

Appendix D
SUBDIVISION CONSTRUCTION AGREEMENT SAMPLE FORM

1. Parties. This Subdivision Construction Agreement (the Agreement) is by and between the City of Natalia and the Subdivider. The Subdivider is _____, who is the owner, or the authorized agent or owner, of a tract of land located within the geographic area and jurisdiction of the City.
2. Effective Date. This agreement is effective on the date the City approves the final plat for the subdivision described in paragraph 3 of this agreement.

RECITALS

3. Subdivider is the owner of the land included in the proposed final subdivision plat of the subdivision, more particularly described by metes and bounds attached as Exhibit A.
4. Subdivider seeks authorization from the City to subdivide the Property in accordance with the requirements imposed by Texas statute and the City's Ordinances, regulations, and other requirements; and
5. City Ordinances require the completion of various improvements in connection with the development of the subdivision to protect the health, safety and general welfare of the community and to limit the harmful effects of substandard subdivisions; and
6. The purpose of this agreement is to protect the City from the expense of completing subdivision improvements required to be installed by the Subdivider; and
7. This agreement is authorized by and consistent with state law and the City's ordinances, regulations, and other requirements governing development of a subdivision.

IN CONSIDERATION of the foregoing recitals and mutual covenants, promises, and obligations by parties set forth in this Agreement, the parties agree as follows:

SUBDIVIDER'S OBLIGATIONS

8. Improvements. The subdivider agrees to construct and install, at Subdivider's expense, all subdivision improvements required to comply with the City's ordinances, regulations and policies governing subdivision approval, specifically including without limitation those improvements shown on the final plat of the subdivision, as approved by the City of Natalia. All improvements shall be constructed in conformity with Appendix A of this ordinance and are subject to inspection, certification and acceptance by the City.
9. Completion. Unless a different time period is specified by the Natalia City Council for a particular improvement during the plat approval process, construction of all of the improvements shall be completed no later than one year from the effective date. Upon completion of the construction of the improvements, the Subdivider agrees to provide the City with a complete set of construction plans ("as built") within sixty days of construction completion.
10. Warranty. The Subdivider warrants the improvements constructed by Subdivider or Subdivider's agents, contractors, employees, tenants, or licensee will be free from defects for a period of one (1) year from the date the City accepts the dedication of a completed improvement or group of improvements (the Warranty Period), as such improvements or group of improvements is separately identified and listed on Exhibit B, except the Subdivider does not warrant the Improvements for defects caused by events outside the control of the Subdivider or the Subdivider's agents, contractors, employees, tenants, or licensees. The Subdivider agrees to repair any damage to the Improvement before and during the Warranty Period due to private construction-related activities. As a condition of the City's acceptance of dedication of any of the Improvements, the City may require the Subdivider to

post a maintenance bond or other financial security acceptable to the City to secure the warranty established by this Agreement. If the improvements have been completed but not accepted, and neither the Subdivider nor Issuer is then in default under this Agreement or the Letter of Credit, at the written request of the Subdivider or the Issuer the City shall complete, execute, and deliver to the Issuer a reduction letter documenting that the Stated Amount has been reduced to an amount equal to the face amount of the maintenance bond or other financial security acceptable to the City.

11. Security. To secure the performance of Subdivider's obligations under this Agreement, Subdivider agrees to provide adequate financial guarantees of performance in the form of a surety bond acceptable to the City, a cash deposit to be held by the City escrow, or an irrevocable letter of credit in the amount of _____ Dollars (\$_____) (the Stated Amount), which amount is 110% of the estimated total cost of constructing each of the improvements as shown on Exhibit B. If a letter of credit is provided pursuant to this Agreement, it shall be in a standard form acceptable to the City, shall have an expiration date no earlier than one year from the date of its issuance, and shall be issued by a financial institution having a rating equivalent to the minimum acceptable rating established under the City's financial institution rating system in effect at the time the initial letter of credit is issued pursuant to this Agreement (the Issuer). During the term of this Agreement and subject to the terms of Paragraph 22 of this Agreement, the City may revise the standard form letter of credit it reasonably considers acceptable and necessary to secure the performance of Subdivider's obligations under this agreement. A letter of credit satisfying the criteria of this Paragraph (and any substitute or confirming letter of credit) is referenced to in this Agreement as the "letter of credit."

12. Reduction In Letter of Credit. After the acceptance of any improvement, the amount, which the City is entitled to draw on the Letter of Credit, shall be reduced by an amount equal to ninety percent (90%) of the Quoted cost of the accepted improvement, as shown on Exhibit B. Upon completion of an improvement, at the written request of Subdivider or Issuer, and if neither the Subdivider nor Issuer is then [in] default under this agreement or the Letter of Credit, the City shall complete, execute, and deliver to the Issuer a reduction letter verifying the acceptance of the improvement and documenting that the stated amount has been reduced by stating the balance of the stated amount remaining after the reduction required by the first sentence of this Paragraph. No later than sixty (60) days after its receipt of a written request to reduce the stated amount submitted by the Subdivider or the Issuer, the City shall determine the estimated remaining cost and shall complete, execute, and deliver to the Issuer a reduction letter documenting that the Stated Amount has been reduced to the estimated remaining cost if the City determines the stated amount exceeds the estimated remaining cost. Notwithstanding the preceding sentence, the City shall not be required to authorize reductions in the stated amount more frequently than every ninety - (90) days. As used in this paragraph, "Estimated Remaining Cost" means amount the City estimated to be the cost of completing all improvements, which are incomplete as of the time of such estimate.

CITY'S OBLIGATIONS

13. Inspections and Certificate. The City agrees to inspect improvements during and at the completion of construction and, if completed in accordance with the standards and specifications for such improvements, to certify the improvements as being in compliance with City standards and specifications. The inspections and certifications will be conducted in accordance with standard City policies and requirements. The Subdivider grants the City, its agents, employees, officers, and contractors an easement and license to enter the property to perform such inspections as it deems appropriate.

14. Notice of Defect. The City will provide timely notice to the Subdivider whenever inspections reveals that an improvement is not constructed or completed in accordance with the standards and specifications for health or safety, and the notice of defect includes a statement explaining why the defect creates such immediate and substantial harm, the cure period may be shortened to no less than

five (5) days and the City may declare a default under this Agreement if not satisfied that the defect is cured after the cure period. Any cure period should be reasonable in relation to the nature of the default.

15. Use of Proceeds. The City will disburse funds drawn under the Letter of Credit only for the purposes of completing the improvements in conformance with the City's requirements and specifications for the improvements, or to correct defects in or failures of the improvements. The Subdivider has no claim or rights under this Agreement to funds drawn under the Letter of Credit or any accrued interest earned on the funds. All funds obtained by the City pursuant to one or more draws under the Letter of Credits shall be maintained by the City in an interest bearing account or accounts until such funds, together with accrued thereon (the escrowed funds), are disbursed by the City. The City may disperse all or portions of the escrowed funds as improvements are completed and accepted by the City, or in accordance with the terms of a written construction contract between the City and a third party for the construction of improvements. Escrowed funds not used or held by the City for the purpose of completing an improvement or correcting defects in or failures of improvements, together with interest accrued thereon, shall be paid by the City to the Issuer of the Letter of Credit no later than sixty (60) days following the City's acceptance of the improvement or its decision not to complete the improvement using escrowed funds, whichever date is earlier.

16. Return of Excess Escrowed Funds. No later than sixty - (60) days after its receipt of a written request from the Subdivider or the Issuer to return excess escrowed funds to the Issuer, the City shall disburse to the Issuer from the escrowed funds all excess escrowed funds. For purposes of this paragraph, "Excess Escrowed Funds" means the amount of escrowed funds exceeding one hundred ten percent (110%) of the estimated cost of constructing improvements the City intends to construct but which have not been accepted, as such, cost is shown on Exhibit B. Notwithstanding the first sentence in this paragraph, the City shall not be required to disburse excess escrowed funds more frequently than every ninety - (90) days.

17. Cost Participation by City. If the City and Subdivider agree the City will participate in the expense of installing any of the Improvements, the respective benefits and obligations of the parties shall by [be] governed by the terms of that agreement [and] shall control to the extent of any inconsistency with this Agreement.

18. Conditions of Draw on Security. The City may draw upon any financial guarantee posted in accordance with Paragraph 11 upon the occurrence of one or more of the following events:

- (a) Subdivider's failure to construct the Improvements in accordance with Paragraph 8 of this Agreement;
- (b) Subdivider's failure to renew or replace the Letter of Credit at least forty-five (45) days prior to the expiration date of the Letter of Credit;
- (c) Subdivider's failure to replace or confirm the Letter of Credit if the Issuer fails to maintain the minimum rating acceptable to the City, in accordance with Paragraph 11 of this Agreement; or
- (d) Issuer's acquisition of the Property or a portion of the Property, through foreclosure or an assignment or conveyance in lieu of foreclosure.

The City shall provide written notice of the occurrence of one or more of the above events to the Subdivider, with a copy provided to the Issuer. Where a Letter of Credit has been provided as the financial guarantee, with respect to an event described by subparagraph (a), the City shall provide notice to the Subdivider and the Issuer of the specific default and the notice shall include a statement that the City intends to perform some or all of Subdivider's obligation under Paragraph 8 for specified Improvements if the failure is not cured. The notice with respect to a default under subparagraph (a) shall be given no less than twenty (20) days before presentation of a draft on the Letter of Credit, unless, in the reasonable opinion of the City, the failure creates an immediate and substantial harm to

the public health or safety, in which case the notice shall state why the failure creates an immediate and substantial harm to the public health or safety, and shall be given no less than five (5) days before presentation of a draft on the Letter of Credit. In the event of a draw based on subparagraph (a), the City shall be entitled to draw in the amount it considers necessary to perform Subdivider's obligations under Paragraph 8, up to the amount allocated according to Exhibit B for any improvements it states its intent to construct or complete. In accordance with the standards and specifications for such improvement. The Subdivider hereby grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purpose of constructing, maintaining, and repairing such Improvements. Where a Letter of Credit has been provided as the financial guarantee, with respect to an event described by subparagraphs (b), (c) or (d) the notice shall be given no less than twenty (20) days before presentation of a draft on the Letter of Credit. In lieu of honoring a draft based on an event described in subparagraphs (b) or (c), the Issuer of the Subdivider may deliver to the City a substitute Letter of Credit if the event is described by subparagraph (b) or a substitute or confirming Letter of Credit if the event is described by subparagraph (c). If the Issuer has acquired all or a portion of the Property through foreclosure or an assignment or conveyance in lieu of foreclosure, in lieu of honoring draft based on an event described in subparagraph (d), the issuer may deliver to the City a substitute or confirming Letter of Credit.

19. Procedures for Drawing on the Letter of Credit. The City may draw upon the Letter of Credit in accordance with Paragraph 18 by submitting a draft to the Issuer in compliance with the terms of the Letter of Credit governing such draft. The Letter of Credit must be surrendered upon presentation of any draft, which exhausts the Stated Amount of such Letter of Credit. The City may not draft under a Letter of Credit unless it has substantially complied with all its obligations to the Issuer under this Agreement and has properly completed and executed the draft in strict accordance with the terms of the Letter of Credit.

20. Measures of Damages. The measure of damages for breach of this Agreement by the Subdivider is the reasonable cost [cost] of completing the Improvements in conformance with the City's requirements, procedures, and specifications. For Improvements upon, which construction has not begun, the estimated cost of the Improvements shown on Exhibit B will be prima facie evidence of the minimum cost of completion; however, neither that amount or the amount of the Letter of Credit establishes the maximum amount of the Subdivider's liability.

21. Remedies. The remedies available to the City, the Subdivider, and Issuer under this Agreement and the laws of Texas are cumulative in nature.

22. Provisions for the Benefit of Issuer. The provisions of Paragraph[s] 9, 10, 11, 12, 15, 16, 18, 19, 21, 22, 23, 25, 26, 27, 28, 29, 30, 32, and 36 of this Agreement for the benefit of the Issuer may not be modified, released, diminished, or impaired by the parties without prior written consent of the Issuer.

23. Third Party Rights. No person or entity who or which is not a party to this Agreement shall have any right of action under this Agreement, nor shall any such person or entity other than the City (including without limitation a trustee in bankruptcy) have any interest in or claim to funds drawn on the Letter of Credit and held in escrow by the City in accordance with this Agreement. Notwithstanding the preceding sentence, the Issuer shall have a right to enforce any provision of this Agreement where the Issuer is specifically named as a beneficiary of such provision pursuant to Paragraph 22.

24. Indemnification. The Subdivider hereby [hereby] expressly agrees to indemnify and hold the City harmless from and against all claims, demands, costs, and liability of every kind and nature, including reasonable attorney's fees for the defense of such claims and demands, arising from any breach on the part of Subdivider of any provision in this Agreement, or from any act or negligence of Subdivider or Subdivider's agents, contracts [contractors], employees, tenants, or licensees in the construction of the Improvements. The Subdivider further agrees to aid and defend the City if the City is named as a

defendant in an action arising from any breach on the part of Subdivider of any provision in this Agreement, or from any act of negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements, except where such suit is brought by the Subdivider. The Subdivider is not an employee or agent of the City. Notwithstanding anything to the contrary contained in this agreement, the Subdivider does not agree to indemnify and hold the City harmless from any claims, demands, costs, or liabilities arising from any act or negligence of the City, its agents, contractors, employees, tenants, or licensees.

25. No Waiver. No Waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute continuing waiver unless expressly provided for by a written amendment to this Agreement; nor will the waiver of any default under this agreement be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Agreement or covenant by the City, the Subdivider, or the Issuer, their heirs, successors, or assigns, whether any violations thereof are known or not, shall not constitute a waiver or estoppels of the right to do so.

26. Attorney's Fees. Should either party or the Issuer, to the extent Issuer is named as specific beneficiary, be required to resort to litigation to enforce the terms of this agreement, the prevailing party, plaintiff or defendant, shall be entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other party. If the court awards relief to both parties, each will bear its own costs in the entirety.

27. Assignability. The benefits and burdens of this Agreement are personal obligations of the Subdivider and are binding on the heirs, successors, and assigns [of] Subdivider. The Subdivider's obligations under this Agreement may not be assigned without the express written approval of the City. The City's written approval may not be withheld if the Subdivider's assignee explicitly assumes all obligations of the Subdivider under this Agreement and has posted the required security. The City agrees to release or reduce, as appropriate, the Letter of Credit provided by the Subdivider if it accepts substitute security for all or any portion of the Improvements. The City, in its sole discretion, may assign some or all of its rights under this Agreement, and any such assignment shall be effective upon notice to the Subdivider and the Issuer.

28. Expiration. This Agreement shall terminate upon the expiration of the approval of the proposed final plat of the Subdivision is vacated by the Subdivider.

29. Notice. Any notice required or permitted by this Agreement is effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Subdivider

Attn: _____

Printed Name: _____

Office or Position: _____

Address: _____

if to City:

Attn: _____

Printed Name: _____

Office or Position: _____

Address: _____

if to the Issuer: at Issuer's address shown on the Letter of Credit.

The parties may, from time to time, change their respective addresses listed above to any other location in the United States for the purpose of notice under this Agreement. A party's change of address shall be effective when notice of the change is provided to the other party in accordance with the provisions of this Paragraph.

30. Severability. If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or enforceability shall not affect the validity of any other part, term, or provision was [sic] never part of this Agreement.

31. Personal Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement or the Issuer, whether arising out of or relating to the Agreement or the Letter of Credit, will be deemed to be proper only if such action is commenced in District Court for Cameron County, Texas, or the United States District Court for the _____ District of Texas, _____ Division. The Subdivider expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal. The Issuer, by providing a Letter of Credit pursuant to the terms of this Agreement, expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal.

32. Release Upon Completion. Upon acceptance of all Improvements, the City agrees: (a) to complete, execute and deliver to the Subdivider and the Issuer a release in recordable form releasing the Subdivider and Subdivider's heirs, successors and assigns, and the Property from all provisions of this Agreement except those contained in Paragraph 10, and (b) to return to the Issuer the Letter of Credit and any escrowed funds not expended or obligated by the City for the completion of the Improvements.

33. Captions Immaterial. The numbering, order, and captions or headings of the paragraphs of the agreement are for convenience only and shall not be considered in construing this agreement.

34. Entire Agreement. This Agreement contains the entire agreement between the parties and correctly sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any oral representations or modifications concerning this Agreement shall be of no force or effect excepting a subsequent written modification executed by both parties.

35. Authorization to Complete Blanks. By signing and delivering this agreement to the appropriate official of the City, the Subdivider authorizes completion of this Agreement by filling in the Effective Date below.

36. Binding Agreement. The execution and delivery of this agreement and the performance of the transactions completed thereby have been duly authorized by all necessary corporate and governmental action of the City. This Agreement has been duly executed and delivered by each party, and constitutes a legal, valid, and binding obligation of each party enforceable in accordance with the terms as of the effective Date. These representations and agreements are for the benefit of the Issuer, and have been relied on by the Issuer in issuing the Letter of Credit.

EXECUTED by the parties to be effective as of the _____ day of _____, 20____.

City Official

Subdivider

Witness

Witness

EXHIBIT A: METES AND BOUNDS DESCRIPTION OF PROPERTY

EXHIBIT B: SUBDIVISION IMPROVEMENTS

Subdivision Improvements. Subdivider and City agree the following improvements are required in connection with the approval and development of the Subdivision (collectively, the Subdivision Improvements). Subdivider agrees to deliver a financial guarantee acceptable in form [form] and substance to the City in an amount equal to the Estimated Cost of Completion listed below as follows:

Description of Improvement(s)	Estimated Cost of Completion
a)	
b)	
c)	