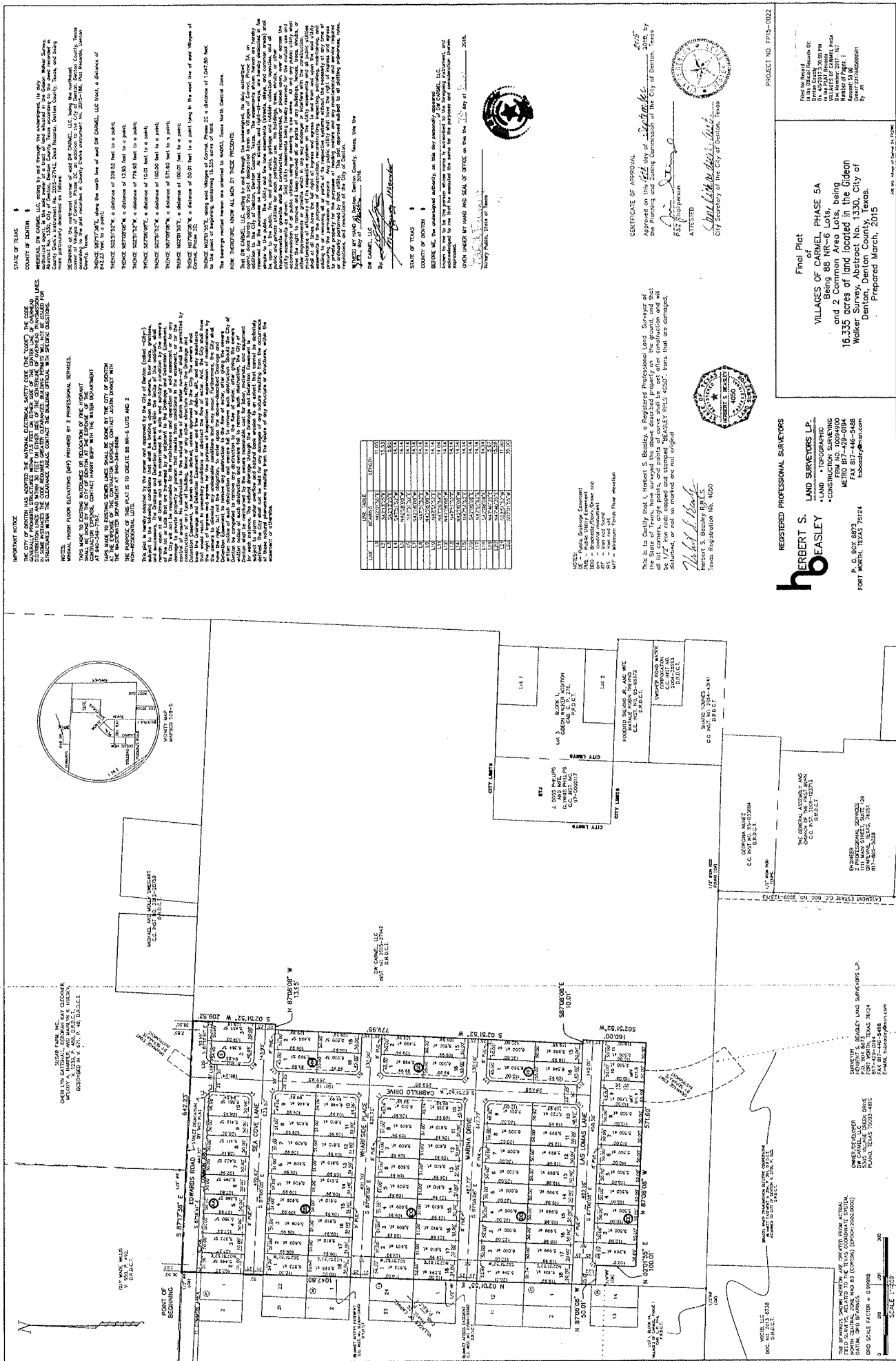
ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: [Signature]

EXHIBIT "A" attachment to Development Agreement - Sheet 1 of 2



A-1168-19

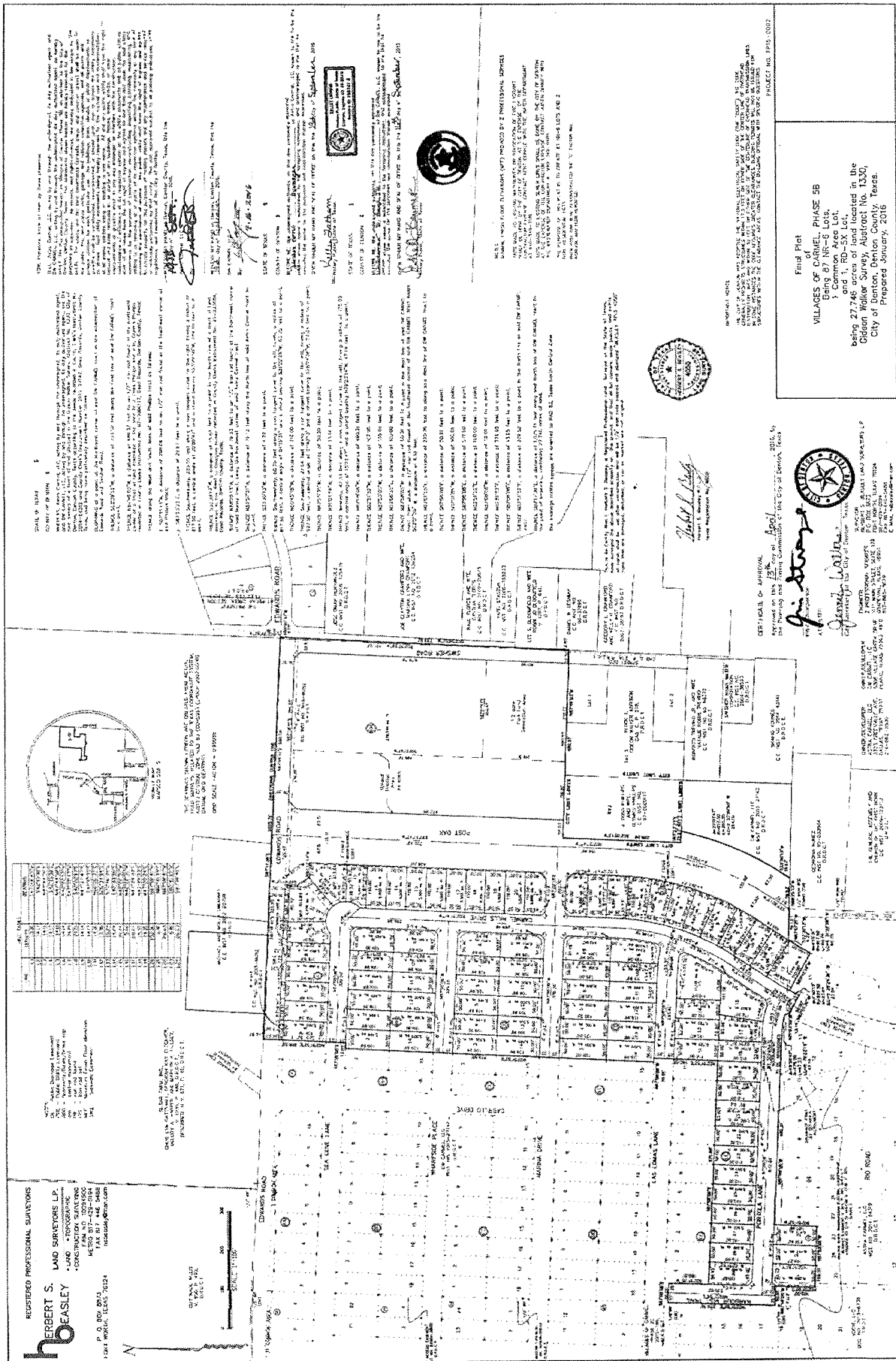


Exhibit "B"
to Development Agreement

REAL ESTATE SALES CONTRACT

This REAL ESTATE SALES CONTRACT ("Contract") is entered into by DW CARMEL, LLC, a Texas limited liability company ("Seller"), and City of Denton, a Texas home rule municipal corporation ("Purchaser").

RECITALS

Seller wants to sell to Purchaser and Purchaser wants to purchase from Seller all of Seller's right, title, and interest in and to the real property described below.

AGREEMENT

In consideration of these recitals, the mutual covenants, agreements, and obligations stated below, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Seller and Purchaser agree as follows:

ARTICLE 1
SALE AND PURCHASE

1.1. Property. Subject to the terms and conditions set forth in this Contract, Purchaser agrees to purchase from Seller, and Seller agrees to sell to Purchaser, the following described property (collectively, "Property"):

- (a) that certain tract of land containing approximately 6.394 acres ("Land") located in Denton, Denton County, Texas, and more particularly described in the attached Exhibit A;
- (b) all rights, privileges, and appurtenances pertaining to the Land, including but not limited to all trees, timber rights and contracts for cutting timber, water rights, claims and permits;
- (c) all intangible property, if any, owned by Seller and pertaining to the Land or the use of it, including but not limited to all present and future use of wastewater, wastewater capacity, drainage, drainage capacity, water, water capacity, or other utility facilities directly attributable to the Land;
- (d) all reservations of, commitments for, and letters covering utility capacity, whether or not they are currently being used to the fullest extent available;
- (e) all of Seller's right, title, and interest and estates in any land lying within the bed of any stream, river, lake, or other waterway or body of water on or crossing that portion of the Land; and
- (f) all of Seller's right, title, and interest and estates in any land within any easement or right of way or under any bed of any road or highway, whether open or proposed on or crossing that portion of the Land.

ARTICLE 2
PURCHASE PRICE

2.1. Purchase Price. The purchase price for the Property ("Purchase Price") is Two Hundred Seventy Eight Thousand Three Hundred Twenty Five and No/100 Dollars (\$278,325.00), payable in cash or other immediately available funds at Closing (as defined in Section 6.1).

ARTICLE 3
EARNEST MONEY

3.1. Earnest Money Deposit. Within fourteen (14) business days after this Contract is fully executed by Seller and Purchaser, Purchaser will deposit with Capital Title of Texas, LLC ("Title Company"), at 620 West Hickory, Denton, Texas 76201, a fully executed original counterpart of this Contract and the amount of Fourteen Thousand and No/100 Dollars (\$14,000.00) to ensure prompt observance of this Contract by Purchaser ("Earnest Money Deposit"). All interest accruing on the Escrow Deposit will become a part of the Escrow Deposit and will be delivered to the party entitled to receive the Escrow Deposit. If the Purchaser does not timely deposit the Escrow Deposit(s) with the Title Company, Seller will have the right to terminate this Contract. At Closing, the Escrow Deposit will be applied to the payment of the Purchase Price.

3.2. Refundability. The Earnest Money Deposit will be nonrefundable to Purchaser, except as specified in this Contract.

ARTICLE 4
TITLE STATUS

4.1. Title Commitment and Survey. Seller will deliver or have delivered to Purchaser within thirty (30) days after the Effective Date, as defined in Section 12.10, the following:

(a) a current Commitment for Title Insurance ("Title Commitment") for the Property, issued by Title Company. The Title Commitment shall set forth the state of title to the Property, including a list of liens, mortgages, security interests, encumbrances, pledges, assignments, claims, charges, leases (surface, space, mineral, or otherwise), conditions, restrictions, options, severed mineral or royalty interests, conditional sales contracts, rights of first refusal, restrictive covenants, exceptions, easements (temporary or permanent), rights-of-way, encroachments, or any other outstanding claims, interests, estates or equities of any nature (each of which are referred to herein as an "Exception"); and

(b) true and correct copies of all instruments that create or evidence Exceptions ("Exception Documents"), including those described in the Title Commitment as exceptions to which the conveyance will be subject and/or which are required to be released or cured at or prior to Closing; and

(c) a current on the ground survey of the Property ("Survey") prepared at Purchaser's expense by Teague Nall and Perkins which shall include the matters prescribed by Purchaser, which may include but not be limited to, a depiction of the location of all roads, streets, easements and rights of way, both on and adjoining the Property, water courses, 100 year flood plain, fences and improvements and structures of any kind and other matters provided in items 1-4, 6, 7a, 8, 10 and 11,13,16, 18, and 19 of Table A of the ALTA Minimum Standard Detail Requirements and contain the surveyor's certificate addressed to Seller, Purchaser, and the Title Company. Notwithstanding the Survey of the Property, the Purchase Price for the Property shall not be adjusted in the event the Survey shall determine the Property to be either larger or smaller than that depicted or described in the attached Exhibit A.

In addition to the deliverables cited above, but a function of the Survey, no later than fourteen (14) days after the Effective Date, at the sole cost and expense to Seller, Seller shall have caused the establishment of the "on-the-ground" boundary monuments (i.e. iron rods/pins) of the aforementioned Lot 1, Block KK, pending Villages of Carmel Addition, Phase 5B subdivision plat (the "Land"). Upon establishment of the boundary monuments of said Lot 1, Seller shall notify Purchaser of that event, so that the Survey contemplated herein can be completed for delivery to the parties.

4.2. Review of Title Documents. The review of the Commitment, the Exception Documents, and the Survey (collectively, "Title Documents") will be governed by the following terms:

(a) Purchaser Obligations. Purchaser will have until the date that is the sooner of (i) ten (10) days after Purchaser's receipt of the last of the Title Documents, or (ii) thirty (30) days after the Effective Date ("Title/Survey Review Period") to provide to Seller written objections to the status of title to the Property ("Objections"). All items set forth in the Schedule C of the Title Commitment, and all other items set forth in the Title Commitment which are required to be released or otherwise satisfied at or prior to Closing, shall also be deemed to be Objections without any action by Purchaser. All matters affecting the status of title to the Property to which Purchaser does not timely make Objections per this Section 4.2(a) or which are not otherwise deemed to be Objections per the previous sentence shall be deemed "Permitted Exceptions".

(b) Seller Response. If Purchaser does timely deliver Objections to Seller, Seller may within seven (7) days after receiving them ("Response Period") notify Purchaser of which Objections Seller will cure before Closing ("Cure Notice"), Seller having no obligation to cure any of Purchaser's Objections. If during the Response Period, Seller fails to notify Purchaser that Seller agrees to cure any or all of Purchaser's Objections before Closing, Purchaser may terminate this Contract by giving written notice to Seller within fourteen (14) business days after the end of the Response Period (the "Title Termination Period"), in which

event the Earnest Money Deposit will be returned to Purchaser on demand, and neither Seller nor Purchaser will have any further obligations under this Contract except for those that expressly survive its termination. Purchaser's failure to timely terminate this Contract per the previous sentence shall be deemed Purchaser's election to waive the Objections and to purchase the Property subject to the matters affecting the status of title to the Property to which the Objections applied, in which event such matters will be deemed Permitted Exceptions.

4.3. Conveyance by Deed. Seller will deliver to Purchaser at Closing a Special Warranty Deed in the form and substance of Exhibit B ("Deed") conveying fee simple title to the Real Property to Purchaser, subject to the Permitted Exceptions.

ARTICLE 5

INSPECTION AND EXAMINATION

5.1. Inspection Period. The Purchaser's inspection and examination of the Property has been completed and is satisfactory to the Purchaser.

5.2. Document Inspection. To facilitate Purchaser's inspection of the Property, Seller will provide to Purchaser, within thirty (30) days after the Effective Date, but only to the extent within Seller's actual possession, true, correct, and complete copies of any reports, tests, and environmental studies made with respect to the Property. Additionally, Seller will provide any further information in its actual possession relating to the Property that may be reasonably requested in writing by Purchaser. Purchaser acknowledges that any information of any type that Purchaser has received or may receive from Seller or its agents is furnished to Purchaser as a courtesy only, without any warranty relating to such information, and on the express condition that Purchaser will make an independent verification of the accuracy of the information and will not rely on such information.

ARTICLE 6

CLOSING

6.1. Closing Date. The consummation of the transactions contemplated by this Contract ("Closing") will take place in the offices of the Title Company, on or before 4:00 p.m. on the date that is fifteen (15) days after the latter to occur of (i) the Final Plat Filing Date, or (ii) the date on which the Title Termination Period expires ("Closing Date").

6.2. Closing Costs. At Closing, Seller will pay (a) any inspection fees charged by the Title Company in connection with the issuance of the Owner Policy, and the base premium for the Owner Policy hereinafter defined), (b) the cost of satisfying any liens not deemed Permitted Exceptions, (c) Seller's legal fees, (d) one-half (1/2) of any escrow or closing fee charged by the Title Company and the cost of any tax certificates, municipal and utility lien certificates, and any other Title Company charges, and (e) all other items normally paid by sellers in real estate transactions in Denton County, Texas. Purchaser will pay (a) the cost of Purchaser's due-diligence inspection, (b) the cost to modify the areas-

and-boundaries exception in the Owner Policy to read "shortages in area" only (if requested by Purchaser), (c) Purchaser's legal fees, (d) one-half (1/2) of any escrow or closing fee charged by the Title Company, and (e) all other items normally paid by purchasers in real estate transactions in Denton County, Texas.

6.3. Ad Valorem Tax Proration. Title to the Property on the day of Closing will belong to Purchaser, and any ad valorem tax proration to be made as of Closing will be made as of 12:01 a.m., Central Time, on the Closing Date. Specifically, ad valorem taxes relating to the Property shall be adjusted or prorated between Seller and Purchaser for the calendar year in which the Closing occurs and shall be submitted by Seller to the Denton County Tax Assessor as of the Closing Date. Ad valorem tax for the calendar year in which the Closing shall occur shall be tendered under *Texas Property Tax Code Section 26.11*. If the actual amount of taxes for the calendar year in which the Closing shall occur is not known as of the Closing Date, the proration at Closing shall be based on the amount of taxes due and payable with respect to the Property for the preceding calendar year. Purchaser shall pay for those taxes attributable to the period of time prior to the Closing Date (including, but not limited to, subsequent assessments for prior years due to change of land usage or ownership occurring prior to the date of Closing).

6.4. Seller's Obligations at Closing. At Closing, Seller will deliver, or have delivered in accordance with local custom and practice, to the Title Company the documents in (a)-(d) below, each of which will be duly executed and, if appropriate, acknowledged, together with any other necessary or appropriate items or instruments:

(a) Deed. A Special Warranty Deed in the form and substance of Exhibit B conveying fee simple title to the Real Property to Purchaser, subject to the Permitted Exceptions.

(b) Nonforeign Affidavit. An affidavit required under Internal Revenue Code Section 1445 stating, under penalty of perjury, that neither Seller nor any other party so swearing is a foreign person within the meaning of Section 1445.

(c) Evidence of Authority. Any documents reasonably requested by the Title Company or required by this Contract to confirm that this transaction and the parties executing the documents are fully authorized and empowered to act.

(d) Owner Policy. An Owner's Policy of Title Insurance ("Owner Policy") issued by the Title Company, insuring good and indefeasible title to the Property in Purchaser in a face amount equal to the Purchase Price, subject to the standard printed or exceptions (as modified below) and the Permitted Exceptions. The Owner Policy may contain no other exceptions to title, with certain standard printed or common exceptions amended or deleted as follows:

(i) survey exception must be amended if required by Purchaser to read "shortages in area" only (although Schedule C of the Title Commitment may condition amendment on the presentation of an

acceptable survey and payment, to be borne solely by Purchaser, of any required additional premium);

(ii) no exception will be permitted for “visible and apparent easements” or words to that effect (although reference may be made to any specific easement or use shown on the Survey, if a Permitted Exception);

(iii) no exception will be permitted for “rights of parties in possession”, unless otherwise agreed by Purchaser; and

(iv) no liens will be shown on Schedule B of the Owner’s Policy.

6.5. Purchaser’s Obligations at Closing. At Closing, Purchaser will deliver, or have delivered in accordance with local custom and practice, to the Title Company the following:

(a) Cash Funds. The cash funds or other immediately available funds for the Purchase Price (as defined in Section 2.1).

(b) Evidence of Authority. Any documents reasonably requested by the Title Company or required by this Contract to confirm that this transaction and the parties executing the documents are fully authorized and empowered to act.

6.6. Delivery of Possession. Possession of the Property will be delivered to Purchaser at Closing, after completion of funding, subject only to the Permitted Exceptions.

ARTICLE 7

REPRESENTATIONS, WARRANTIES, AND COVENANTS

7.1. Seller’s Representations, Warranties, and Covenants. Seller represents, warrants, and covenants to Purchaser the following:

(a) Authority. Seller has been duly organized and is in good standing under the laws of the state of its organization. Seller has the legal right and authority to enter into this Contract and to transfer all of the Property under this Contract. The person signing this Contract on Seller's behalf is authorized to do so.

(b) Condemnation; Legal Action. To Seller’s actual knowledge, there is no pending or threatened condemnation or similar proceeding affecting the Property or pending public improvements, liens, or special assessments in, about, or outside the Property that will affect the Property or access to it, nor any legal action of any kind affecting the Property that will affect Purchaser, nor is any such legal action presently contemplated.

(c) Governmental Requirements. To Seller’s actual knowledge, Seller has complied with all applicable laws, ordinances, regulations, statutes, rules, and restrictions pertaining to and affecting the Property, and Seller’s performance of

this Contract will not result in any breach of, constitute any default under, or result in imposition of any lien or encumbrance on the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property might be bound.

(d) Terrorist Organizations Lists. Neither Seller nor, to Seller's actual knowledge, any of its respective partners, members, shareholders, owners, employees, officers, directors, representatives, or agents is or will become a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control of the Department of the Treasury (including those named on the OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

(e) Pending Actions. To Seller's actual knowledge, Seller has not received written notice of any action, lawsuit, arbitration, unsatisfied order or judgment, government investigation, or proceeding pending against Seller that, if adversely determined, could materially interfere with the transaction contemplated by this Contract.

(f) No New or Amended Agreements. After the Effective Date, Seller will not, without Purchaser's prior written consent, which may be withheld or denied in Purchaser's sole discretion, enter into any leases, licenses, occupancy agreements, or other agreements providing for the use or occupancy of the Property or services for the Property for a term that extends beyond the Closing Date.

7.2. Purchaser's Representations, Warranties, and Covenants. Purchaser represents, warrants, and covenants to Seller the following:

(a) Authority. Purchaser has been duly organized and is in good standing under the laws of the state of its organization. Purchaser has the legal right and authority to enter into this Contract and to make the transactions under this Contract. The execution, delivery, and performance of this Contract have been duly authorized, and no other action by Purchaser is required for the valid and binding execution, delivery, and performance of this Contract, except as otherwise expressly provided. There is no agreement to which Purchaser is a party or, to Purchaser's knowledge, binding on Purchaser that is in conflict with this Contract.

(b) Terrorist Organizations Lists. Neither Purchaser nor, to Purchaser's actual knowledge, any of its respective partners, members, shareholders, owners, employees, officers, directors, representatives, or agents is or will become a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control of the Department of the Treasury (including those named on the OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24,

2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

7.3. **As Is.** Prior to Closing, Purchaser will have examined and inspected the Property, reviewed all instruments, records, and documents that Purchaser deems appropriate or advisable to review in connection with this transaction, and, at its own cost and expense, made its own independent investigation into the Property and all other aspects of this transaction.

PURCHASER AGREES THAT, EXCEPT FOR SELLER'S REPRESENTATIONS AND WARRANTIES IN SECTION 7.1, SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES ABOUT THE COMPLIANCE OR NONCOMPLIANCE OF SELLER OR ANY OTHER PERSON OR ENTITY OR THE PROPERTY OR ITS OPERATION WITH (A) ALL CODES, LAWS, ORDINANCES, REGULATIONS, AGREEMENTS, LICENSES, PERMITS, APPROVALS, AND APPLICATIONS OF OR WITH ANY GOVERNMENTAL AUTHORITIES ASSERTING JURISDICTION OVER THE PROPERTY, INCLUDING BUT NOT LIMITED TO THOSE RELATING TO ZONING, LAND USE, BUILDING, PUBLIC WORKS, PARKING, FIRE AND POLICE ACCESS, HANDICAP ACCESS, LIFE SAFETY, SUBDIVISION AND SUBDIVISION SALES, AND HAZARDOUS AND TOXIC SUBSTANCES, MATERIALS, CONDITIONS, OR WASTE; AND (B) ALL AGREEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (PUBLIC OR PRIVATE), DEVELOPMENT AGREEMENTS, BUILDING RULES, AND OTHER INSTRUMENTS AND DOCUMENTS GOVERNING THE USE, DEVELOPMENT, AND OPERATION OF THE PROPERTY. PURCHASER AGREES THAT THE PROPERTY WILL BE SOLD AND CONVEYED TO (AND ACCEPTED BY) PURCHASER AT CLOSING IN ITS CONDITION AT THE TIME, **AS IS, WHERE IS, WITH ALL FAULTS, AND WITHOUT ANY WRITTEN OR ORAL REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW**, OTHER THAN THE SPECIAL WARRANTY OF TITLE IN THE DEED. FURTHER, PURCHASER REPRESENTS AND WARRANTS TO SELLER THAT PURCHASER HAS KNOWLEDGE AND EXPERTISE IN FINANCIAL AND BUSINESS MATTERS THAT ENABLE IT TO EVALUATE THE MERITS AND RISKS OF THE TRANSACTION CONTEMPLATED BY THIS CONTRACT AND THAT PURCHASER IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION. PURCHASER AGREES THAT THE PROVISIONS IN THIS SECTION WILL SURVIVE THE CLOSING. PURCHASER WILL RELY SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED BY SELLER, ITS AGENTS, OR ITS CONTRACTORS. SELLER WILL NOT BE LIABLE OR BOUND IN ANY WAY BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION ABOUT THE PROPERTY OR ITS OPERATION FURNISHED BY ANY PARTY PURPORTING TO ACT ON SELLER'S BEHALF.

ARTICLE 8

DEFAULT

8.1. Purchaser's Default. If Purchaser defaults in its obligation to purchase the Property from Seller under this Contract, Seller may, as its sole and exclusive remedy for the breach, terminate this Contract by written notice to Purchaser and the Title Company, and upon any such termination the Title Company will immediately deliver to Seller the Earnest Money Deposit, which is agreed on as the amount payable by Purchaser to Seller in consideration of Purchaser having the option to refuse to purchase the Property without any liability on account of its refusal other than payment of the Earnest Money Deposit.

8.2. Seller's Default. If Seller defaults in its obligation to convey the Property to Purchaser under this Contract, the Purchaser may, as its sole and exclusive remedy, either (i) terminate this Contract by written notice to Seller and the Title Company, in which event the Earnest Money Deposit will be returned to Purchaser, or (ii) enforce specific performance of Seller's obligations under this Contract. In no event will Seller be liable to Purchaser for any actual, punitive, speculative, consequential, or other damages.

ARTICLE 9

CASUALTY LOSS

9.1. Risk of Loss. Risk of loss due to casualty up to and including the Closing Date will be borne by Seller (as between Seller and Purchaser), except to the extent of any loss or damage caused solely by the acts of Purchaser or its agents, employees, contractors, or invitees. The provisions of this Section will govern despite any contrary provisions of Texas Property Code Section 5.007.

9.2. Condemnation. By written notice to Purchaser given within three (3) days after Seller receives written notice of proceedings in eminent domain affecting the Property that are contemplated, threatened, or instituted by anybody having the power of eminent domain, Purchaser may (a) terminate this Contract and the Earnest Money Deposit will be immediately returned to Purchaser without the necessity of obtaining any consent or release by Seller, or (b) proceed under this Contract, in which event Seller will, at Closing, assign to Purchaser its entire right, title, and interest in and to any condemnation award. The provisions of this Section will govern despite any contrary provisions of Texas Property Code Section 5.007.

ARTICLE 10
BROKER FEES AND COMMISSIONS

10.1. No Brokerage Fees. Neither Seller nor Purchaser has contacted any real estate broker, agent, finder, or similar person in connection with the negotiation and execution of this Contract, the transactions contemplated by it, or the sale and purchase of the Property. To the actual knowledge of Seller and Purchaser, no Acquisition Fees have been paid or are due to any other person or entity. As used this Section, "Acquisition Fees" means all fees paid to any person or entity in connection with the selection and purchase of the Property, including real estate commissions, selection fees, nonrecurring management and startup fees, development fees, and any other similar fees. If any claims for Acquisition Fees are ever made against Seller or Purchaser in connection with the transactions contemplated by this Contract, all such claims will be the responsibility of the party whose commitments form the basis of the claims. Seller and Purchaser each agree to indemnify and hold harmless the other from and against any and all liabilities, claims, demands, or actions for or with respect to Acquisition Fees asserted by any person, firm, or corporation in connection with this Contract or the transactions contemplated by it, and any court costs, attorney fees, or other costs and expenses arising from it, insofar as any such liabilities, claims, demands, or actions are based on a contract or commitment of the indemnifying party. This indemnification provision will survive the Closing or the termination of this Contract, as applicable.

ARTICLE 11
NOTICE

11.1. Notice Designation. All notices required or permitted under this Contract must be in writing and be served on the parties at the addresses listed below. Unless otherwise provided, all notices must be given or served (a) by overnight delivery using a nationally recognized overnight courier, (b) by personal delivery, (c) by fax transmission during normal business hours with a confirmation copy delivered by another method permitted under this Section other than e-mail, or (d) by e-mail sent to the e-mail address listed below with a confirmation copy delivered by another method permitted under this Section other than fax transmission. Notice given by all permitted forms other than fax transmission or e-mail will be effective on the earlier of actual delivery to the address of the addressee or refusal of receipt by the addressee (even if the addressee refuses delivery). Notice given by fax transmission or e-mail will be effective on the transmission or attempted transmission of a fax to the phone number designated as the recipient's fax number during normal business hours or an e-mail to the e-mail address designated as the recipient's e-mail address during normal business hours. A party's address, fax number, or e-mail address may be changed by written notice to the other party, but a notice of change is not effective until actual receipt of the notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice will not be deemed a failure to give notice. Notices given by a party's attorney will be deemed given by that party. The notice addresses of the parties are specified below until further notice:

Seller:
DW Carmel, LLC,
c/o Marquis Group
5305 Village Creek
Plano, Texas 75093
Attn: Waldemar Maya, Jr.
email: wmaya@marquisgroup.net
phone: 972-732-1155
fax: 972-732-6644

With a copy to:
Nathan White
Smith, Stern, Friedman & Nelms, P.C.
14160 Dallas Parkway, Suite 800
Dallas, Texas 75254
Email: nwhite@ssfnlaw.com
Phone: 214-739-0606

Purchaser:

City of Denton
Paul Williamson
Real Estate and Capital Support
901-A Texas St.
Denton, Texas 76209
Fax (940) 349-8951
Email paul.williamson@cityofdenton.com
with a copy to:

City of Denton
Trey Lansford, Deputy City Attorney
City Attorney's Office
215 E. McKinney St.
Denton, Texas 76201
Fax (940) 382-7923
Email trey.lansford@cityofdenton.com

ARTICLE 12

MISCELLANEOUS

12.1. Binding Agreement. This Contract and all of its terms, provisions, and covenants will apply to, be binding on, and inure to the benefit of the parties and their respective successors and assigns.

12.2. Headings. The headings used in this Contract are for convenience only and are not intended in any way to limit or expand the terms and provisions of this Contract.

12.3. Time of Essence. Time is of the essence in this Contract.

12.4. Governing Law. This Contract will be governed by and interpreted under the laws of the State of Texas, regardless of any conflict-of-law rules. This Contract will be specifically performable in Denton County, Texas.

12.5. Entire Agreement. This Contract contains the entire agreement of the parties. All understandings, discussions, and agreements previously made between the parties, written or oral, are superseded by this Contract, and neither party is relying on any warranty, statement, or representation not contained in this Contract.

12.6. Amendment. This Contract may not be altered, changed, or amended except by a written agreement signed by all parties.

12.7. Counterparts. This Contract may be executed in two or more counterparts, each of which will be deemed an original and all of which together will constitute one agreement.

12.8. Date Computation. If any significant date falls on a Saturday, Sunday, or federal or state holiday, the date will be deemed moved to the next business day that is not a Saturday, Sunday, or federal or state holiday. The term "business day" means a day that is not a Saturday, Sunday, or federal or state holiday.

12.9. Contract Consideration. In addition to the Earnest Money Deposit, Purchaser will pay to Seller the amount of One Thousand Dollars (\$1,000.00) as independent contract consideration for Seller's execution and delivery of this Contract and all of its provisions, including Purchaser's right to terminate this Contract during the Termination Period. This consideration is in addition to and independent of any other consideration or payment provided in this Contract and is nonrefundable to Purchaser.

12.10. Effective Date. The date on which this Contract is executed by the Purchaser shall be the "Effective Date" of this Contract. Upon timely receipt of the Seller executed Contract by Purchaser, if Purchaser does not execute the Contract within seven (7) days after date Seller's execution thereof, then this Contract shall be null and void ab initio and of no further force or effect without further action or notice by Seller or Purchaser. Upon timely execution of Contract by Purchaser, Purchaser shall promptly deliver fully-executed Contract to Title Company within fourteen (14) days of the Effective Date.

12.11. Construction. This Contract is the result of negotiations between the parties, neither of whom has acted under any duress or compulsion, whether legal, economic, or otherwise. Accordingly, the terms and provisions of this Contract will be construed in accordance with their usual and customary meanings. Seller and Purchaser waive the application of any rule of law that would otherwise apply in the construction of this Contract that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Contract or any earlier draft of it.

12.12. Exchange. Seller may elect to participate in a tax-deferred exchange under the Internal Revenue Code. If Seller elects to participate, Purchaser will reasonably cooperate with the election; however, Purchaser will have no obligation to incur any cost or liability or to take title to any real property (other than Purchaser's acquisition of the Property under this Contract), and the Closing will not be conditioned on or unreasonably delayed by any exchange. Seller will provide all documents requested from Purchaser at least seven (7) days before the Closing and will indemnify and hold Purchaser harmless from any claims, liabilities, or damages arising from the cooperation, and the indemnity obligation will expressly survive the termination or Closing of this Contract.

12.13. Survival Clause. The provisions of Section 6.3, Article 7, and Article 10 of this Contract will survive the Closing and remain in full force and effect between the parties.

12.14. Further Assurances. In addition to the acts and deeds recited in this Contract and contemplated to be performed, executed and/or delivered by Seller and Purchaser, Seller and Purchaser agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered at the Closing or after the Closing, any further deeds, acts, and assurances as are reasonably necessary to consummate the transactions contemplated hereby

12.15. Delegation of Authority. Authority to take any actions that are to be, or may be, taken by Purchaser under this Contract, including without limitation, adjustment of the Closing Date, are delegated by Purchaser, pursuant to action by the City Council of Denton, Texas, to Emerson Vorel, Jr., Director of Parks and Recreation, of Purchaser, or his designee.

12.16. Final Plat Shall Be Filed Within Six Months of Effective Date; Final Plat Filing Date; Automatic Termination.

- (a) A Final Plat for the Property, which meets the requirements of the Memorandum of Understanding dated July 31, 2015 and which is attached as Exhibit C, must be filed in accordance with Section 35.16.12.3 of the Denton Development Code.
- (b) The date the Final Plat is filed of record in the Denton County Clerk's real property records will be the "Final Plat Filing Date". The Final Plat shall be a Permitted Exception.
- (c) If the Final Plat is not filed of record in the Denton County Clerk's real property records within six (6) months after the Effective Date this Contract will terminate automatically and with no further action required by the parties and the Earnest Money Deposit will be immediately refunded to Purchaser by the Title Company.

Executed by Seller on the 30th day of October 2017.

SELLER:

DW CARMEL, LLC,
a Texas limited liability company

By: **MARQUIS UG VENTURE, INC.,**
a Texas corporation
its Manager

By: 

Douglas M. Hickok, President

PURCHASER:

CITY OF DENTON, a Texas home rule municipal corporation

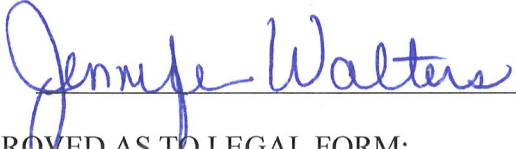
By: 

Todd Hileman, City Manager

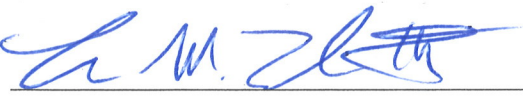
Executed by Purchaser on the 31st day of October 2017.

ATTEST:

JENNIFER WALTERS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: 

ACCEPTANCE BY TITLE COMPANY

The undersigned title company, Capital Title of Texas, referred to in this Contract as the Title Company, acknowledges receipt of (i) a fully executed copy (or executed counterparts) of the Contract, and, (ii) the Earnest Money Deposit; and accepts the obligations of the Title Company as stated in the Contract.

TITLE COMPANY
Capital Title of Texas

By: _____

Printed Name: _____

Title: _____

Contract receipt date: _____, 2017 ("Effective Date")

EXHIBIT "A"
TO
REAL ESTATE SALES CONTRACT

Park Tract

Being a 6.394 acre tract of land located in the Gideon Walker Survey, Abstract No. 1330, Denton County, Texas, being a portion of TRACT 1 described in the deed to Mary L. Mason Children's Trust, recorded in County Clerk's Document No. 1998-031144, Real Property Records, Denton County, Texas, said 6.394 acre tract being Lot 1, Block KK of the pending Villages of Carmel Phase 5B subdivision plat, and said 6.394 acre tract being more particularly described as follows:

COMMENCING at a point in the intersection of Edwards Road and Swisher Road at the Northwest corner of said TRACT 1;

THENCE South 02 degrees 39 minutes 52 seconds West a distance of 733.52 feet along the East line of said TRACT 1 to a point at the Southeast corner of said TRACT 1;

THENCE North 87 degrees 46 minutes 03 seconds West a distance of 32.50 feet along South line of said TRACT 1 to a POINT OF BEGINNING;

THENCE North 87 degrees 46 minutes 03 seconds West a distance of 400.93 feet along the South line of said TRACT 1 to a point;

THENCE North 02 degrees 37 minutes 47 seconds East a distance of 677.98 feet to a point;

THENCE North 47 degrees 39 minutes 33 seconds East a distance of 28.27 feet to a point;

THENCE South 87 degrees 18 minutes 41 seconds East a distance of 364.95 feet to a point;

THENCE South 42 degrees 22 minutes 51 seconds East a distance of 21.24 feet to a point;

THENCE South 02 degrees 32 minutes 59 seconds West a distance of 679.79 feet to the POINT OF BEGINNING, containing 6.394 acres of land.

EXHIBIT "B"
TO
REAL ESTATE SALES CONTRACT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS
COUNTY OF DENTON	§	

That DW CARMEL, LLC, a Texas limited liability company ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration to Grantor in hand paid by the City of Denton, a Texas home rule municipal corporation ("Grantee"), 215 E. McKinney, Denton, Texas 76201, the receipt and sufficiency of which are hereby acknowledged and confessed, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY, unto Grantee all the real property in Denton County, Texas being particularly described on Exhibit "A", attached hereto and made a part hereof for all purposes, and being located in Denton County, Texas, together with any and all other rights or interests of Grantor in and to adjacent streets, alleys and rights-of-way and together with all and singular the improvements and fixtures thereon and all other rights and appurtenances thereto (collectively, the "Property").

Exceptions to conveyance and warranty:

[Insert Permitted Exceptions, if any]

TO HAVE AND TO HOLD the Property, 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 Grantor and Grantor's successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise.

EXECUTED the _____ day of _____, 201__.

SELLER:

DW CARMEL, LLC,
a Texas limited liability company

By: Its Manager
MARQUIS UG VENTURE, INC.
A Texas corporation

By: _____
Douglas M. Hickok, President

ACKNOWLEDGMENT

STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned, a Notary Public in and for the said County and State, on this day personally appeared Douglas M. Hickok, President of Marquis UG Venture, Inc. a Texas corporation, Manager of DW CARMEL, LLC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in the capacity and for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____, 201__.

Notary Public, State of Texas
My commission expires: _____

Upon Filing Return To:
The City of Denton-Engineering
Attn: Paul Williamson
901-A Texas Street
Denton, TX 76209

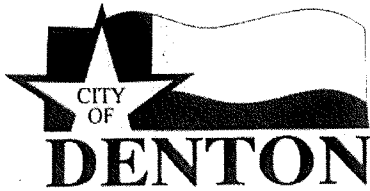
Property Tax Bills To:
City of Denton Finance Department
215 E. McKinney Street
Denton, Texas 76201

Exhibit "A"
To
Special Warranty Deed

Legal Description

BEING all of Lot 1, Block KK, as set forth on that certain Final Plat of Villages of Carmel, Phase 5B,
according to the plat thereof filed for Record in the Official Records of: Denton County on the date of
_____ in the PLAT Records under Document No. _____, Denton County, Texas.

Exhibit "C"



901A TEXAS ST. DENTON, TEXAS 76209 • (940) 349-8910 • FAX (940) 349-8951
ENGINEERING SERVICES

July 31, 2015

MEMORANDUM OF UNDERSTANDING

DW Carmel, LLC
C/o Z Professional Services
Attn: Rodney Zielke, P. C.
1111 S. Main Street, Suite 129
Grapevine, TX 76051

Re: **7.338 ± acre tract, Lot 1, Block K, Villages of Carmel Phase 5 (PP14-0027)**
Preliminary Plat prepared September 2014 by Herbert S. Beasley Land
Surveyors, L. P., approved by Planning and Zoning Commission
December 10, 2014

The purpose of this Memorandum of Understanding is to formally set forth the mutual goals and understandings between D. W. Carmel, LLC, (the "Owner") and the City of Denton, (the "City") in respect to Owners' in-progress subdivision development. The City contemplates purchase of Lot 1, Block K, Villages of Carmel Phase 5.

It is important to memorialize elements concerning the above-mentioned property tract in order to avoid any possible misunderstanding as to the details of a prospective purchase or the process by which the City of Denton has already made requirements under the pending plat application as referenced above, ahead of entering into a formal Contract of Sale.

The City and the Owner understand and support the following platting provisions:

- 1) The Owner shall final plat Lot 1, Block K, as shown on the Preliminary Plat, prepared by Herbert S. Beasley Land Surveyors, L. P., prepared September 2014. To be platted as Lot 1, Block K, Villages of Carmel Phase 5.
 - a) The Owner shall dedicate the 0.9 acre right-of-way along Edwards and Swisher Roads as required under PP14-0027, Villages of Carmel Phase 5, as stated in DRC comments;
 - b) The Final Plat will designate/dedicate a 2.4 acre tract as "Upland Habitat Area" as required under PP14-0027, Villages of Carmel Phase 5, and as stated in record DRC comments, and also shown on the approved Preliminary Plat referenced above;

"Dedicated to Quality Service"
www.cityofdenton.com

DW Carmel, LLC and City of Denton

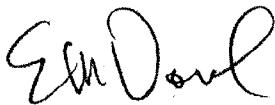
July 31, 2015

Page 2

- 2) The Owner shall satisfy Park Land Dedication Ordinance provisions (Denton Code of Ordinances, Chapter 22, Article III, Sec. 22-37 – Land Dedication) as required under PP14-0027, Villages of Carmel Phase 5, as stated, in record DRC comments. A 1.2 acre "Park Land Dedication Area" shall be annotated and depicted on the Final Plat, Lot 1, Block K;
- 3) The Owner shall provide for the extension of a 12 inch water main along Edwards Road, from the existing 12-inch stub at the Swisher Road intersection to the existing water main at the northeast corner of Villages of Carmel, Phase 2B, as required under PP14-0027, Villages of Carmel Phase 5, record DRC comments, and as additionally stated in Z114-0012 record DRC comments.;
- 4) The Owner shall provide for the construction of 25 foot wide concrete pavement, 8 foot wide sidewalk, curb & gutter, and required drainage improvements along Edwards Road frontage, as required under PP14-0027, Villages of Carmel Phase 5 record DRC comments, in respect to Lot 1, Block K;
- 5) City and Owner to consider a Contract of Sale in the amount of ~~\$248,325.00~~ ^{\$278,325.00} for purchase of Lot 1, Block K, Villages of Carmel Phase 5 Addition, (Preliminary Plat Lot 1 Block K, Villages of Carmel Phase 5: net ROW dedication, with Upland Habitat price adjustment, and the Park Land dedication requirements as detailed above).

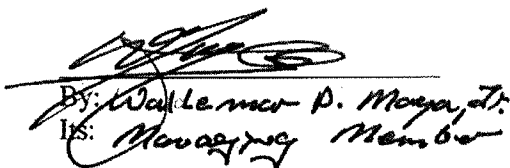
Please indicate your assent and understanding of the above stated elements toward a prospective Contract of Sale by signing and returning the original of this Memorandum in the self addressed envelope provided, retaining the duplicate original for your records.

Sincerely,



Emerson Vorel
Director of Parks and Recreation

DW Carmel, LLC



By: Wallace P. Morgan, Jr.
Is: Managing Member