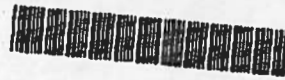


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**GREENSHORES  
ANNEXATION AND DEVELOPMENT AGREEMENT**

**January 24, 2005**

**Return:  
First American Title**

## **GREENSHORES ANNEXATION AND DEVELOPMENT AGREEMENT**

THE STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

This Greenshores Annexation and Development Agreement (the "Agreement") is made and entered into by and among the **CITY OF AUSTIN, TEXAS**, a municipal corporation, acting by and through its duly authorized City Manager (the "City"); and **PK-RE DEVELOPMENT COMPANY, INC.**, a Texas corporation, including without limitation its successors, assigns, agents, and affiliated entities ("PK-RE"), and the undersigned individuals and entities as owners of Greenshores, including without limitation their respective successors, assigns, agents, and affiliated entities (collectively, PK-RE and the undersigned individuals and entities will be known as "Owners"). By the signatures of their respective authorized representatives below, PK-RE warrants and represents that there are no other owners of any portion of Greenshores and no other third-parties holding an interest therein.

### **RECITALS**

A. Owners own, or represent the owners of, a total of approximately 280 acres of land located in Travis County, Texas contained within the area described in the attached Exhibit "A" ("Greenshores"). Greenshores is located partially in the City's extraterritorial jurisdiction ("ETJ"), and partially within its corporate limits.

B. Owners have commenced development of Greenshores, and have conveyed certain portions of the property to other entities, from whom they have received Powers of Attorney authorizing execution of this Agreement and related documents. The City has commenced the process of annexing a portion of Greenshores for full purposes. The Parties wish to enter into this Agreement to postpone annexation for a certain number of years and provide that the area may be included within the limited and full purpose city limits. No special district shall be created in the area, but PK-RE will maintain certain water and wastewater Certificates of Convenience and Necessity ("CCNs") under which water and wastewater service will be provided to the area.

C. The Parties desire to (i) establish, define, protect and clarify the City's jurisdictional and regulatory authority over Greenshores, (ii) provide for the annexation of Greenshores by the City, and (iii) clarify the understanding

regarding the provision of water and wastewater service by PK-RE through the CCNs, duly approved by the Texas Commission on Environmental Quality ("TCEQ"), and the possible acquisition of such CCNs and the associated water and wastewater systems by the City after annexation. Owners are entering into this Agreement and consenting to the annexation of Greenshores in accordance with the terms set out herein.

D. This Agreement is promulgated under Section 212.172 of the Texas Local Government Code.

**NOW, THEREFORE**, for and in consideration of the mutual agreements, covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and Owners agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01 Terms Defined in this Agreement.** In this Agreement, each of the following terms shall have the meanings indicated:

"City Code" shall mean the City Code of Austin, together with all its related administrative rules and technical criteria manuals.

"City Council" shall mean the City Council of the City or any successor governing body.

"Effective Date" shall mean January 24, 2005.

"ETJ" shall have the meaning set forth in the recitals to this Agreement.

"Land Development Code" shall mean the Land Development Code of the City, codified as Titles 25 and 30 of the City Code.

"Notice" shall have the meaning set forth in Section 10.08.

"Ordinances" shall mean the ordinances of the City.

"Greenshores " shall have the meaning set forth in the recitals to this Agreement, and

"Term" shall have the meaning set forth in Section 10.02.

**Section 1.02. Other Definitions.** All capitalized terms used but not defined in this Agreement shall have the meaning given to them in the City Code.

## **ARTICLE II**

### **LAND USE**

**Section 2.01 Uses.** Greenshores shall be developed in accordance with plats and other permit applications submitted to, and approved by, the City and Travis County through their Single Office for subdivision regulation, and as finally approved by the appropriate approval bodies, as set forth in those certain subdivision plats identified in Exhibit "A", as same may be amended in accordance with applicable regulations from time to time. Uses are limited to residential uses and related public and private facilities, including the water and wastewater utilities, as set out in this Agreement.

## **ARTICLE III**

### **APPLICABLE ORDINANCES AND RELATED MATTERS**

**Section 3.01 Applicable Requirements.** All of the City's laws, ordinances, manuals, and administrative rules, (including the Land Development Code) as they regard land development as amended from time to time shall apply to subdivisions within Greenshores, except as otherwise specified in this Agreement. Prior to full purpose annexation, subdivisions are subject to applicable regulations in Land Development Code Title 30, and after full purpose annexation, subdivisions are subject to applicable regulations in Land Development Code Title 25. Water and wastewater systems will comply with applicable requirements of the TCEQ and the City, including without limitation requirements for review and approval of construction plans, fire flow, and inspection of facilities, and CCN No. 12407, CCN No. 12408, and TCEQ Wastewater Permit No. 14286-001. The City acknowledges that the existing water system, except for fire flow, and the existing wastewater system for the Lake Austin portion of Greenshores ("GLA"), and the Excess Capacity portion of Greenshores ("EC"), have been designed in accordance with City requirements and are acceptable to the City. Future water and wastewater systems and alterations to existing systems will comply with TCEQ, City and other applicable standards. The City and Owners acknowledge that City and Lake Navigation Company have entered into a separate agreement regarding PK-RE's TCEQ wastewater discharge permit number 14286-001.

**Section 3.02 No Creation of Districts.** No special districts or municipalities of any kind, including but not limited to any type of water district, road district, library district, or other district, shall be created in the Greenshores area, without the prior written approval of City Council. Owners shall not apply for, support, sponsor, or seek third party sponsorship for any such district or municipality without prior written approval of City Council. Provided, however, that this Agreement is not intended to prohibit the creation of a homeowners association, with limited powers and duties typical of a homeowners association, or any form of property owners' association that does not impede or impair in any way the City's ability to annex Greenshores.

#### **ARTICLE IV**

##### **AMENDMENTS**

**Section 4.01 Amendments to Agreement.** This Agreement may be amended only by a written agreement signed by the City and Owners; provided, however, an Owner of a portion of Greenshores (other than an individual owner of an occupied single family, duplex, townhouse or attached single family residential lot) and the City may amend this Agreement as it relates solely to such Owner's parcel without the joinder of any other Owner.

#### **ARTICLE V**

##### **ANNEXATION**

**Section 5.01 Annexation.** By the execution and in consideration of the mutual covenants of this Agreement, Owners and the City agree as follows.

a. Owners and the City agree to defer limited purpose annexation and to continue the extraterritorial status of the Greenshores on Lake Austin portion of Greenshores ("GLA Portion") and the Excess Capacity portion of Greenshores ("EC Portion"), identified respectively as area A-1 and A-2 on the map included in Exhibit "A", and immunity from limited purpose annexation by the City for the period expiring January 24, 2010; and to defer full purpose annexation of the GLA Portion and EC Portion for the period expiring January 24, 2015.

b. Owners hereby consent to and request, on behalf of themselves and their successors and assigns, as of the dates indicated below the annexation of portions of Greenshores into the City for the limited purposes of planning and zoning, as follows: (i) with respect to the Woods of Greenshores portion of



Greenshores ("WG Portion"), identified as area A-3 on the map included in Exhibit "A", on the date this Agreement becomes effective as specified in Section 1.01; and (ii) with respect to any part of the GLA Portion and the EC portion which is not within the full or limited purpose jurisdiction as of the Effective Date on January 24, 2010. The City Manager will commence a limited purpose annexation case for each such portion of Greenshores within sixty (60) days of the date so specified for such portion. Interim zoning designations shall be proposed in accordance with residential and civic uses shown on plat applications and approved plats for the portion being annexed. Each limited purpose annexation case shall also include a proposed zoning case to be initiated by the City, recommending zoning consistent with the uses designated on plats or preliminary plans for the portion being annexed.

c. The parties intend that this Agreement guarantee the continuation of the extraterritorial status and limited purpose annexation status of portions of Greenshores as set forth above; authorize certain general uses and development of Greenshores; provide for infrastructure for Greenshores; specify the uses and development of Greenshores after annexation; and provide other lawful terms and considerations relating to Greenshores; all as herein set forth.

**Section 5.02 Full Purpose Annexation.** Owners hereby request and consent to full purpose annexation, on behalf of themselves, their successors and assigns, as set out herein, and waive the City's obligation to annex the respective portions of Greenshores for full purposes within three (3) years of limited purpose annexation of each such portion. Instead, Owners and the City agree that the City shall have the option, but not the obligation, to annex for full purposes the respective portions of Greenshores under the following terms and according to the schedule below.

- a. After January 24, 2015, for the GLA Portion and the EC Portion.
- b. After January 24, 2017, for the WG Portion.
- c. In addition, the City may at any time annex those portions of Greenshores mutually agreed to be annexed for full purposes by the then Owners of the portions to be annexed.

After full purpose annexation, all city ordinances, regulations and requirements applicable in the full purpose jurisdiction, including city taxation, shall apply to the portions so annexed. During the term of this Agreement, the City shall not annex any part of Greenshores except as provided in this Article V.

## **ARTICLE VI**

### **WATER AND WASTEWATER SERVICE**

**Section 6.01 Service.** Water and wastewater service will be provided to Greenshores by PK-RE, operating under duly approved CCNs (including the CCNs for those areas described in Section 6.02), and in accordance with all applicable state and local regulations and permits. PK-RE agrees to comply with the City's Utilities Criteria Manual, standards, and specifications including without limitation the provision of fire flow through the water system for Greenshores. The City and PK-RE agree that within seventy-five (75) days after the Effective Date, PK-RE will submit to the City plans for the provision of adequate fire flow that comply with the City's Utilities Criteria Manual and standards and specifications for the GLA Portion and EC Portion. Adequate fire flow means that the design and construction of necessary facilities meet the City's Utilities Criteria Manual, specifications, and standards and the Austin Fire Department's requirement of fire flow for Greenshores based upon the Uniform Fire Code. The City and PK-RE acknowledge the City has determined that a single-family residence, when the area of the largest structure on the property is less than 7,700 square feet as determined by the Austin Fire Department, shall have a minimum required fire flow of 2,250 gallons per minute ("gpm") for a two hour duration. PK-RE agrees to construct facilities capable of providing such fire flow and if PK-RE allows or individual property owners request structures that exceed 7,700 square feet, then PK-RE will either: 1) have its water system modified to meet new fire flow requirements as determined by the Austin Fire Department, or 2) require the property owner to construct in such a manner as determined by the Austin Fire Department or limit the size of the structure so that the minimum required fire flow may remain at 2,250 gpm for a two hour duration.

Within 24 months of the Effective Date, PK-RE agrees to complete construction of the facilities to provide adequate fire flow and cause PK-RE's engineer to submit to the City a letter, sealed by the engineer, indicating that the constructed facilities comply, without limitation, with the City's approved plans. If PK-RE does not complete such construction and provide such letter within 24 months of the Effective Date, PK-RE agrees to cease any future water or wastewater connections to any portion of Greenshores until PK-RE has completed such obligations. Concurrent with the submission of each proposed final plat, site plan, or application for site development permit for the WG Portion, PK-RE agrees to submit construction plans to the City to serve the area included therein in

accordance with the City's Utilities Criteria Manual, standards, and specifications including without limitation the City's requirements for fire flow.

**Section 6.02 CCNs.** The parties acknowledge that PK-RE has agreed to provide water and wastewater service to Greenshores. PK-RE shall file with TCEQ, within 90 (ninety) calendar days of the Effective Date, applications for additional or modified water and wastewater CCNs for any part of the WG Portion, the GLA Portion and the EC Portion that is not included within the existing CCNs, so that all of Greenshores will be included within a water and wastewater CCN. PK-RE agrees to use due diligence in seeking to obtain from TCEQ the additional and/or modified CCNs contemplated herein, and the City agrees not to protest same. Otherwise, PK-RE agrees not to seek modification of any of the CCNs or provide water and wastewater service using its Greenshores facilities outside of Greenshores without the City's prior written approval. PK-RE agrees that the facilities for the WG Portion shall be designed and constructed to use a conventional gravity wastewater system (using a lift station to send the wastewater flows to the wastewater treatment plant to be located within the WG Portion) instead of a pressurized system (where all wastewater connections use a pump to send wastewater flows to the wastewater treatment plant) in accordance with the City's Utilities Criteria Manual, standards, and specifications. The City recognizes that some individual lots may be required for engineering purposes to use a pump, but that the pump will be the sole responsibility of the lot owner. Owners agree that such responsibilities shall be set forth in each affected lot owner's real property instruments.

**Section 6.03 Notice of Intent to Sell CCNs and Water and Wastewater Utility Systems; Negotiations Regarding Purchase.** If PK-RE determines that it intends to sell the CCNs and associated water and wastewater systems, PK-RE agrees to provide written notice of such intent to the City. The City shall have 30 calendar days from the date of its receipt of such written notice in which to respond in writing stating the City's interest in negotiating for the purchase of the Facilities as defined below. If the City responds in writing within the 30-day period that it is interested in negotiating the purchase of the Facilities, PK-RE and the City agree to enter into good faith negotiations concerning the purchase price, and terms and conditions for the City's purchase. The parties shall endeavor to reach an agreement for such purchase within 90 days, unless extended by agreement of the parties in writing. Any such transaction shall include the CCNs, and all rights and interests in all real property, easements, and water and wastewater utility assets associated with the CCNs, and all warranties, guaranties, and other assurances of performance owned or held by PK-RE or its affiliated utility entities relating



thereto (collectively, the "Facilities"). PK-RE agrees to include in any professional service contract or operations and maintenance contract related to the Facilities notice of this provision, and a termination clause to provide for the termination thereof on six months written notice without fees or costs to the City, in the event the City acquires the Facilities.

## **ARTICLE VII**

### **LEGISLATIVE DISCRETION; REPRESENTATIONS AND WARRANTIES**

**Section 7.01 Legislative Discretion.** This Agreement is not intended to bind, and the parties agree in fact and law that the Agreement does not bind, the legislative discretion of the City Council to approve or disapprove any proposed annexation ordinance for Greenshores, subject to and in accordance with the provisions hereof.

#### **Section 7.02 Representations and Warranties of Owners.**

**a. Organization and Good Standing.** Owners consist of individuals and business organizations, each of which is duly organized and validly existing in good standing under the laws of the State of Texas, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under this Agreement. PK-RE also has been given Powers of Attorney from all other Owners of property within Greenshores, under which PK-RE has been granted authority to execute this Agreement on behalf of said other Owners.

**b. Authority; No Conflict.** This Agreement constitutes the legal, valid and binding obligation of Owners, enforceable against Owners in accordance with its terms. Owners have the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform their obligations under this Agreement.

#### **Section 7.03 Representations and Warranties of the City.**

**a. Organization and Good Standing.** The City is a duly organized and validly existing municipal corporation in good standing under the laws of the State of Texas, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under this Agreement.

b. **Authority; No Conflict.** This Agreement constitutes the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms. The City has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform its obligations under this Agreement.

## **ARTICLE VIII**

### **FRUSTRATION OF PURPOSE**

**Section 8.01 Frustration of Purpose.** If any word, phrase, clause, sentence, paragraph, section or other part of this Agreement is affected in whole or in part as a result of amendments to the underlying statutory authority for this Agreement, or a final judicial decree for which all appeals have expired or been exhausted, or if the Texas Legislature amends state law in a manner having the effect of limiting or curtailing any right or obligation of the parties under this Agreement, then the parties agree and understand that the purpose of this Agreement may be frustrated. In such case, the parties agree to work in good faith to amend this Agreement so that the purpose of this Agreement may be fully realized, including full purpose annexation if necessary. Owners agree not to protest any annexation of any portion of Greenshores in accordance with this Agreement, and further agree not to sponsor or support legislation that would hinder the City's ability to annex any portion of Greenshores in accordance with the provisions hereof.

## **ARTICLE IX**

### **DEFAULT AND REMEDIES FOR DEFAULT**

**Section 9.01 Default.** It shall be a default under this Agreement by a party, if such party shall fail to perform any of its obligations under this Agreement and such failure shall remain uncured following the expiration of thirty (30) calendar days after written notice of such failure. However, in the event the default is of a nature that cannot be cured within such thirty (30) calendar day period, the defaulting party shall have a longer period of time as may be reasonably necessary to cure the default in question, but in no event more than sixty (60) calendar days.

**Section 9.02 Remedies between the City and Owners.** Should any default between Owners and the City remain uncured after Notice to the other as provided in Section 9.01, the non-defaulting party, whether Owners or the City,

may pursue any remedy that is available at law or in equity at the time of the breach.

**Section 9.03 Mediation.** In order to avoid unnecessary litigation, in the event that either party fails to cure an alleged default within the cure period set out in Section 9.01 above, then if requested by either party, prior to seeking any form of relief from a court of law or agency of competent jurisdiction, each party agrees to enter into mediation concerning the alleged default for a period of not more than thirty (30) days prior to the filing of any court action. Nothing in this Agreement shall be construed to limit the parties from mediating a default after any court or agency action may have been filed.

**Section 9.04 No Liability For Actions of Others.** Except as expressly set forth herein, (a) the liabilities, obligations and responsibilities of each Owner, their successors and assigns, under this Agreement are several, and not joint; and (b) no Owner, or successor or assign, of any portion of Greenshores will be in default under this Agreement or otherwise liable or responsible for any default which is not caused by such Owner or by any person acting by, through or under such Owner or successor or assign.

**Section 9.05 Force Majeure.** If, by reasons of Force Majeure, a party will be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party will give written notice of the particulars of such Force Majeure to the other party within a reasonable time after the occurrence of it. The obligations of the party giving such notice, to the extent affected by such Force Majeure, shall be suspended during the continuance of the inability claimed and for no longer period, and such party will in good faith exercise its best efforts to remove and overcome such inability.

The term "Force Majeure" as utilized in this Agreement will mean and refer to acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, the State of Texas, or any other civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; storms; floods; washouts; other natural disasters; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines or canals; or other causes not reasonably within the control of the party claiming such inability.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

**Section 10.01     Effective Date.** The Parties agree that, notwithstanding the dates of signatures to this Agreement, the "Effective Date" of this Agreement shall be the date set forth in Section 1.01.

**Section 10.02     Term.** This Agreement shall commence and bind the parties on the Effective Date and continue until January 24, 2020, with an automatic extension to December 31, 2020, unless sooner terminated by express written agreement executed by both parties (the "Term").

**Section 10.03     Termination.** This Agreement may be terminated as to all of Greenshores only by express written agreement executed by the City and Owners. This Agreement may be terminated as to a portion of Greenshores only by express written agreement executed by the City and the Owners of the portion of land affected by the termination. In the event this Agreement is terminated by mutual agreement of the parties or by its terms, the parties shall promptly execute and file of record in the Official Public Records of Travis County, Texas, a document confirming the termination of this Agreement, and such other documents as may be appropriate to reflect the basis upon which such termination occurs.

**Section 10.04     Agreement Binds Successors and Runs with the Land.** This Agreement shall bind and inure to the benefit of the parties, their successors and assigns. The terms of this Agreement shall constitute covenants running with the lands comprising Greenshores and shall be binding on all Owners of property in Greenshores and of the Owners of the CCNs and the Facilities. After the Effective Date hereof, this Agreement, at the City's cost, shall be recorded in the Official Public Records of Travis County, Texas. Nothing in this Agreement is intended to impose obligations on individual Owners of platted single family, duplex, townhouse or attached single-family residential lots, except as set forth in Section 10.05.

**Section 10.05     Restrictive Covenants and Notice to Lot Buyers.** Within 30 days after the Effective Date, Owners shall execute and record a restrictive covenant that expressly restricts Greenshores to the applicable terms of this Agreement; provided, however, with respect to a fully developed and improved lot within Greenshores acquired by an end-buyer, the restrictive covenant shall only restrict such lot to the land use and development regulations set forth in this Agreement, and which shall include, without limitation, a restriction



that the end-buyer consents to limited and full purpose annexation by the City, as provided herein. OWNERS FURTHER AGREE THAT EACH DEED TO EACH END-BUYER, AND EACH NOTICE ISSUED BY THE HOMEOWNERS ASSOCIATION FOR GREENSHORES TO ANY BUYER, SHALL INCLUDE A NOTICE TO SUCH OWNER OF THE CITY'S RIGHT TO ANNEX THE LOT FOR LIMITED AND FULL PURPOSES ON OR AFTER THE DATES SPECIFIED IN SECTIONS 5.01 AND 5.02, AND A SUMMARY OF OTHER TERMS AND CONDITIONS CONTAINED HEREIN. Such restrictive covenant, and such notice, shall be submitted to the City Attorney for approval as to form.

**Section 10.06 Assignment.** PK-RE may assign its rights and obligations under this Agreement with respect to all or part of Greenshores from time to time to any party. In any such event PK-RE shall require its assignee to assume in writing and agree to be bound by the requirements of this Agreement, and shall provide the City a copy of such assignment.

**Section 10.07 Entire Agreement.** This Agreement and the agreements between the parties referenced in this Agreement, contain the entire agreement of the parties. There are no other agreements or promises, oral or written, among the parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the parties as provided for in this Agreement. This Agreement and the agreements between the parties referenced in this Agreement, supersede all prior agreements between the parties concerning the subject matter of this Agreement.

**Section 10.08 Notice.** It is contemplated that the parties will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications ("Notice") required to be given by one party to another by this Agreement shall be given in writing addressed to the party to be notified at the address set forth below for such party, (i) by delivering same in person, (ii) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified, (iii) by depositing the same with Federal Express or another nationally recognized courier service guaranteeing "next day delivery", addressed to the party to be notified, or (iv) by sending same by telefax with confirming copy sent by mail. Notice deposited in the United States mail in the manner described above shall be deemed effective from and after the earlier of the date of actual receipt or three (3) days after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as provided below, be as follows:

**Owners:** c/o Mr. Russell Eppright  
6836 Bee Cave Road, Suite 400  
Austin, Texas 78746  
Fax: (512) 347-9966

**With copy to:** Wm. Terry Bray  
401 Congress Avenue, Suite 2200  
Austin, Texas 78701  
Fax: (512) 480-5835

**City:** City of Austin  
Attn: City Manager  
P.O. Box 1088  
Austin, Texas 78767  
Fax: (512) 974-2964

**With copy to:** City of Austin  
Attn: City Attorney  
P.O. Box 1088  
Austin, Texas 78767  
Fax: (512) 974-6490

The parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days written notice to the other party. If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday or legal holiday.

**Section 10.09 Standards Not Binding On Other Governmental Entity.** Notwithstanding any provision in this Agreement to the contrary, the parties acknowledge that some of the standards set forth in this Agreement may require the approval of a governmental entity other than the City to implement. Owners agree that the City is not responsible for obtaining such approval.

**Section 10.10 No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, and its past, present and future officers, elected officials, employees and agents, do not

assume any responsibilities or liabilities to any third party in connection with the development of Greenshores.

**Section 10.11** **Time.** Time is of the essence in all things pertaining to the performance of this Agreement.

**Section 10.12** **Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected.

**Section 10.13** **Waiver.** Any failure by a party hereto to insist upon strict performance by the other party of any material provision of this Agreement shall not be deemed a waiver of such provision or of any other provision of this Agreement, and such party shall have the right at any time(s) thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

**Section 10.14** **Attorney's Fees and Court Costs.** In the event that any matter relating to this Agreement results in the institution of legal proceedings by any party to this Agreement, the prevailing party in such proceeding shall be entitled to recover all costs and expenses incurred by it in connection with such proceedings, including, without limitation, reasonable court costs and reasonable attorneys' fees.

**Section 10.15** **Applicable Law and Venue.** THE CONSTRUCTION AND VALIDITY OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES). Venue for any dispute arising from or related to this Agreement shall be in a Texas state district court and shall be in accordance with the Texas Civil Practice and Remedies Code.

**Section 10.16** **Reservation of Rights.** To the extent not inconsistent with this Agreement, each party reserves all rights, privileges and immunities under applicable laws.

**Section 10.17** **Further Assurances.** Both parties agree that at any time after execution of this Agreement, they will, upon request of the other party, execute and deliver such further documents and do such further acts and things as may be reasonably necessary or desirable to effectuate the terms of this Agreement.

**Section 10.18     Incorporation of Exhibits and Other Documents by Reference.** All Exhibits and other documents attached to or referred to in this Agreement are incorporated by reference for the purposes set forth in this Agreement.

**Section 10.19     Counterparts.** This Agreement may be executed in multiple counterparts which shall be construed together as a single original instrument as though all parties had signed one instrument, and, when executed, each counterpart shall be binding upon and inure to the benefit of each of the parties executing the instrument whether or not all other parties have executed same.

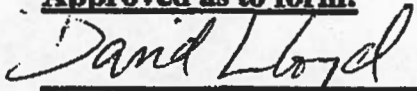


**Section 10.20      Exhibits.**

**Exhibit "A"** – Description of Greenshores and of the GLA Portion, WG Portion, and EC Portion; and subdivision plats and preliminary plans

EXECUTED in multiple counterparts, each of which shall constitute an original, to be effective as of the Effective Date.

**Approved as to form:**

  
Assistant City Attorney *David Lloyd*

**Date:**

*2/14/05*

**CITY:**

**CITY OF AUSTIN,**

a home rule city and Texas municipal corporation

By: 

Toby Hammett Futrell, City Manager

**Date:**

*2/14/05*

**PK-RE:**

**PK-RE Development Company, Inc.**

a Texas corporation

By: 

Russell Eppright, President

**Date:**

*2/11/05*

**OTHER OWNERS, by Russell Eppright, in his capacity as Attorney-in-Fact:**

Signature: \_\_\_\_\_

Russell Eppright

Russell Eppright, Attorney-in-Fact for and on behalf of all other Owners (Mark David Bateman, Brandon B. Bible, Richard Bright Custom Homes, L.L.P., Cathryn Coleman, Deborah A. Dunnam, James A. Dunnam, Jr., Christopher A. Elder, Wendy Elder, Ben Eppright, William E. Fowler, Clarice B. Fowler, Jay N. Greenberg, Janett C. Greenberg, John C. Henry, Pamela Henry, Heyl Homes, Inc., Anthony W. Howl, Kailey Development Partners, L.P., Metropolitan Greenshores, L.P., Pitt Building Company, Inc., RME Enterprises, Inc. d/b/a Russell Eppright Homes, Trans-Western Property Corporation, Urban Property Development, Inc., Waldrop Builders, Inc., Carl A. Waldrop, Angela Waldrop, Deerwood Place, L.L.C., Marion Dudley Fowler, Carol Young McMurtry Fowler, Susan K. Adler as Trustee of the Carol McMurtry Fowler Charitable Remainder Unitrust, Robert Penn Fowler, Bradley A. Fowler, Sally Pope Fowler, Lake Navigation Company, and Robert Penn Fowler as Custodian for Julia Marion Fowler under the Texas Uniform Transfers to Minors Act)

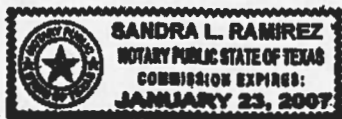
Date: \_\_\_\_\_

2/11/05

THE STATE OF TEXAS     §

COUNTY OF TRAVIS     §

This instrument was acknowledged before me on this the 4<sup>th</sup> day of February, 2005, by Toby Hammett Futrell, as City Manager of the City of Austin, a municipal corporation, on behalf of the corporation.



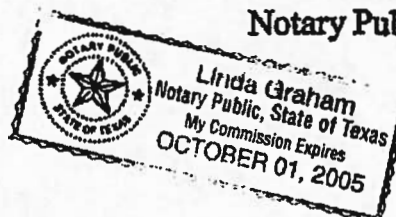
*Sandra L. Ramirez*  
Notary Public, State of Texas

THE STATE OF TEXAS     §

COUNTY OF TRAVIS     §

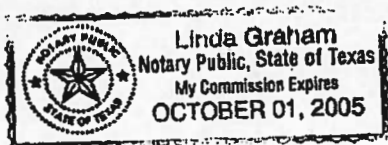
This instrument was acknowledged before me on this the 11<sup>th</sup> day of February, 2005, by Russell Eppright, President of PK-RE Development Company, Inc., a Texas corporation, on behalf of said corporation.

*Linda Graham*  
Notary Public, State of Texas



**THE STATE OF TEXAS       §**  
**COUNTY OF TRAVIS       §**

This instrument was acknowledged before me on this the 11<sup>th</sup> day of February, 2005, by Russell Eppright as attorney-in-fact for and on behalf of all other Owners (Mark David Bateman, Brandon B. Bible, Richard Bright Custom Homes, L.L.P., Cathryn Coleman, Deborah A. Dunnam, James A. Dunnam, Jr., Christopher A. Elder, Wendy Elder, Ben Eppright, William E. Fowler, Clarice B. Fowler, Jay N. Greenberg, Janett C. Greenberg, John C. Henry, Pamela Henry, Heyl Homes, Inc., Anthony W. Howl, Kailey Development Partners, L.P., Metropolitan Greenshores, L.P., Pitt Building Company, Inc., RME Enterprises, Inc. d/b/a Russell Eppright Homes, Trans-Western Property Corporation, Urban Property Development, Inc., Waldrop Builders, Inc., Carl A. Waldrop, Angela Waldrop, Deerwood Place, L.L.C., Marion Dudley Fowler, Carol Young McMurtry Fowler, Susan K. Adler as Trustee of the Carol McMurtry Fowler Charitable Remainder Unitrust, Robert Penn Fowler, Bradley A. Fowler, Sally Pope Fowler, Lake Navigation Company, and Robert Penn Fowler as Custodian for Julia Marion Fowler under the Texas Uniform Transfers to Minors Act).



*Linda Graham*

Notary Public, State of Texas



## **EXHIBIT "A"**

### **Map and Legal Description and List of Plats and Preliminary Plans**

**1. Greenshores on Lake Austin –**

**(a) Phase One, according to the plat thereof recorded at Document No. 200400036, Official Public Records of Travis County, Texas.**

**(b) Phase Two, according to the plat thereof to be recorded in the Official Public Records of Travis County, Texas, and being the same property approved by the City of Austin in Case No. C8j-01-251.01.2A.**

**(c) Phase Three, according to the plat thereof to be recorded in the Official Public Records of Travis County, Texas, and being the same property approved by the City of Austin in Case No. C8j-01-251.01.3A.**

**2. The Woods of Greenshores, according to the preliminary plan thereof in City of Austin file C8j-03-0220, and being the same property described in deed recorded at Document No. 2002183602, Official Public Records of Travis County, Texas.**

**(Copies of the Annexation Area Map attached as Page One and of the plats referenced above are available in the City of Austin files.)**



Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

## FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2005 Feb 15 02:38 PM 2005025550

EVANSK \$58.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS