BOARD OF DIRECTORS
Special Meeting Agenda

TROPHY CLUB MUNICIPAL UTILITY DISTRICT NO. 1
100 MUNICIPAL DRIVE
TROPHY CLUB, TEXAS 76262

September 30, 2015	6:00 P.M.	Svore Municipal Boardroom

SPECIAL MEETING

CALL TO ORDER AND ANNOUNCE A QUORUM

SPECIAL SESSION

1. Consider and take appropriate action to approve Non-Standard Water and Wastewater Agreement with CP Trophy Club LLC for the development known as Meat-U-Anywhere.

   attachment: NSA CP Trophy Club LLC

2. Consider and take appropriate action to approve Non-Standard Water and Wastewater Agreement with OTD TC, LLC for the development known as Bread Winners.

   attachment: NSA OTD TC, LLC

EXECUTIVE SESSION

3. Deliberations pursuant to Section 551.074(a)(1) of the Texas Open Meetings Act regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee:
   a. Jennifer McKnight, General Manager

RECONVENE INTO REGULAR SESSION

4. Consider and take appropriate action regarding Executive Session.

ADJOURN

*THE BOARD RESERVES THE RIGHT TO ADJOURN INTO AN EXECUTIVE SESSION AT ANY TIME DURING THE MEETING FOR THE PURPOSE OF SEEKING THE ADVICE OF ITS ATTORNEY ABOUT ANY ITEM ON THE AGENDA, PURSUANT TO SECTION 551.071 OF THE TEXAS GOVERNMENT CODE.

CERTIFICATION

THE STATE OF TEXAS §
COUNTIES OF DENTON AND TARRANT §

THIS CERTIFIES THAT BY 4:00 P.M. ON SEPTEMBER 25, 2015 A COPY OF THE ABOVE NOTICE OF TROPHY CLUB MUNICIPAL UTILITY DISTRICT NO. 1, BOARD OF DIRECTORS SPECIAL MEETING TO BE HELD ON WEDNESDAY, SEPTEMBER 30, 2015 AT 6:00 P.M., WAS POSTED ON THE FRONT WINDOW OF TROPHY CLUB MUNICIPAL UTILITY DISTRICT NO. 1, ADMINISTRATION BUILDING LOCATED AT 100 MUNICIPAL DRIVE, TROPHY CLUB, TEXAS, WHICH IS A PLACE CONVENIENT TO THE PUBLIC WITHIN THE BOUNDARIES OF THE DISTRICT. A COPY OF THIS NOTICE WAS ALSO PROVIDED TO THE COUNTY CLERKS OF DENTON AND TARRANT COUNTIES TO BE POSTED ON THEIR WEBSITES OR AT A PLACE CONVENIENT TO THE PUBLIC PURSUANT TO SECTION 49.063 OF THE WATER CODE AND SECTION 551.054 OF THE OPEN MEETINGS ACT, CHAPTER 551 OF THE TEXAS GOVERNMENT CODE.

LAURIE SLAGHT, DISTRICT SECRETARY

DRAFT 092315 NON-STANDARD WATER AND WASTEWATER SERVICE AGREEMENT

THE STATE OF TEXAS §
§
COUNTY OF DENTON §

This **Non-Standard Water and Wastewater Service Agreement** (this "Agreement") is entered into as of the Effective Date, by and among the **Trophy Club Municipal Utility District No. 1**, a conservation and reclamation district created and functioning under Chapters 49 and 54 of the Texas Water Code (the "District") and **CP Trophy Club LLC**, a limited liability corporation ("Developer").

Recitals

A. WHEREAS, the District is a political subdivision of the State of Texas and the owner of certain water and wastewater system facilities that it utilizes to provide retail water and wastewater services to its customers; and

B. WHEREAS, Developer owns that certain real property located in the District being more particularly described on **Exhibit "A"** (the "Property") attached hereto that it desires to develop primarily for single family and/or commercial purposes; and

C. WHEREAS, Developer desires that the District provide retail water and wastewater service within the Property, and is willing to finance, design, construct, and dedicate to the District certain facilities located on the Property and required for the District to provide retail water and wastewater services within the Property as specifically identified herein; and

D. WHEREAS, the District and Developer now desire to enter into this Agreement in order to state the terms and conditions pursuant to which the District shall provide retail water service and retail wastewater service within the Property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereafter set forth, the receipt and sufficiency of which are hereby acknowledged, the District and Developer hereby agree as follows:

I.
DEFINITIONS

When used in this Agreement, the following terms will have the meanings set forth below:

1.1 "Agreement" means this Non-Standard Water and Wastewater Services Agreement.

1.2 "Closing" means the execution and delivery by the Developer of all documents conveying, transferring, or assigning the interests and property of Developer in any Interests to be Acquired to the District, and the performance of all acts necessary to complete such execution and delivery.

1.3 “Closing Date” means the date on which a Closing occurs.

1.4 “Developer” means the person or entity that owns the Property, as identified in the first paragraph of this Agreement.

1.5 “District System” means the water and wastewater system now owned or to be acquired by District to serve the District’s service territory, and any expansions, improvements, enlargements, additions and replacements thereto, including the Interests to be Acquired, subject to the terms of this Agreement.

1.6 “Easements” means, collectively, the easements for existing water and sewer lines located within the Property in the locations shown on **Exhibit “B”**, which are to be dedicated to the District by Developer pursuant to this Agreement.

1.7 “Effective Date” means the last day of execution of this Agreement by all parties hereto.

1.8 “Interests to be Acquired” means, collectively, (a) the Internal Facilities when they are finally constructed and accepted by the District, and (a) the Easements as stated in Section 5.1.

1.9 “Internal Facilities” means, collectively, the water and sewer taps into the District’s water and wastewater infrastructure existing on the date hereof and/or to be constructed on the Property by Developer and dedicated to the District for providing retail water and wastewater services to customers within the Property. The Internal Facilities shall include all facilities and equipment required to connect the Internal Facilities to the District System, but shall not include private service lines.

1.10 “Property” means the real property owned by Developer and located within the District’s boundaries being more particularly described on **Exhibit “A”** attached hereto.

1.11 “Service Commitment” means the annual average of 12,000 gallons per day of retail water and wastewater service that the District agrees to make available to the Property in accordance with the terms and conditions of this Agreement.

1.12 “TCEQ” means the Texas Commission on Environmental Quality or any successor agency.

II.
PROVISION OF RETAIL WATER AND WASTEWATER SERVICES

2.1 **Service Commitment**.

(a) In accordance with and subject to the terms and conditions of this Agreement, the District agrees to provide retail water and wastewater services to customers within the Property in a quantity not to exceed the Service Commitment. The District’s obligation to serve the Property is expressly contingent on Developer’s compliance with its obligations under this Agreement and with the District’s rules, regulations and policies.

(b) The District shall have no obligation to provide water or wastewater service to any portion of the Property until all of the following conditions precedent have been satisfied:

(i) the Internal Facilities required to provide service to the Property have been completed by Developer, are operational, have been dedicated to, and are accepted by the District;

(ii) the Easements have been dedicated to the District in accordance with this Agreement;

(iii) the fees and charges described on **Exhibit "C"** have been paid to the District by Developer; and

(iv) the District has received all necessary governmental approvals for the provision of services to the Property.

2.2 **Service.** The District shall provide continuous and adequate retail water and wastewater services to customers in the Property in accordance with this Agreement, its standard rules and policies (as consistently applied to all similar customers), and the applicable laws and regulations of the State of Texas.

2.3 **Minimum Pressure**. The District will deliver potable water to customers within the Property at a minimum pressure of 35 pounds per square inch at each retail customer meter, or as may otherwise be required by the applicable rules of TCEQ.

2.4 **District Operations**. Subject to the terms of this Agreement, the District will be responsible for operating and maintaining the District System in good working order; for making all needed replacements, additions and improvements as required for the operation of the facilities; for reading meters, billing and collecting from all customers; and for performing all other usual and customary services and administrative functions associated with retail water and wastewater utility systems.

2.5 **Service Subject to State and Local Approvals**. Notwithstanding other provisions in this Agreement, the District will not provide water or wastewater services in the manner described in this Agreement until such time as Developer obtains at its sole cost and expense all necessary permits, certificates, and approvals for development of the Property from any and all local, state, or federal governmental or regulatory bodies with jurisdiction.

2.6 **Water Conservation**. The District may curtail service to the Property in times of high system demand or drought, or as may be required by the District's Water Conservation Plan or Drought Contingency Plan, by other regulatory authorities, and/or by entities from whom to the District purchases water supplies, in the same manner as such curtailment is imposed on other similar customers of the District.

III.
RATES, FEES, CHARGES, AND OTHER PAYMENT OBLIGATIONS

3.1 **Rates**. All retail water customers within the Property will pay District's standard rates for retail water and wastewater service, as established and amended by the Board of Directors of the District from time to time.

3.2 **Fees and Charges.** Each applicant for retail service within the Property shall be required to pay to the District all standard charges, fees, and deposits for water and wastewater service applicable to customers of the District, as amended from time to time.

3.3 **Consultant Fees**. Simultaneously with the execution of this Agreement and as a condition precedent to performance by the District under this Agreement, the Developer agrees to pay or cause to be paid to the District its legal, engineering, and other costs incurred by the District in connection with the preparation of this Agreement.

IV.
FACILITIES

4.1 **General.** Developer and the District each acknowledge and agree that some of the Internal Facilities have been previously designed and constructed by the prior owner of the Property. The Developer will design and construct all additional Internal Facilities that may be required for the District's provision of retail water and wastewater services to the customers within the Property from the District System, including all facilities and equipment required to connect the Internal Facilities to the District System.

4.2 **Design of the Facilities.** The Developer will cause all physical facilities to be constructed by Developer as a part of the Internal Facilities to be designed by a qualified registered professional engineer selected by the Developer and approved by the District. The design will be subject to the approval of the District and all governmental agencies with jurisdiction. The Internal Facilities shall be designed so as to ensure their compatibility with the District System. The Developer further agrees to install meter boxes and a flow indicator for fire lines, if any. Any variance to the plans or specifications approved by the District or specified in this Agreement must be submitted in writing to the District and is subject to the District's sole discretion and approval. If any portions of the Internal Facilities constructed by the Developer are not in compliance with the agreed specifications approved by the District, then the District may require correction or pursue any remedy provided in this Agreement.

4.3 **Bidding and Construction of Facilities**.

(a) All construction contracts and other agreements pertaining to the Internal Facilities entered into by Developer will contain provisions to the effect that any contractor, materialman or other party thereto will look solely to Developer for payment of all sums coming due thereunder and that the District will have no obligation whatsoever to any such party.

(b) All construction contracts and change orders will be prepared in compliance with any applicable rules and regulations of the District, TCEQ and any other governmental entity with jurisdiction.

(c) The portions of the Internal Facilities to be constructed by the Developer will be constructed in a good and workmanlike manner and all material used in such construction will be substantially free from defects and fit for their intended purpose. The District may have an on-site inspector to inspect and approve the construction, which approval will not be unreasonably withheld or delayed.

(d) At Closing and as a condition of service, the Developer agrees to furnish the District with one reproduction of the utility plan approved by the District (such approval not to be unreasonably withheld, conditioned or delayed by the District) and submitted to the Town of Trophy Club for approval in connection with the Developer obtaining a building permit for its construction of the initial improvements on the Property.

4.4 **Cost of Facilities.** The Developer will promptly pay the costs of the Internal Facilities as they become due, including, without limitation, all costs of design, engineering, materials, labor, construction and inspection arising in connection with the Internal Facilities; all payments arising under any contracts entered into by Developer for the construction of the Internal Facilities; all costs incurred by Developer in connection with obtaining governmental approvals, certificates, permits, easements, rights-of-way, or sites required as a part of the construction of the Internal Facilities; and all out-of-pocket expenses incurred in connection with the construction of the Internal Facilities. The District will not be liable to any contractor, engineer, attorney, materialman or other party employed or contracted with in connection with the construction of the Internal Facilities.

4.5 **Duty to Repair and Warranty**. Except as otherwise specified, the Developer agrees to repair or cause to be repaired all defects in materials, equipment or workmanship for the Internal Facilities appearing within **two (2) years** from the Completion Date. Upon receipt of written notice from the District of the discovery of any defects, the Developer shall promptly and at its own cost remedy or cause to be remedied the defects and replace any property damaged therefrom. In case of emergency where delay would cause serious risk of loss or damage to the District or its customers, or if the Developer, after receipt of written notice from the District, fails to proceed promptly toward such remedy within thirty (30) days or within another period of time which has been agreed to in writing, the District may have defects in the Internal Facilities corrected in compliance with the terms of this warranty and guarantee, and Developer shall pay or cause to be paid all costs and expenses incurred by the District in so doing within thirty (30) days of receipt of a request for payment by the District.

4.6 **Assignment of Warranty Obligations**. In addition to Developer's duty to repair, as set forth above, Developer expressly assumes all warranty obligations required by the District under the approved plans and specifications, if any, for specific components, materials, equipment or workmanship. Developer may satisfy its obligation hereunder by obtaining and assigning to the District, by written instrument in a form approved by counsel for the District, a complying warranty from a manufacturer, supplier, or contractor. Where an assigned warranty is tendered and accepted by the District that does not fully comply with the requirements of the agreed specifications, the Developer shall remain liable to the District on all elements of the required warranty that are not provided by the assigned warranty during the one-year warranty period described in Section 4.5. The Developer shall provide to the District a maintenance bond that provides for the repair of the Internal Facilities constructed during the two-year warranty period. The maintenance bond shall be in an amount equal to 100% of the costs of construction of the Internal Facilities constructed (excluding the easements).

4.7 **Insurance**. Developer shall require that all workers involved with the installation and construction of the Internal Facilities are covered by workers' compensation insurance as required by the laws of the State of Texas. Developer shall also procure and maintain, at its own cost, or require that its contractors procure and maintain, comprehensive general liability insurance

insuring against the risk of bodily injury, property damage, and personal injury liability occurring from, or arising out of, construction of the Internal Facilities, with such insurance in the amount of a combined single limit of liability of at least $1,000,000 and a general aggregate limit of at least $1,000,000. Such insurance coverage shall be maintained in force at least until the completion, inspection and acceptance of the Internal Facilities by the District. The District shall be named as an additional insured on all such insurance coverages.

4.8 **Acceptance of Completed Facilities for Operation and Maintenance**.

(a) Upon completion of construction of the Internal Facilities, the Developer will provide or cause to be provided to the District a certificate of completion from the Developer's engineers certifying that the Internal Facilities have been completed in accordance with this Agreement. The date upon which the certificate of completion is provided to the District shall be the "Completion Date."

(b) Within thirty (30) days after the Completion Date, the District and the Developer will conduct a Closing in accordance with the procedures set forth in Article VI.

V.
REAL PROPERTY

5.1 **Easements**. Developer agrees to dedicate and convey the Easements to the District, at no cost to the District. Easement forms shall be provided by the District to the Developer prior to the Closing, with such commercially reasonable revisions as may be required by the Developer. Developer shall provide the survey and metes and bounds description of each easement as an attachment to the Easement form provided by the District.

VI.
CLOSING

6.1 **Interests to be Acquired**. Subject to the conditions set out in this Agreement, Developer agrees to convey, or cause to be conveyed, to the District at the Closing all of the Interests to be Acquired.

6.2 **Commencement of Service**. Except as otherwise approved by the District, the District shall not commence retail water service within the Property until the Interests to be Acquired have been conveyed to the District as required by this Agreement.

6.3 **Legal Description of Real Property**. Prior to the Closing, the Developer shall provide the District with a survey of the Easements.

6.4 **Manner of Transfer**.

(a) A Bill of Sale shall specify the final construction costs of the Internal Facilities incurred by the Developer.

(b) The Easements shall be in a form approved by counsel to the District.

6.5 **Risks Pending Closing.**

(a) If, on the Closing Date, any proceeding is pending before any court or administrative agency of competent jurisdiction, challenging the legal right of Developer or the District to make and perform this Agreement, Developer and the District, respectively, will have the right, at any time prior to the Closing Date, to suspend and postpone the Closing until such right will have been sustained by a final judgment of a court of competent jurisdiction.

(b) Developer agrees that, until the Closing, it will maintain or cause to be maintained insurance in such amounts as are reasonable and prudent, based on the nature of the facilities, on those components of the Interests to be Acquired that have not already been conveyed to the District. If, between the Effective Date and the Closing, any part, whether substantial or minor, of the Interests to be Acquired to be conveyed are destroyed or rendered useless by fire, flood, wind, or other casualty, the District will not be released from its obligations hereunder; however, as to any portion of the Interests to be Acquired so damaged or destroyed, Developer will make or cause to be made repairs and replacements to restore the Interests to be Acquired to their prior condition regardless of whether the insurance obtained by Developer covers such repair or replacement.

VII.
CONDITIONS, REPRESENTATIONS AND WARRANTIES

7.1 **Indemnification**. **TO THE FULLEST EXTENT AUTHORIZED BY LAW, DEVELOPER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DISTRICT, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, DEBTS, SUITS, CAUSES OF ACTION, LOSSES, DAMAGES, JUDGMENTS, FINES, PENALTIES, LIABILITIES, AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS INCURRED BY THE DISTRICT RELATING TO: (1) THE DEVELOPER'S BREACH OF ANY AGREEMENT, WARRANTY OR REPRESENTATION UNDER THIS AGREEMENT; OR (2) THE DESIGN, CONSTRUCTION OR INSTALLATION OF THE INTERNAL FACILITIES PERFORMED BY THE DEVELOPER, EXCEPTING ONLY THOSE DAMAGES, LIABILITIES, OR COSTS ATTRIBUTABLE TO THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE DISTRICT**. This indemnity shall survive the termination of this Agreement and shall be binding upon and inure to the benefit of the parties hereto and their respective successors, representatives and assigns.

7.2 **Representations of Developer.** With respect to the sale and conveyance of the Interests to be Acquired to be conveyed by it, as of the date hereof Developer acknowledges, represents and agrees that:

(a) It is a limited liability corporation qualified in all respects to conduct business within the State of Texas;

(b) It has not created or permitted any third person to create any liens, leases, options, claims, encumbrances or any other adverse rights, claims or interests with respect to the Interests to be Acquired, except for the lien of any mortgagee thereon which will be released or subordinated, as appropriate, at the Closing;

(c) It will be the true and lawful owner of the Interests to be Acquired to be conveyed by Developer hereunder and, no other third person or entity, public or private, will possess a right or interest, legal or equitable, nor any lien, encumbrance or other adverse claim, present or contingent, in or to the Interests to be Acquired to be conveyed by the Developer to the District, except for the lien of any mortgagee thereon which will be released or subordinated, as appropriate, at the Closing;

(d) It has not previously sold, assigned, transferred, leased, pledged or hypothecated its ownership interest in or to Interests to be Acquired and, prior to each Closing contemplated in this Agreement, will not sell, assign, transfer, lease, pledge, or otherwise hypothecate any interest in or to the Interests to be Acquired to any third person or entity, except in connection with a first-lien loan which will be released or subordinated, as appropriate, as to the Interests to be Acquired at the Closing;

(e) It has not entered into any agreement, written or oral, with any third party, wherein any such third party has acquired a right to purchase the Interests to be Acquired;

(f) Execution of this Agreement and the consummation of the transactions contemplated hereunder will not constitute an event of default under any contract, covenant or agreement to which Developer is a party or, to Developer's knowledge, which is otherwise binding upon Developer;

(g) To Developer's knowledge, the contemplated transfer of the Interests to be Acquired to the District will not violate the provisions of any federal, state or local law, ordinance or regulation; and

(h) It has not previously granted any right or option to any other person, entity or political subdivision to acquire or use the Interests to be Acquired.

The District is executing this Agreement in reliance on each of the warranties and representations set forth above and each such representation and warranty will survive the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

7.3 **Representations of the District.** The District represents and warrants to Developer that:

(a) The District is a political subdivision of the State of Texas duly created by and validly operating under and pursuant to the provisions of Chapters 49 and 54 of the Texas Water Code, and has the requisite power and authority to take all necessary action to execute and deliver this Agreement and to perform all obligations hereunder;

(b) The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of the District and the person executing this Agreement on behalf of the District has been fully authorized and empowered to bind the District to the terms and provisions of this Agreement;

(c) This Agreement does not contravene any law or any governmental rule, regulation or order applicable to the District;

(d) The execution and delivery of this Agreement and the performance by the District of its obligations hereunder do not contravene the provisions of, or constitute a default under, the terms of any indenture, mortgage, contract, resolution, or other instrument to which the District is a party or by which the District is bound;

(e) The contemplated acquisition of the Interests to be Acquired by the District will not violate any term, condition or covenant of any agreement to which the District is a party;

(f) The contemplated acquisition of the Interests to be Acquired by the District will not violate the provisions of the United States Constitution, the Texas Constitution, or any federal, state

(g) OPEN ISSUE – There is a caveat in the contract that seems to indicate the MUD is not required to provide service per 2.1(b) iv; the MUD Engineer has indicated capacity doesn't always exist but the MUD is moving to provide MUA service; as we move forward with a $3,000,000 project does the MUD have a recommendation for how we might put language in this agreement to provide a further level of measure that the MUD will continue to pursue the permits and once the permits are issued will move forward with the expansion and upgrade of the facilities; we understand that the MUD doesn't control the City; we are looking for a recommendation or further discussion to finalize.

Developer is executing this Agreement in reliance on each of the warranties and representations set forth above and each such representation and warranty of the District will survive the execution and delivery of this Agreement and the consummation of each of the transactions contemplated by this Agreement.

7.4 **Survival of Covenants.** The covenants contained in this Article will survive the conveyance, transfer and assignment of the Interests to be Acquired at all Closings and will continue to bind the District and Developer as provided herein.

VIII.
REMEDIES

8.1 **District Remedies.**

(a) If Developer fails or refuses to timely comply with any of its obligations hereunder, or if, prior to any Closing, any of Developer's representations, warranties or covenants contained herein are not true in all material respects when made or have been materially breached, then subject to Section 8.5 below, the District will have the right to enforce this Agreement by any remedy at law or in equity or under this Agreement to which it may be entitled; to terminate this Agreement; or to waive prior to or at Closing as applicable, the applicable objection or condition and to proceed to close their transaction in accordance with the remaining terms.

(b) If, after any Closing, the District determines that any of a Developer's representations, warranties or covenants which applied to the Closing are not true in all material respects when made, then the District may avail itself of any remedy at law or in equity or under this Agreement to which it may be entitled.

8.2 **Developer Remedies**.

(a) If the District fails or refuses to timely comply with its obligations hereunder, or if, prior to any Closing, the District's representations, warranties or covenants contained herein are not true or have been breached, Developer will have the right to enforce this Agreement by any remedy in equity to which it may be entitled; or waive prior to or at Closing as applicable, the applicable objection or condition and to proceed to close their transaction in accordance with the remaining terms.

(b) If, after Closing, a Developer determines that any of the District's representations, warranties or covenants which applied to the Closing are not true, then the Developer may avail itself of any remedy in equity to which it may be entitled.

8.3 **Default in Payments**. All amounts due and owing by Developer to District shall, if not paid when due, bear interest at the Texas post-judgment interest rate in the Texas Civil Practice & Remedies Code, or any successor statute, from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate as permitted by law. If any amount due and owing by the Developer to the District is placed with an attorney for collection, the prevailing party in any litigation or arbitration involving the collection shall be paid its costs and attorneys' fees by the non-prevailing party, and such payments shall be in addition to all other payments provided for by this Agreement, including interest.

8.4 **Disputed Payment**. If Developer at any time disputes the amount to be paid by it to the District, the Developer shall nevertheless promptly make or cause to be made the disputed payment or payments, but Developer shall thereafter have the right to seek a determination whether the amount charged by the District is in accordance with the terms of this Agreement.

8.5 **Notice and Opportunity to Cure**. If either Party (referred to herein as the "Defaulting Party") fails to comply with its obligations under this Agreement or is otherwise in breach or default under this Agreement (collectively, a "Default") then the other Party (referred to herein as the "Non-Defaulting Party") may not invoke any rights or remedies with respect to the Default until and unless: (i) the Non-Defaulting Party delivers to the Defaulting Party a written notice (the "Default Notice") which specifies all of the particulars of the Default and specifies the actions necessary to cure the Default; and (ii) the Defaulting Party fails to cure, within ten (10) days after the Defaulting Party's receipt of the Default Notice, any matters specified in the Default Notice which may be cured solely by the payment of money or the Defaulting Party fails to commence the cure of any matters specified in the Default Notice which cannot be cured solely by the payment of money within a reasonable period of time after the Defaulting Party's receipt of the Default Notice or fails to thereafter pursue curative action with reasonable diligence to completion.

IX.
NOTICES

9.1 **Addresses.** All notices hereunder from Developer to the District will be sufficient if sent by certified mail with confirmation of delivery, addressed to the District to the attention of its General Manager, 100 Municipal Drive, Trophy Club, Texas 76262. All notices hereunder from the District to Developer will be sufficiently given if sent by certified mail with confirmation of delivery to Developer to the attention of Dusty Dennis, CP Trophy Club, LLC, 640 W. Southlake Blvd., Suite 102, Southlake, TX 76092.

X.
MISCELLANEOUS

10.1 **Execution.** This Agreement may be simultaneously executed in any number of counterparts, each of which will serve as an original and, will constitute one and the same instrument.

10.2 **Approvals**. The Board of Directors of the District may delegate any approvals required hereunder to the District Engineer or other representatives.

10.3 **Costs and Expenses.** Except as otherwise expressly provided herein, each Party will be responsible for all costs and expenses incurred by such Party in connection with the transaction contemplated by this Agreement.

10.4 **Governing Law.** This Agreement will be governed by the Constitution and laws of the State of Texas, except as to matters exclusively controlled by the Constitution and Statutes of the United States of America.

10.5 **Successors and Assigns.** The assignment of this Agreement by either Party is prohibited without the prior written consent of the other Party, which consent will not be unreasonably withheld. All of the respective covenants, undertakings, and obligations of each of the Parties will bind that Party and will apply to and bind any successors or assigns of that Party.

10.6 **Headings.** The captions and headings appearing in this Agreement are inserted merely to facilitate reference and will have no bearing upon its interpretation.

10.7 **Partial Invalidity.** If any of the terms, covenants or conditions of this Agreement, or the application of any term, covenant, or condition, is held invalid as to any person or circumstance by any court with jurisdiction, the remainder of this Agreement, and the application of its terms, covenants, or conditions to other persons or circumstances, will not be affected.

10.8 **Waiver.** Any waiver by any Party of its rights with respect to a default or requirement under this Agreement will not be deemed a waiver of any subsequent default or other matter.

10.9 **Amendments.** This Agreement may be amended or modified only by written agreement duly authorized by the governing body of the District and Developer, and executed by the duly authorized representatives of all Parties.

10.10 **Cooperation.** The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement. Without limitation, each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

10.11 **Venue.** All obligations of the Parties are performable in Tarrant County, Texas and venue for any action arising hereunder will be in Tarrant County.

10.12 **Third Party Beneficiaries.** Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

10.13 **Representations.** Unless otherwise expressly provided, the representations, warranties, covenants, indemnities, and other agreements will be deemed to be material and continuing, will not be merged, and will survive the closing of this transaction and the conveyance and transfer of the Interests to be Acquired to the District.

10.14 **Exhibits.** All exhibits attached to this Agreement are hereby incorporated in this Agreement as if the same were set forth in full in the body of this Agreement.

10.15 **Entire Agreement.** This Agreement, including the attached exhibits, contains the entire agreement between the Parties with respect to the Interests to be Acquired and supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties with respect to such matters.

[Signature page immediately follows.]

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be signed, sealed and attested in duplicate by their duly authorized officers, as of the Effective Date.

TROPHY CLUB MUNICIPAL UTILITY DISTRICT NO. 1

By: ______________________________

Name: ______________________________

Title: ______________________________

____
Secretary

DEVELOPER:

CP TROPHY CLUB LLC,

By: ______________________________

Name: Dusty Dennis

Title: Manager

THE STATE OF TEXAS §
§
COUNTY OF DENTON §

This instrument was acknowledged before me on the _____ day of ________________, 2015, by _________________________, ________________ of Trophy Club Municipal Utility District No. 1 a conservation and reclamation district created and functioning under the laws of the State of Texas, on behalf of said conservation and reclamation district.

____
Notary Public, State of Texas

(SEAL)

THE STATE OF TEXAS §
§
COUNTY OF ____________ §

This instrument was acknowledged before me on the _____ day of ________________, 2015, by Dusty Dennis, Manager of CP Trophy Club LLC, a Texas limited partnership, on behalf of said limited partnership.

____
Notary Public, State of Texas

Exhibit "A"

Description of Property

Exhibit "B"

Easements to be Dedicated to the District

Exhibit "C"

Fees and Charges to be Paid by Developer to the District

DRAFT 092515 NON-STANDARD WATER AND WASTEWATER SERVICE AGREEMENT

THE STATE OF TEXAS §
§
COUNTY OF DENTON §

This **Non-Standard Water and Wastewater Service Agreement** (this "Agreement") is entered into as of the Effective Date, by and among the **Trophy Club Municipal Utility District No. 1**, a conservation and reclamation district created and functioning under Chapters 49 and 54 of the Texas Water Code (the "District") and **OTD TC, LLC**, a Texas limited liability corporation ("Developer").

Recitals

A. WHEREAS, the District is a political subdivision of the State of Texas and the owner of certain water and wastewater system facilities that it utilizes to provide retail water and wastewater services to its customers; and

B. WHEREAS, Developer owns that certain real property located in the District being more particularly described on **Exhibit "A"** (the "Property") attached hereto that it desires to develop primarily for single family and/or commercial purposes; and

C. WHEREAS, Developer desires that the District provide retail water and wastewater service within the Property, and is willing to finance, design, construct, and dedicate to the District certain facilities required for the District to provide retail water and wastewater services within the Property; and

D. WHEREAS, the District and Developer now desire to enter into this Agreement in order to state the terms and conditions pursuant to which the District shall provide retail water service and retail wastewater service within the Property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereafter set forth, the receipt and sufficiency of which are hereby acknowledged, the District and Developer hereby agree as follows:

I. DEFINITIONS

When used in this Agreement, the following terms will have the meanings set forth below:

1.1 "Agreement" means this Non-Standard Water and Wastewater Services Agreement.

1.2 "Closing" means the execution and delivery by the Developer of all documents conveying, transferring, or assigning the interests and property of Developer in any Interests to be Acquired to the District, and the performance of all acts necessary to complete such execution and delivery.

1.3 "Closing Date" means the date on which a Closing occurs.

1.4 "Developer" means the person or entity that owns the Property, as identified in the first paragraph of this Agreement.

1.5 "District System" means the water and wastewater system now owned or to be acquired by District to serve the District's service territory, and any expansions, improvements, enlargements, additions and replacements thereto, including the Interests to be Acquired, subject to the terms of this Agreement.

1.6 "Effective Date" means the last day of execution of this Agreement by all parties hereto.

1.7 "Interests to be Acquired" means the Internal Facilities, the Offsite Facilities (if any), all easements required to be conveyed to the District under this Agreement, and all other interests that Developer is required to convey or cause to be conveyed to the District under this Agreement.

1.8 "Internal Facilities" means the internal water and wastewater infrastructure to be constructed by Developer and dedicated to the District for providing retail water and wastewater services to customers within the Property. The Internal Facilities shall include all facilities and equipment required to connect the Internal Facilities to the District System, but shall not include private service lines.

1.9 "Property" means the real property located within the District's boundaries being more particularly described on **Exhibit "A"** attached hereto.

1.10 "Service Commitment" means the annual average of 37,000 gallons per day of retail water and wastewater service that the District agrees to make available to the Property in accordance with the terms and conditions of this Agreement.

1.11 "TCEQ" means the Texas Commission on Environmental Quality or any successor agency.

II.
PROVISION OF RETAIL WATER AND WASTEWATER SERVICES

2.1 **Service Commitment**.

(a) In accordance with and subject to the terms and conditions of this Agreement, the District agrees to provide retail water and wastewater services to customers within the Property in a quantity not to exceed the Service Commitment. The District's obligation to serve the Property is expressly contingent on Developer's compliance with its obligations under this Agreement and with the District's rules, regulations and policies.

(b) The District shall have no obligation to provide water or wastewater service to any portion of the Property until all of the following conditions precedent have been satisfied:

(i) the Internal Facilities required to provide service to the Property have been completed by Developer, are operational, have been dedicated to, and are accepted by the District, which acceptance shall not be unreasonably withheld, conditioned, or delayed;

(ii) the final construction costs for the Internal Facilities have been provided to the District;

(iii) all necessary easements and other real property interests have been dedicated to the District in accordance with this Agreement;

(iv) all required fees and charges have been paid to the District by Developer; and

(v) the District has received all necessary governmental approvals for the provision of services to the Property.

2.2 **Service.** The District shall provide retail water and wastewater services to customers in the Property in accordance with its standard rules and policies, and the applicable laws and regulations of the State of Texas.

2.3 **Minimum Pressure**. The District will deliver potable water to customers within the Property at a minimum pressure of 35 pounds per square inch at each retail customer meter, or as may otherwise be required by the applicable rules of TCEQ.

2.4 **District Operations**. Subject to the terms of this Agreement, the District will be responsible for operating and maintaining the District System in good working order; for making all needed replacements, additions and improvements as required for the operation of the facilities; for reading meters, billing and collecting from all customers; and for performing all other usual and customary services and administrative functions associated with retail water and wastewater utility systems.

2.5 **Service Subject to State and Local Approvals**. Notwithstanding other provisions in this Agreement, the District will not provide water or wastewater services in the manner described in this Agreement unless Developer obtains at its sole cost and expense all necessary permits, certificates, and approvals for development of the Property from any and all local, state, or federal governmental or regulatory bodies with jurisdiction.

2.6 **Water Conservation**. The District may curtail service to the Property in times of high system demand or drought, or as may be required by the District's Water Conservation Plan or Drought Contingency Plan, by other regulatory authorities, and/or by entities from whom to the District purchases water supplies, in the same manner as such curtailment is imposed on other similar customers of the District.

III.
RATES, FEES, CHARGES, AND OTHER PAYMENT OBLIGATIONS

3.1 **Rates**. All retail water customers within the Property will pay District's standard rates for retail water and wastewater service, as established and amended by the Board of Directors of the District from time to time.

3.2 **Fees and Charges.** Each applicant for retail service within the Property shall be required to pay to the District all standard charges, fees, and deposits for water and wastewater service applicable to customers of the District, as amended from time to time.

3.3 **Consultant Fees**. Simultaneously with the execution of this Agreement and as a condition precedent to performance by the District under this Agreement, the Developer agrees to pay or

cause to be paid to the District its legal, engineering, and other costs incurred by the District in connection with the preparation of this Agreement and prior service availability negotiations.

3.4 **Inspection Fees**. The Developer shall pay to the District Inspection Fees in connection with its inspection of the Internal Facilities. Payment shall be tendered by Developer within 30 days of a receipt of a written invoice for payment from the District.

IV.
FACILITIES

4.1 **General.** The Developer will design and construct all Internal Facilities required for the District's provision of retail water and wastewater services to the customers within the Property from the District System, including all facilities and equipment required to connect the Internal Facilities to the District System.

4.2 **Design of the Facilities.** The Developer will cause all physical facilities to be constructed or acquired as a part of the Internal Facilities to be designed by a qualified registered professional engineer selected by the Developer and approved by the District which such approval shall not be unreasonably withheld, conditioned, or delayed. The design will be subject to the approval of the District, which such approval shall not be unreasonably withheld, conditioned, or delayed, and all governmental agencies with jurisdiction. The Internal Facilities shall be designed so as to ensure that the District may provide continuous and adequate service within the Property and so as to ensure their compatibility with the District System. The Developer further agrees to install meter boxes and a flow indicator for fire lines, if any. Any variance to the plans or specifications approved by the District or specified in this Agreement must be submitted in writing to the District and is subject to the District's reasonable sole discretion and approval. If the Internal Facilities as constructed by the Developer are not in compliance with the agreed specifications approved by the District, then the District may require correction or pursue any remedy provided in this Agreement.

4.3 **Bidding and Construction of Facilities**.

(a) All construction contracts and other agreements pertaining to the Internal Facilities will contain provisions to the effect that any contractor, materialman or other party thereto will look solely to Developer for payment of all sums coming due thereunder and that the District will have no obligation whatsoever to any such party.

(b) All construction contracts and change orders will be prepared in compliance with any applicable rules and regulations of the District, TCEQ and any other governmental entity with jurisdiction.

(c) The Internal Facilities will be constructed in a good and workmanlike manner and all material used in such construction will be substantially free from defects and fit for their intended purpose. The District may have an on-site inspector to inspect and approve the construction, which approval will not be unreasonably conditioned, withheld or delayed.

(d) At Closing and as a condition of service, the Developer agrees to furnish the District with one reproduction, three blue-line copies, and one set of computer files of the as-built or record drawings of each facility.

4.4 **Cost of Facilities.** The Developer will promptly pay the costs of the Internal Facilities as they become due, including, without limitation, all costs of design, engineering, materials, labor, construction and inspection arising in connection with the Internal Facilities; all payments arising under any contracts entered into by Developer for the construction of the Internal Facilities; all costs incurred by Developer in connection with obtaining governmental approvals, certificates, permits, easements, rights-of-way, or sites required as a part of the construction of the Internal Facilities; and all out-of-pocket expenses incurred in connection with the construction of the Internal Facilities. The District will not be liable to any contractor, engineer, attorney, materialman or other party employed or contracted with in connection with the construction of the Internal Facilities.

4.5 **Duty to Repair and Warranty**. Except as otherwise specified, the Developer agrees to repair or cause to be repaired all defects in materials, equipment or workmanship for the Internal Facilities appearing within **two (2) years** from the Completion Date to comply with the approved plans and specifications for the Internal Facilities. Upon receipt of written notice from the District of the discovery of any defects, the Developer shall promptly and at its own cost remedy or cause to be remedied the defects and replace any property damaged therefrom. In case of emergency where delay would cause serious risk of loss or damage to the District or its customers, or if the Developer, after notice, fails to proceed promptly toward such remedy within thirty (30) days or within another period of time which has been agreed to in writing, the District may have defects in the Internal Facilities corrected in compliance with the terms of this warranty and guarantee, and Developer shall pay or cause to be paid all costs and expenses incurred by the District in so doing within thirty (30) days of receipt of a request for payment by the District. The Developer shall provide to the District a maintenance bond or letter of credit that provides for the repair of the Internal Facilities during the two-year warranty period. The maintenance bond or letter of credit shall be in an amount equal to 100% of the costs of construction of the Internal Facilities and Offsite Facilities.

4.6 **Assignment of Warranty Obligations**. In addition to Developer's duty to repair, as set forth above, Developer expressly assumes all warranty obligations required by the District under the approved plans and specifications for specific components, materials, equipment or workmanship. Developer may satisfy its obligation hereunder by obtaining and assigning to the District, by written instrument in a form approved by counsel for the District, a complying warranty from a manufacturer, supplier, or contractor. Where an assigned warranty is tendered and accepted by the District that does not fully comply with the requirements of the agreed specifications, the Developer shall remain liable to the District on all elements of the required warranty that are not provided by the assigned warranty during the one-year warranty period described in Section 4.5.

4.7 **Insurance**. Developer shall require that all workers involved with the installation and construction of the Internal Facilities are covered by workers' compensation insurance as required by the laws of the State of Texas. Developer shall also procure and maintain, at its own cost, or require that its contractors procure and maintain, comprehensive general liability insurance insuring against the risk of bodily injury, property damage, and personal injury liability occurring from, or arising out of, construction of the Internal Facilities, with such insurance in the amount of a combined single limit of liability of at least $1,000,000 and a general aggregate limit of at least $1,000,000. Such insurance coverage shall be maintained in force at least until the completion, inspection and acceptance of the Internal Facilities by the District. The District shall be named as an additional insured on all such insurance coverages.

4.8 **Acceptance of Completed Facilities for Operation and Maintenance**.

(a) Upon completion of construction of each phase of the Internal Facilities, the Developer will provide or cause to be provided to the District a certificate of completion from the Developer's engineers certifying that the Internal Facilities have been completed in accordance with the plans and specifications previously approved by the District. The date upon which the certificate of completion is provided to the District shall be the "Completion Date."

(b) After the Completion Date, the District and the Developer will conduct a Closing in accordance with the procedures set forth in Article VI.

V. REAL PROPERTY

5.1 **Easements**.

(a) All Internal Facilities located within the Property may be constructed within public right of way or within public utility easements indicated on Exhibit B which are specifically approved by the District. Otherwise, such facilities shall be located within easements dedicated to the District. The District shall approve the physical location of water and wastewater lines and other utilities within public rights-of-way and public utility easements to prevent conflicts between the Internal Facilities and road improvements, drainage improvements, or other utilities; those indicated in Exhibit B are hereby expressly approved by the District. Further, the District shall not accept for operation any Internal Facilities located within public right of way or public utility easements until Developer has furnished certification to the District from a licensed professional engineer that all utilities have been constructed and installed at the locations specified in the plans approved by the District.

(b) The Developer shall dedicate to the District, at no cost to the District, exclusive and perpetual easements, to be in a form approved in advance by legal counsel to the District, for all tie-in facilities that the District does not approve for installation in public right of way. Notwithstanding anything to the contrary herein, the District's approval of the placement of all facilities within a public right of way shall not be unreasonably withheld, conditioned, or delayed. In the event facilities must be installed on private property, the District shall exercise all diligence to ensure that the easements necessitated to be transferred to the District are as limited in size as possible.

VI. CLOSING

6.1 **Interests to be Acquired**. Subject to the conditions set out in this Agreement, Developer agrees to convey, or cause to be conveyed, to the District the following, which are collectively referred to as the "Interests to be Acquired":

(a) the Internal Facilities, or any portions thereof, when they are finally constructed and accepted by the District, which such acceptance shall not be unreasonably withheld, conditioned, or delayed;

(b) all easements necessary for the ownership, operation and maintenance of the

Internal Facilities, including access easements from public roads, to the extent that Internal Facilities . The easements must have a minimum width of twenty (20) feet, unless otherwise specified in this Agreement. Such easements shall be at locations reasonably approved by the District and in a form approved by counsel for the District; the District's and the District's counsel's approval of the location and form of the easements shall not be unreasonably withheld, conditioned, or delayed;

(c) all documents described in Section 4.3(g) relating to the Internal Facilities ; and,

(d) all of the contracts, leases, warranties, bonds, permits, franchises, and licenses in the possession of Developer related to or arising out of the acquisition, construction and operation of the Interests to be Acquired (the "Contracts").

Any failure of Developer to convey or cause the conveyance to the District of the Interests to be Acquired on a Closing Date agreed upon specified by the District and the Developer shall be a material breach of this Agreement.

6.2 **Commencement of Service**. Except as otherwise approved by the District, the District shall not commence retail water service within the Property until the Interests to be Acquired have been properly conveyed to the District.

6.3 **Legal Description of Real Property**. Prior to each Closing, the Developer shall provide the District with a survey of all real property or easements to be transferred at the Closing to the District by virtue of this Agreement.

6.4 **Manner of Transfer**.

(a) Any personal property to be transferred shall be transferred by Utility Conveyance Agreement and Bill of Sale and Assignment free of liens and encumbrances, with a covenant on the part of the Developer that it is the lawful owner and has a lawful right to transfer and deliver such property.

(b) The Bill of Sale shall specify the final construction costs of the Internal Facilities being conveyed thereunder.

(c) All easements to be conveyed by Developer to the District at each Closing shall be in a form approved by counsel to the District, which such approval shall not be unreasonably withheld, conditioned, or delayed.

(d) All of Developer's rights, title and interest in and to any Contract(s) which are required to be transferred to the District pursuant to this Agreement shall be transferred to the District by assignment in a form approved by counsel to the District, which such approval shall not be unreasonably withheld, conditioned, or delayed.

6.5 **Risks Pending Closing.**

(a) If, on any Closing Date, any proceeding is pending before any court or administrative agency of competent jurisdiction, challenging the legal right of Developer or the District to make and perform this Agreement, Developer and the District, respectively, will have

the right, at any time prior to the Closing Date, to suspend and postpone the Closing until such right will have been sustained by a final judgment of a court of competent jurisdiction.

(b) Developer agrees that, until each Closing, it will maintain or cause to be maintained insurance in such amounts as are reasonable and prudent, based on the nature of the facilities, on those components of the Interests to be Acquired that have not already been conveyed to the District. If, between the Effective Date and any Closing, any part, whether substantial or minor, of the Interests to be Acquired to be conveyed are destroyed or rendered useless by fire, flood, wind, or other casualty, the District will not be released from its obligations hereunder; however, as to any portion of the Interests to be Acquired so damaged or destroyed, Developer will make or cause to be made repairs and replacements to restore the Interests to be Acquired to their prior condition regardless of whether the insurance obtained by Developer covers such repair or replacement.

VII.
CONDITIONS, REPRESENTATIONS AND WARRANTIES

7.1 **Indemnification**. **TO THE FULLEST EXTENT AUTHORIZED BY LAW, DEVELOPER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DISTRICT, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, DEBTS, SUITS, CAUSES OF ACTION, LOSSES, DAMAGES, JUDGMENTS, FINES, PENALTIES, LIABILITIES, AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS INCURRED BY THE DISTRICT RELATING TO: (1) THE DEVELOPER'S BREACH OF ANY AGREEMENT, WARRANTY OR REPRESENTATION UNDER THIS AGREEMENT; OR (2) THE DESIGN, CONSTRUCTION OR INSTALLATION OF THE INTERNAL FACILITIES, EXCEPTING ONLY THOSE DAMAGES, LIABILITIES, OR COSTS ATTRIBUTABLE TO THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE DISTRICT**. This indemnity shall survive the termination of this Agreement and shall be binding upon and inure to the benefit of the parties hereto and their respective successors, representatives and assigns.

7.2 **Representations of Developer.** With respect to the sale and conveyance of the Interests to be Acquired to be conveyed by it, Developer acknowledges, represents and agrees that:

(a) It is a limited liability corporation qualified in all respects to conduct business within the State of Texas;

(b) It has not created or permitted any third person to create any liens, leases, options, claims, encumbrances or any other adverse rights, claims or interests with respect to the Internal Facilities;

(c) It will be the true and lawful owner of the Internal Facilities to be conveyed by Developer hereunder and, no other third person or entity, public or private, will possess a right or interest, legal or equitable, nor any lien, encumbrance or other adverse claim, present or contingent, in or to the Internal Facilities to be conveyed by the Developer to the District;

(d) It has not previously sold, assigned, transferred, leased, pledged or hypothecated its ownership interest in or to Internal Facilities and, prior to each Closing contemplated in this

Agreement, will not sell, assign, transfer, lease, pledge, or otherwise hypothecate any interest in or to the Interests to be Acquired to any third person or entity;

(e) It has not entered into any agreement, written or oral, with any third party, wherein any such third party has acquired a right to purchase such facilities;

(f) The contemplated transfer of the Internal Facilities to the District will not violate any term, condition or covenant of any agreement to which it is a party;

(g) Execution of this Agreement and the consummation of the transactions contemplated hereunder will not constitute an event of default under any contract, covenant or agreement binding upon it;

(h) The contemplated transfer of the Interests to be Acquired to the District will not violate the provisions of the United States Constitution, the Texas Constitution, or any federal, state or local law, ordinance or regulation;

(i) It has not previously granted any right or option to any other person, entity or political subdivision to acquire or use the Interests to be Acquired and agrees to defend and hold the District harmless from all claims or causes of action asserted by any third person, entity or political subdivision alleging a right or option to acquire or use the Interests to be Acquired or any portion thereof; and

(j) Except as provided herein, it has not previously entered into any agreement or caused or otherwise authorized any action that would diminish, eliminate or adversely affect the District's contemplated ownership or use of the Interests to be Acquired or the value of same.

The District is executing this Agreement in reliance on each of the warranties and representations set forth above and each such representation and warranty will survive the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

7.3 **Representations of the District.** The District represents and warrants to Developer that:

(a) The District is a political subdivision of the State of Texas duly created by and validly operating under and pursuant to the provisions of Chapters 49 and 54 of the Texas Water Code, and has the requisite power and authority to take all necessary action to execute and deliver this Agreement and to perform all obligations hereunder;

(b) The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of the District and the person executing this Agreement on behalf of the District has been fully authorized and empowered to bind the District to the terms and provisions of this Agreement;

(c) This Agreement does not contravene any law or any governmental rule, regulation or order applicable to the District;

(d) The execution and delivery of this Agreement and the performance by the District of its obligations hereunder do not contravene the provisions of, or constitute a default under, the

terms of any indenture, mortgage, contract, resolution, or other instrument to which the District is a party or by which the District is bound;

(e) The contemplated acquisition of the Interests to be Acquired by the District will not violate any term, condition or covenant of any agreement to which the District is a party;

(f) The contemplated acquisition of the Interests to be Acquired by the District will not violate the provisions of the United States Constitution, the Texas Constitution, or any federal, state or local law, ordinance or regulation; and

Developer is executing this Agreement in reliance on each of the warranties and representations set forth above and each such representation and warranty of the District will survive the execution and delivery of this Agreement and the consummation of each of the transactions contemplated by this Agreement.

7.4 **Survival of Covenants.** The covenants contained in this Article will survive the conveyance, transfer and assignment of the Interests to be Acquired at all Closings and will continue to bind the District and Developer as provided herein.

VIII.
REMEDIES

8.1 **District Remedies.**

(a) If Developer fails or refuses to timely comply with any of its obligations hereunder, or if, prior to any Closing, any of Developer's representations, warranties or covenants contained herein are not true or have been breached, the District will have the right to enforce this Agreement by any remedy at law or in equity or under this Agreement to which it may be entitled; to terminate this Agreement; or to waive prior to or at Closing as applicable, the applicable objection or condition and to proceed to close their transaction in accordance with the remaining terms.

(b) If, after any Closing, the District determines that any of a Developer's representations, warranties or covenants which applied to the Closing are not true, then the District may avail itself of any remedy at law or in equity or under this Agreement to which it may be entitled.

8.2 **Developer Remedies**.

(a) If the District fails or refuses to timely comply with its obligations hereunder, or if, prior to any Closing, the District's representations, warranties or covenants contained herein are not true or have been breached, Developer will have the right to enforce this Agreement by any remedy at law or in equity or under this Agreement to which it may be entitled; to terminate this Agreement; or waive prior to or at Closing as applicable, the applicable objection or condition and to proceed to close their transaction in accordance with the remaining terms.

(b) If, after Closing, a Developer determines that any of the District's representations, warranties or covenants which applied to the Closing are not true, then the Developer may avail itself of any remedy at law or in equity or under this Agreement to which it may be entitled.

8.3 **Default in Payments**. All amounts due and owing by Developer to District shall, if not paid when due, bear interest at the Texas post-judgment interest rate in the Texas Civil Practice & Remedies Code, or any successor statute, from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate as permitted by law. If any amount due and owing by the Developer to the District is placed with an attorney for collection, the prevailing party in any litigation or arbitration involving the collection shall be paid its costs and attorneys' fees by the non-prevailing party, and such payments shall be in addition to all other payments provided for by this Agreement, including interest.

8.4 **Disputed Payment**. If Developer at any time disputes the amount to be paid by it to the District, the Developer shall nevertheless promptly make or cause to be made the disputed payment or payments, but Developer shall thereafter have the right to seek a determination whether the amount charged by the District is in accordance with the terms of this Agreement.

8.5 **Notice and Opportunity to Cure**. If either Party (referred to herein as the "Defaulting Party") fails to comply with its obligations under this Agreement or is otherwise in breach or default under this Agreement (collectively, a "Default") then the other Party (referred to herein as the "Non-Defaulting Party") may not invoke any rights or remedies with respect to the Default until and unless: (i) the Non-Defaulting Party delivers to the Defaulting Party a written notice (the "Default Notice") which specifies all of the particulars of the Default and specifies the actions necessary to cure the Default; and (ii) the Defaulting Party fails to cure, within ten (10) days after the Defaulting Party's receipt of the Default Notice, any matters specified in the Default Notice which may be cured solely by the payment of money or the Defaulting Party fails to commence the cure of any matters specified in the Default Notice which cannot be cured solely by the payment of money within a reasonable period of time after the Defaulting Party's receipt of the Default Notice or fails to thereafter pursue curative action with reasonable diligence to completion.

IX.
NOTICES

9.1 **Addresses.** All notices hereunder from Developer to the District will be sufficient if sent by certified mail with confirmation of delivery, addressed to the District to the attention of its General Manager, 100 Municipal Drive, Trophy Club, Texas 76262. All notices hereunder from the District to Developer will be sufficiently given if sent by certified mail with confirmation of delivery to Developer to the attention of Chris Gordon, OTD TC, LLC, 2241 Veranda Avenue, Trophy Club, TX 76262.

X.
MISCELLANEOUS

10.1 **Execution.** This Agreement may be simultaneously executed in any number of counterparts, each of which will serve as an original and, will constitute one and the same instrument.

10.2 **Approvals**. The Board of Directors of the District may delegate any approvals required hereunder to the District Engineer or other representatives.

10.3 **Costs and Expenses.** Except as otherwise expressly provided herein, each Party will be responsible for all costs and expenses incurred by such Party in connection with the transaction contemplated by this Agreement.

10.4 **Governing Law.** This Agreement will be governed by the Constitution and laws of the State of Texas, except as to matters exclusively controlled by the Constitution and Statutes of the United States of America.

10.5 **Successors and Assigns.** The assignment of this Agreement by either Party is prohibited without the prior written consent of the other Party, which consent will not be unreasonably withheld. All of the respective covenants, undertakings, and obligations of each of the Parties will bind that Party and will apply to and bind any successors or assigns of that Party.

10.6 **Headings.** The captions and headings appearing in this Agreement are inserted merely to facilitate reference and will have no bearing upon its interpretation.

10.7 **Partial Invalidity.** If any of the terms, covenants or conditions of this Agreement, or the application of any term, covenant, or condition, is held invalid as to any person or circumstance by any court with jurisdiction, the remainder of this Agreement, and the application of its terms, covenants, or conditions to other persons or circumstances, will not be affected.

10.8 **Waiver.** Any waiver by any Party of its rights with respect to a default or requirement under this Agreement will not be deemed a waiver of any subsequent default or other matter.

10.9 **Amendments.** This Agreement may be amended or modified only by written agreement duly authorized by the governing body of the District and Developer, and executed by the duly authorized representatives of all Parties.

10.10 **Cooperation.** The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement. Without limitation, each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

10.11 **Venue.** All obligations of the Parties are performable in Tarrant County, Texas and venue for any action arising hereunder will be in Tarrant County.

10.12 **Third Party Beneficiaries.** Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

10.13 **Representations.** Unless otherwise expressly provided, the representations, warranties, covenants, indemnities, and other agreements will be deemed to be material and continuing, will not be merged, and will survive the closing of this transaction and the conveyance and transfer of the Interests to be Acquired to the District.

10.14 **Exhibits.** All exhibits attached to this Agreement are hereby incorporated in this Agreement as if the same were set forth in full in the body of this Agreement.

10.15 **Entire Agreement.** This Agreement, including the attached exhibits, contains the entire agreement between the Parties with respect to the Interests to be Acquired and supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties with respect to such matters.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be signed, sealed and attested in duplicate by their duly authorized officers, as of the Effective Date.

TROPHY CLUB MUNICIPAL UTILITY DISTRICT NO. 1

By: ______________________________

Name:______________________________

Title: ______________________________

____
Secretary

DEVELOPER:

OTD TC, LLC, a Texas limited liability company

____

By: ______________________________

Name:______________________________

Title: ______________________________

THE STATE OF TEXAS §
§
COUNTY OF DENTON §

This instrument was acknowledged before me on the _____ day of ________________, 2015, by __________________________, ________________ of Trophy Club Municipal Utility District No. 1 a conservation and reclamation district created and functioning under the laws of the State of Texas, on behalf of said conservation and reclamation district.

____
Notary Public, State of Texas

(SEAL)

THE STATE OF TEXAS §
§
COUNTY OF ____________ §

This instrument was acknowledged before me on the _____ day of ________________, 2015, by __________________, _________________________ of ______________________, a ___________________________, on behalf of said _____________________.

____
Notary Public, State of Texas

Exhibit "A"

Description of Property

Exhibit "B"

Approved Public Right of Way Usage