

Sponsor: John Gieseke, Rory Riddler, Larry Muench, Mark B. Brown, Bob Kneemiller, Michael Weller, Jerry E. Reese, Dottie Greer, Joe Koester, Bob Hoepfner

An Ordinance Authorizing a Development Finance Agreement with Whittaker Builders, Inc. Clarifying Obligations of the Parties in Connection with the Establishment of the Proposed New Town at St. Charles Neighborhood Improvement District and the Implementation of the Proposed New Town at St. Charles Neighborhood Improvement District Infrastructure Project.

Whereas, the City of Saint Charles (the "City") has entered into a certain Development Agreement dated as of July 15, 2003 (the "Master Agreement") with Whittaker Builders, Inc. ("Developer") which provides, among other things, that the City shall take such steps as may be necessary and as Developer may request to assist Developer in recovering costs of constructing and installing lakes, storm water systems, bridges and other public infrastructure (collectively, the Improvements") which confer a benefit on properties within an area containing approximately 630.84 acres within the City and to be established applying principles of "new urbanism" as master planned, model, mixed use community known as "The New Town at St. Charles" (the "Development"), including designation in accordance with the Neighborhood Improvement District Act, sections 67.453 through 67.475 of the revised Statutes of Missouri, as amended (the "NID Act"), of a neighborhood improvement district, as that term is used and defined in the NID Act, for the Development; and

Whereas, the City and Developer in the Development Finance Agreement, a copy of which is attached as Exhibit A to and incorporated by reference in this Ordinance (the "Finance Agreement"), have restated and clarified their mutual expectations and obligations under the Master Agreement in respect of the undertaking and financing of the installation of the Improvements through the issuance of a series of neighborhood improvement district limited general obligation bonds or notes (the "NID Obligations") and the levying of certain special assessments on the benefited properties within the Development, all pursuant to the NID Act and have set forth the procedures and timing and phasing of events regarding the establishment of the neighborhood improvement district for the Development (the "District"), the delineation of the Improvements within the District, the issuance of the NID Obligations, the levying and collection of NID Assessments and other attendant matters;

Now, Therefore, Be it Ordained by the Council of the City of Saint Charles, Missouri, as follows:

SECTION 1. The Finance Agreement is hereby approved in substantially the form of Exhibit A to this Ordinance and the Mayor and City Clerk are hereby authorized and directed to execute the Finance Agreement on behalf of the City.

SECTION 2. The Mayor, City Administrator, City Clerk, City Attorney, and applicable City staff are hereby further authorized and directed to execute and deliver such further instruments and take such further actions as may be necessary or convenient and from time to time to cooperate with Developer to carry out the intent of this Ordinance and to obtain for the City the benefits of the Development and the Finance Agreement.

SECTION 3. The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the Council would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

SECTION 4. This Ordinance shall be in full force and effect from and after the date of its passage and approval.

June 15, 2004  
Date Passed

June 25, 2004  
Date Approved by Mayor

Rory Riddler  
Rory Riddler, Presiding Officer

Patricia M. York  
Patricia M. York, Mayor

Attest:  
Marilyn K. McCoy  
City Clerk

Approved as to Form:  
Michael J. Valenti 5/27/04  
Michael J. Valenti, City Attorney Date

CO4-296

## DEVELOPMENT FINANCE AGREEMENT

THIS DEVELOPMENT FINANCE AGREEMENT (this "Agreement") is entered into as of this 25th day of June, 2004 by and between the CITY OF SAINT CHARLES, a constitutional charter city and Missouri municipal corporation located in St. Charles County (the "City") and WHITTAKER BUILDERS, INC., a Missouri corporation having a principal address at 355A Mid Rivers Mall Drive, St. Peters, Missouri 63376 ("Developer"). *Capitalized terms used and not defined herein shall have the meanings respectively ascribed to them in Section 1 of this Agreement.*

### RECITALS

A. Developer and the City have previously entered into a certain Development Agreement dated as of July 15, 2003 (the "Master Agreement") which provides, among other things, that the City shall take such steps as may be necessary and as Developer may request to assist Developer in recovering costs of constructing and installing lakes, storm water systems, bridges and other public infrastructure which confer a benefit on properties within the Development, including designation in accordance with the NID Act of a neighborhood improvement district, as that term is used and defined in the NID Act, for the Property.

B. The City, pursuant to the Master Agreement and upon due deliberation, is willing to establish a neighborhood improvement district for the Property and the Development in accordance with the NID Petition submitted or to be submitted by Developer in accordance with this Agreement and to finance the undertaking and installation of the Improvements, through the issuance of a series of neighborhood improvement district limited general obligation bonds or notes and the levying of certain special assessments on the Property, all pursuant to the NID Act and as provided in this Agreement (the "NID Financings").

C. The parties desire to restate and clarify their mutual expectations and obligations under the Master Agreement in respect of the NID Financings and to set forth the procedures and timing and phasing of events regarding the establishment of the District, the delineation of the Improvements and projects within the District, the issuance of the NID Bonds, the levying and collection of NID Assessments and other attendant matters.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby mutually acknowledged, and intending to be mutually bound hereby, the City and Developer hereby agree as follows:

1. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:

"*Assessment Ordinance*" shall mean one or more ordinances duly adopted by the Council in general conformance with Schedule 2 to in this Agreement, the effect of which shall be to impose the NID Assessments against the properties identified in an Assessment Roll in accordance with the NID Act, with the first such NID Assessment commencing not later than the

second anniversary of the date of this Agreement, and in each case, in aggregate amounts sufficient to pay principal and interest on associated NID Bonds so issued.

*"Assessment Roll"* shall mean the corresponding assessment roll for the Phase One through the Phase Nine Improvements, including any applicable amendments following public hearings and as approved by the Council from time to time by ordinance.

*"Council"* shall mean the duly elected and serving governing body of the City.

*"Completion Date"* shall mean the dates on which the City formally accepts the dedication of any phase of the Improvements in the manner provided in Section 3 of this Agreement; *provided that* such phase of the Improvements shall have been fully completed in a first-class and workman-like manner in accordance with applicable City standards for such work and in a manner which permits submittal to the City of a Certificate of Completion for such phase of the Improvements; and *provided further that* such acceptance shall in no event occur later than two (2) years after a Construction Start Date.

*"Certificate of Completion"* shall mean a certificate in substantially the form of Exhibit B, attached to and incorporated by reference in this Agreement, evidencing the satisfactory completion of a respective phase of the Improvements in accordance with this Agreement.

*"Construction Start Date"* shall mean the date of actual commencement of construction of any phase of the Improvements which shall be in general conformance with the tentative dates provided in Schedule 1 to this Agreement.

*"Development"* shall mean a master planned, model, mixed use community located within the City known as "The New Town at St. Charles" to be established applying principles of "new urbanism" on the Property.

*"District"* shall mean the New Town at St. Charles Neighborhood Improvement District of the City encompassing the Property and established pursuant to this Agreement.

*"Financial Advisor"* shall mean an independent public finance advisor having recognized expertise in matters of municipal finance and capital formation selected by the City.

*"Financing Ordinance"* shall mean one or more ordinances duly adopted and approved by the Council following public hearing pursuant to the requirements of the NID Act and ordering that certain phases of Improvements be made within the District, and directing that financing for the costs of such Improvements be obtained.

*"Governmental Authority"* shall mean any federal, state and municipal government, agency, court, department, commission, board, or officer having jurisdiction over any portion of the Improvements or the construction thereof.

*"Governmental Requirement(s)"* shall mean all present and future laws, ordinances, orders, directives, rules, regulations and requirements of any Governmental Authority and all

building permits and other licenses and approvals required by any codes, ordinances, or Governmental Authority in connection with this Agreement.

*"Improvements"* shall mean, collectively, the Phase One Improvements through the Phase Nine Improvements generally located within the correspondingly numbered Development Phases illustrated on that certain "Phasing Diagram" set forth at page 8, Section "C-Plan" of "New Town St. Charles" prepared by Duany Plater-Zyberk & Company, Architects and Town Planners dated 12-29-03, and as further identified on Schedule 1 to this Agreement and as described more particularly in the Plans and Specifications for each such phase of Improvements, together with respective design, legal and similar costs for each such phase of Improvements.

*"NID Act"* shall mean the Missouri Neighborhood Improvement District Act, Sections 67.453 through 67.475 of the Revised Statutes of Missouri, as amended.

*"NID Assessments"* shall mean the special assessments to be imposed by the City against the properties listed in an Assessment Roll and used by the City to pay principal of and interest on a series of NID Bonds.

*"NID Bonds"* shall mean one or more series of neighborhood improvement district limited general obligation bonds or notes issued by the City in general accordance with the phasing set forth in Schedule 2 to this Agreement the proceeds of which shall be used to pay, among other things, the costs of a respective phase of the Improvements together with the costs of issuance of such series.

*"NID Bond Proceeds"* shall mean the net cash proceeds from the sale of any series of the NID Bonds after payment of all reasonable and customary costs of issuance of the NID Bonds, including, but not limited to underwriters' discounts and fees, bond counsel and attorneys' fees, financial advisor fees, bond registration fees, prepaid interest, debt service reserves, costs of printing any NID Bonds and any official statement relating thereto, costs of credit enhancement, if any, and fees of any rating agency rating the NID Bonds, together with any interest earned thereon.

*"NID Petition"* shall mean a proper petition for the establishment of the District which meets the requirements of section 67.457.3 of the NID Act and in substantially the form of Exhibit A, attached to and incorporated by reference in this Agreement.

*"Plans and Specifications"* shall mean those certain construction drawings, design specifications, and final cost estimates for the construction of any phase of the Improvements and approved by the City in a Financing Ordinance.

*"Property"* shall mean the real property within the Development containing approximately 630 acres and further legally described in Exhibit A to the NID Petition.

**2. Submittal of NID Petition; Approval of District and Phased Improvements.**  
The parties acknowledge that, pursuant to the Master Agreement, Developer has prepared and filed with the Clerk of the City the NID Petition and that, contemporaneous with the approval and execution of this Agreement, the City will expeditiously take such steps as are required under the

NID Act to establish the District. Additionally, for the Phase One Improvements and each subsequent phase through the Phase Nine Improvements, the City shall expeditiously cause preparation, in cooperation with Developer, of Plans and Specifications; cause preparation of Assessment Rolls; conduct required public hearings; order each phase of the Improvements and the making of associated NID Assessments; and, by adoption of a Financing Ordinance, order and direct the issuance of the NID Bonds for the respective phase of the Improvements, all in accordance with Schedules 1 and 2 to this Agreement.

3. **Construction and Maintenance of the Improvements.** The City hereby designates Developer as the agent of the City to prepare Plans and Specifications for and to construct or cause to be constructed Phase One through Phase Nine of the Improvements, inclusive, pursuant to this Agreement. For purposes of this Agreement and compliance with the NID Act, each phase of the Improvements shall be deemed complete upon a respective Completion Date; *provided that* from the respective Construction Start Date through such Completion Date, Developer shall maintain the respective phase of the Improvements in a condition reasonably satisfactory to permit dedication and acceptance by the City of the said phase of the Improvements under all applicable Governmental Requirements. Developer shall use good faith efforts to cause the Phase One through the Phase Nine Improvements to be completed in general conformance with Schedules 1 and 2 to this Agreement, subject to force majeure provisions set forth in Section 8 of this Agreement, and in a first-class and workman-like manner in accordance with applicable City standards for such work for acceptance and public maintenance of same by the City. Developer shall obtain or provide at Developer's sole cost and expense, such easements over public or private property within the Development as may reasonably be required for the installation of any phase of the Improvements, including, without limitation such temporary construction easements as shall be reasonably necessary to permit the installation of the Improvements in accordance with customary construction practices for such work. Each phase of the Improvements shall be deemed completed and accepted for public maintenance upon filing by Developer of a Certificate of Completion therefor and adoption by the City of a resolution of the Council accepting such Certificate of Completion and the dedication provided for therein.

In performing or causing the construction and installation of Phase One through Phase Nine of the Improvements, Developer may enter into one or more construction contracts; *provided that* upon written request, any such contractor or contractors shall furnish to the City evidence of financial responsibility reasonably satisfactory to the City. Such construction contract or contracts shall be subject to the terms of this Agreement. Developer shall allow authorized representatives of the City access to the work site from time to time upon reasonable advance notice prior to the completion of any phase of the Improvements for reasonable inspection thereof. During the construction and installation of Phase One through Phase Nine of the Improvements, Developer shall obtain or shall ensure that any contractor or subcontractor of Developer in connection with the installation of the Improvements obtains workers' compensation, comprehensive public liability and builder's risk insurance coverage for the Improvements with insurers licensed to do business in the State of Missouri and in amounts customary in the industry for similar type projects; *provided that* Developer may use umbrella or blanket liability policies in satisfaction of the foregoing requirements. Each such policy shall name the City as an additional insured or loss payee, as applicable. Developer shall maintain such policies or ensure that such

policies are maintained at all times during the construction of the Improvements and shall provide to the City, upon request, copies of certificates of insurance or other documentation reflecting compliance with insurance requirements of this Section 3. In the event of a casualty to any phase of the Improvements, proceeds of such insurance policies shall be utilized solely to repair or restore such phase of the Improvements; *provided that*, in the cases of umbrella or blanket policies, this provision shall apply only to the extent of coverage allocable to the Improvements.

4. **Terms of NID Bonds; Procedures for Issuance.** Developer agrees to advance the costs of constructing Phase One through Phase Nine of the Improvements and the City agrees to issue the NID Bonds, all in general conformance with Schedules 1 and 2 to this Agreement. All costs of each phase of the Improvements, together with such capitalized interest as may apply, shall be paid from the proceeds of the respective series of NID Bonds; *provided that* in no event shall final costs of any phase of the Improvements, including reimbursement of all expenditures by Developer for costs of Plans and Specifications (and the associated amount of NID Bonds to be issued therefor), as provided in this Agreement, exceed the total amount of NID Bond Proceeds set forth in Schedules 1 and 2 to this Agreement; *and provided further that* estimated final costs for any phase of the Improvements (and the associated amount of NID Bonds to be issued therefor) may be moved between phases to assure that each phase remains adequately funded and so long as the total aggregate face amount of the NID Bonds issued for any phase of Improvements shall not exceed the amount allocated therefor on Schedules 1 and 2 by an amount which is one-half of the average annual face amount of NID Bonds to be issued without prior City approval. In conjunction with the issuance of the NID Bonds, the City shall select one or more underwriters or purchasers and the Financial Advisor. Each series of NID Bonds shall bear interest at such rates, shall be subject to redemption, and shall have such terms as the City, acting through Bond Counsel, the Financial Advisor, and the respective underwriter or purchaser, shall determine in the City's sole discretion, after consultation with Developer, based upon a review of then-current market conditions, projected NID Assessments and cash flows available for debt service, subject to the application of prudent public finance and market economics principles. Timing, and terms of each series of NID Bonds shall result in and reflect: (i) minimization of financing costs, i.e. costs of issuance and interest costs; and (ii) adequacy of funds available for cost of the respective phase of the Improvements to be financed. The City and Developer hereby agree to assist and cooperate with one another and with Bond Counsel, the underwriter(s) or purchaser(s), and the Financial Advisor in the preparation of offering statements, private placement memoranda or other disclosure documents and all other documents necessary to market and sell any series of the NID Bonds.

5. **Obligations and Covenants of Developer.** Developer hereby agrees, covenants, represents and warrants to the City as follows:

(i) Developer shall include in each contract or agreement relative to the sale of any real property constituting any lot or portion of the Development executed after the effective date of this Agreement, and shall use best efforts to assure that each deed by which any such property is conveyed to any third party, contains language disclosing the pendency of the NID Assessments, the expected inception date and duration of such NID Assessments and the annual amount of the NID Assessment projected to be imposed against the real property to which such contract and deed relate; and

(ii) Developer shall pay all NID Assessments to be levied against any and all platted lots and parcels of real property listed on an Assessment Roll and owned by Developer or any affiliate thereof and located within the District pursuant to the NID Act, on or before the date such NID Assessments are due. Developer hereby waives any right, pursuant to Section 67.463.3 of the NID Act, to pay such NID Assessments in full in one lump sum, and hereby elects to pay such NID Assessments in substantially equal annual installments as provided in Section 67.463.4 of the NID Act. Developer further waives the right, in accordance with Section 67.465 of the Act, to file suit to set aside the NID Assessments, or otherwise question the validity of the NID Assessments, the establishment of the District, or any proceedings relating thereto; and

(iii) It being intended that the following covenants, agreements and waivers run with the land and bind future owners of all or any portion of the real property comprising the District, for the benefit of the City so long as any series of the NID Bonds remains outstanding, Developer further covenants and agrees that Developer shall, promptly upon the execution of this Agreement, record a declaration of restrictions against those lots within the NID District for which Developer or any affiliate of Developer is the record owner as listed in the real estate records of the Recorder of Deeds of St. Charles County, Missouri containing the following provision:

“Whittaker Builders, Inc. (“Whittaker”) has covenanted and agreed for the benefit of the City of Saint Charles, Missouri (the “City”), to pay all special assessments (the “NID Assessments”) to be levied against any and all platted lots and parcels of real property owned by Whittaker or its affiliated entities and its successors in title and located within the New Town at St. Charles Neighborhood Improvement District (the “NID District”) pursuant to the Missouri Neighborhood Improvement District Act, Sections 67.453 through 67.475 of the Missouri Revised Statutes, as amended (the “NID Act”), on or before the date such NID Assessments are due. Whittaker has also waived any right, pursuant to Section 67.463.3 of the NID Act, to pay such NID Assessments in full in one lump sum, and has elected to pay such NID Assessments in substantially equal annual installments as provided in Section 67.463.4 of the NID Act. Whittaker has further waived the right, in accordance with Section 67.465 of the NID Act, to file suit to set aside the NID Assessments or otherwise question the validity of the proceedings relating thereto. It is intended that the foregoing covenants, agreements and waivers run with the land and bind future owners of all or any portion of the land within the NID District, including future platted lots, for the benefit of the City so long as any notes or bonds relating the NID Assessments are outstanding. Such covenants, agreements and waivers may not be amended, modified or waived without the consent of the City so long as any notes or bonds relating to the NID Assessments are outstanding.”

6. **Obligations of the City.** The City shall use commercially reasonable efforts to cause the Council to adopt an Assessment Ordinance as soon as is practicable after each Completion Date. The City covenants and agrees to cooperate with Developer to obtain all approvals and/or permits issuable by any City agency or department, *provided that* such



cooperation shall be at no cost or expense to the City, and *provided further that* nothing in this Section 6 nor in this Agreement shall require the City to grant any approvals which the City would not be obligated to grant under the Master Agreement and applicable local ordinances and rules. The City further covenants that the City shall accept the dedications of Phase One through Phase Nine of the Improvements to public use as soon as is reasonably practicable after each respective Completion Date; *provided that* construction of such phase of the Improvements complies in all respects with provisions of this Agreement.

7. Termination.

7.1 City's Right of Termination. In the event of any material default on or breach of any term or condition of this Agreement or of the Master Agreement by Developer and upon failure of Developer to cure such default within thirty (30) days after notice thereof, the City may terminate this Agreement. The City's termination of this Agreement for any reason shall not affect, in any manner, the City's legal rights and obligations pursuant to the District or the establishment thereof or any legal rights and obligations of Developer pursuant to the District or the establishment thereof.

7.2 Developer's Right of Termination. Developer may, at Developer's option, terminate this Agreement upon written notice to the City within no more than five (5) business days of any of the following events:

(a) The City fails to adopt an Assessment Ordinance in a form reasonably acceptable to Developer on or before the third anniversary of any Construction Start Date; or

(b) The City materially breaches this Agreement and fails to cure such breach within thirty (30) days after written notice thereof from Developer.

8. Force Majeure. Neither the City nor Developer nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended, in the event of any delay caused for force majeure, including, without limitation, damage or destruction by fire or other casualty; condemnation; strike; lockout; civil disorder; war; restrictive government regulations; issuance of any permits and/or legal authorization by any governmental entity or by any public utility necessary for Developer to proceed with construction of and installation of the Improvements or the Development or any portion thereof; shortage or delay in shipment of material or fuel; acts of God; or other causes beyond the parties' reasonable control, including but not limited to, any court order or judgment resulting from any litigation affecting in any respect the validity of this Agreement, the NID Petition, the District, or the NID Bonds.

9. Assignment. The rights, duties and obligations of the parties under this Agreement shall be assignable in whole or in part, subject to prior written approval of the other party, which approval shall not be unreasonably withheld or delayed.

10. Notices. Any notice, demand, or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be

sufficiently given or delivered if dispatched by certified United States First Class Mail, postage prepaid, or delivered personally,

(i) In the case of Developer, to:

Whittaker Builders, Inc.  
355A Mid Rivers Mall Drive  
St. Peters, Missouri 63376  
Attn: Gregory G. Whittaker

With a copy to:

Brad Goss, Esq.  
Law Office of Brad Goss, L.L.C.  
21 Maryhill Drive  
St. Louis, Missouri 63124

(ii) In the case of the City, to:

City of Saint Charles  
200 North Second Street - City Hall  
Saint Charles, Missouri 63301  
Attn: City Administrator

with a copy to:

Michael Valenti, Esq.  
City Attorney  
200 North Second Street - City Hall  
Saint Charles, Missouri 63301

and a copy to:

Thomas A. Cunningham, Esq.  
Cunningham, Vogel & Rost, P.C.  
75 West Lockwood, Suite One  
St. Louis, Missouri 63119

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this Section 10.

11. **Remedies.** In the event of any default in or breach of any term or condition of this Agreement by either party, or any successor, the defaulting or breaching party (or successor) shall, upon written notice from the other party, proceed immediately to cure or remedy such default or breach, and, shall, in any event, within thirty (30) days after receipt of notice, commence to cure or remedy such default. In case such cure or remedy is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time but no less than thirty (30) days, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but

not limited to proceedings to compel specific performance by the defaulting or breaching party or termination of this Agreement. The parties, their successors and assigns, further agree that the other party shall have the right and power to institute and prosecute proceedings to enjoin the threatened or attempted violation of any covenant, agreement, restriction or regulation contained herein. The breaching party at all times shall have the right to appeal to the courts from any adverse decision so rendered.

**12. Additional Representations of the Parties.**

**12.1 Representations of the City.** The City hereby represents and warrants to Developer that:

(i) The execution and delivery of this Agreement will not conflict with or result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the City is a party or by which the City is bound or the City's ordinances, or any of laws, rules or regulations applicable to the City;

(ii) The City has full corporate power to execute and deliver and perform the terms and obligations of this Agreement and the City has been authorized by all necessary action to execute and deliver this Agreement, which shall constitute the legal, valid and binding obligation of the City, enforceable in accordance with its terms, subject to bankruptcy and other laws affecting creditors' rights generally and to general principles of equity.

**12.2 Representations of Developer.** Developer hereby represents and warrants to the City that:

(i) The execution and delivery of this Agreement by Developer will not conflict with or result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which Developer or any affiliate or principal of Developer is a party or by which Developer or any affiliate or principal of Developer is bound or any applicable articles of organization, or operating agreement, or any of the rules or regulations of any Governmental Authority applicable to Developer or any affiliate or principal of Developer;

(ii) Developer is duly organized under the laws of the State of Missouri, and has full corporate power to execute and deliver and perform the terms and obligations of this Agreement, which shall constitute the legal, valid and binding obligation of Developer, enforceable in accordance with its terms, subject to bankruptcy and other laws affecting creditors' rights generally and to general principles of equity.

**13. Miscellaneous.**

**13.1 Binding Effect.** Except as otherwise expressly provided in this Agreement, the covenants, conditions and agreements contained in this Agreement shall bind and inure to the benefit of Developer and the City and their respective permitted successors and assigns.

**SCHEDULE 1  
IMPROVEMENTS BY PHASE AND TENTATIVE COMPLETION DATES**

<u>Improvement Phase</u>	<u>Estimated Cost<sup>1</sup></u>	<u>Improvements (by Category/Type)</u>	<u>Tentative Completion Date<sup>2</sup></u>
One	\$4,000,000.00	1, 2, 3, 4, 5, 6, 7, 8, 9	September 2004
Two	\$4,949,000.00	1, 2, 3, 4, 5, 6, 7	May 2005
Three	\$2,009,000.00	1, 2, 3, 4, 5, 6, 7	August 2005
Four	\$3,552,500.00	1, 2, 3, 4, 5, 6, 7	May 2006
Five	\$5,512,500.00	1, 2, 3, 4, 5, 6, 7, 8, 9	May 2007
Six	\$1,837,500.00	1, 2, 3, 5, 6, 7	January 2009
Seven	\$1,702,000.00	1, 2, 3, 4, 5, 6, 7	May 2010
Eight	\$3,802,050.00	1, 2, 3, 4, 5, 6, 7	May 2011
Nine	<u>\$2,365,000.00</u>	1, 2, 3, 4, 5, 6, 7	December 2012
<b>All Phases</b>	<b>\$30,000,000.00</b>		

**Improvement Category/Type Key:**

- 1 = Lakes, fountains, grading, storm and flood control
- 2 = Vehicular and pedestrian bridges
- 3 = Storm sewers, drainage works and pipeline water controls
- 4 = Lake edge walls and cast iron bollards
- 5 = Decorative street lights, furnishings and signage
- 6 = Sidewalks and trails
- 7 = Street trees, landscaping and plantings
- 8 = Sanitary sewerage vacuum/pump station
- 9 = Sanitary off-site sewer

<sup>1</sup> Represents portion of total Development financed by NID Bonds; total cost of Development (including privately financed portions associated with Improvements) will substantially exceed estimated costs of NID "Improvement(s)."

<sup>2</sup> Assumes average 10 month construction period; actual schedule will be dependent upon, among other things, weather conditions, materials delivery schedules and site conditions.

**SCHEDULE 2**  
**NID BOND AMOUNTS AND TENTATIVE ISSUANCE SCHEDULE**

<u>Phase of Improvements</u>	<u>Approx. Acres Benefited</u>	<u>NID Bond Amount</u>	<u>Projected Issuance Date</u>
Phase One	130	\$ 4,000,000	September 1, 2004
Phase Two	101	\$ 4,949,000	September 1, 2005
Phase Three	41	\$ 2,009,000	March 1, 2006
Phase Four	70	\$ 3,552,500	March 1, 2007
Phase Five	105	\$ 5,512,500	March 1, 2008
Phase Six	35	\$ 1,837,500	March 1, 2009
Phase Seven	32	\$ 1,702,400	September 1, 2010
Phase Eight	71	\$ 3,802,050	September 1, 2011
Phase Nine	49	\$ 2,635,050	February 1, 2013
<b>TOTALS</b>	<b>634</b>	<b>\$ 30,000,000</b>	

