

**A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF MANSFIELD
AND
HPC SOMERSET DEVELOPMENT CORPORATION**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the City of Mansfield, a Texas municipal corporation of Tarrant, Johnson and Ellis Counties, Texas (hereinafter called "City") and HPC Somerset Development Corporation, a Texas corporation (hereinafter called "Developer").

W I T N E S S E T H:

WHEREAS, Developer, together with one or more Affiliates of Developer, own an approximate 486-acre tract of land within the corporate city limits of the City being more particularly described on Exhibit A attached hereto (the "Property"); and

WHEREAS, Developer is engaged in the business of developing single family residential subdivisions; and

WHEREAS, Developer intends to develop a single family residential subdivision on the Property to include streets, public utilities and other public infrastructure, homesites for approximately 1,100 single family residences and the Private Amenities all in accordance with the Design Standards (collectively, the "Subdivision"); and

WHEREAS, the Property is zoned to permit the development of townhomes, retail and other commercial improvements in addition to the Subdivision; and

WHEREAS, Developer intends to sell (i) homesites in the Subdivision to commercial homebuilders for the construction of single family residences in accordance with the Design Standards (the "Residences") and (ii) other portions of the Property to developers of Commercial Improvements; and

WHEREAS, the Development will be a great asset to the City with an estimated capital investment of \$400,000,000.00, to include approximately 1,100 homes together with a commercial component in Phases II and III; within the City; and

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the grant of public funds to promote economic development and to stimulate business and commercial activity in the City; and

WHEREAS, numerous economic development studies have shown that business and retail development follows residential development; and

WHEREAS, the City Council finds and determines that it is necessary to increase the number and quality of the housing stock in the City to stimulate business and commercial activity in the City; and

WHEREAS, the Development includes a commercial and retail component; and

WHEREAS, the infrastructure to be funded under this Agreement will be oversized to ultimately serve retail and commercial development outside of the Property; and

WHEREAS, the City desires to provide the incentive herein to assist Developer with costs related to construction of the infrastructure for the Development; and

WHEREAS, Developer desires to participate in the Program by entering into this Agreement; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program by encouraging Developer to develop the Subdivision, which will, in turn, encourage the construction of quality homebuilding in Mansfield, Texas, and will aid in the development of the residential housing market and encourage retail businesses to locate in the City.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS

In this Agreement, the following words shall have the meanings ascribed to them:

AD VALOREM TAX means all ad valorem taxes paid to the City attributable to the Property and any Residences, Private Amenities and Commercial Improvements to the Property which are actually received by the City, excluding taxes attributable to the value of the mineral estate.

AFFILIATE means as to any Person any other Person controlling, controlled by or under common control with any such Person.

APPROVED PLANS means construction plans for the Public Improvements and Private Amenities that conform to the Design Standards and all City regulations, as certified by Developer's engineer of record and approved by the City Engineer.

AVAILABLE AD VALOREM TAX REVENUE (PHASE II) means that portion of the Ad Valorem Taxes generated by and attributable to the Property and any Residences, Private Amenities and Commercial Improvements, not including the Base Year Value, for only Phase II of the Development.

AVAILABLE AD VALOREM TAX REVENUE (PHASE III) means that portion of the Ad Valorem Taxes generated by and attributable to the Property and any Residences, Private Amenities and Commercial Improvements, not including the Base Year Value, for only Phase III of the Development.

BASE YEAR VALUE means the real estate value of the Property as established by the Johnson or Ellis County Appraisal District, as applicable, as of January 1, 2015, excluding any value from any mineral estate.

COMMERCIAL IMPROVEMENTS mean the townhomes, retail and other commercial improvements to be constructed on the Property in accordance with the Design Standards.

CONSTRUCTION COSTS means the actual cost of all hard construction, construction and equipment charges, and the costs of construction materials, and with respect to Phase I Eligible Public Improvements, Construction Costs shall include engineering costs and inspection fees incurred by Developer, all as evidenced by documentation acceptable to the City.

DESIGN STANDARDS means the design standards set forth in the Somerset Planned Development District Standards adopted pursuant to City of Mansfield Ordinance No. OR-1952-15, including requirements for upscale single family residential housing product and enhancements to single family residential subdivision amenities, and the Commercial Improvements.

DEVELOPMENT means the Subdivision and the Commercial Improvements.

EFFECTIVE DATE means the date set forth in Section 16 of this Agreement.

ELIGIBLE PUBLIC IMPROVEMENTS means those Public Improvements eligible for reimbursements to Developer by the City pursuant to Section 4 of this Agreement.

EVENT OF BANKRUPTCY OR INSOLVENCY means the dissolution or termination of Developer's existence as a going business, insolvency, appointment of receiver for any part of Developer's property and such appointment is not terminated within 60 days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer and such proceeding is not dismissed within 60 days after the filing thereof.

PERSON means any natural person, governmental agency or instrumentality, estate, nominee, custodian, or any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, unincorporated organization, cooperative or association, or any foreign trust or foreign business organization.

PHASE I, PHASE II and PHASE III each mean that portion of the Property labeled as such and shown on the Concept Plan attached hereto as Exhibit B.

PRIVATE AMENITIES mean the amenity centers, entry and landscape features, decorative towers, walking trails, amenity lakes and other amenity features to be developed by Developer for the benefit of residents of the Subdivision in substantial conformance with the Approved Plans and the Design Standards and as represented by the site plan approved by the City and depicted on Exhibit C attached hereto and incorporated herein (the "Site Plan"). The Private Amenities do not include the Public Improvements.

PRIVATE IMPROVEMENTS mean the Residences, the Private Amenities and the Commercial Improvements.

PROGRAM PAYMENT(S) means the payments made to Developer pursuant to Section 4 of this Agreement.

PROPERTY means the approximately 486 acre tract upon which the Private Improvements will be constructed, as described in Exhibit A, attached hereto and incorporated herein, owned by Developer.

PUBLIC IMPROVEMENTS means the public streets, water, sewer and other public infrastructures related to public developments necessary to serve the Development.

SUBDIVISION means a single family residential subdivision on the Property to include streets, public utilities, and other public infrastructure, homesites for approximately 1,100 single family residences and the Private Amenities all constructed in accordance with the Design Standards.

SUBSTANTIAL COMPLETION or SUBSTANTIALLY COMPLETE means a) with regard to the Public Improvements, the date the City issues a Certificate of Completion (herein so called) and accepts the maintenance obligation for such Public Improvements.

RESIDENCES mean the single family residences to be constructed on the Property in conformance with the Design Standards.

SECTION 2. PROGRAM ESTABLISHED

Pursuant to Section 380.001 of the Texas Local Government Code, a Program is hereby established to bring a quality residential and commercial development to the City for the reasons set forth in the recitals. This Agreement implements the Program.

SECTION 3. DEVELOPER'S OBLIGATIONS

A. In General.

1. Developer agrees to design and construct the Subdivision, including the Public Improvements and the Private Amenities. The Property is divided into three phases, Phase I, Phase II and Phase III. Actual development of any Phase of the Property may occur in one or more sub-phases, depending on market conditions and other factors. The Public Improvements are to be located entirely within the limits of the City (except for certain portions of the Public Improvements to be constructed in off-site easements described in Section 3.B.7 below), and all Public Improvements shall be constructed within public property, public rights-of-way or easements.
2. Developer shall develop the Subdivision in conformance with the Approved Plans and the Design Standards.
3. Developer shall be solely responsible for the payment of all fees and for securing all permits necessary for development and construction of the Subdivision including, but not limited to, the requirements of the Parkland Dedication Ordinance required by the City and other entities having jurisdiction over the Subdivision.
4. Contracts for sale of land within the Property between Developer and homebuilders or developers of Commercial Improvements shall provide that construction of Private Improvements on such land is subject to compliance with the Design Standards. Further, any declaration of covenants, conditions and restrictions covering and affecting the Property shall subject the Property to compliance with the Design Standards and will provide for review and approval of plans and specifications for the Private Improvements by an architectural control committee or other similar body to confirm compliance with the Design Standards.

B. Public Improvements.

1. Infrastructure. Developer shall design and construct all offsite and onsite infrastructure necessary to serve the Subdivision.
2. Time Frame for Phase I Infrastructure. Construction of the Public Improvements necessary to serve Phase I shall be commenced no later than January 1, 2016 and such construction shall be completed within twenty-four (24 29) months after commencement.

3. Competitive Bidding. All Eligible Public Improvements shall be competitively bid according to the requirements of state law.
4. Construction Plans; Surveying. Developer shall submit to the City for approval complete construction plans for the Public Improvements. The construction plans shall be prepared by a professional engineer licensed to practice in the State of Texas, at Developer's sole cost. Construction plans shall be in conformity with all state and local ordinances and regulations. Developer shall pay all costs of engineering design and surveying for the Public Improvements directly to the provider.
5. Public Improvement Conveyance. Any Public Improvements constructed onsite or offsite shall be conveyed to the City free and clear of all liens, encumbrances, assessments and restrictions other than as provided in this Agreement. Phase I Public Improvements shall be conveyed to the City upon the later to occur of (1) Substantial Completion or (2) final payment of the Phase I Program Payments. Phase II and Phase III Public Improvements shall be conveyed to the City upon Substantial Completion. At the time of conveyance Developer shall deliver to the City releases from the contractors, subcontractors and suppliers of material who have provided labor and materials for the Public Improvements showing they have paid for such labor and materials.
6. Easement Acquisition. Developer agrees to dedicate to the City all land within the Property necessary for the construction the Public Improvements. Subject to the City's prior approval, Developer will negotiate with adjacent landowners and seek to consummate the acquisition and dedication of all land outside the Property necessary for the construction of off-site Public Improvements. All public rights-of-way and easements necessary for the Public Improvements shall be dedicated to the City prior to commencement of construction of the Public Improvements. The cost of easement acquisition will be borne by the City and the Developer as provided in Section 4.D below. In the event that eminent domain is necessary to acquire the necessary off-site easements, the City will proceed as provided in Section 4.E below, and Developer will assist in the eminent domain proceedings as required by the City.

C. Private Amenities.

1. In General. The Private Amenities shall be designed and constructed in conformance with the ordinances of the City of

Mansfield, the Design Standards, the Site Plan and the Approved Plans.

2. Residential Development Standards. Residences in the Development shall be subject to the Design Standards.
3. Time Frame for Private Amenities. The Phase I Private Amenities shall be constructed together with Phase I of the Subdivision and completed within one hundred eighty (180) days after the deadline established for the Phase I Public Improvements.

D. Compliance with Law. All aspects of the construction and development of the Subdivision shall be in conformance with applicable state, federal and local laws.

E. Ad Valorem Taxes. For all portions of the Property owned by Developer, all ad valorem taxes for the Property are to remain current on all ad valorem taxes owed to the City or other jurisdiction for the Property.

F. Evidence of Expenditure of Cost of Construction for Public Improvements. Prior to receiving any payment from the City pursuant to Section 4 of this Agreement, Developer shall provide documentation satisfactory to the City Manager to substantiate the Construction Costs for the Public Improvements subject to reimbursement.

G. Inspection. The City shall have access at all times to inspect construction of the Public Improvements and Private Amenities.

H. No Alteration of Development Regulations. This Agreement is not intended to and does not waive or alter any development requirement imposed by City ordinances, City development regulations or other law.

SECTION 4. CITY PARTICIPATION

A. In General. In consideration of Developer's agreement to construct the Subdivision in conformance with the requirements of this Agreement and subject to Developer's compliance with its duties and obligations in this Agreement, the City agrees to participate in the construction of certain Public Improvements as set forth in this section by making Program Payments.

B. Phase I Program Payments.

1. Maximum Amount. The City shall make Program Payments to Developer in the amount of no more than ~~Five Million Six Hundred Six Million Three Hundred Sixty-Two~~ Thousand Dollars (~~\$5,600,000~~ **\$6,362,000**) to reimburse Construction Costs actually owed or expended for the offsite and onsite water lines and sewer lines described and depicted on Exhibit D. The Public

Improvements described in this Section 4.B.1 are herein called the "Phase I Eligible Public Improvements."

2. Availability of Funds. Program Payment funds shall be available the later of February 1, 2016 or the date thirty (30) days after the 1st invoice is submitted to the City for Phase I Eligible Public Improvements. Prior to February 1, 2016, Program Payments may be made at the sole discretion of the City Manager as funds may be available. Program Payments shall be made upon the submission of evidence of Construction Costs owed or expended for the Phase I Eligible Public Improvements satisfactory to the City Manager.
3. Program Payment Procedure. Phase I Program Payments shall be made as progress payments during the construction of Phase I Eligible Public Improvements. Developer may submit monthly requests for Phase I Program Payments, accompanied by underlying substantiating documentation satisfactory to the City Manager or his designee, showing the amount owed or expended by Developer for Phase I Eligible Public Improvements. The City shall pay the Program Payments within thirty (30) days after submission of the request.

C. Phases II and III Program Payments.

1. Phase II. As set forth in this subsection, the City shall make Program Payments to Developer in an amount not to exceed Two Million Dollars (\$2,000,000) to reimburse Construction Costs actually expended for the paving of residential streets to be constructed in Phase II, substantially as shown on Exhibit D ("Phase II Eligible Public Improvements").
2. Phase III. As set forth in this subsection, the City shall make Program Payments to Developer in an amount not to exceed ~~Two Million Three Hundred~~ **One Million Five Hundred Thirty-Eight** Thousand Dollars (~~\$2,300,000~~ **\$1,538,000**) to reimburse Construction Costs actually expended for the paving of residential streets to be constructed in Phase III, substantially as shown on Exhibit D ("Phase III Eligible Public Improvements").
3. Evidence of Cost. Prior to any Program Payment Developer shall submit evidence of amounts actually expended for the Construction Costs satisfactory to the City Manager.
4. Program Payments. Program Payments for Phase II and Phase III shall be paid from Available Ad Valorem Tax Revenue attributable to each Phase, on or before April 1st and September 15th of each

year after the Eligible Phase II and Phase III Public Improvements are respectively Substantially Complete, in an amount equal to fifty percent (50%) of the Phase II or Phase III Available Ad Valorem Tax Revenue, as applicable. In no event shall the City be obligated to make Program Payments under this section from any funds other than Phase II or Phase III Available Ad Valorem Tax Revenue. Together with each such Program Payment, the City will provide a reasonably detailed accounting setting forth the calculation of Available Ad Valorem Tax Revenue for the applicable Phase and the calculation of each payment.

5. Termination of Program Payments. The City's obligation to make Program Payments shall terminate when Developer is reimbursed for the actual Construction Costs of Phase II Eligible Public Improvements or Two Million Dollars (\$2,000,000), whichever is less, and the actual Construction Costs of Phase III Eligible Public Improvements or ~~Two Million Three Hundred One Million Five Hundred Thirty-Eight~~ Thousand Dollars (~~\$2,300,000~~ ~~\$1,538,000~~), whichever is less.

Whether or not Developer is fully reimbursed, Phase II Program Payments shall terminate on that date ten (10) years after Phase II Eligible Public Improvements are Substantially Complete. Phase III Program Payments shall terminate on that date ten (10) years after the Phase III Eligible Public Improvements are Substantially Complete. All Program Payments shall terminate twenty (20) years after the Effective Date, whether or not the ten (10) year period for each of Phase II or Phase III has ended. If Phase II and Phase III Available Ad Valorem Tax Revenue, as applicable, have not been sufficient to reimburse Developer by the first to occur of the termination date for Phase II or III or twenty (20) years from the Effective Date, all unreimbursed sums are released with the City having no further Program Payment obligations to Developer.

D. Easement Acquisition. The City will pay or reimburse the Developer for the cost of easement acquisition, including any cost related to eminent domain proceedings, up to, but not exceeding, One Hundred Twenty-Five Thousand Dollars (\$125,000). All costs over One Hundred Twenty-Five Thousand Dollars (\$125,000) shall be the obligation of the Developer.

E. Eminent Domain. In the event Developer is not able to obtain the necessary easements described in Section 3.B.7 above in a timely manner and after reasonable attempts to do so, the City will institute eminent domain proceedings to obtain the easements.

SECTION 5. TERM

The term of this Agreement shall begin on the Effective Date and shall terminate upon the earlier of: (a) the complete performance of all obligations and conditions precedent by parties to this Agreement; or (b) on the earlier to occur of the termination date for Phase III Program Payments or the date twenty (20) years after the Effective Date, whether or not Program Payments have been made in full; or (c) upon the City's termination of this Agreement pursuant to Section 7 hereof.

SECTION 6. AUTHORITY; COMPLIANCE WITH LAW

A. Developer hereby represents and warrants to the City that it has full lawful right, power and authority to execute and deliver and perform the terms and obligations of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by Developer and this Agreement constitutes the legal, valid and binding obligation of Developer, and is enforceable in accordance with its terms and provisions.

B. Developer represents and warrants that to the best of its knowledge during Developer's ownership of the Property (1) no landfill was deposited on or taken from the Property, (2) no construction debris or other debris (including, without limitation, rocks, stumps, and concrete) was buried upon the Property, and (3) no toxic waste or "hazardous substances" as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1988, or petroleum products and derivatives thereof, were deposited on the Property. Developer shall submit to the City environmental reports commissioned by Developer.

C. Notwithstanding any other provision of this Agreement, Developer shall comply with all federal and state laws, and City ordinances in the development, construction and operation of the Subdivision.

D. As required by Subchapter B of Chapter 2264 of the Texas Government Code, Developer certifies that to Developer's knowledge it does not and will not knowingly employ an undocumented worker. If after receiving the Payment set forth in this Agreement Developer is convicted under 8 USC Section 1324(a)(6), he shall repay the amount of the Payment (or portion that he has received) plus 10% interest not later than the 120th day after the date the City notifies Developer of the violation.

E. The City hereby represents and warrants to Developer during the term of this Agreement that:

1. The City is a home rule Texas municipal corporation and has the power to enter into this Agreement and take all actions required to authorize this Agreement and to carry out its obligations hereunder.

2. The City knows of no litigation, proceedings, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement.
3. The City knows of no law, order, rule or regulation applicable to the City that would be contravened by, or conflict with, the execution and delivery of this Agreement and performance of the City's obligations hereunder.

SECTION 7. DEFAULT AND REMEDIES

A. In the event: (i) Developer fails to comply with the terms of this Agreement; (ii) Developer has delinquent ad valorem or sales taxes owed to the City (provided that Developer retains the right to timely and properly protest and/or contest any such taxes); (iii) upon the occurrence of any Event of Bankruptcy or Insolvency by Developer prior to Substantial Completion of the Public Improvements; or (iv) Developer materially breaches any of the material terms and conditions of this Agreement, then Developer after the expiration of the notice and cure periods described herein, shall be in default of this Agreement. In the event of such a default, City shall give Developer written notice of such breach and/or default, and if Developer has not cured such breach or default within 30 days after receipt of such notice, the City may terminate this Agreement by written notice to Developer, and the City shall have no further obligation to Developer. Notwithstanding the immediately preceding sentence, if the nature of the default is such that it cannot reasonably be cured within such 30-day period and Developer has commenced the cure and is diligently pursuing action to cure the default, the cure period shall be extended for an additional thirty (30) days with the consent of the City Manager.

B. If a default shall occur and continue, after 30 days written notice to cure the default (as such cure period may be extended pursuant to the immediately preceding paragraph), the party not in default shall have the right to exercise any and all rights available to such party at law or in equity, including the right to seek equitable relief such as injunction or mandamus as to which the non-defaulting party may be entitled.

C. No waiver or any breach of any term or condition of this Agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement. Any waiver of any term or condition of this Agreement must be in writing and approved by the City Council of Mansfield.

SECTION 8. RIGHT OF OFFSET

City may, at its option, offset any amounts due and payable to Developer under this Agreement against any debt (including taxes) lawfully due to City, from Developer, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt in question has been reduced to judgment by a court.

SECTION 9. DETERMINATION OF ROUGH PROPORTIONALITY

As additional consideration for the Program Payments received by Developer under this Agreement, Developer hereby agrees to donate to the City the land within the Property necessary to construct the Public Improvements; and Developer further agrees that such land is roughly proportional to the need for such land, and Developer hereby waives any claim therefor that it may have. Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any costs incurred relative to said donation are related both in nature and extent to the impact of the Public Improvements. Developer waives and releases all claims against the City related to any and all rough proportionality and individual determination requirements mandated by Subchapter Z of Chapter 212, Texas Local Government Code, as well as other requirements of a nexus between development conditions and the projected impact of the Public Improvements.

SECTION 10. VENUE AND GOVERNING LAW

This Agreement is performable in Tarrant County, Texas and venue of any action arising out of this Agreement shall be exclusively in Tarrant County, Texas. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Mansfield, applicable federal and state laws, violation of which shall constitute a default of this Agreement. To the extent permitted by law, the laws of the State of Texas shall apply without regard to applicable principles of conflicts of law, and the parties submit to the jurisdiction of the state and federal courts in Mansfield, Tarrant County, Texas.

SECTION 11. FORCE MAJEURE

Performance of Developer's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and Developer's obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, issuance of any permit and/or legal authorization (including engineering approvals by any governmental entity), shortage or delay in shipment of materials or fuel occasioned by any event referenced herein, acts of God, unusually adverse weather or wet soil conditions or other causes beyond the parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Property or this Agreement.

SECTION 12. GIFT TO PUBLIC SERVANT OR TO DEVELOPER REPRESENTATIVE

A. No Benefit. Each party hereto represents to the other that it has not offered, conferred, or agreed to confer and that it will not offer, confer or agree to confer in the future any benefit upon an employee or official of the other party. For purposes of this section, "benefit" means anything reasonably regarded as economic advantage,

including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.

B. Right of Reimbursement. Notwithstanding any other legal remedies, City may obtain reimbursement for any expenditures made to Developer as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

SECTION 13. BINDING AGREEMENT; ASSIGNMENT

A. The terms and conditions of this Agreement are binding upon the successors and assigns of the parties hereto.

B. Except as hereinafter expressly provided, any assignment of Developer's obligations or its rights to receive the benefits provided under this Agreement must be in writing executed by the assignor and assignee and shall not be permitted without the express written consent of the City. Notwithstanding the immediately preceding sentence, without the City's consent, (i) Developer may assign this Agreement as may be necessary to lender(s), including the seller of the Property, providing financing to acquire the Property and/or develop the Subdivision; and (ii) without City approval Developer may assign only the rights to receive the benefits set forth in Section 4, so long as Developer remains fully obligated to perform under this Agreement. Any consent of the City required by this Section 13.B shall be evidenced by the consent of the City Manager.

SECTION 14. INDEMNIFICATION

A. **DEVELOPER EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF DEVELOPER OR ITS AGENTS OR EMPLOYEES, ARISING OUT OF DEVELOPER'S PERFORMANCE OF THIS AGREEMENT; PROVIDED, HOWEVER, IN NO EVENT WILL DEVELOPER HAVE ANY SUCH INDEMNIFICATION OBLIGATION FOR ANY CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, COSTS AND EXPENSES ARISING OUT OF OR CAUSED BY THE SOLE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY OR ITS EMPLOYEES.** Nothing in this paragraph may be construed as waiving any governmental immunity available to the City under state law. This provision is solely for the benefit of Developer and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

B. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City, their past, present and future officers, elected officials, directors, employees and agents of the City does not assume any responsibility to any third party in connection with Developer's construction of the Public Improvements.

SECTION 15. MISCELLANEOUS MATTERS

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

B. Agreement Subject to Law. This Agreement is made subject to the provisions of the Mansfield Home Rule Charter and ordinances of City, as amended, and all applicable State and federal laws.

C. Interpretation. This Agreement shall not be construed against the drafting party.

D. Counterparts Deemed Original. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

E. Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

F. Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached and made a part of this Agreement.

G. Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by a nationally recognized overnight courier service; or (iii) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below, and shall be effective (a) upon receipt or refusal if delivered personally; (b) one business day after depositing, with such an overnight courier service or (c) two business days after deposit in the United States mails, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this subsection.

If intended for City, to:

City of Mansfield
1200 E. Broad Street
Mansfield, Texas 76063
Attn: City Manager
Facsimile: (817) 473-1342
With a copy to:
Taylor, Olson, Adkins, Sralla & Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107
Attn: Betsy Elam
Facsimile: (817) 332-4740

If intended for Developer, to:

c/o Hanover Property Company, LLC
3001 Knox Street, Ste. 207
Dallas, Texas 75205
Attn: Richard E. LeBlanc & Ben Luedtke
Facsimile: (214) 368-7985
With a copy to:
Scheef & Stone, LLP
2600 Network Blvd., Suite 400
Frisco, Texas 75034
Attn: Robert J. Banta
Facsimile: (214) 472-2150

H. Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

I. Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In the event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

SECTION 16. EFFECTIVE DATE.

This Agreement shall become effective upon the last to occur: of the execution of the Agreement by all parties.

EXECUTED to be effective as of the 28th day of February, 2017 by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. RE _____ approved February 27, 2017.

CITY OF MANSFIELD, TEXAS

HPC SOMERSET DEVELOPMENT
CORPORATION, a Texas corporation

By: _____
Clayton Chandler, City Manager

By: _____
Richard E. LeBlanc, President

ATTEST:

By: _____
Jeanne Heard, City Secretary

APPROVED AS TO FORM AND
LEGALITY:

By: _____
Allen Taylor, City Attorney

SCHEDULE OF EXHIBITS:

Exhibit A – Legal Description of Property

Exhibit B – Concept Plan Showing Layout of Phase I, Phase II and Phase III

Exhibit C – Site Plan

Exhibit D – Depiction of Phase I Eligible Public Improvements, Phase II Eligible Public Improvements and Phase III Eligible Public Improvements