

BROWNSTONES AT TOWN SQUARE, PHASE I COMMERCIAL DEVELOPER AGREEMENT

An agreement between the City of Southlake, Texas, hereinafter referred to as the "City", and the undersigned Developer, hereinafter referred to as the "Developer", of Brownstones at Town Square Phase I, hereinafter referred to as "Addition" to the City of Southlake, Tarrant County, Texas, and COOPER & STEBBINS, L.P. (for the limited purposes set forth herein) for the installation of certain community facilities located therein, and to provide city services thereto. It is understood by and between the parties that this Agreement is applicable to the Addition (a commercial development) and to the off-site improvements necessary to support the Addition.

I. GENERAL REQUIREMENTS

- A. It is agreed and understood by the parties hereto that the Developer shall employ a civil engineer licensed to practice in the State of Texas for the design and preparation of the plans and specifications for the construction of all facilities covered by this Agreement.

- B. The Developer will present to the City either a cash escrow, Letter of Credit, performance bond and payment bond acceptable to the City guaranteeing and agreeing to pay an amount equal to 100% of the value of the construction cost of all the public facilities to be constructed by the Developer, and providing for payment to the City of such amounts, up to the total remaining amounts required for the completion of the public facilities if the Developer fails to complete the work within two (2) years of the signing of this Agreement between the City and Developer. All bonds shall be issued by a Best-rated bonding company. All letters of credit must meet the Requirements for Irrevocable Letter of Credit attached hereto and incorporated herein.

The value of the performance bond, letter of credit or cash escrow will reduce at a rate consistent with the amount of work that has been completed by the Developer and accepted by the City. Performance and payment bond, letter of credit or cash escrow from the prime contractor(s) or other entity reasonably acceptable to the City, hereinafter referred to as Contractor, will be acceptable in lieu of Developer's obligations specified above.

- C. The Developer agrees to furnish to the City maintenance bonds, letter of credit and cash escrow amounting to 100% of the cost of construction of underground public utilities and 100% for the paving. These maintenance bonds, letter of credit or cash escrow will be for a period of two (2) years and will be issued prior to the final City acceptance of the Addition. The maintenance bonds, letter of credit or

cash escrow will be supplied to the City by the contractors performing the work, and the City will be named as the beneficiary if the contractors fail to perform any required maintenance.

- D. It is further agreed and understood by the parties hereto that upon acceptance by the City, title to all facilities and improvements mentioned herein above which are intended to be public facilities shall be vested in the City, and Developer hereby relinquishes any right, title, or interest in and to said facilities or any part thereof. It is further understood and agreed that until the City accepts such improvements, the City shall have no liability or responsibility in connection with any such facilities. Acceptance of the facilities for this provision and for the entire Agreement shall occur at such time that the City, through its City Manager or his duly appointed representative, provides Developer with a written acknowledgement that all facilities are complete, have been inspected and approved, and are being accepted by the City.
- E. On all public facilities included in this Agreement for which the Developer awards his own construction contract, Developer agrees to the following procedure:
1. Developer agrees to pay the following:
 - a. Inspection fees equal to three percent (3%) of the cost of the water , street, drainage and sanitary sewer facilities, on all facilities included in this agreement for which Developer awards his or her own construction contract, to be paid prior to construction of each phase and based on actual bid construction cost;
 - b. Administrative Processing Fee equal to two percent (2%) of the cost of water, street, drainage and sanitary sewer facilities, on all facilities included in this Agreement for which Developer awards his or her own construction contract, to be paid prior to construction of each phase and based on actual bid construction cost;
 - c. Trench testing (95% Standard);
 - d. The additional charge for inspections during Saturday, Sunday, holidays, and after normal working hours;
 - e. Any charges for retesting as a result of failed tests;
 - f. All gradation tests required to insure proper cement and/or lime stabilization.

2. The City agrees to bear the expense of:
 - a. All nuclear density tests on the roadway subgrade (95% Standard);
 - b. Technicians time for preparing concrete cylinders; and
 - c. Concrete cylinder tests and concrete coring samples.

The City can delay connection of buildings to service lines or water mains constructed under this Agreement until said water mains and service lines have been completed to the satisfaction of and acceptance by the City.

- F. The Developer will be responsible for mowing all grass and weeds and otherwise reasonably maintaining the aesthetics of all land and lots in said Addition which have not been sold to third parties. After fifteen (15) days written notice, should the Developer fail in this responsibility, the City may contract for this service and bill the Developer for reasonable costs. Such amount shall become a lien upon all real property of the Addition so maintained by the City, and not previously conveyed to other third parties, 120 days after Developer has notice of costs.
- G. Any guarantee of payment instrument (Performance Bond, Letter of Credit, etc.) submitted by the Developer or Contractor on a form other than the one which has been previously approved by the City as "acceptable" shall be submitted to the City Attorney and this Agreement shall not be considered in effect until such City Attorney has approved the instrument. Approval by the City shall not be unreasonably withheld or delayed.
- H. Any surety company through which a bond is written shall be a surety company duly authorized to do business in the State of Texas, provided that the City, through the City Manager, shall retain the right to reject any surety company as a surety for any work under this or any other Developer's Agreement within the City regardless of such company's authorization to do business in Texas. Approval by the City shall not be unreasonably withheld or delayed.
- I. The Developer agrees to fully comply with the terms and conditions of all other applicable development regulations and ordinances of the City.

- J. The Developer agrees that the completed project will be constructed in conformance with the Development Site Plan, Construction Plans and other permits or regulatory authorizations granted by the City during the development review process.

II. FACILITIES

A. ON-SITE WATER

The Developer hereby agrees to install water facilities to service lots as shown on the final plat of the Addition. Water facilities will be installed in accordance with plans and specifications to be prepared by the Developer's engineer and released by the City. Further, the Developer agrees to complete this installation in accordance with Ordinance No. 170 and shall be responsible for all construction costs, materials and engineering. In the event that certain water lines are to be oversized because of City requirements, the City will reimburse the Developer for the oversize cost greater than the cost of an 8" line. Additionally, the City agrees to provide temporary water service at Developer's request and expense, for construction, testing and irrigation purposes only, to individual lots during the construction of buildings, even though sanitary sewer service may not be available to the buildings.

B. DRAINAGE

Developer hereby agrees to construct the necessary drainage facilities within the Addition. These facilities shall be in accordance with the plans and specifications to be prepared by Developer's engineers, released by the Director of Public Works, the City, and made part of the final plat as approved by the Planning and Zoning Commission. The Developer hereby agrees to fully comply with all EPA and TNRCC requirements relating to the planning, permitting and management of storm water which may be in force at the time that development proposals are being presented for approval by the City.

C. STREETS

The street construction in the Addition will be installed in accordance with plans and specifications to be prepared by the Developer's engineer and released by the Director of Public Works.

1. The Developer will be responsible for:
 - a) Installation and two year operation of street lights, which is payable to the City prior to final acceptance of the Addition; or an agreement with utility provider stating that

no charge will be made for street lights for the two-year duration.

- b) Installation of all street signs designating the names of the streets inside the Addition, said signs to be of a type, size, color and design standard generally employed by the Developer and approved by the City in accordance with City ordinances;
 - c) It is understood that Developer may put in signage having unique architectural features, however, should the signs be moved or destroyed by any means, the City will replace them with signage identical to what is damaged.
- 2.
- a) All street improvements will be subject to inspection and approval by the City. No work will begin on any street included herein prior to complying with the requirements contained elsewhere in this Agreement. All water, sanitary sewer, and storm drainage utilities which are anticipated to be installed within the street or within the street right-of-way will be completed prior to the commencement of street construction on the specific section of street in which the utility improvements have been placed or for which they are programmed. It is understood by and between the Developer and the City that this requirement is aimed at substantial compliance with the majority of the pre-planned facilities.
 - b) It is understood that in every construction project a decision later may be made to realign a line or service which may occur after construction has commenced. The Developer has agreed to advise the City Director of Public Works as quickly as possible when such a need has been identified and to work cooperatively with the City to make such utility change in a manner that will be least disruptive to street construction or stability.
 - c) Developer agrees that the City's specifications for public and private improvements are minimum standards only and Developer shall retain an engineer for purposes of review of City specifications. If, in the engineer's opinion, additional technical design requirements, in addition to the City specifications, are required to design the Public Improvements sufficient for local conditions, Developer will include such design requirements in the specifications for the Public Improvements. The City shall be expressly named as an intended third party

beneficiary in the contract between the Developer and the engineer.

D. ON-SITE SANITARY SEWER FACILITIES

The Developer hereby agrees to install sanitary sewage collection facilities to service lots as shown on the final plat of the Addition. Sanitary sewer facilities will be installed in accordance with the plans and specifications to be prepared by the Developer's engineer and released by the City. Further, the Developer agrees to complete this installation in compliance with all applicable city ordinances, regulations and codes and shall be responsible for all construction costs, materials, engineering, permits and Impact Fees. In the event that certain sewer lines are to be oversized because of City requirements, the City will reimburse the Developer for the oversize cost greater than the cost of an 8" line.

E. EROSION CONTROL

During construction of the Addition and after the streets have been installed, the Developer agrees to keep the streets free from soil build-up. The Developer agrees to use soil control measures, such as those included in NCTCOG STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, DIVISION 1000 EROSION AND SEDIMENT CONTROL, to prevent soil erosion. It will be the Developer's responsibility to present to the Director of Public Works a soil control development plan that will be implemented for this Addition. When in the opinion of the Director of Public Works there is sufficient soil build-up on the streets or other drainage areas and notification has been given to the Developer, the Developer will have seventy-two (72) hours to clear the soil from the affected areas. If the Developer does not remove the soil within 72 hours, the City may cause the soil to be removed either by contract or City forces and place the soil within the Addition at the contractor's expense. All fees owed to the City will be collected prior to acceptance of the Addition.

After construction of the Addition and prior to acceptance by the City, the Developer agrees to have a permanent erosion control plan prepared and approved by the Director of Public Works and have the plan installed and working, effectively, in the opinion of the Director of Public Works. This erosion control will prevent soil erosion from the newly created lot/lots from washing into street rights of way, drainage ways or other private property.

F. AMENITIES

It is understood by and between the City and Developer that the Addition may incorporate a number of unique amenities and aesthetic improvements such as ponds, aesthetic lakes, unique landscaping, walls, and may incorporate specialty signage and accessory facilities. The Developer agrees to accept responsibility for the construction and maintenance of all such aesthetic or specialty items such as walls, vegetation, signage, landscaping, street furniture, pond and lake improvements until such responsibility is turned over to a homeowner's association.

G. USE OF PUBLIC RIGHT-OF-WAY

It is understood by and between the City and Developer that the Developer may provide unique amenities within public right-of-way, such as landscaping, irrigation, lighting, etc., for the enhancement of the Addition. The Developer agrees to maintain these amenities until the right-of-way on which they are located is dedicated to and accepted by the City. The Developer understands that the City shall not be responsible for the replacement of amenities turned over to a homeowners association under any circumstances and further agrees to indemnify and hold harmless the City from any and all damages, loss or liability of any kind whatsoever by reason of injury to property or third person occasioned by its use of the public right-of-way with regard to improvements turned over to an association and the Developer shall, at his own cost and expense, defend and protect the City against all such claims and demands.

H. START OF CONSTRUCTION

Before the construction of the water, sewer, streets or drainage facilities can begin, the following must take place:

1. Approved payment and performance bonds must be submitted to the City in the name of the City prior to commencement of any work.
2. At least six (6) sets of construction plans to be stamped "Released for Construction" by the Director of Public Works must be submitted.
3. All fees required to be paid to the City.

4. Developer Agreement must be executed.
5. The Developer, or Contractor, shall furnish to the City a policy of general liability insurance, naming the City as co-insured, prior to commencement of any work. All insurance must meet the **Requirements of Contractor's Insurance** attached hereto and incorporated herein.
6. A Pre-Construction Meeting to be held with all Contractors, major Sub-Contractors, Utilities and appropriate Government Agencies.

III. GENERAL PROVISIONS

A. INDEMNIFICATION

DEVELOPER COVENANTS AND AGREES TO INDEMNIFY AND DOES HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS), ARISING OUT OF OR IN CONNECTION WITH, DIRECTLY OR INDIRECTLY, THE CONSTRUCTION, MAINTENANCE, OCCUPANCY, USE, EXISTENCE OR LOCATION OF SAID IMPROVEMENT OR IMPROVEMENTS, AND SHALL FURTHER BE LIABLE FOR INJURY OR DAMAGE TO CITY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH ANY AND ALL ACTS OR OMISSIONS OF DEVELOPER, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES OR TRESPASSERS. DEVELOPER AGREES TO INDEMNIFY THE CITY, ITS OFFICERS AND EMPLOYEES FOR ANY DAMAGES, CLAIMS OR LIABILITIES ARISING FROM THE NEGLIGENT ACT OR OMISSION, OR OF THE CONCURRENT NEGLIGENT ACT OR OMISSION, OF THE CITY, ITS OFFICERS AND EMPLOYEES.

- B. Venue of any action brought hereunder shall be in Fort Worth, Tarrant County, Texas.
- C. Approval by the Director of Public Works or other City employee of any plans, designs or specifications submitted by the Developer pursuant

to this Agreement shall not constitute or be deemed to be a release of the responsibility and liability of the Developer, his engineer, employees, officers or agents for the accuracy and competency of their design and specifications. Such approval shall not be deemed to be an assumption of such responsibility and liability by the City for any defect in the design and specifications prepared by the consulting engineer, his officers, agents, servants or employees, it being the intent of the parties that approval by the Director of Public Works signifies the City's approval on only the general design concept of the improvements to be constructed. In this connection, the Developer shall for a period of two (2) years after the acceptance by the City of the completed construction project, indemnify and hold harmless the City, its officers, agents, servants and employees, from any loss, damage, liability or expense on account of damage to property and injuries, including death, to any and all persons which may arise out of any defect, deficiency or negligence of the engineer's designs and specifications incorporated into any improvements constructed in accordance therewith, and the Developer shall defend at his own expense any suits or other proceedings brought against the City, its officers, agents, servants or employees, or any of them, on account thereof, to pay all expenses and satisfy all judgments which may be incurred by or rendered against them or any of them in connection with herewith.

- D. This Agreement or any part herein, or any interest herein, shall not be assigned by the Developer without the express written consent of the City Manager, which shall not be unreasonably withheld or delayed.
- E. On all facilities included in this Agreement for which the Developer awards his or her own construction contract, the Developer agrees to employ a construction contractor who is approved by the City, and whose approval shall not be unreasonably withheld or delayed, said contractor to meet City and statutory requirements for being insured, licensed and bonded to do work in public projects and to be qualified in all respects to bid on public projects and to be qualified in all respects to bid on public projects of a similar nature.

In addition, the Developer, or Contractor shall furnish the payment and performance bonds in the name of the City prior to the commencement of any work hereunder and shall also furnish to the City a policy of general liability insurance.

- F. Work performed under the Agreement shall be completed within two (2) years from the date thereof. In the event the work is not completed within the two (2) year period, the City may, at its election, draw down on the performance bond, letter of credit or other security provided by

Developer and complete such work at Developer's expense; provided, however, that if the construction under this Agreement shall have started within the two (2) year period, the City may agree to renew the Agreement with such renewed Agreement to be in compliance with the City policies in effect at that time.

- G. Prior to final acceptance of the Addition, the Developer shall provide to the City three (3) copies of Record Drawings of the Addition, showing the facilities as actually constructed.
- H. Such drawings will be stamped and signed by a registered professional civil engineer. In addition, the Developer shall provide electronic files showing the grading plan and drainage area map; the plan and profile of the sanitary sewer, storm drain, roadway and waterline; all lot lines, and tie in to the state Plane Coordinate System.

IV. OTHER ISSUES

A. DRAINAGE:

Developer shall design on-site and off-site storm water systems within the capacity of the downstream drainage facilities, and consistent with the approved Development Site Plan and Ordinance No. 605.

B. OFF-SITE SEWER AND WATER:

There are no off-site sewer, off-site drainage, or off-site water structures required for Brownstones Phase I, except as shown on the approved Development Site Plan and/or plans and specifications approved by the City.

C. PARK FEES:

Park dedication requirements applicable to Brownstones at Town Square Phase I are 0.8774 acres, based upon the development of thirty-five (35) units. If the number of units increases or decreases, the requirements and credits shall be calculated based upon the revised number of units. Developer and Cooper & Stebbins, L.P. ("C&S") are contributing a combined 2.054 acres of adjoining park land to the City. This leaves a credit of 1.1766 acres going forward from this development. The developer of adjacent Town Square improvements has an additional credit of 0.67 acres from prior development, yielding a total of 1.8466 acres of credits being carried forward within Town Square. The Developer shall be allowed to carry this credit forward to future phases of development.

D. TREE PRESERVATION ORDINANCE:

1. All construction activities shall comply with the current Tree Preservation Ordinance 585-B. Such conditions include, but are not limited to, proper posting of tree protection warning signs and tree protective fencing to be maintained throughout the duration of the project.
2. The Developer acknowledges that protected trees removed from the park area shall be mitigated by the Developer. The total tree removal for grading in the park area is estimated at 310 caliper inches of mitigation based on current grading plans, but final mitigation amounts shall be determined by the Landscape Administrator based upon actual removal. The Developer shall be allowed to mitigate the trees through tree replacement; however, such replacement of trees shall be in the park adjacent to the Brownstones or in other park areas within Town Square as approved by the Landscape Administrator, but shall not include credit for any trees otherwise required or previously planned to be planted as part of the landscape requirements, bufferyard requirements, or street tree plantings. Developer agrees to plant the mitigation trees within 180 days of the issuance of the first certificate of occupancy or to post a bond in accordance with the provisions of the Tree Preservation Ordinance 585-B.

E. City's Purchase of Land and Right-Of-Way and Parks:

1. In connection with the development of Southlake Town Square, the City has created a Tax Increment Reinvestment Zone No. 1 (the "TIRZ") to promote the development of a "downtown" area of the City and to provide for funding in connection with the construction and purchase of certain public facilities. Developer will convey the above property and parks located within Brownstones at Town Square, Phase I to the City by general warranty deed, as set forth in Exhibits C and D, respectively. In consideration for such conveyance, City agrees to pay Developer, subject to and upon satisfaction of the conditions and limitations set forth in Section IV.F below, including forty percent (40%) of the cost of all public streets, sidewalks, landscaping and associated streetscape improvements identified on Exhibit A; and one hundred percent (100%) of the cost of all public park improvements, including sidewalks,

landscaping, and associated park improvements identified on Exhibit A.

2. The Developer shall provide to the City a detailed plan of park improvements, which the City must approve prior to construction of park improvements.
3. The Developer agrees that the City has already paid Cooper & Stebbins \$150,000, pursuant to action of the City Council of February 4, 2003. Cooper & Stebbins agree that this sum shall be credited towards the improvements in the park, and to pay Developer an amount equal to the funds shown on Exhibit A and approved by the City.
4. Developer agrees that the reimbursement for parks shall be made out of the funds previously paid Cooper & Stebbins and that City has no obligation to reimburse Developer for improvements within the park adjacent to the Brownstones.
5. City's reimbursement to Developer shall not exceed \$264,000.00 for improvements for streets, sidewalks, etc. as shown on Exhibit A. Reimbursement shall only be made for the items reflected on Exhibit A and the City shall have the right to inspect any and all records relating to expenses paid as reflected on Exhibit A and shall have the right to require Developer to submit any necessary information, documents, invoices, receipts or other records relating to costs of the streets and parks.
6. Any improvements installed by the Developer over the maximum reimbursement provided above to Developer by the City shall be at Developer's sole cost and expense.
7. To the extent the park reimbursement obligation is less than \$150,000.00 based upon the park design and expenditures approved by the City, Developer and Cooper & Stebbins shall be entitled to carry forward the balance to future park improvements within Southlake Town Square.

F. PAYMENTS TO DEVELOPER:

1. City's payment obligations under Section IV.E. are expressly contingent upon:
 - a. the dedication by Developer and acceptance by City of all public facilities;

- b. completion of not fewer than 28 Brownstone residences having a total area of not less than 70,000 sq. ft.; and
 - c. the issuance of certificates of occupancy for not less than 25 Brownstones generating a Phase I real property taxable value on completion of not less than \$10,000,000.00.
 - d. the availability of funds from incremental real property tax revenues for Brownstones Phase 1 within the TIRZ (the "TIRZ" tax revenues).
2. If an initial certificate of occupancy is not issued for a minimum of 25 Brownstones in Brownstones Phase I, within two (2) years from the date of execution of this agreement, City's obligation will be null and void and City should be released from any obligation to make the payments provided above.
 3. City shall make payments to Developer on an annual basis, provided that the conditions of subsection 1 above are met. Developer shall not be entitled to interest on payments made pursuant to this Agreement nor shall City be entitled to interest on the \$150,000 previously paid to Cooper & Stebbins.

SIGNED AND EFFECTIVE on the date last set forth below.

DEVELOPER: *Brownstones at Town Square, L.P.*

By: *Brownstone GP, LLC
A Texas Limited Liability Company, General Partner*

By: *CLB Management, Ltd.
A Texas Limited Partnership, Member*

By: *CLB Holdings, LLC
A Texas Limited Liability Company, General Partner*

*Signature: *Ron Cibulka*


Name: *RON CIBULKA*


Title: *Vice-Pres.*

Address: *16250 Dallas Parkway
Suite 201
Dallas, Texas 75248*

By: SLTS Brownstones, L.P.
A Texas Limited Partnership, Member

By: SLTS Brownstones Genpar, LLC
A Texas Limited Liability Company, General Partner

By: 

Brian R. Stebbins
Member 

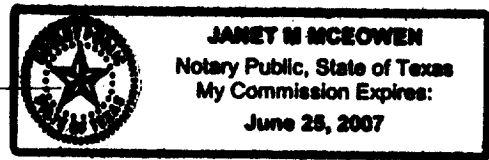
*See Notary Attachment for above signature.

STATE OF Texas

COUNTY OF Dallas

On November 23, 2004, before me, Janet M. McEwen
Notary Public, personally appeared Ren Cibulka, personally
known to me (or proved to me on the basis of satisfactory evidence) to be the
person whose name is subscribed to the within instrument and acknowledged to me
that he executed the same in his authorized capacity, and that by his signature on
the instrument, the person, or the entity upon behalf of which the person acted,
executed the instrument.

Janet M. McEwen
WITNESS my hand and official seal.



Janet M. McEwen (SEAL)
Notary Public

My commission expires: June 25, 2007

Cooper & Stebbins, L.P. joins in this agreement for purposes of indicating its
acceptance and agreement to be bound by the provisions of Article IV.C and IV.E. of
this Developer's Agreement

*Cooper & Stebbins, L.P.
A Texas Limited Partnership*

By: *CS Town Centers, LLC,
A Texas Limited Liability Company General Partner*

Signature: *Brian R. Stebbins* (FRB)

Name: *Brian R. Stebbins, Member*

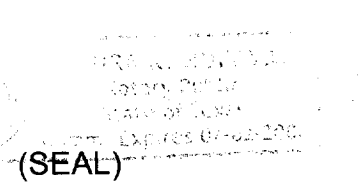
Address: *1256 Main Street
Suite 256
Southlake, Texas 76092*

STATE OF TEXAS

COUNTY OF TARRANT

On December 7, 2004, before me, Frankie Huffman, Notary Public, personally appeared Brian R. Stebbins, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

Frankie Huffman
WITNESS my hand and official seal.



Frankie Huffman
Notary Public

My commission expires: 7/2/06

CITY OF SOUTHLAKE, TEXAS

By: [Signature]
Andy Wambsganss, Mayor

ATTEST:

Lori A. Farwell
Lori Farwell, City Secretary



Date: 12-7-04

REQUIREMENTS FOR IRREVOCABLE LETTER OF CREDIT

1. The Letter of Credit must have a duration of at least one year.
2. The Letter of Credit may be substituted for utility security deposits exceeding \$10,000.00. The City reserves the right to specify the face amount of the letter of credit.
3. The Letter of Credit must be issued by a FDIC insured bank in a form acceptable to the City of Southlake. The City reserves the right to approve/disapprove the bank issuing the Letter of Credit.
4. The Letter of Credit must be issued by a bank that has a minimum capital ratio of six (6%) percent, and has been profitable for each of the last two consecutive years.
5. The customer must provide the City with supporting financial information on the bank to allow the City to ascertain requirements are met. Suitable financial information would be the previous two (2) years December 31 Call Reports submitted to the FDIC and audited financial statements.
6. Partial drawings against Letters of Credit must be permitted.
7. The City must be able to draft on sight with proof of amount owed.
8. The customer pays any and all fees associated with obtaining Letter of Credit.
9. Expiring Letter of Credit must be replaced by substitute Letters of Credit at least 30 days prior to the expiration date on the Letter of Credit held by the City.

REQUIREMENTS FOR CONTRACTOR'S INSURANCE

Contractor's Insurance

1. Without limiting any of the other obligations or liabilities of the CONTRACTOR, during the term of the Contract, the CONTRACTOR shall purchase and maintain the following minimum insurance coverages with companies duly approved to do business in the State of Texas and satisfactory to the CITY. In this section "Project" shall mean the public facilities to be constructed by Developer or under Developer's contract with a CONTRACTOR. Coverages shall be of the following types and not less than the specified amounts:

- a. Workers' compensation as required by Texas law, with the policy endorsed to provide a waiver of subrogation as to the CITY; employer's liability insurance of not less than the minimum statutory amounts.
- b. Commercial general liability insurance, including premises- operations; independent CONTRACTOR's liability, completed operations and contractual liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring CONTRACTOR's (or Subcontractor's) liability for injury to or death of CITY's employees and third parties, extended to include personal injury liability coverage with damage to property of third parties, broad form property damage, with minimum limits as set forth below:

General Aggregate	\$2,000,000	
Bodily Injury \$1,000,000 Each Occurrence		
Property Damage \$1,000,000 Each Occurrence		
Products-Components/Operations Aggregate	\$1,000,000	
Personal and Advertising Injury	\$1,000,000	
(With Employment Exclusion deleted)		
Each Occurrence	\$1,000,000	
Contractual Liability:		
Bodily Injury	\$1,000,000	Each occurrence
Property Damage	\$1,000,000	Each occurrence

The policy shall include coverage extended to apply to completed operations, asbestos hazards (if this project involves work with asbestos) and ECU (explosion, collapse and underground) hazards. The completed operations coverage must be maintained for a minimum of one year after final completion and acceptance of the work, with evidence of same filed with CITY.

- c. Comprehensive automobile and truck liability insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage minimum limit of \$1,000,000 per occurrence; or separate limits of \$500,000 for bodily injury (per person), and \$500,000 for property damage. Such insurance shall include coverage for loading and unloading hazards.
- d. Property Insurance (Builder's All Risk)
 - (i) CONTRACTOR shall purchase and maintain, at all times during the term of its Contract with the Developer property insurance written on a builder's risk

“all-risk” or equivalent policy form in the amount of the initial contract price, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made, or until no person or entity other than the CITY has an insurable interest in the property required by this paragraph to be covered, whichever is later. This insurance shall include interests of the CITY, the CONTRACTOR, Subcontractors and Sub-Subcontractors in the Project.

- (ii) Property insurance shall be on an “all-risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for CONTRACTOR’s services and expenses required as a result of such insured loss.
- (iii) If the insurance required by this paragraph requires deductibles, the CONTRACTOR shall pay costs not covered because of such deductibles.
- (iv) This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

d. OWNER’s Protective Liability Insurance:

- (i) CONTRACTOR shall obtain, pay for and maintain at all times during the prosecution of the work under the contract between the CONTRACTOR and the Developer, a CITY’s protective liability insurance policy naming the CITY as insured for property damage and bodily injury, which may arise in the prosecution of the work or CONTRACTOR’s operations under the contract.
- (ii) Coverage shall be on an “occurrence” basis, and the policy shall be issued by the same insurance company that carries the CONTRACTOR’s liability insurance with a combined bodily injury and property damage minimum limit of \$1,000,000 per occurrence.

e. “Umbrella” Liability Insurance:

The CONTRACTOR shall obtain, pay for and maintain umbrella liability insurance during the term of the Contract between the CONTRACTOR and the Developer, insuring CONTRACTOR for an amount of not less than **\$5,000,000 per occurrence combined** limit for bodily injury and property damage that follows form and applies in excess of the primary liability coverages required herein above. The policy shall

provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

Policy Endorsements

1. Each insurance policy to be furnished by CONTRACTOR shall include the following conditions by endorsement to the policy:
 - a. name the CITY as an additional insured as to all applicable policies;
 - b. each policy shall require that 30 days prior to cancellation, non-renewal or any material change in coverage, a notice thereof shall be given to CITY by certified mail. If the policy is canceled for nonpayment of premium, only 10 days written notice to CITY is required;
 - c. the term "CITY" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the CITY and individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the CITY;
 - d. the policy phrase "other insurance" shall not apply to the CITY where the CITY is an additional insured on the policy.

2. *Special Conditions*

- a. Insurance furnished by the CONTRACTOR shall be in accordance with the following requirements:
 - i. any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by CONTRACTOR. The CITY's decision thereon shall be final;
 - ii. all policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas; and
 - iii. all liability policies required herein shall be written with an "occurrence" basis coverage trigger.
- b. CONTRACTOR agrees to the following:
 - i. CONTRACTOR hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the CITY, it being the intention that the insurance policies shall protect all parties to the contract and be primary coverage for all losses covered by the policies;
 - ii. companies issuing the insurance polices and CONTRACTOR shall have no recourse against the CITY for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the CONTRACTOR;
 - iii. approval, disapproval or failure to act by the CITY regarding any insurance supplied by the CONTRACTOR (or any Subcontractors) shall not relieve the CONTRACTOR of full responsibility or liability for damages and accidents as

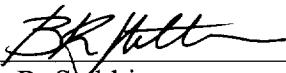
set forth in the Contract Documents or this Agreement. Neither shall be bankruptcy, insolvency or denial of liability by the insurance company exonerate the CONTRACTOR from liability;

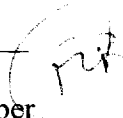
- v. deductible limits on insurance policies exceeding \$10,000 require approval of the CITY;
- vi. any of such insurance policies required under this paragraph may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby;
- vii. prior to commencement of operations pursuant to this Contract, the Developer or the Developer's CONTRACTOR shall furnish the CITY with satisfactory proof that he has provided adequate insurance coverage in amounts and by approved carriers as required by this Agreement;
- viii. CONTRACTOR shall provide notice of any actual or potential claim or litigation that would affect required insurance coverages to the CITY in a timely manner;
- ix. CONTRACTOR agrees to either require its Subcontractors to maintain the same insurance coverage and limits as specified for the CONTRACTOR or coverage of Subcontractors shall be provided by the Contract; and
- x. Prior to the effective date of cancellation, CONTRACTOR shall deliver to the CITY a replacement certificate of insurance or proof of reinstatement.

Cooper & Stebbins, L.P. is joining in the execution of this document solely as it relates to the accounting for park dedication requirements and fee credits carried forward for Town Square development as set forth in Section IV.C. of the Agreement.

COOPER & STEBBINS, L.P.
a Texas limited partnership

By: CS TOWN CENTERS, LLC,
a Texas limited liability company
Its Authorized General Partner

By: 

Brian R. Stebbins
Its Authorized Managing Member 

Infrastructure Cost Schedule
Exhibit A - Page 1

Updated

11/16/2004

B. COST SCHEDULE

Development Name: Brownstones at Town Square, Phase I

TOTAL PROJECT SUMMARY		Description / Notes
	Eligible Costs	
	Infrastructure	
Land		
Land	0	
Demoition	5,000	
Construction Cost - Site Work		
On Site Work	0	
On Site Imp - Water Facilities - Standard	49,660	
On Site Imp - Water Facilities - Oversized	0	
On Site Imp - Drainage	64,100	In Summit Avenue and Main Street
Off Site Imp - Drainage	0	
Off Site Improvements	0	
Other	0	
Construction Hard Costs		
Streets - Improvements	191,302	Dirt Work Allocated as Percent of R.O.W to Gross Acreage
Streets - Street Lights	93,636	Antique Street Lights
Streets - Street Signs	5,000	Street Signage, 5 Stop Signs
Streets - Erosion Control	0	Included in Site Improvements
Sewer Facilities - Standard	0	
Sewer Facilities - Oversized	0	
Amenities - Ponds/Lakes	0	
Amenities - Landscaping	30,000	Allowance for Street Trees, Ground Cover, Planters
Amenities - Walls	0	
Amenities - Other (Specify)	5,000	Benches/Trashcans (allowance)
Contractor Fees		
General Requirements (<6%)	26,622	6.00%
Contractor Overhead (<2%)	8,874	2.00%
Contractor Profit (<6%)	22,185	5.00%
Professional Fees		
Architect - Design	5,000	Site Plan for Brownstones Development
Architect - Supervision	0	
Real Estate Attorney	5,000	Allowance
Engineer/Survey	50,835	Allocation of Overall Survey and Civil Engineering for Phase I
Other	0	
Construction Interim Costs		
Hazard Insurance	1,000	
Liability Insurance	2,000	
Payment Bond	3,000	
Performance Bond	3,000	
Credit Report	0	
Origination Fees	2,811	0.50%
Construction Loan Interest	14,055	12 month Construction period with avg interest of 5%
Bridge Loan Cost	0	
Discount Points	0	
Credit Enhancement Fees	0	
Inspection Fees	25,069	2% + 3% per Developer Agreement
Title & Recording	3,631	Assumes Title Policy for \$600K
Legal Fees	3,000	Allocated to Work
Real Estate Taxes	8,700	Construction Period Taxes
Permanent Construction Costs		
Bond Premium	0	
Credit Report	0	
Discount Points	0	
Origination Fees	0	
Credit Enhancement	0	
Title & Recording	0	
Legal Fees	0	
Prepaid MIP	0	
Soft Costs		
Consultant Fees	0	
Consultant Fees	0	
Other Development Costs		
Market Study	0	
Environmental Study	1,000	
Property Appraisal	2,500	
Other	0	
Syndication Costs		
Organizational	0	
Tax Opinion	0	
Developer Fees (15% Maximum)		
Developer Overhead	0	
Developer Fee	0	
Development Reserves		
Operating Reserves	0	
Escrows	0	
Total Costs		
Residential Costs:	0	
- Commercial Space Costs	0	
Development Costs	631,980	
Reimbursement Percentage	40%	
Owner's Requested Reimbursement	252,792	

Park Cost Schedule
Exhibit A - Page 2
Block 22

Updated: 11/16/2004

B. COST SCHEDULE Development Name: Brownstones at Town Square, Phase I

TOTAL PROJECT SUMMARY		Description / Notes
	Eligible Costs	
	Parks	
Land		
Land	0	
Demolition	0	
Construction Cost - Site Work		
On Site Work	0	
On Site Imp - Water Facilities - Standard	0	
On Site Imp - Water Facilities - Oversized	0	
On Site Imp - Drainage	0	
Off Site Imp - Drainage	0	
Off Site Improvements	0	
Other	0	
Construction Hard Costs		
Streets - Improvements	0	
Streets - Street Lights	0	
Streets - Street Signs	0	
Streets - Erosion Control	0	
Sewer Facilities - Standard	0	
Sewer Facilities - Oversized	0	
Amenities - Ponds/Lakes	0	
Amenities - Landscaping	73,000	Allowance for trees, Grass, Shrubs, Irrigation, and Decorative Lighting ²
Amenities - Sidewalks	42,000	Allowance for approximately 1,300 Linear Feet of 8' sidewalk/trail
Amenities - Other (Specify)	14,750	Allowance for Benches, Trashcans, Other Amenity Areas
Subtotal ¹	129,750	
Contractor Fees		
General Requirements (<6%)	N/A	All Allowances above are Lump Sum
Contractor Overhead (<2%)	N/A	
Contractor Profit (<6%)	N/A	
Professional Fees		
Architect, Design	15,000	Landscape Architect/Civil
Engineer/Survey	5,000	Boundary, Topo, and Tree Surveys
Construction Interim Costs		
Permanent Construction Costs		
Soft Costs		
Other Development Costs		
Environmental Study	250	
Syndication Costs		
Organizational	0	
Tax Opinion	0	
Developer Fees (15% Maximum)		
Developer Overhead	0	
Developer Fee	0	
Development Reserves		
Operating Reserves	0	
Escrows	0	
Total Costs		
Residential Costs:	0	
- Commercial Space Costs	0	
Development Costs	150,000	
Reimbursement Percentage	100%	
Owner's Requested Reimbursement	150,000	

1. Line item savings and overruns can be shifted among these line items, provided that the sum of the line items does not exceed the Hard Cost subtotal, nominated above.
2. Design and detail cost Breakdown will be done in cooperation with City Staff.

EXHIBIT 'B' INTENTIONALLY LEFT BLANK

GENERAL WARRANTY DEED FOR STREETS

Date: _____, 2004

Grantor:

Grantors' Mailing Address (including county): Attn: Frank Bliss
1256 Main Street, Suite 240
Southlake, Tarrant County, TX
76092

Grantee: The City of Southlake, Texas

Grantee's Mailing Address (including county): 1400 Main Street
Southlake, Tarrant County, Texas
76092

Consideration:

Ten Dollars (\$10.00) and other good and valuable consideration.

Property (including any improvements):

All of Grantor's interest in the streets, rights of way, and alleys dedicated to the public's use pursuant to the Final Plat - Phase 1 of Brownstone Addition to the City of Southlake, as recorded in Cabinet _____, Slide _____ of the Plat Records of Tarrant County, Texas ("Plat").

Exceptions To Conveyance And Warranty:

All governmental zoning laws, regulations and ordinances affecting the Property, an undivided one-fourth interest in all oil, gas and other minerals as reserved in deed recorded in Volume 2091, Page 608, Deed Records of Tarrant County, and conditions of the Plat but only to the extent such items are validly existing and affect the Property;

Grantors, for the Consideration and subject to the Exceptions to Conveyance and Warranty, GRANT, SELL, and CONVEY to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's successors and assigns forever.

Grantors bind Grantors and their respective successors and assigns to warrant and forever defend all and singular the Property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Exceptions to Conveyance and Warranty.

Grantors, their successors and assigns, to the extent each shall own the property abutting the Property conveyed by this deed, hereby reserve a right of first refusal with respect to the Property, as described in this paragraph. In the event that Grantee determines to sell all or a portion of the Property to a non-governmental entity, the owners of the land abutting the Property (the "Abutting Owners") shall have the exclusive right of first refusal to purchase the Property, at fair market value as determined by an appraisal of the Property to be sold obtained by the Grantee. For purposes of this right of first refusal, the term "Property" is defined as that portion of the Property conveyed to Grantee which Grantee intends to offer for sale. In such event, Grantee agrees to notify the owners which abut the Property intended to be sold of the fair market value of the Property to be sold and the terms and conditions of the sale (the "Notice of Offer"). Grantee shall notify the Abutting Owners at the addresses as shown on the Tarrant Appraisal District rolls. The Abutting Owners shall have the exclusive right, at their option, for a period of thirty (30) days (the "Exercise Period") from its receipt of the Notice of Offer to notify Grantee in writing that the Abutting Owners shall purchase the Property intended to be sold upon the terms and conditions and at the price specified in the Notice of Offer. If the Abutting Owners do not give notice to Grantee of their exercise of its rights hereunder within the Exercise Period, the Abutting Owners' right of first refusal shall automatically terminate. If the Abutting Owners exercise such right to purchase by giving written notice to Grantee at any time within the Exercise Period, the closing of the resulting sale and purchase of the Property shall take place upon the terms and conditions of the Notice of Offer. This right of first refusal does not apply, however, to any sale of the Property to a governmental entity.

The foregoing right of first refusal runs with the land making up the Property, is binding on Grantee and Grantee's successors and assigns forever, and inures to the benefit of Grantors, Grantee and the Abutting Owners.

When the context requires singular nouns and pronouns include the plural.

GRANTORS:

SLTS Grand Avenue District, L.P.

SPECIAL WARRANTY DEED

Date: _____, 200__

Grantor:

Grantee: The City of Southlake, Texas,
A municipal corporation
1400 Main Street
Southlake,
Tarrant County, Texas 76028

Consideration: Ten dollars and no/100 and other valuable consideration

Property (including any improvements):

Reservations from and Exceptions to Conveyance and Warranty:

NONE

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and to hold it to Grantee, Grantee's heirs, executors, administrators, and to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from the exception to conveyance and warranty, when the claim is by, through or under Grantor, but not otherwise.

When the context requires, singular nouns and pronouns include the plural.

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the _____, and that he is authorized to execute the foregoing instrument as the act of such of such Partnership for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____, 200____.

Notary Public in and for the State of Texas

Type or Print Notary's Name

My Commission Expires:

GRANTOR:

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the _____, and that he is authorized to execute the foregoing instrument as the act of such of such _____ for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____, 200____.

Notary Public in and for the State of Texas

Type or Print Notary's Name

My Commission Expires:

AFTER RECORDING RETURN TO:

Ms. Lori Farwell
City Secretary
City of Southlake
1400 Main Street, Suite 270
Southlake, Texas 76092