

**THIRD AMENDMENT TO
NPWIS CONSTRUCTION AND PARTICIPATION AGREEMENT**

This Third Amendment to NPWIS Construction and Participation Agreement (this "*Third Amendment*") is entered into this _____ day of September, 2015 (the "*Effective Date*"), between the **City of Pflugerville, Texas** (the "*City*"), a home rule city located in Travis County, Texas, and **KM Avalon, Ltd.** (the "*Developer*"), a Texas limited partnership.

RECITALS

A. The City, KM Kelly Lane, Ltd. ("*KM Kelly Lane*"), a Texas limited partnership, and Rowe Lane Development, Ltd. ("*Rowe Lane*"), a Texas limited partnership, previously entered into a "NPWIS Construction and Participation Agreement" dated August 30, 2004 (the "*Original Agreement*"), concerning the development of approximately 540 acres of land located in the extraterritorial jurisdiction of the City.

B. Effective as of October 18, 2005, KM Kelly Lane assigned its rights, duties, and obligations under the Original Agreement to the Developer and the Developer assumed and agreed to perform the assigned duties and obligations.

C. The Original Agreement was subsequently amended by "First Amendment to NPWIS Construction and Participation Agreement for Avalon" dated May 10, 2006 (the "*First Amendment*"), and by "Second Amendment to NPWIS Construction and Participation Agreement" dated February 20, 2013.

D. Paragraph 17 of the Original Agreement provides that the City and the Developer may amend the Original Agreement without the consent of Rowe Lane provided that such amendment does not adversely affect the economic interest of Rowe Lane or change the rights or obligations of Rowe Lane under the Original Agreement.

E. The City and the Developer have agreed to certain modifications of the Original Agreement (as amended by the First Amendment and the Second Amendment, the "*Agreement*"), which do not adversely affect the economic interest of Rowe Lane or change the rights or obligations of Rowe Lane under the Agreement, and desire to set forth those agreements in this Third Amendment.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer agree as follows:

1. **Defined Terms.** All terms delineated with initial capital letters in this Third Amendment that are defined in the Agreement have the same meanings in this Third Amendment as in the Agreement. Other terms have the meanings commonly ascribed to them.

2. **Amendment to Section 8 of the Original Agreement (Wastewater Capacity Fees).** The third sentence in Section 8 of the Original Agreement is deleted in its entirety and replaced with the following:

"The wastewater LUE fee or the wastewater impact fee, as applicable, will be paid prior to the issuance of a building permit."

3. **Effect of Amendment.** Except as specifically provided in this Third Amendment, the terms of the Agreement continue to govern the rights and obligations of the

parties, and all terms of the Agreement remain in full force and effect. If there is any conflict or inconsistency between this Third Amendment and the Agreement, this Third Amendment will control and modify the Agreement.

IN WITNESS WHEREOF, the undersigned parties have executed this Third Amendment on the dates indicated below, to be effective as of the Effective Date.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES FOLLOW]

CITY OF PFLUGERVILLE, TEXAS

By: _____
Brandon Wade, City Manager

Date: _____

KM AVALON, LTD., a Texas limited partnership

By: KM Avalon GP, Inc., a Texas corporation, its General Partner

By: _____
Blake J. Magee, President

Date: _____