

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

This Second Amendment to NPWIS Construction and Participation Agreement (this "Second Amendment") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013 (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").

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, 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 Second 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 Second Amendment that are defined in the Agreement have the same meanings in this Second Amendment as in the Agreement. Other terms have the meanings commonly ascribed to them.

2. **Amendment to Section 5 of the Original Agreement (Exclusion of Commercial Tracts); Amendment to Section 2 of the First Amendment (Corner Tracts).** The Corner Tracts may be annexed into the boundaries of Kelly Lane Water Control and Improvement District No. 1 (the "District"). After the annexation of the Corner Tracts into the District, the Corner Tracts may be developed for any or all

land uses, excluding attached residential uses, in accordance with the conceptual land development plan attached as **Exhibit B** to the “Comprehensive Development Agreement Between KM Kelly Lane, Ltd. and the City of Pflugerville, Texas Including Consent to Inclusion of Land in Water Districts and the Development of a 540 Acre Tract in Travis County, Texas” dated as of August 30, 2004 between the City and KM Kelly Lane (as amended, the “*Consent Agreement*”), subject to the requirements and all approvals, exemptions and variances specified in Section 5.1 of the Consent Agreement.

3. **Effect of Amendment.** Except as specifically provided in this Second 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 Second Amendment and the Agreement, this Second Amendment will control and modify the Agreement.

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

[SIGNATURE PAGES FOLLOW]

[SIGNATURE PAGE TO SECOND AMENDMENT TO NPWIS CONSTRUCTION AND PARTICIPATION AGREEMENT]

CITY OF PFLUGERVILLE, TEXAS

By: \_\_\_\_\_  
Brandon Wade, City Manager

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

[SIGNATURE PAGE TO SECOND AMENDMENT TO NPWIS CONSTRUCTION AND PARTICIPATION AGREEMENT]

KM AVALON, LTD., a Texas limited partnership

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

By: \_\_\_\_\_  
Blake J. Magee, President

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