

**ECONOMIC DEVELOPMENT AGREEMENT
SHTC CONNECTION
TOWN CENTER DRIVE & PORTCHESTER CASTLE PATH EXTENSION
CITY OF PFLUGERVILLE, TEXAS**

THIS ECONOMIC DEVELOPMENT AGREEMENT (hereinafter referred to as "Agreement") by and between the **CITY OF PFLUGERVILLE**, Texas, a Texas home rule municipal corporation (hereinafter referred to as "City") and **CONTINENTAL HOMES OF TEXAS, L.P.**, a Texas Limited Partnership, (hereinafter referred to as "Continental"), and **A-S 93 SH 130-SH 45, L.P.**, a Texas limited partnership, (hereinafter referred to as "NewQuest") is entered into to be effective the 19 day of October, 2012 (Effective Date).

WHEREAS, Continental is the owner and/or developer of approximately 412.0 acres of real property within the Highland Park Subdivision in the City of Pflugerville, Texas, and as more particularly described on **Exhibit "A"** attached hereto (hereinafter referred to as "Continental Property"); and

WHEREAS, NewQuest is the owner and/or developer of approximately 183.7 acres of real property within the Stone Hill Town Center Subdivision in the City of Pflugerville, Texas, and as described on **Exhibit "B"** attached hereto (hereinafter referred to as "NewQuest Property"); and

WHEREAS, in order to facilitate commercial and residential development of the Continental and NewQuest properties an extension of Town Center Drive /Portchester Castle Path between the Stone Hill Town Center and the Highland Park Subdivision must be constructed and coordinated among the owners/developers, (hereinafter referred to as the "Project"); and

WHEREAS, the Fourth Supplement and Amendment to [the] Economic Development Agreement "Stone Hill Town Center" by and between the City of Pflugerville and A-S 93 SH 130-SH 45, L.P. established that the City accepts responsibility for the construction of Town Center Drive in the floodplain only across the frontage of Lot 23; and

WHEREAS, the construction of the Project shall improve connectivity within the City and promote development, population and job growth and economic development; and

WHEREAS, the City has established policies to adopt reasonable measures, as are permitted by law, to attract and promote the development of new and expanded business enterprises within the City and thereby enhance the economic stability and growth of the City; and

WHEREAS, the City has determined that the construction of the Project will promote economic development and will stimulate business and commercial activity in the City; and

WHEREAS, in order to accelerate the construction of the Project and further enhance the project to serve the needs of the public, the City has agreed to contribute funds to cover certain construction costs in accordance with the Fourth Supplement and Amendment to [the] Economic Development Agreement "Stone Hill Town Center" by and between the City of Pflugerville and A-S 93 SH 130-SH 45, L.P."; and

WHEREAS, under authority of Section 52-a of Article III of the Texas Constitution, the Texas Legislature enacted Chapter 380, Texas Local Government Code (Chapter 380), which provides that the governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, the City has taken all necessary legal action to adopt an economic development program in satisfaction of Chapter 380; and

WHEREAS, the Project qualifies under the City's economic development program established under Chapter 380, and this Agreement is authorized pursuant to Section 380.001(a), Texas Local Government Code, as amended, and the Grant (as defined herein) granted to Continental and NewQuest in this Agreement complies in all respects with Section 380.001(b), Texas Local Government Code, as amended; and

WHEREAS, Continental and NewQuest have agreed, in exchange and as consideration for certain funding by the City to satisfy and comply with certain terms and conditions in furtherance of completion of the Project; and

WHEREAS, the City, Continental and NewQuest agree that the provisions of this Agreement substantially advance a legitimate interest of the City; and

WHEREAS, Continental or NewQuest may elect to record this Agreement in the Real Property Records of Travis County, Texas.

NOW THEREFORE, for and in consideration of the promises and the agreements set forth herein, and other good and valuable consideration, the sufficiency of which is agreed and acknowledged, the City, Continental and NewQuest hereby agree as follows:

I.

AUTHORITY & BINDING REPRESENTATIONS

1. The recitals, above, are incorporated by reference herein. City's execution of this Agreement is authorized by Chapter 380, *Texas Local Government Code*, and by the Resolution authorizing same and shall constitute a valid and binding obligation of City to

pay certain costs associated with construction of the Project as provided by this Agreement. Continental's execution and performance of this Agreement constitutes a valid and binding obligation of Continental obligating Continental to pay certain costs of construction associated with the Project as provided by this Agreement. NewQuest's execution and performance of this Agreement constitutes a valid and binding obligation of NewQuest obligating NewQuest to pay certain costs of construction associated with the Project, as provided by this Agreement. City acknowledges that Continental and NewQuest are acting in reliance upon City's performance of its obligations under this Agreement in making its decision to commit substantial resources to the construction of the Project, and Continental and NewQuest acknowledge that City is acting in reliance upon Continental and NewQuest's representations and their full and complete performance of their respective obligations under this Agreement in making its decision to commit substantial resources to construction of the Project.

II.

The Project

1. The Project is an extension of Town Center Drive / Portchester Castle Path between the Stone Hill Town Center and the Highland Park Subdivision as described in **Exhibit "C"** attached hereto.
2. Project costs include all costs to be incurred for street, sewer, water, drainage, erosion and sedimentation, and related improvements.
3. The Parties agree to perform the following obligations and roles associated with the implementation of this Agreement:
 - a. Continental agrees:
 - i. To act on their own behalf to fully fund and construct Portchester Castle Path (hereinafter referred to as "Continental Segment") as shown in **Exhibit "A-1"** in consideration that the Parties responsible for the extension of Town Center Drive act without delay to design and construct the extension of Town Center Drive.
 - ii. To submit a complete application to the City for the construction of public improvements for the extension of Portchester Castle Path to Continental's eastern property boundary within 30 days of this Agreement and commence construction of the extension within 60 days after City approval of all plans and issuance of any required permits, subject to Force Majeure. Construction shall be complete within 120 days of commencing construction and subject to Force Majeure.
 - iii. To provide a payment and performance bond to the City consistent with the design engineer's estimate of probable costs within 30 days of this Agreement.

- iv. Upon completion and acceptance by the City of Pflugerville, dedicate the public improvements to the City of Pflugerville.
 - b. NewQuest agrees:
 - i. To serve as the Project Manager and fund the project (in accordance with Section II(5) of this Agreement) for the NewQuest/City of Pflugerville segment.
 - ii. Upon completion and acceptance by the City of Pflugerville, dedicate the public improvements to the City of Pflugerville.
 - c. City of Pflugerville agrees:
 - i. To serve as Fiscal Agent to fund the project (in accordance with Section II(5) of this Agreement) for the NewQuest/City of Pflugerville segment.
 - ii. In addition to the City's monetary contribution, the City shall waive all inspection and permitting fees associated with the Project, except that direct costs incurred by the Project for testing are the responsibility of the Parties according to Section II(5) below.
- 4. All Parties agree to share plans, specifications, details and geotechnical and other data as may be useful to the Project.
- 5. To fund this Agreement, all Parties agree to contribute a percentage of the projected Project costs to complete their Segment of the Project as summarized below:
 - a. Continental Segment (Exhibit "A-1")
 - i. Continental at 100.0% (Payment and Performance Bond to be provided to the City) \$274,599.70
 - ii. Continental is contributing toward 18.6% of the total Project
 - b. NewQuest/City of Pflugerville Segment (Exhibit "C-1")
 - i. City 46.2% (Agreed Initial Escrow Deposit Equals: \$555,023.00)
 - 1. City is contributing 37.6% of the total Project
 - ii. NewQuest 53.8% (Agreed Initial Escrow Deposit Equals: \$645,655.00)
 - 1. NewQuest is contributing 43.8% of the total Project

Total Project Participation: 100% projected project costs equals (\$1,475,277.70)
- 6. The City's projected Grant amount represents the City's initial escrow deposit. The remaining projected Project costs shown by each Party represent the respective Party's initial escrow deposit. Any additional costs or costs savings realized in completing the NewQuest/City of Pflugerville Segment shown in paragraph 5, subpart b above, shall be divided by NewQuest and the City of Pflugerville in the same proportion as their initial escrow deposit contribution. In any event, the City's Grant provided herein shall not exceed 110% of the City's projected Project costs (\$610,525.30), and NewQuest's participation shall not exceed 110% of the projected Project costs (\$710,220.50). In the event that the actual construction costs for the NewQuest/City of Pflugerville Segment exceeds the total projected Project costs shown in paragraph 5, subpart b, the Parties may contribute on their own and/or seek additional grant funding, so long as the actual

grant funding of the Project does not exceed 46.2% of the NewQuest/City of Pflugerville Segment.

7. In accordance with the terms of Article III (entitled "Development and Escrow"), NewQuest shall serve as Project Manager.

III.

Development and Escrow Agreement

1. The Infrastructure Development & Escrow Terms & Conditions attached as Exhibit "D" is incorporated into this Agreement as if recited verbatim, setting forth the agreed terms and conditions used to manage the Project.

IV.

Economic Incentives

1. The City, Continental and NewQuest agree that this Agreement establishes a program for economic development as required by Chapter 380 of the Texas Local Government Code and that the Grant of funds by the City to complete the Project will be paid in the form of an Economic Development Grant pursuant to Chapter 380.

V.

Term

1. In no event will the term of this Agreement exceed five (5) years.

VI.

Miscellaneous

1. Successor and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties. No party may convey or assign its interest in this Agreement to any person or entity without the consent of the other parties. All assignees will be subject to all of the obligations, covenants and conditions applicable to the assignor under this Agreement. Upon an assignment of a party's entire interest under this Agreement, the other parties shall recognize the assignee as the assignor's proper successor, the assignee shall have all of the assigned rights, benefits and obligations of assignor under and pursuant to this Agreement, and assignor shall be relieved of all of its obligations under this Agreement that relate to acts or omissions which occur or accrue following the effective date of such conveyance or assignment.
2. Severability. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be given the intent manifested by the portion held invalid or inoperative. The failure by any party to

enforce against any other party any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against any other party the same or any other such term or provision. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, then in that event, it is the intention to the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties to this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

3. Governing Law. This Agreement shall be governed, construed, applied, and enforced in accordance with the laws of the State of Texas, and shall be performable with venue in Travis County, Texas.
4. Amendments. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.
5. Time. Time is of the essence in the performance of this Agreement.
6. Attorney Fees. Should any party employ attorneys to enforce any of the provisions hereof, the party losing in any final judgment agrees to pay to the prevailing party all reasonable costs, charges and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.
7. Notices. All notices hereunder must be in writing and shall be deemed delivered on the day personally delivered or on the third day from the day sent by registered mail or certified mail, return receipt requested with the U.S. Postal Service, or on the day after the day sent by national overnight courier, to the parties at the following addresses, or at such other addresses as shall be specified by notice.

If to the City:

City of Pflugerville
Attention: City Manager
100 East Main Street
P.O. Box 589
Pflugerville, Texas 78691-0589

With copy to:
City Attorney
P. O. Box 589
Pflugerville, Texas 78691-0589

If to Continental:

Attn: Richard Maier
Vice President
12554 Riata Vista Circle
Austin, TX 78727

With copy to:
Jackson Walker, L.L.P.
100 Congress Avenue, Suite 1100
Austin, TX 78701
Attn: Tim Taylor

If to NewQuest:
8827 W. Sam Houston Pkwy N., Suite 200
Houston, TX 77040
Attn: Steven D. Alvis

8. Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.
9. Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one Agreement.
10. Representations and Warranties by Continental and NewQuest. If Continental or NewQuest are a limited partnership or limited liability company, Continental or NewQuest, as the case may be, warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its formation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Continental or NewQuest, as the case may be, has been duly authorized to act for and bind Continental or NewQuest, as the case may be.
11. Payment of Debt or Delinquency to the State or Political Subdivision of the State. Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Continental or NewQuest, as the case may be, agrees that any payments owing to Continental or NewQuest, as the case may be, under the Agreement may be applied directly toward any debt or delinquency that Continental or NewQuest, as the case may be, owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

12. Texas Family Code Child Support Certification. Continental and NewQuest, as the case may be, certifies that the limited partners or members are not delinquent in child support obligations and therefore is not ineligible to receive the award of or payments under this Agreement and acknowledges that payment under this Agreement may be withheld if this certification is inaccurate and any such inaccuracy is not rectified within thirty (30) days of written notice specifying such inaccuracy.
13. Eligibility Certification. Continental and NewQuest certify that the individual or business entity named in the Agreement is not ineligible to receive the award of or payments under the Agreement and acknowledges that payment under this Agreement may be withheld if this certification is inaccurate and any such inaccuracy is not rectified within thirty (30) days of written notice specifying such inaccuracy.
14. Notice and Cure Periods. No party may terminate this Agreement unless (i) such party provides written notice by certified mail, return receipt requested (a "Notice") to each other party specifying a material default in the performance of a material covenant or obligations by one of the other parties (such party being referred to herein as or the "Defaulting Party") under this Agreement and (ii) such failure is not (a) excused by the occurrence an event of Force Majeure or (b) cured by the Defaulting Party within ninety (90) days after Notice thereof, or if such failure cannot be cured within such ninety (90) day period, the Defaulting Party has commenced remedial action to cure such failure (and continued to diligently and timely pursue the completion of such remedial action); provided, however, that (A) if such failure arises from a violation of law, then such default shall not give rise to the termination of this Agreement so long as the Defaulting Party acts in accordance with a plan of action to cure such default, which plan of action is approved by a governmental entity within one hundred and eighty (180) days after receipt by the Defaulting Party of such Notice; provided, however, that the Defaulting Party shall endeavor to cause such plan to provide for cure of such default within one hundred and eighty (180) days; or (B) if such default arises from a violation of law resulting from a change in law, or a change in the interpretation or enforcement of law, by a governmental entity, then such default shall not give rise to the termination of this Agreement so long as the Defaulting Party acts in accordance with a commercially reasonable plan of action to cure such default prepared by such Defaulting Party and delivered to the other parties hereto.
15. Force Majeure. For purposes of this Agreement, the term "Force Majeure" shall mean, and have application, as provided in **Exhibit "D"**.
16. Mutual Assistance. The City, Continental and NewQuest will each do all things reasonably necessary and appropriate to carry out the terms and provisions of this Agreement.
17. Exhibits. All Exhibits to this Agreement are incorporate by reference for all purposes as if fully set forth herein.

CONTINENTAL HOMES OF TEXAS, L.P.
A Texas Limited Partnership

By: CHTEX of Texas, Inc.,
A Delaware Corporation
Name: Stacey H. Dwyer
Title: Stacey H. Dwyer
Executive Vice President

A-S 93 SH 130-SH 45, L.P.,
A Texas limited partnership

By: A-S 93, L.C., a Texas limited liability company,
General Partner
Name: Steven D. Alvis
Title: Manager

CITY OF PFLUGERVILLE
A Texas Home Rule Municipal Corporation

By: Brandon Wade
Name: Brandon Wade
Title: City Manager

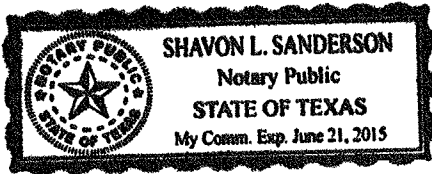
Attested to: Deputy City Secretary
Deputy City Secretary

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared Stacey H. Dwyer, EVP of CHTEX of Texas, Inc. Delaware corporation, General Partner of Continental Homes of Texas, L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and sworn and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated and as the act and deed of the said corporation as General Partner of said limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 15th day of October, 2012.



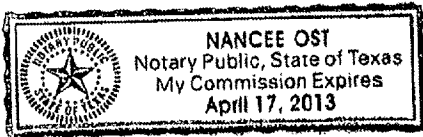
Shavon L. Sanderson
Notary Public in and for
The State of Texas

STATE OF TEXAS,

COUNTY OF TRAVIS.

BEFORE ME, the undersigned authority, on this day personally appeared Steven D. Alvis, Manager of, A-S 93 L.C., a Texas limited liability company, General Partner of A-S 93 SH 130-SH 45 L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and sworn and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated and as the act and deed of said limited liability company, as General Partner of said limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 14 day of September, 2012.



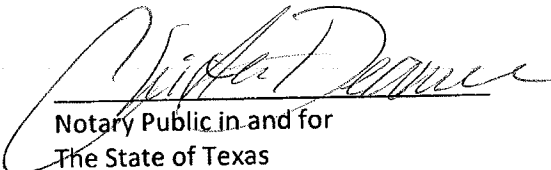
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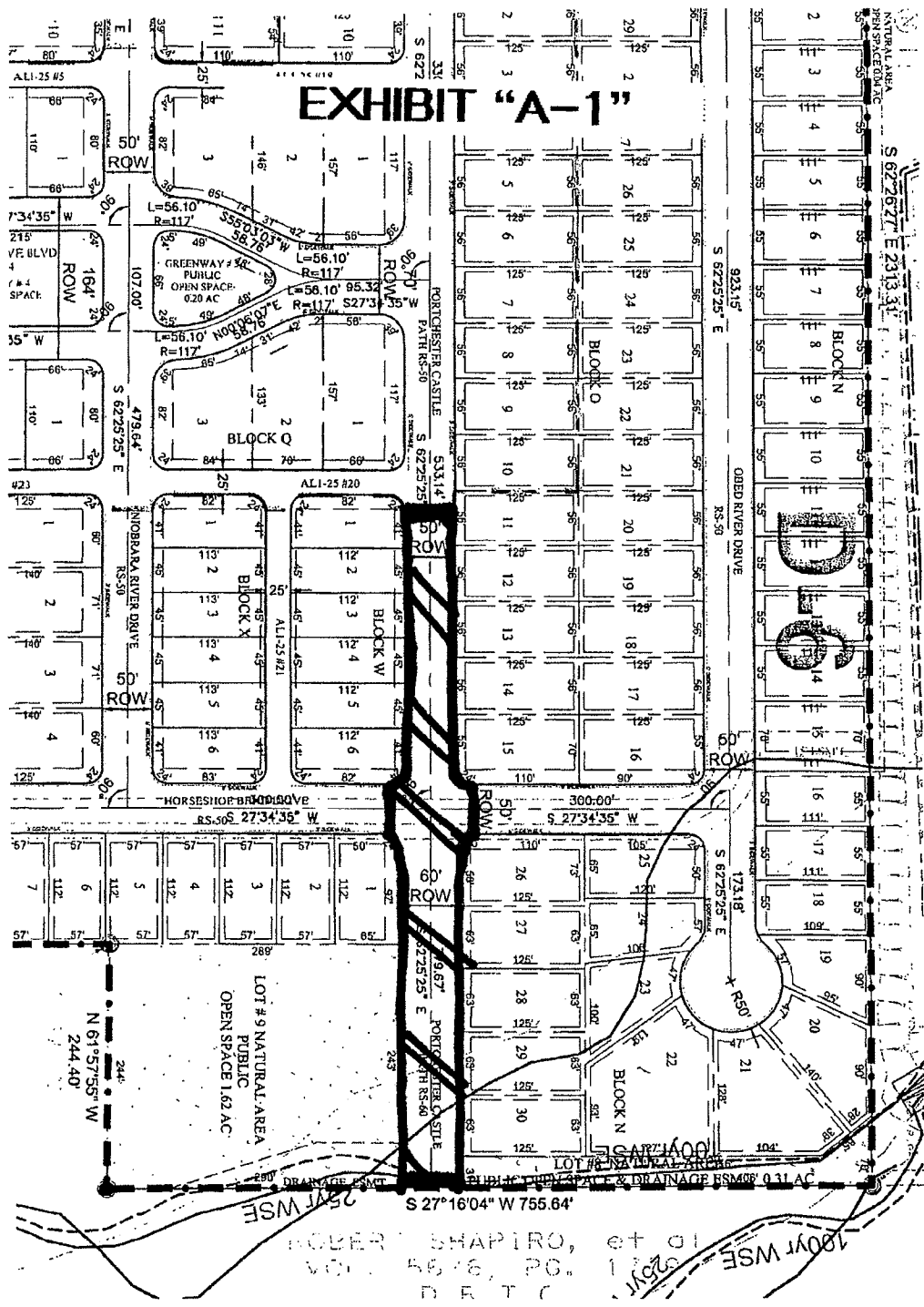
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COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared BRANDON WADE, City Manager of, the City of Pflugerville, known to me to be the person whose name is subscribed to the foregoing instrument, and sworn and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 19 day of October, 2012.




Notary Public in and for
The State of Texas



PAPE-DAWSON ENGINEERS

K BLVD | AUSTIN TEXAS 78757 | PHONE: 512.454.8711
FAX: 512.459.8067

ENGINEER'S OPINION OF DEVELOPMENT COST		
Project: Highland Park D-6; Porchester Castle Path Extension	Client: DR HORTON	
Project No:	Date: January 14, 2011	
Prepared By: PAPE-DAWSON ENGINEERS, INC.	Lots:	
Quantities From: Preliminary Plan	UPA:	
Unit Costs From: Similar Projects	Acres:	
SUMMARY OF PROBABLE COSTS		
ITEM		TOTAL COST
Street Improvements		\$96,098.00
Drainage Improvements		\$59,540.00
Water Improvements		\$42,610.00
Wastewater Improvements		\$25,240.00
ESC Improvements		\$6,110.00
SUBTOTAL		\$229,598.00
CONTINGENCY	15%	\$34,439.70
SUBTOTAL		\$264,037.70
FEES		
City of Pflugerville Review and Inspection fees, 4.0%		\$10,562.00
GRAND TOTAL		\$274,599.70

The quantities shown are based upon preliminary plan information prior to City of Pflugerville approval and are subject to change to reflect City of Pflugerville review comments.

Since the ENGINEER has no control over cost of labor, materials, equipment, or services furnished by others, or over the contractor(s)' competitive bidding or market conditions, the ENGINEER'S opinions and construction cost estimates provided above have been made on the basis of the ENGINEER'S best judgement as an experienced and qualified professional ENGINEER familiar with the construction industry for which this estimate was prepared; but the ENGINEER cannot and does not guarantee that actual construction costs will not vary from this estimate.

EXHIBIT: B

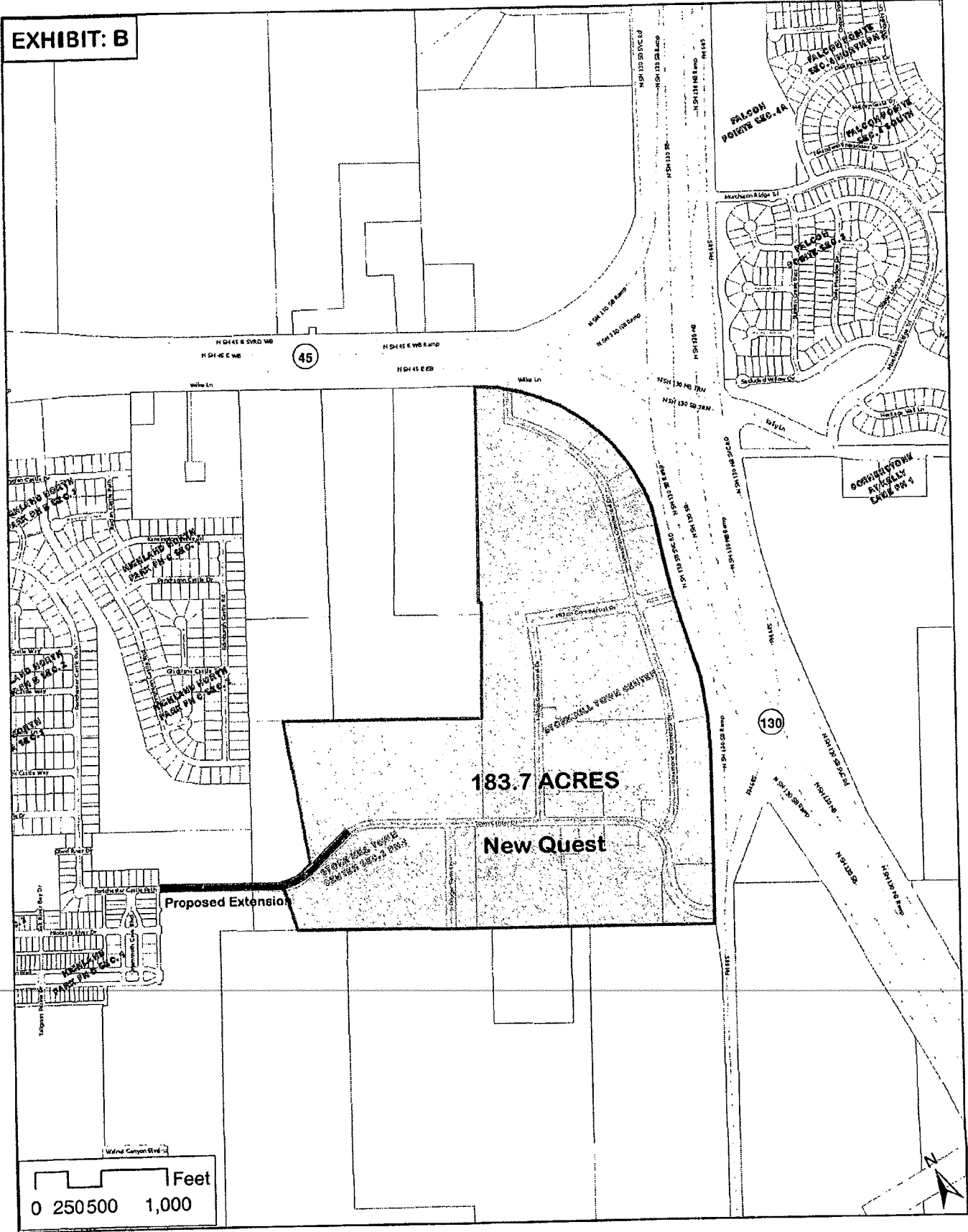
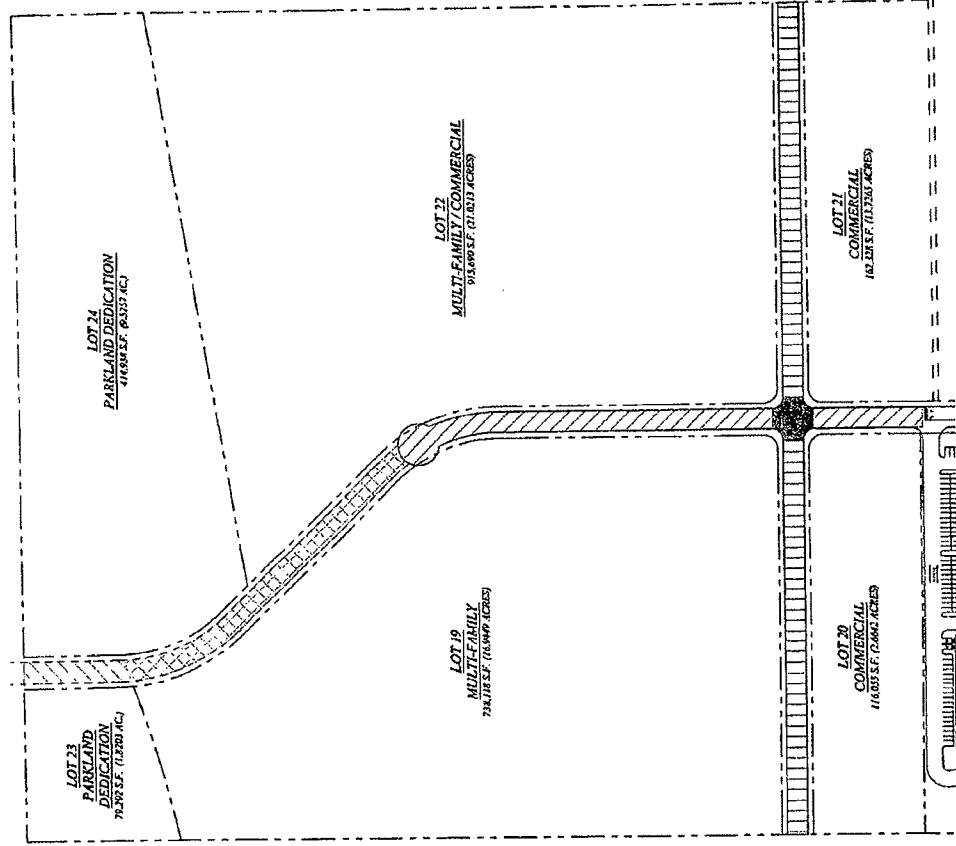





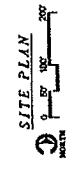


EXHIBIT "C-1"



-  CITY OF PFLUGERVILLE RESPONSIBILITY IN FLOODPLAIN ONLY
-  A-S 93 SH 130-SH 45, L.P. RESPONSIBILITY UPON DEVELOPMENT OF LOT 22
-  A-S 93 SH 130-SH 45, L.P. RESPONSIBILITY UPON DEVELOPMENT OF LOT 19
-  FUTURE TIMMERMAN ACCESS ROAD
- NOT RESPONSIBILITY OF A-S 93 SH 130-SH 45, L.P.
- FINAL ROAD ALIGNMENT TO BE DETERMINED BY A-S 93 SH 130-SH 45, L.P.
-  TO BE DEVELOPED WITH FUTURE TIMMERMAN ACCESS ROAD
- NOT RESPONSIBILITY OF A-S 93 SH 130-SH 45, L.P.



SITE PLAN
EXHIBIT
STONE HILL TOWN CENTER - PHASE II
 STATE HIGHWAY 45 & STATE HIGHWAY 130
 PELLIGERVILLE, TEXAS



EXHIBIT "D"

INFRASTRUCTURE DEVELOPMENT AND ESCROW TERMS AND CONDITIONS By and between NewQuest and the City of Pflugerville

The following terms and conditions shall apply, and be incorporated into the Agreement as if recited verbatim and shall control the Parties' administration and costs of the project related to this Grant:

1. Stipulated Cost of Project. The parties hereto agree that the stipulated cost of the Project shall not exceed \$1,475,277.00.
2. Certain Definitions. When used in this Agreement, the following terms shall have the respective meanings set forth below, unless the context otherwise requires, such definitions to be equally applicable to both singular and plural of the terms defined:
 - (a) "Affidavit" shall mean a sworn affidavit from NewQuest (or the general contractor performing the Development Work, in NewQuest's discretion) to the effect that to the actual knowledge of the affiant the construction of the Development Work has been completed in conformance with and in substantial compliance, in all material respects, with the Plans and Specifications, if applicable, and, to the actual knowledge of the affiant, that all labor and materials bills of every kind in connection with the construction of the development work as of such date have been paid in accordance with the provision of any applicable construction contract, except for the unpaid bills to be paid from the proceeds of the current advance requested.
 - (b) "City Engineer" shall mean the City Engineer of the City of Pflugerville, Texas.
 - (c) "Development Work" shall mean the completion of the design and engineering and construction of the Project.
 - (d) "Escrow Agent" shall be the City of Pflugerville, Texas, unless all parties agree in writing to an independent third-party to act as Escrow Agent for this project.
 - (e) "Force Majeure" means if the operations contemplated by this Agreement are prevented or interrupted by Act of God, weather, fire, war, strikes, delays in permitting of construction of improvements required by any applicable governmental authority, or any other cause whatsoever beyond the commercially reasonable control of the parties hereto, the affected obligations hereunder shall be suspended until the parties are able to perform such obligations in the manner envisioned herein.

- (f) "Performance Default" shall mean the occurrence of, or projected occurrence of, (i) a material deviation from the Plans and Specifications, other than as reasonably required to complete the Development Work required thereunder, or (ii) a failure of NewQuest to complete the Development Work by the Completion Date (defined below), subject to Force Majeure, and in either case such deviation has not been previously approved by the City in writing (and City will not unreasonably withhold or delay its consent for any such change reasonably required to complete the Development Work if such change is not the result of the negligence of or failure to perform by NewQuest).
- (g) "Plans and Specifications" shall mean the plans and specifications for the Development Work, as prepared by the Project Engineer, which have been approved in writing by City and NewQuest as provided below.
- (h) NewQuest/City of Pflugerville Segment shall mean the extension of Town Center Drive between Stone Hill Town Center and the Highland Park Subdivision, including construction of all related infrastructure (including but not limited to water and sewer mains, drainage and other utilities) as described on Exhibit "C" of that certain ECONOMIC DEVELOPMENT AGREEMENT between the Parties entitled "SHTC CONNECTION TOWN CENTER DRIVE & PORTCHESTER CASTLE PATH EXTENSION CITY OF PFLUGERVILLE, TEXAS."
- (i) "Project Engineer" means the engineer to be selected by NewQuest to provide engineering consulting services related to the design of the Project and related matters. The selection of the Project engineer must comply with Section 3.3 of this Agreement and is subject to the approval of City.
- (j) "Request for Advance" shall mean a statement of the Contractor or NewQuest, with an Affidavit, and approved by the Project Engineer, and City Engineer, setting forth the parties to whom money is owed in respect to the Development Work and the amount owed; and which states, among other things, that such amounts represent payment due for labor or services actually rendered or materials actually acquired or furnished.

3. Development Work.

3.1 Plans and Specifications.

- (a) Plans and Specifications. NewQuest shall furnish to City interim plans and

specifications at 30, 60 and 90% completion intervals for review, comment as regular and customary in a municipal capital improvement project. 100% plans and specifications for the Project shall be approved by all parties.

(b) Deviation from Plans and Specifications. NewQuest shall not have the right to deviate from the final set of Plans and Specifications approved by the City unless approved in writing by the Parties.

3.2 Development Work. NewQuest agrees to take all requisite and necessary action to finish and deliver for the City approval the Preliminary Plans and Specifications and, upon such approval, thereafter diligently prosecute the Development Work in accordance with the final Plans and Specifications until completion. NewQuest agrees that it will complete all Development Work within 30 days after City approval of the final Plans and Specifications, subject to Force Majeure (the "Completion Date"). The Development Work shall be performed in a first class and workmanlike manner in accordance with good construction practices and applicable law.

3.3 Selection of Project Engineer and Project Contractor. NewQuest, as Project Manager, in its discretion shall select any and all professional services and/or contractors necessary to complete the project.

3.4 Cooperation of City and NewQuest. City and NewQuest will jointly execute any applications, permits, or related documents necessary to satisfy and complete the Development Work and shall otherwise reasonably cooperate in connection with the performance of the Development Work to the extent necessary, including (without limitation) granting any reasonably necessary temporary construction easements and drainage or utility easements.

4. Escrow Deposit.

4.1 Escrow Deposit. The parties agree to deposit with the Escrow Agent the sums that follow: City \$555,023.00; NewQuest \$645,655.00; which sums approximate the total Project Costs (the "Escrow Deposit").

4.2 Receipt of Escrow Deposit. Subject to Section 4.1 the Escrow Agent acknowledges receipt of the initial Escrow Deposit on the effective date of this Agreement, and agrees to retain the Escrow Deposit in the Escrow Account and to disburse the Escrow Deposit in accordance with the terms of this Agreement.

4.3 Use of Escrow Deposit. Subject to the terms of Section 4 the Escrow Deposit shall be used solely for the purpose of paying for the completion of

the Development Work.

4.4 Investment of Escrow Deposit. The Escrow Deposit if held by the City shall be held at the discretion of the City. The Escrow Deposit, if held by a third-party, shall be maintained in an interest bearing account in an institution approved by the Parties, in the name of Escrow Agent for the benefit of NewQuest, pursuant to this Agreement (with NewQuest's taxpayer identification number) (the "Escrow Account"). All interest earned on the Escrow Deposit shall be added to and shall be deemed to be a part of the Escrow Deposit for all purposes.

5. Delivery and Release of Escrow Deposit.

5.1 Requests for Advances. NewQuest will make Requests for Advances no more often than once each month on or about the 10th day of the calendar month; provided NewQuest shall not make Requests for Advances that would cause the Escrow Account to be less than One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00). NewQuest shall not make any request for disbursement from the Escrow Deposit, and Continental shall not be entitled to any disbursement with respect to the performance of the Development Work, until the following conditions precedent are satisfied:

- (i) NewQuest, with written notice to City, the Project Engineer and Escrow Agent, provides a Request for Advance with respect to the requested payment; and
- (ii) Escrow Agent has received a statement by the Project Engineer that the portion of the Development Work for which payment is requested has been completed substantially in accordance with the Plans and Specifications; and
- (iii) Escrow Agent has received an Affidavit (as defined above) associated with such Request for Advance; and
- (iv) Escrow Agent has received a statement from the City Engineer confirming that the portion of the Development Work for which payment is requested has been completed substantially in accordance with the Plans and Specifications.

City and shall provide written notice to NewQuest and Escrow Agent of any objection to the payment of the sums associated with the particular Request for Advance within five (5) business days after City and NewQuest's receipt of

the above documentation. If City or NewQuest makes any such written objection, then City and NewQuest will work together, in good faith, to reasonably resolve any such objection so that the Request for Advance can be funded. If, within such five (5) business day period, City fails to provide to NewQuest and the Escrow Agent written objection to such Request For Advance, then, in such case, City will be deemed to have approved such Request for Advance in its entirety and the Escrow Agent shall proceed to disburse the appropriate funds represented by such Request For Advance out of the Escrow Deposit. NewQuest may require that any advances be made directly to the Project Engineer or any contractor, subcontractors and materialmen (if any) who have provided material in connection with the Development Work.

- 5.2 Final Request for Advance. The Final Request for Advance from the Escrow Deposit to be made by NewQuest shall be for the balance of the Escrow Deposit in the Escrow Account that reflects NewQuest's actual cost to complete the project. To request the final advance, NewQuest must deliver to the Escrow Agent a Final Request for Advance from the Escrow Deposit and deliver (i) a certificate from the Project Engineer that the Development Work is substantially completed for acceptance by City as a public street, subject only to completion of any inconsequential details and any final punch list items as determined by the City Engineer; (ii) a statement from the City Engineer confirming the final completion of the Development Work and (iii) the receipt by City and NewQuest of a final lien waiver from any general contractor performing the Development Work. Upon the payment of the sums associated with the Final Request for Advance, NewQuest will have no further obligation associated with the Development Work, except for a two-year maintenance warranty.
- 5.3 Disbursement/Refund of Remaining Funds. Contemporaneously with the disbursement of the sums associated with the Final Request for Advance, Escrow Agent shall immediately disburse to City and NewQuest any balance of the Escrow Deposit in the Escrow Account, if any in the percentages show in Section II, (3) of the Economic Development Agreement for the Project.

6. Replacement of NewQuest.

- 6.1 Performance Default. In the case of a Performance Default, NewQuest shall have thirty (30) days after receipt of written notice from City (the "Default Notice") to cure such default before City may exercise its right under this Section; and, if not reasonably susceptible to cure within such thirty (30) day period, then so long as cure is commenced within such period; and

completed within a period of time as is reasonably necessary for such cure. In the event NewQuest fails to cure such Performance Default within such thirty (30) day period after the Default Notice, City may elect to complete the Development Work, in the name of, and for the account of NewQuest, in a commercially reasonable manner, with a full accounting to the other parties of such expenditures. In addition, City may seek monetary damages against NewQuest in a court of competent jurisdiction for such default.

6.2 Completion of Development Work by City and NewQuest. If City or NewQuest elects to complete such Development Work, as contemplated in this Section 6, it shall give written notice of such election (the "Election Notice") to Continental and the Escrow Agent. Continental agrees that upon its receipt of such Election Notice, City and NewQuest shall specifically be empowered to complete the Development Work in the name of, and for the account of Continental. At such time, the Escrow Agent is authorized to disburse the Escrow Deposit to City or NewQuest, as the case may be, for such purposes in compliance with the terms of this Agreement.

7. Duties of Escrow Agent.

7.1 Duties of Escrow Agent. The duties of Escrow Agent under this Agreement shall be entirely administrative, and not discretionary, and are limited specifically to the duties expressly stated herein. Escrow Agent shall not be responsible for the sufficiency, correctness, genuineness or validity of any certification, statement, release or other instrument tendered to it hereunder or with respect to the form or execution of the same, or the identity, authority, or rights of any person executing or depositing the same, and Escrow Agent shall be protected in acting upon any certification, statement, release, waiver, consent, receipt of other paper or document reasonably believed by Escrow Agent to be genuine and to be signed by the proper party or parties.

7.2 Waiver. City and NewQuest hereby waive any suit, claim, demand or cause of action of any kind which they may have or may hereafter have against Escrow Agent arising out of or relating to Escrow Agent's performance of its obligations pursuant to Section 7.1 of this Agreement, unless such suit, claim, demand or cause of action is based on Escrow Agent's willful misconduct, gross negligence, or bad faith.

7.3 Indemnity. Excepting for claims, demands or losses based on the Escrow Agent's gross negligence, willful misconduct or bad faith in which gross

negligence, willful misconduct and bad faith are established by entry of a final judgment by a court of competent jurisdiction, City and NewQuest hereby agree, to the extent allowed by law, to indemnify the Escrow Agent and hold it harmless from and against any and all claims, losses, costs, damages, charges, liabilities or expenses, including court costs and reasonable attorneys' fees, which the Escrow Agent may suffer or incur as a result of its acting as the Escrow Agent under this Agreement.

7.4 Fees and Expenses. Any and all permitted fees charged by the Escrow Agent in connection with this Agreement, if any, shall be paid from the Escrow Deposit, upon a proper accounting thereof by Escrow Agent to City and NewQuest.

8. Miscellaneous.

- 8.1 Insurance. NewQuest agrees to provide certificates of insurance and obtain risk insurance coverage for casualty loss and public liability in amounts that may be reasonably required by City, to protect the each of the Parties.
- 8.2 No Partnership. City and NewQuest expressly disclaim any intention to create by this Agreement or any acts or omissions in connection herewith a partnership, joint venture, or any other association that would create joint and several liabilities or otherwise render the parties liable as partners.
- 8.3 No Third-Party Beneficiary. Nothing in this Agreement, express or implied, is intended or may be construed to confer on any person or entity, other than City, NewQuest, and Escrow Agent, and their respective successors and assigns, any right, remedy or claim by reason of this Agreement.
- 8.4 Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be sent by hand delivery, confirmed receipt by facsimile or mailed by certified or registered mail, postage prepaid, express mail, or a national overnight carrier, addressed or faxed to the address annexed to the signature block of the respective parties below. The parties reserve the right to change such address or facsimile numbers as any party may from time to time designate by giving notice in writing to the other party.