ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

Between the City Of Harker Heights, Texas and
D Squared Development, LLC

1. **DEFINITIONS.** In this Agreement the following definitions apply unless the context clearly indicates otherwise:

A. *Affiliated Entity* means, with respect to Developer, any person or entity that directly or indirectly controls, is controlled by, or is under common control with, the Developer, and includes any direct or indirect subsidiary or parent corporation of the Developer now existing or hereafter formed or acquired and which has an interest in the Property or the Facility. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of another, whether through the ownership of voting securities, by contract, as trustee or executor, or otherwise.

B. *Agreement* means this Economic Development Incentive Agreement, together with its exhibits and addenda, as may be modified from time to time.

C. *Business days* means normal working business days (i.e., Monday through Friday of each calendar week, exclusive of federal and national bank holidays).

D. *Certificate of Occupancy* shall mean that final document issued by the City entitled "Certificate of Occupancy" indicating that all applicable codes, regulations, and ordinances enforced by the City have been unconditionally, fully and completely complied with in all respects. A Certificate of Occupancy shall not include a certificate issued in error, mistake or misrepresentation of facts, nor any temporary or conditional document authorizing temporary or conditional occupancy.

E. *City* means the City of Harker Heights, Texas, a home rule municipal corporation located in Bell County, Texas.

F. *Confidential Information* means any information and documentation provided by Developer to City pursuant to this Agreement which is clearly marked as being confidential.

G. *Developer* means D Squared Development, LLC, a Florida limited liability company, having its principal place of business in Travis County, Texas, and its contractors, agents and representatives.

H. *Effective Date* means February 10, 2015.

I. *Facility* means a facility that Developer proposes to build and operate on the Property to provide affordable family housing, as depicted in the Concept Plan attached hereto as **Exhibit A**, and other ancillary facilities such as reasonably required for parking, landscaping, and amenities.

J. *Force Majeure* means any cause that, despite the exercise of due diligence by the affected party, is not reasonably within the control of and could not have been avoided by that party, including without limitation: acts of God; strikes, lockouts and other labor disputes or industrial stoppages; interruption of communications or public utilities; orders or actions of any governmental or military authority; blockade or embargo; expropriation or confiscation of facilities; civil riots, commotion or disturbances; acts of war, terrorism, the public enemy, revolution, rebellion or sabotage; materials shortages; rationing; fires, floods, lightning, storms, hurricanes, tornados, epidemics, earthquakes, landslides, drought, explosions or other calamity; and unavoidable accidents or breakdowns.

K. *Incentives* means, collectively, all economic development incentives described in Paragraph 7 of this Agreement.

L. *Infrastructure* means the connector road required in Paragraph 4C.

M. *Program* means the Economic Development Program adopted by the City Council on or about December 19, 2000.

N. *Project* means all work necessary to construct the Facility and Infrastructure required by this Agreement.

O. *Property* means real property described in **Exhibit B**.

P. *Tax Credits* means 2015 Housing Tax Credits from the Texas Department of Housing and Community Affairs.

Q. *Term* means the term of this Agreement, which commences on the Effective Date and expires when the City issues a Certificate of Occupancy for the Facility, unless sooner terminated as herein provided.

2. BACKGROUND.

A. The City adopted the Program as authorized by: (1) the City's broad and inherent authority as a home-rule municipality under its Charter; (2) Article XI, Section 5, of the Texas Constitution; (3) Article VIII, Section 52-a of the Texas Constitution; and (4) Chapter 380 of the Texas Local Government Code. The Program provides for the City to provide economic development incentive funds to: support the creation of new jobs or improve wage scales for existing jobs; make the City more attractive to new residents, businesses, and visitors; encourage residential and commercial growth and development; expand the City's tax base; and generally to promote local economic development.

B. Developer is considering development of the Project in the City, and is seeking Tax Credits in connection therewith.

C. The City Council has found that the Project will provide substantial benefits to the City, and should be encouraged by means of certain incentives to be made subject to the terms of this Agreement.

D. The parties accordingly enter into this Agreement providing for economic incentives as an inducement for the Developer to invest its time, energy, and resources in the City, and by extension to facilitate the goals and objectives of the Program.

3. CITY COUNCIL FINDINGS. By approval of this Agreement, the City Council of the City of Harker Heights finds and determines that:

A. The Facility expected to add at least $2,000,000 in appraised value to the City's tax rolls, thereby providing additional revenue for the City to fund critical public services, and reducing the City's dependence on income from residential property taxes.

B. The Facility would be the first high-quality affordable family housing project located in the City, thereby offering the citizens new choices and greater convenience in meeting their housing needs.

C. The presence of the Facility in the City will make the City more attractive to families and businesses, thereby promoting additional residential and commercial growth and development.

D. The Incentives authorized by this Agreement will encourage the Developer to locate the Facility in the City when it might not otherwise be able to do so.

E. This Agreement provides reasonable and adequate safeguards to ensure that the public receives sufficient benefits in exchange for the Incentives.

F. This Agreement benefits the public health, safety and welfare, and should be approved.

4. DEVELOPER OBLIGATIONS.

A. *Tax Credits.* Developer or its Affiliated Entity, Stillhouse Flats, LLC, will timely apply for and make a commercially reasonable and diligent effort to obtain the Tax Credits.

B. *Facility Construction.* If successful in obtaining the Tax Credits and closing on the acquisition of the Property by Developer or an Affiliated Entity (the "Closing"), Developer will proceed with reasonable commercial diligence to construct the Facility on the Property, and to have the Facility fully operational and open for business not later than December 31, 2017, subject to events of Force Majeure. Based on current projections of net operating income to be generated from the Property after completion of the Facility and applying current capitalization rates, the value of the Facility (land and improvements) is expected to be not less than $ 2,000,000.

C. *Infrastructure.* As part of the construction of the Facility, the Developer will at its sole cost and expense design and construct an approximately 80-foot wide connector road from Stillhouse Lake Road (F.M. 3481) to Cedar Knob Road and/or utility infrastructure improvements which will directly support the Facility, as generally depicted **Exhibit A** (collectively the "Infrastructure"), subject to the terms and conditions of this Agreement.

1. The construction of the Infrastructure shall be performed in a good and workmanlike manner using new materials in good condition, according to standards and designs acceptable to the City, consistent with similar infrastructure and improvements serving other projects of similar size and use in the City.

2. When the Facility is complete and fully operational, the Developer will dedicate the Infrastructure to the City, together with such easements as may be reasonably necessary for the City to inspect, operate, reconstruct, maintain, repair, and replace the Infrastructure or any portion thereof. The dedicatory instrument and easements shall be upon forms reasonably acceptable to the City. The Developer understands and agrees that the City will not accept a dedication of the Infrastructure unless and until the Infrastructure is approved by the City's Public Works Director, which approval shall not be unreasonably withheld, conditioned or delayed. The Developer shall be solely responsible for all repairs and maintenance until the Infrastructure is accepted by the City, and thereafter as provided by the maintenance bond required herein.

3. At the time the Developer offers the Infrastructure for dedication, the Developer shall furnish the City with the following, each in form reasonably acceptable to the City:

a. A maintenance bond or other surety instrument, such as a letter of credit or escrow account (the "Guaranteed Funds") reasonably satisfactory to the City to assure the quality of materials and workmanship, and maintenance of the Infrastructure, including the City's cost of collecting the Guaranteed Funds and administering the correction or replacement of the Infrastructure. The bond shall be in amount equal to twenty percent (20%) of the cost of the Infrastructure as verified by the City Engineer, and shall provide coverage for a period of one (1) year, beginning on the date of the City's acceptance of the Infrastructure. Should a defect or failure occur within the period of coverage, the City may require that the term of coverage be extended for one (1) full calendar year from the date the City accepts the correction of the defect or failure.

b. A waiver of lien or a lien subordination agreement executed by each contractor, laborer and supplier that has furnished labor and/or materials in connection with the completed aspects of the Infrastructure.

c. An assignment of any third party warranties to the extent related to the Infrastructure.

D. *Employment of Undocumented Workers.* During the Term of this Agreement, the Developer agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. § 1324a(f), the Developer shall repay the Incentives and any other funds received by the Developer from the City under this Agreement as of the date of such violation, such payment being due within 120 business days after the date the Developer is notified by the City of such violation, plus interest at the rate periodically announced by the *Wall Street Journal* as the prime or base commercial lending rate, or if the *Wall Street Journal* shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from

time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate, from the date of such notice until paid.

E. *Legal Compliance.* The Developer shall at all times strictly comply with this Agreement and all rules, orders, laws and regulations (as the same may be amended from time to time) that relate in any way to the Project, the Property, the Facility, and the activities conducted by or on behalf of the Developer thereon.

F. *Developer Restrictions.* During the Term, the Developer shall not, without the City's prior written consent: (1) change its name or jurisdiction of organization; (2) amend its capital structure, liquidate or dissolve, or become a party to any merger, conversion or consolidation, or otherwise transfer control or ownership of the Developer, or form or acquire any subsidiary; (3) make any substantial change to its present executive or management personnel; or (4) change the state in which its place of business (or chief executive office if the Developer has more than one place of business) is located.

G. *Notice Required.* The Developer shall notify the City immediately of any event of default hereunder and of any: (1) change in the Developer's name or mailing address, (2) material adverse change in the Developer's financial condition; (3) material adverse change in the ability of the Developer to perform its obligations hereunder; or (4) any representation or warranty made by the Developer in this Agreement that is no longer true and correct in all material respects.

H. *Subordination, Non-Disturbance and Attornment.* If any mortgage, deed of trust, or other lien (each a "Mortgage") presently existing encumbers the Property or any portion of it, then the Developer agrees, within thirty (30) days after the Closing, to deliver or cause the Affiliated Entity to which title to the Property is transferred, to deliver to the City a subordination, non-disturbance and attornment agreement on a form reasonably satisfactory to the City's legal counsel, pursuant to which the holder of the Mortgage agrees that the City's rights and interests under this Agreement shall not be disturbed as long as the City does not default under this Agreement (after giving effect to all applicable cure periods).

I. *Refund of Overpayment.* The payment or delivery of any Incentives hereunder shall not be an admission of the Developer's unqualified entitlement to same, but the City retains the right to review the Developer's entitlement and to require such corrective action as may be supported by this Agreement, including without limitation requiring the Developer to refund any overpayment to the City upon demand.

J. *Reimbursement of Legal Fees.* Developer agrees to pay reasonable and necessary fees incurred by the City for the legal services associated with preparation of this Agreement, up to a maximum of $1,000. The payment of legal fees is contingent upon the execution of this Agreement by both Parties. Upon presentation of reasonably detailed itemized legal bills for fees associated with this Agreement, Developer will reimburse the City for these costs within thirty (30) days following the Closing.

5. REPORTS AND INSPECTIONS.

A. Until the City issues a Certificate of Occupancy for the Facility, Developer shall certify to the City each March and September that it has complied with the terms of this Agreement in the preceding six months. Together with each certification of compliance, the Developer shall submit such written information, records, and documents as the City may in its discretion require to verify the Developer's certification of compliance.

B. To demonstrate compliance with its obligations hereunder, the Developer shall prepare and maintain systematic and complete records in compliance with good business and accounting practices consistently applied, and shall cause its contractors and agents to do the same. Developer shall retain all records relating to this Agreement for a period of at least four (4) years after the expiration or termination of this Agreement, with any extensions thereof, or for such longer period(s) as may otherwise be required by applicable law. If any such records are or may be required to resolve any then threatened or pending claim or proceeding relating to this Agreement, the period of retention shall continue until final disposition of such claim or proceeding.

C. All information required to be provided by the Developer to the City shall be sent to the attention of the City's Finance Director at the address specified for giving notice in this Agreement.

D. The City's authorized representatives shall have the right to enter the Property and the Facility at reasonable times to conduct site visits, meet with Developer's personnel, view and copy any records or other evidence relating to performance of this Agreement, to audit and verify costs under this Agreement, and evaluate and test Developer's systems of internal controls, practices, and procedures.

E. If the City notes any deficiencies based upon the reports and inspections required by this section, it shall provide written notice thereof to the Developer together a statement of the measures required to correct such deficiencies.

F. Nothing herein shall be construed to require the Developer to disclose information that it is prohibited by law from disclosing or which is otherwise proprietary or confidential.

6. CONFIDENTIALITY. Developer acknowledges that pursuant to the Texas Public Information Act, Government Code Chapter 552, the City's ability to prevent disclosure of information is limited by law. However, the City agrees to the extent allowed by law to keep confidential all Confidential Information, provided that the City will not be required to incur any expense in doing so. The City will use the Confidential Information solely for the purposes of exercising its rights and performing its obligations hereunder, and for monitoring and enforcing the Developer's obligations hereunder. In the event the City is requested or becomes legally compelled (by Public Information Act request, deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, the City shall provide the Developer with prompt written notice of such request or requirement so that the Developer may seek a protective order or other appropriate remedy, and/or waive compliance with the terms of this paragraph.

7. INCENTIVES TO DEVELOPER.

A. *Incentives Provided.* As consideration for Developer's contractual obligations hereunder, and subject to Developer's strict, faithful and timely performance thereof, the City agrees to provide the following incentives to the Developer:

1. *Resolutions.* The City will provide Developer with formal Resolutions duly passed by the City Council expressing support for the Project and committing to provide Incentives as herein provided.

2. *Infrastructure Participation.* Within thirty (30) days following the later of acceptance of the Infrastructure, receipt of the required bond, receipt of all records the City deems reasonably necessary to verify the expenditures, and issuance of a Certificate of Occupancy for the Facility, the City will pay to the Developer a sum equal to the lesser of: (i) four thousand dollars ($4,000.00) per affordable / rent-restricted unit in the Facility, or (ii) one hundred percent (100%) of the actual, reasonable, necessary, allowable and allocable direct costs incurred by the Developer and paid to third parties for labor, materials, engineering, and administration of the Infrastructure construction.

3. *Funding.* The monetary incentives provided by this Paragraph shall be paid from current revenues in the City's General Fund.

B. *Suspension or Offset of Incentives.* If the Developer or any Affiliated Entity is delinquent in payment to the City of any sums (including without limitation any fees, fines, assessments, taxes, and charges for water, sewer, garbage, drainage improvements, permits, or otherwise), and regardless of whether the amount due has been reduced to judgment by a court, the City may: (i) suspend all Incentives provided under this Agreement until such sums are paid in full; and (ii) deduct any such sums or the value thereof from the Incentives, if amounts remain unpaid for more than thirty (30) days following written notice of delinquency.

C. *Termination of Incentives.* Should any legal impediment arise during the Term of this Agreement, including a change in law, that prevents or limits the City's ability to lawfully comply with this Agreement or to provide the Incentives required hereby, the City may without further liability to Developer terminate the Incentives to the extent (but only to the extent) of such impediment.

8. DEFAULT, TERMINATION, AND REMEDIES.

A. *Default.* The Developer shall be in default if, during the Term hereof: (1) a receiver is appointed for the Facility, the Property, the Developer, or an Affiliated Entity; (2) a bankruptcy or insolvency proceeding is commenced against or by the Developer, and the Developer fails to have the proceedings dismissed or stayed within sixty (60) days; (3) the Developer is dissolved and fails to be reinstated within fifteen (15) days after written notice; (4) the Developer fails to comply with any term, condition, or covenant of this Agreement that is binding on the Developer, and such failure continues for more than thirty (30) days following receipt of written notice; provided, however, if such default is not reasonably susceptible of cure within such thirty (30) days period, such cure period shall be extended for so long as Developer

or the applicable Affiliated Entity is diligently pursuing such cure; (5) any warranty, covenant, or representation of the Developer in this Agreement or in any other written agreement between the City and the Developer is materially false when made; (6) the Property or the Facility is impaired by loss, theft, damage, levy and execution, issuance of an official writ or order of seizure, or destruction, unless Developer or an Affiliated Entity promptly commences restoration following receipt of insurance or other proceeds to be applied to such restoration and thereafter diligently pursues same to completion; or (7) the City reasonably determines that the Developer's ability to strictly perform its obligations under this Agreement is threatened by reason of a material adverse change in financial condition or credit of the Developer.

B. *Notice of Default.* The party alleging a default hereunder will give the other party not less than thirty (30) days' written notice specifying the nature of the alleged default and, when appropriate, the manner in which the alleged default may be satisfactorily cured. Notwithstanding the preceding sentence, if the nature of the alleged default is such that the giving of such written notice is impractical due to a threat of harm to life or property then the party alleging the default or breach shall give the other party such notice as may be reasonable under the circumstances.

C. *City's Remedies.* Upon the occurrence of a default by the Developer which is not timely cured, the City may (but shall not be obligated to): (i) terminate this Agreement and seek recovery of any damage suffered by the City; (ii) enter on the Property or the Facility without fear of trespass, remedy such default on behalf and at the expense of the Developer, and obtain reimbursement from the Developer of all sums reasonably expended or expenses incurred by the City in effecting such cure; (iii) discontinue performance of this Agreement until the default is cured; (iv) seek specific performance of this Agreement by the Developer; (v) withhold further Incentives until the default is cured; (vi) exercise any other remedy granted by this Agreement or by applicable law; or (vii) any combination of the foregoing, such rights and remedies being cumulative, and the exercise of any particular right or remedy shall not preclude the exercise of any other right or remedy.

D. *Developer's Remedies.* Upon the occurrence of a default by the City which is not timely cured, the Developer may (but shall not be obligated to): (i) terminate this Agreement and seek recovery of any damage suffered by the Developer; (ii) seek specific performance of this Agreement by the City; (iii) exercise any other remedy granted by this Agreement or by applicable law; or (iv) any combination of the foregoing, such rights and remedies being cumulative, and the exercise of any particular right or remedy shall not preclude the exercise of any other right or remedy.

E. *Waivers in Writing.* All waivers must be in writing and signed by the party to be bound. Failure or delay in giving notice of default shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failure or delay by either party to assert any of its rights or remedies as to any default shall not operate as a waiver of the default, nor shall it deprive the party of the right to institute and maintain any actions or proceedings it deems necessary to protect or enforce its rights or remedies. The waiver, in one instance, of any act, condition, or requirement stipulated in this Agreement shall not constitute a continuing waiver or a waiver of any other act, condition, or

requirement, or a waiver of the same act, condition, or requirement in other instances, unless specifically so stated.

F. *Mediation.* Any dispute between the parties related to this Agreement which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall initially bear the mediation costs equally, subject to adjustment as part of any mediated settlement. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

G. *Waiver of Jury.* EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES IN RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS RELATED HERETO, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. THIS WAIVER HAS BEEN FULLY NEGOTIATED BY THE PARTIES AND WILL NOT BE SUBJECT TO ANY EXCEPTIONS. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

H. *Waiver and Certain Relief.* NOTWITHSTANDING ANY CONTRARY PROVISION HEREIN, THE PARTIES EACH WAIVE ALL CLAIMS FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

I. *Attorney's Fees & Court Costs.* The prevailing party in any legal proceeding related to this Agreement is entitled to recover reasonable attorney's fees and all costs of such proceeding incurred by the prevailing party.

J. *Interest.* Unless otherwise provided all sums payable to either party by the other hereunder shall bear interest at the rate of maximum rate allowed by law (or if no such rate is provided, then 18% per annum) from the 30th day after the date due until paid.

9. DEVELOPER'S REPRESENTATIONS. As a material inducement to the City to enter into this Agreement, the Developer warrants and represents to City that the following are true as of the Effective Date, and will be true throughout the Term hereof:

A. The Developer has full power and authority to execute and deliver this Agreement and to perform its obligations under it. This Agreement constitutes the valid and legally binding obligation of the Developer, and all requisite action has been taken to make this Agreement valid and binding on the Developer in accordance with its terms.

B. Neither the execution and delivery of this Agreement by Developer, nor the performance by the Developer of its obligations hereunder, will violate any statute, regulation,

rule, judgment, order, decree, stipulation, injunction, charge or other restriction of any government, governmental agency, or court to which Developer is subject, or any provision of the governing instruments of the Developer.

C. There are no attachments, executions, or assignments for the benefit of creditors or voluntary or involuntary proceedings in bankruptcy or under any other debtor-in-relief laws pending against the Developer.

D. There are no other legal actions, suits, arbitrations, or other legal administrative or other governmental proceedings pending or threatened against the Developer, its properties, assets, or business that, if adversely determined, could have a material adverse effect on the Developer's ability to perform its obligations hereunder, and the Developer is not aware of any facts which to its knowledge might result in any such action, suit, arbitration, or other proceedings.

E. The Developer is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Florida, and having authority to do business in Texas, and with full power to carry on its business as now being conducted.

F. The Developer possesses or will acquire all permits, registrations, approvals, consents, licenses, trademarks, trademark rights, trade names, trade name rights, and copyrights needed to conduct its business in the manner contemplated by this Agreement.

G. The Developer has the expertise, experience, and resources necessary to perform its obligations hereunder with the highest degree of skill, diligence, efficiency and professionalism normally demonstrated by others engaged in performing similar activities throughout the State of Texas.

H. Developer is not aware of any related past, present, or planned interest, financial or otherwise, that may impair its objectivity in performing the Project.

I. Developer has not within a ten-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

J. Developer is not under indictment for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in the preceding subparagraph.

K. Developer has not within a ten-year period preceding the Effective Date had a contract with a governmental entity terminated for cause or default.

L. All information furnished by or on behalf of the Developer to the City is true and correct in all material respects.

The Developer acknowledges that the City has justifiably relied upon the foregoing representations and warranties, and that City would not have entered into this Agreement but for the Developer's representations as to the truthfulness and accuracy of the same.

10. FORCE MAJEURE. If a party shall be delayed, hindered, or prevented from performance of any of its obligations by reason of Force Majeure, and such party is not otherwise in default, the time for performance of such obligation shall be extended for the period of such delay, provided that the affected party shall: (i) give prompt written notice to the other party; (ii) diligently attempt to remove, resolve, or otherwise eliminate such event, keep the other party advised with respect thereto; and (iii) commence performance of its obligations hereunder immediately upon such removal, resolution, or elimination. Nothing contained in this paragraph shall be applied so as to: (i) permit any delay or time extension due to shortage of funds; or (ii) excuse any nonpayment or delay in payment of money when due; or (iii) limit either party's right (if any) to cure the other's default as if this paragraph were not contained in this Agreement.

11. COOPERATION IN THE EVENT OF LEGAL CHALLENGE. The parties agree to cooperate in defending any legal action instituted by a third party or other governmental entity or official challenging (a) the validity of one or more provisions of this Agreement; (b) the state and local legislation authorizing the City to enter into this Agreement; or (c) any discretionary action and approvals of the City regarding permits or other entitlements issued pursuant to this Agreement.

12. DOCUMENT CORRECTION; FURTHER ASSURANCES. From time to time, at the request of the City, the Developer will (a) promptly correct any defect, error or omission which may be discovered in the contents of this Agreement or in any other document executed by the Developer or in the execution or acknowledgment thereof; (b) execute, acknowledge, deliver and record or file (or cause to be executed, acknowledged, delivered and recorded or filed) such further documents and instruments and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in City's reasonable opinion, to: (i) to carry out more effectively the purposes of this Agreement and the and the transactions contemplated hereunder, (ii) confirm the rights created under this Agreement and any related documents, (iii) protect and further the validity, priority and enforceability of this Agreement and any related documents, and any liens and security interests created thereby.

13. MISCELLANEOUS PROVISIONS.

A. *Signatories.* Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement and any related documents. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

B. *Developer's Undertaking.* The Developer's efforts to establish the Facility and perform its obligations hereunder constitute a private undertaking. The Developer shall have full

power over, and exclusive control of, the specific details of its undertaking, subject only to the general limitations and obligations under this Agreement and applicable local, state and federal statutes and regulations. Nothing contained in this Agreement or in any related document shall be construed as making the City and the Developer joint venturers or partners, nor shall the Developer be or represent itself to be a contractor, agent or employee of the City.

C. *Memorandum of Record.* The City, at its option, may record a memorandum of this Agreement, which memorandum the Developer agrees to properly execute within ten (10) days after a request to do so from the City. Any such memorandum shall be executed in a recordable form, shall set forth a summary of the Developer's obligations and such other terms of this Agreement as the City deems necessary, shall expressly state that it is executed pursuant to the provisions contained in this Agreement, and that is not intended to vary the terms and conditions of this Agreement.

D. *Notices.* All notices under this Agreement shall be in writing, and (i) delivered personally to the person to whom the notice is to be given, (ii) given by certified or registered mail, return receipt requested, (iii) delivered via Federal Express or any other nationally recognized courier service that provides a return receipt showing the name of the recipient and the date of actual delivery, or (iv) given by e-mail or facsimile transmission. Notice given by mail shall be effective three (3) days (exclusive of Saturdays, Sundays and postal holidays) after the same is deposited in the United States Postal Service, properly post-paid and certified and addressed to the party to be notified. Notice given by e-mail or facsimile transmission shall only be deemed received if the transmission thereof is confirmed and such notice is followed by written notice as provided in subparts (i) through (iii) within three (3) business days following the e-mail or facsimile notice. Notice given in any other manner shall be effective only if and when actually delivered to the party to be notified or at such party's address for purposes of notice as set forth herein. A change in the notice address of any party may be effected by serving written notice of such change and of such new address upon the other party in the manner provided herein. Initially, notices shall be addressed to:

If to the City: City of Harker Heights
ATTN.: City Manager
P.O. Box 2518
Harker Heights, TX 76548
Fax: (254) 953-5605
dmitchell@ci.harker-heights.tx.us

If to Developer: D Squared Development, LLC
ATTN.: David Deutch
421 W. 3rd Street, Suite 1504
Austin, TX 78701
Fax: _____
Email: david@pinnaclehousing.com

E. *Law Governing and Venue.* The laws of the State of Texas govern this Agreement without regard to any conflict of laws provision and no lawsuit may be prosecuted on this Agreement except in a court of competent jurisdiction located in Bell County, Texas. The

Developer specifically consents to and waives any objections to *in personam* jurisdiction in Bell County, Texas.

F. *Assignment.* The Developer may not assign this Agreement to any other person or entity other than an Affiliated Entity unless the City consents in writing to the assignment, and any attempted or purported assignment in the absence of such consent shall be void.

G. *Severability.* If any provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

H. *Binding Effect.* This Agreement shall be binding upon, and shall inure to the benefit of, the parties' respective successors and permitted assigns.

I. *Third Party* Beneficiaries. There are no third-party beneficiaries of this Agreement.

J. *Survival.* All provisions of this Agreement (including, without limitation, the sections regarding record retention and audit rights, refund of overpayments, liability and indemnification, and dispute resolution) that by their terms require any performance following termination or expiration of this Agreement shall survive such termination or expiration.

K. *Interpretation.* Each party has carefully read this entire Agreement, understands the meaning and effect of each and every provision contained herein, and acknowledges that it has relied on its own judgment in entering into this Agreement. Each party executes this Agreement only after first having obtained, or having had the opportunity to obtain, competent legal advice. The use of the masculine or neuter genders herein shall include the masculine, feminine and neuter genders. The singular form shall include the plural when the context requires. Headings used throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, restrict, modify, amplify or aid in the interpretation or construction of the meaning of the provisions of this Agreement. The terms "hereof," "hereunder" and "herein" shall refer to this Agreement as a whole, inclusive of all exhibits, except as otherwise expressly provided. This Agreement represents the result of extensive discussion between the parties, and thus should not be construed strictly for or against either party.

L. *Time; Business Days.* Time is of the essence with respect to this Agreement. In the event that any time period expires or any event is to occur pursuant to the terms of this Agreement on a date which is not a business day, then such time period shall expire or such event shall occur on the first business day following such scheduled date.

M. *Entire Agreement; Modification.* This Agreement, including all exhibits, constitutes the sole and entire agreement between the parties relating to the subject matter hereof and supersedes all previous understandings and agreements between the parties (whether oral or written) relating to its subject matter. The parties have not relied upon any statement, promise or representation except those specifically set forth herein, and any other statements or representations that may have been made are void and of no effect. Each party hereby waives all

claims for fraudulent inducement and disclaims any duty of another party to make any disclosures except as set forth herein. This Agreement may be cancelled or amended by mutual consent of the parties, and to be effective an amendment or agreed cancellation must be in writing and signed by each party in a form suitable for recording in the official records of Bell County. The exhibits, attachments and addenda which are a part of this Agreement are:

Exhibit A: Facility Concept Plan
Exhibit B: Property Description

N. *Multiple Counterparts.* To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

CITY OF HARKER HEIGHTS

By: David Mitchell
David Mitchell, City Manager

Date: 3-4-15

D SQUARED DEVELOPMENT, LLC

By: President

Title: President

Date: 2-24-15

ATTEST:

Patricia Brunson
Patricia Brunson, City Secretary

Attach Exhibits:

Exhibit A:	Facility Concept Plan
Exhibit B:	Property Description

EXHIBIT A

EXHIBIT B

9.100 ACRES
H.R. MORRELL SURVEY
HARKER HEIGHTS, TX

FIELD NOTE FILE: 15.016
PROJECT NO.: 238-007
FEBRUARY 4, 2015

LEGAL DESCRIPTION

BEING A 9.100 ACRE TRACT OUT OF THE H.R. MORRELL SURVEY ABSTRACT NO. 579, SITUATED IN THE CITY OF HARKER HEIGHTS, BELL COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN 112.09 ACRE TRACT CONVEYED TO WBW LAND INVESTMENTS, LP, BY DEED OF RECORD IN DOCUMENT NO. 2011-000006237, OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF BELL COUNTY, TEXAS; SAID 9.100 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2-inch iron rod with cap stamped "TS INC." found in the east right-of way line of F.M. 3481/Stillhouse Lake Road (r.o.w. varies), being the northeast corner of the remainder of that certain 490.1 acre tract conveyed to James Dennis Magill, by Deed of record in Volume 1177, Page 145, of the Deed Records of Bell County, Texas, also being the southwest corner of said 112.09 acre tract, for the southwesterly corner hereof, from which a broken TxDOT Type 2 monument found at a point of curvature in said east right-of-way line bears S15°36'22"W, a distance of 381.93 feet;

THENCE, N15°38'10"E, along said east right-of-way line, being the west line of said 112.09 acre tract, a distance of 527.66 feet to a 1/2-inch iron rod with "KBGE" cap set, for the northwesterly corner hereof, from which a TxDOT Type 2 monument found at an angle point in said east right-of-way line bears N15°38'10"E, a distance of 119.36 feet;

THENCE, S74°23'38"E, leaving said east right-of-way line, over and across said 112.09 acre tract, a distance of 839.75 feet to a 1/2-inch iron rod with "KBGE" cap set in the east line of said 112.09 acre tract, being the west right-of-way line of Cedar Knob Road (100' r.o.w.), for the northeasterly corner hereof, from which a 1/2-inch iron rod stamped "CS, LTD." found at an angle point in said west right-of-way line bears the following two (2) courses and distances:

1.) N43°43'14"E, a distance of 696.90 feet to a calculated point, from which a 60D nail found at the base of a cedar fence post bears S34°25'46"E, a distance of 0.86 feet;

2.) N46°15'11"E, a distance of 203.49 feet;

THENCE, along said west right-of-way line of Cedar Knob Road, being the east line of said 112.09 acre tract, the following two (2) courses and distances:

1.) S43°43'14"W, a distance of 155.02 feet to a 60D nail found at the base of a cedar fence post, for an angle point;

2.) S43°39'23"W, a distance of 554.42 feet to a 1/2-inch iron rod found at the southeast corner of said 112.09 acre tract, being the northeast corner of said Magill remainder tract, for the southeasterly corner hereof, from which a 3/8-inch iron round found at an angle point in said west right-of-way line bears S43°35'41"W, a distance of 93.84 feet;

9.100 ACRES
H.R. MORRELL SURVEY
HARKER HEIGHTS, TX

FIELD NOTE FILE: 15.016
PROJECT NO.: 238-007
FEBRUARY 4, 2015

THENCE, N63°23'55"W, leaving said west right-of-way line, along the north line of said Magill remainder tract, being the south line of said 112.09 acre tract, a distance of 515.73 feet to the **POINT OF BEGINNING,** and containing 9.100 acres (396,385 square feet) of land, more or less.

BEARING BASIS: TEXAS COORDINATE SYSTEM, NAD83(2012A), CENTRAL ZONE, UTILIZING THE LEICA SMARTNET CONTINUALLY OPERATING REFERENCE NETWORK.

I HEREBY CERTIFY THAT THIS DESCRIPTION AND ANY ACCOMPANYING SKETCHES ARE THE RESULT OF AN ACTUAL ON-THE-GROUND SURVEY PERFORMED UNDER MY DIRECT SUPERVISION DURING THE MONTH OF FEBRUARY, 2015, AND ARE TRUE AND CORRECT TO THE BEST OF MY ABILITIES.

Witness my hand and seal February 4, 2015

Abram C. Dashner, R.P.L.S. 5901
PROJECT NO. 267-001