DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** (this "Agreement") is made and entered into as of ______________________, 20____, by and between the **CITY OF TEXAS CITY, TEXAS**, a home rule municipality located in Galveston County, Texas (the "City"), and **418 SOUTHLAKE, LTD.**, a Texas limited partnership (the "Developer").

RECITALS

The Developer owns approximately 436.62 acres of land more fully described in **Exhibit A**, attached hereto (the "Property"). The Property shall also include any additional land annexed into Galveston County Municipal Utility District No. 53 (the "District") with the City's consent. The Developer proposes to develop the Property as a master planned residential community (the "Project"). The Property is currently located within the corporate limits of the City.

The Developer determined that the creation of the District over a portion of the Property was and is necessary for the provision of the water, sewer, and drainage facilities, road facilities, and parks and recreational facilities necessary to develop the Property.

Marlin Atlantis White, Ltd., a Texas limited partnership ("MAW"), the previous owner of the Property, originally entered into a Development Agreement dated March 15, 2006 by and between MAW and the City (the "Original Agreement") with respect to the Property. The City and the Developer, as successor in interest to MAW, intend, from and after full execution, that the Original Agreement shall be null and void and of no further force and effect and this Agreement shall replace and supersede any previous development agreement related to the Property, including the Original Agreement, in its entirety.

The City and the Developer have determined that they are authorized by the Constitution and laws of the State of Texas to enter into this Agreement and have further determined that the terms, provisions, and conditions hereof are mutually fair and advantageous to each.

AGREEMENT

For and in consideration of these premises and of the mutual promises, obligations, covenants, and benefits contained herein, the City and the Developer contract and agree as follows:

ARTICLE 1
DEFINITIONS

The terms "*City*," "*Developer*," "*District*," "*Project*," and "*Property*" shall have the meanings provided for them in the Recitals, above. Except as may be otherwise defined, or the context clearly requires otherwise, capitalized terms and phrases used in this Agreement shall have the meanings as follows:

CIP Improvements means the on-site and off-site water and wastewater capital improvements that are necessary to serve, at a minimum, the needs of the Property, as shown on the proposed capital improvement plan in **Exhibit B**.

PUD means the Planned Unit Development for the Property to be adopted pursuant to the Revised Zoning Ordinance of the City of Texas City, in effect as of the date of this Agreement.

Utility Services Agreement means the utility services agreement entered into between the City, the Developer, and the District.

ARTICLE 2
OBLIGATIONS OF THE CITY

2.01. Acquisition of Easements for Off-Site non-CIP Improvements. The City shall cooperate and assist the District to acquire all off-site water and wastewater easements and sites necessary to serve the Property pursuant to the Utility Services Agreement.

ARTICLE 3
OBLIGATIONS OF THE DEVELOPER

3.01. Municipal Facilities Fund. The Developer agrees to cause the District to contribute $250,000 to the City, with such contribution to be paid from the proceeds of the District's first bond issuance. The City shall use such funds only for the construction of municipal facilities for the benefit of the Project, and such facilities shall be located within one (1) mile of the Property.

3.02. Utility Services Agreement. The City recognizes that the construction of the CIP Improvements in a timely manner is critical to the development of the Project. The City and the Developer agree that CIP Improvements must be constructed in order for the City to provide water and sanitary sewer service to the District. Accordingly, the City will permit the Developer and the District to expand the existing water plant and utilize an on-site lift station to pump wastewater to the existing force main and receive credit for the costs of such projects toward any water and wastewater impact fees, as appropriate, pursuant to the Utility Services Agreement. The City agrees to reserve water production and wastewater treatment capacity to serve the Project as reasonably required in conjunction with the development of the Property pursuant to the Utility Services Agreement.

3.03. Maintenance of certain improvements. The Developer or the District will finance and construct all lakes, ponds, and other detention facilities and open ditches, open drainage channels, canals, and other open storm water drainage improvements developed to serve the Property (the "Non-City Improvements") and the City will have no responsibilities with respect thereto. The Non-City Improvements, if any, will be constructed in accordance with all applicable rules and regulations. The City acknowledges and agrees that one or more of such detention facilities may be conveyed to the City of League City, Texas, or another entity in fee simple for the purposes of implementing regional drainage and detention improvements, including for grant eligibility purposes. Any such conveyance shall require written consent from the City. The Developer or District may enter into a maintenance cost-sharing agreement with

the City of League City, Texas, or other applicable entity for its portion of the maintenance expenses. The Developer and the District acknowledge and agree that the Non-City Improvements will be maintained by one of the following entities: 1) the District, 2) the property owners' association(s) serving the Property, or 3) another entity sharing in regional improvements as permitted above, as appropriate, and that the City shall never have the responsibility to own, operate or maintain the Non-City Improvements. The Developer agrees to form one or more property owners' associations, which shall have as one of their stated purposes to permanently maintain through assessments all Non-City Improvements to the extent that the District, or other entity as appropriate, is not responsible for maintaining such Non-City Improvements.

The Developer plans to construct or acquire certain road facilities and improvements on the Property to serve the Project (the "Road Facilities"). At the time any Road Facilities are dedicated or conveyed to the City, the City shall promptly accept and at all times maintain the Road Facilities, or cause the Road Facilities to be maintained, in good condition and working order, at the same standard as for any other road facilities maintained by the City, and in compliance with all applicable laws and ordinances and all applicable regulations, rules, policies, standards, and orders of any governmental entity with jurisdiction over same.

3.04 Covenants and Restrictions for Commercial and Residential use. The Developer agrees that all permanent structures shall be constructed pursuant to certain covenants and deed restrictions, a copy of which shall be provided to the City concurrently with submission of the first plat for the Project. These Covenants will include the requirement that all one-story homes shall be 3 sides masonry (includes brick, stone and stucco). For two-story homes, the requirement will be 3 sides masonry on the first floor with a minimum of 60% masonry overall.

3.05 Dry Utilities. All dry utilities, including gas, cable, and telephone lines, constructed by the Developer within the Project shall be placed underground. This does not apply to electric transmission lines that are permitted to be overhead on concrete poles. The Developer agrees to use its best efforts to minimize the impact to the internal portions of the Project.

ARTICLE 4
LAND AND DEVELOPMENT COVENANTS

Developer agrees that development of the Property shall be in accordance with the terms of the PUD.

ARTICLE 5
TERM AND DEFAULT

5.01. Term. This Agreement shall be in effect as of the date set forth on the first page hereof, and shall terminate thirty (30) years thereafter, unless terminated earlier as specifically provided herein.

5.02. Default.

a. A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to materially perform, observe, or comply with any of its covenants, agreements, or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

b. Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, (a) the party claiming such failure shall provide notice, in writing, to the party alleged to have failed to perform of the alleged failure and shall demand performance (which notice shall set forth in reasonable detail the nature of the alleged failure), and (b) the party alleged to have failed to perform has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than thirty (30) days after written notice of the alleged failure has been given). In addition, there shall be no breach of this Agreement if, within the applicable cure period, the party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. Upon a breach of this Agreement, the non-defaulting Party shall be entitled to specific performance. Regardless of any other provision, neither Party shall be entitled to recover monetary damages for breach of this Agreement, or a tort related to this Agreement. Except as otherwise set forth herein, no action taken by a party pursuant to the provisions of this section or any other section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other party.

c. The City hereby waives its immunity from suit solely for the purpose of allowing the Developer and any allowed successor or assignee to enforce this Agreement.

ARTICLE 6
MISCELLANEOUS PROVISIONS

6.01. Approvals and consents. The Developer and the City agree to execute and adopt such further documents (including ordinances and resolutions) as may be required to carry out the purposes set forth in this Agreement.

6.02. Address and notice. Any notice to be given under this Agreement shall be given in writing, addressed to the party to be notified as set forth below, and may be given either by depositing the notice in the United States mail postage prepaid, registered or certified mail, with return receipt requested; by messenger delivery; or by telecopy. Notice deposited by mail shall be effective three days after posting. Notice given in any other manner shall be effective upon receipt by the party to be notified. For purposes of notice, the addresses of the parties shall be as follows:

If to the City, to:
City of Texas City, Texas
1801 9th Avenue N
Texas City, Texas 77590
Attn: Mayor

If to Developer, to:
418 Southlake, Ltd.
1301 Municipal Way, Suite 200
Grapevine, TX 76051
Attn: Becky Collins/Jeff Gilpatrick/Brandon Jester
BCollins@UMTH.com,
JGilpatrick@UMTH.com,
BJester@UMTH.com

cc to the District to:
Galveston County Municipal Utility District No. 53
c/o: Sanford Kuhl Hagan Kugle Parker Kahn LLP
1980 Post Oak Boulevard, Suite 1380
Houston, Texas 77056
Attn: Julianne B. Kugle/Joshua J. Kahn

The parties shall have the right from time to time to change their respective addressees by giving written notice of such change to the other party at least fifteen (15) days prior to the effective date of the change.

6.03. Assignability; successors and assigns. All covenants and agreements contained by or on behalf of a party in this Agreement shall bind its successors and assigns and shall inure to the benefit of the other parties and their successors and assigns. The parties may assign their rights and obligations, in whole or in part, under this Agreement or any interest herein. Any such assignment shall be acknowledged in writing by the assignor and assignee and said acknowledgement will be delivered to the other party within ten (10) days of the assignment. The Developer may make a collateral assignment in favor of a lender without consent. This section shall not be construed to prevent the Developer from selling lots, parcels, or other portions of the Property in the normal course of business. If such assignment of the obligations by the Developer hereunder is effective, the Developer shall be deemed released from such obligations. If any assignment of the obligations by the Developer hereunder is deemed ineffective or invalid, the Developer shall remain liable hereunder.

6.04. No additional waiver implied. The failure of either party to insist upon performance of any provision of this Agreement shall not be construed as a waiver of the future performance of such provision by the other party.

6.05. Reservation of rights. All rights, powers, privileges and authority of the parties hereto not restricted or affected by the express terms and provisions hereof are reserved by the parties and, from time to time, may be exercised and enforced by the parties.

6.06. Parties in interest. This Agreement shall be for the sole and exclusive benefit of the parties hereto and shall not be construed to confer any rights upon any third parties.

6.07. Merger. This Agreement embodies the entire understanding between the parties and there are no prior representations, warranties, or agreements between the parties covering the subject matter of this Agreement. Upon full execution, this Agreement replaces, in its entirety, any prior development agreements, including the Original Agreement, whereupon the Original Agreement is unconditionally terminated and of no further force and effect. The parties acknowledge that upon execution of this Agreement there are no events of default under the Original Agreement and no facts or circumstances which with the giving of notice or passage of time would constitute an event of default under the Original Agreement. The City

unconditionally and fully releases the Developer from any and all claims that the City had or may have against the Developer, as successor in interest to MAW, directly or indirectly arising under or related to the Original Agreement.

6.08. Modification; Exhibits. This Agreement shall be subject to change or modification only with the mutual written consent of the City and the Developer. The exhibits attached to this Agreement are incorporated by this reference for all purposes. To the extent of any conflict between the exhibits and the terms of this Agreement, the terms of this Agreement shall prevail. Notwithstanding the foregoing, to the extent of any conflict between this Agreement and the PUD, the terms of the PUD shall control.

6.09. Captions. The captions of each section of this Agreement are inserted solely for convenience and shall never be given effect in construing the duties, obligations or liabilities of the parties hereto or any provisions hereof, or in ascertaining the intent of either party, with respect to the provisions hereof.

6.10. Interpretations. This Agreement and the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement. This Agreement shall be construed fairly and reasonably and not more strictly against the drafter because both parties were represented by legal counsel in the negotiation and review of this Agreement.

6.11. Severability. If any provision of this Agreement or the application thereof to any person or circumstances is ever judicially declared invalid, such provision shall be deemed severed from this Agreement and the remaining portions of this Agreement shall remain in effect.

[SIGNATURE PAGES FOLLOW]

AGREED AND ACCEPTED as of the date first above written.

418 SOUTHLAKE, LTD.,
a Texas limited partnership

By: NEHC Properties, Inc.,
a Texas corporation,
its General Partner

By: ___________________________
Joseph H. Fogarty, President

AGREED AND ACCEPTED as of the date first above written.

CITY OF TEXAS CITY, TEXAS

____
Mayor

ATTEST:

____
City Secretary

(SEAL)

APPROVED AS TO FORM:

____
City Attorney

Exhibit A
The Property

Exhibit B
Capital Improvement Plan