

STATE OF TEXAS

COUNTY OF COLLIN

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**FACILITIES RELOCATION AGREEMENT
(WITH IMPACT FEE CREDIT)**

This **FACILITIES RELOCATION AGREEMENT** ("Agreement") is made as of the Effective Date by and between the **City of Allen** ("City"), a Texas home rule municipality, and **DD Watters 6.06, LLC** ("Owner"), a Georgia limited liability company, acting by and through their duly authorized representatives. City and Owner are collectively referred to herein as "Parties" and separately as "Party."

RECITALS

WHEREAS, Owner owns real property located in the City of Allen, Texas, described as follows:

Lot 1-R, Block A of Allen Watters-NTB Addition, an Addition to the City of Allen, Collin County, Texas, according to the plat thereof recorded in Volume 2016, Page 725, Map Records, Collin County, Texas

(the "Property"); and

WHEREAS, Owner intends to develop the Property, which is presently undeveloped; and

WHEREAS, in order to facilitate Owner's plans for development of the Property, Owner desires to relocate and or have abandoned in place a City-owned eighteen-inch (18.0") diameter sanitary sewer line ("the Old Line") located along the western portion of the Property as approximately shown on Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, City is agreeable to vacating the Old Line provided Owner constructs, at Owner's cost, and conveys to City a new eighteen-inch (18.0") diameter sanitary sewer line ("the New Line") along the western portion of the Property as approximately shown on Exhibit "A"; and

WHEREAS, the New Line is longer than the Old Line and is constructed of materials of higher quality than the Old Line such that replacement of the Old Line with the New Line is in the public interest; and

WHEREAS, Owner has advised City that as an incentive to construct the New Line, which will be of a higher quality than the Old Line and will be at a location that enhances the development of the Property, Owner has requested that Owner receive certain credits with respect to impact fees that would otherwise be due and payable to City in association with development of the Property; and

WHEREAS, the Parties desire to enter this Agreement for the purpose of setting forth the terms and conditions relating to the abandonment of the Old Line, construction of the New Line, and providing the requested impact fee credits.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. Term. The term of this Agreement shall begin on the last date this Agreement has been signed by authorized representatives of all of the Parties (the “Effective Date”) and terminate on the earlier of (i) the date all Parties have fully satisfied their respective obligations under this Agreement and (ii) the last day of the calendar month in which falls the fifteenth (15th) anniversary of the Effective Date (whichever applies being “the Termination Date”).

2. Replacement of Old Line with New Line. City agrees to abandon use of the Old Line and authorize Owner to remove or abandon the Old Line and all related pipe, manholes, cleanouts, and other related facilities subject to the following:

- (a) Prior to any work commencing on the Property that will result in the Old Line being removed, plugged, or otherwise modified in a manner that prohibits or restricts the Old Line from receiving wastewater in the normal course of operation of City’s sanitary sewer system:
 - (1) Owner shall construct, or cause the construction of, the New Line; and
 - (2) Construction of the New Line must be completed, approved and accepted by City’s Director of Engineering or his designee on behalf of the City; and
- (b) The New Line shall be constructed at Owner’s cost in accordance with plans and specifications approved by City’s Director of Engineering or his designee.

3. Impact Fee Credit. Upon (i) the completion of construction and acceptance by City of the New Line and (ii) delivery to City of such records and other information reasonably requested by City’s Director of Engineering establishing New Line Cost, City agrees to provide a credit against future wastewater, water, and/or irrigation impact fees (collectively “the Impact Fees”), if any, to be assessed by City against the Property relating to development of the Property pursuant to applicable provisions of the Allen Land Development Code, as amended, (“the Credit”) subject to the following:

- (a) The amount of the Credit shall not exceed the lesser of (i) the New Line Cost and (ii) the Impact Fees assessed against the Property, but not greater than the Maximum Impact Fee Amount;
- (b) For purposes of this Section 3, the “Maximum Impact Fee Amount” is **Sixty-Four Thousand and No/100 Dollars (\$64,000.00)** calculated as follows:

- (1) Water Impact Fees to be paid on two (2) three-inch (3.0") water meters at a rate of \$19,200 per meter (\$38,400 total); plus
 - (2) Wastewater Impact Fees to be paid on two (2) three-inch (3.0") water meters at a rate of \$8,000 per meter (\$16,000 total); plus
 - (3) Irrigation Impact Fees to be paid on one (1) two-inch (2.0") irrigation meter at a rate of \$9,600;
- (c) For purposes of this Section 3, "New Line Cost" means the actual amount paid to the contractor or contractors solely for construction of the New Line and shall not include (i) costs relating to design of the New Line, (ii) costs relating to the acquisition of the Property or any portion of the Property, including, but not limited to, the portion of the Property where the New Line will be constructed, or (iii) development fees, construction management fees, or other fees relating to management and oversight of construction of the New Line and/or development of the Property;
 - (d) If the amount of the Impact Fees assessed against the Property are less than the Maximum Impact Fee Amount as the result of Owner installing fewer and/or smaller water and/or irrigation meters than the number and sizes identified in Section 3(b), above, City shall not be required to pay any remaining or unused portion of the Credit in cash or cash equivalent to Owner or any other party, or to apply any remaining or unused portion of the Credit against any other fees assessed or to be assessed by City against the Property or any other property;
 - (e) If (i) the amount of the Impact Fees assessed against the Property is greater than the Maximum Impact Fee Amount as the result of Owner installing more and/or larger water and/or irrigation meters than the number and sizes identified in Section 3(b), above, and (ii) the New Line Cost is greater than the Maximum Impact Fee Amount, City shall not be required to provide any additional credit against additional Impact Fees that remain due and payable to City;
 - (f) City's obligation to grant the Credit expires, and shall be of no further force and effect, on the Termination Date; and
 - (g) Owner acknowledges and agrees that the availability of, and ability to receive, the Credit constitutes adequate consideration granted by City to Owner for the construction of the New Line, even if the Property is not developed and no Impact Fees are assessed against the Property prior to the Termination Date.

4. *Payment of Other Fees.*

- (a) As further consideration, Owner shall not be required to pay engineering inspection fees in an amount equal to 3.2% if the construction cost of the New

Line that would otherwise be required to be paid in association with the construction of the New Line.

- (b) Except as provided in Section 4(a), above, this Agreement does not waive any requirement to pay to City any fees or assessments required to be paid in relation to the development of the Property, including the payment of Impact Fees, it being the intent to only grant the Credit, being a credit against the Impact Fees that may be due. This Agreement furthermore does not include or provide for the waiver of or credits for any roadway impact fee that may be due and payable to City in association development of the Property.

5. Notice. Any notice required or permitted to be delivered here under shall be deemed received when sent by United States Mail, postage prepared, certified mail addressed to the Party at the address set forth below or to such Party and address designated in writing by a Party, or by courier otherwise by hand delivery.

If intended for Owner, to:

DD Watters 6.06, LLC
Attn: Lance A. Chernow
403 Corporate Center Drive, Suite 201
Stockbridge, Georgia 30281

If intended for City:

City of Allen, Texas
Attn: City Manager
305 Century Parkway
Allen, Texas 75013

With Copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard, Suite 1800
Dallas, Texas 75201

6. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement may not be assigned without the express written consent of City.

7. Severability. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

8. Governing Law. The validity of this Agreement shall be governed by the laws of the State of Texas; and exclusive venue for any action concerning this Agreement shall be in State District Court of Collin County, Texas. The Parties agree to submit to the subject matter and personal jurisdiction of said court.

9. ***Entire Agreement.*** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

10. ***Recordation of Agreement.*** An original or certified copy of this Agreement shall be recorded in the Real Property Records of Collin County, Texas.

11. ***Covenants and Credit Run with Property.*** The provisions of this Agreement are hereby declared covenants running with the Property and are fully binding on Owner and each and every subsequent owner, tenant, subtenant, licensee, manager and occupant of all or any portion of the Property but only during the term of such party's ownership, tenancy, subtenancy, license, management or occupancy thereof (except with respect to defaults that occur during the term of such person's ownership, tenancy, subtenancy, license, management or occupancy) and shall be binding on all successors, heirs, and assigns of Owner which acquire any right, title, or interest in or to the Property, or any part thereof. Any person who acquires any right, title, or interest in or to the Property, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this Agreement with respect to the right, title or interest in such Property.

12. ***Recitals.*** The recitals to this Agreement are incorporated herein as part of this Agreement.

13. ***Exhibits.*** All exhibits to this Agreement are incorporated herein as a part of this Agreement.

14. ***Counterparts.*** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument, and all counterparts shall constitute one and the same instrument.

15. ***Survival of Covenants.*** Any representatives, covenants and obligations of the parties, as well as the rights and benefits of the parties pertaining to a period of time following the termination or expiration of this Agreement shall survive termination.

(signatures on following pages)

City's Signature Page

SIGNED AND AGREED this ____ day of _____, 2017.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

ATTEST:

By: _____
Shelley B. George, City Secretary

APPROVED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2017 by Peter H. Vargas, City Manager of the City of Allen, a Texas, home rule municipality on behalf of said municipality.

Notary Public, State of Texas

My Commission Expires: _____

Owner's Signature Page

SIGNED AND AGREED this ____ day of _____, 2017.

DD Watters 6.06, LLC, a Georgia limited liability company

By: DD Watters 6.06 Manager, LLC, a Delaware limited liability company, its Manager

By: Beaver Creek Trust, its Sole Member

By: Briarcliff Management, LLC, a Nevada limited liability company, Trustee

**By: _____
Fred S. Hazel
Authorized Member**

**STATE OF GEORGIA §
 §
COUNTY OF HENRY §**

Before me, at Notary Public in and for the State of Georgia, on this day personally appeared Fred S. Hazel, in his capacity as Authorized Member of Briarcliff Management, LLC, a Nevada limited liability company, Trustee of Beaver Creek Trust, the sole member of DD Watters 6.06 Manager, LLC, a Delaware limited liability company, the sole manager of DD Watters 6.06, LLC, a Georgia limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed said instrument as his act and deed and as the act and deed of DD Watters 6.06 Manager, LLC, the manager of DD Watters 6.06, LLC, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this ____ day of _____, 2017.

NOTARY PUBLIC in and for the State of Georgia
Name (print): _____
My Commission Expires: _____

INSTALL 5' DIAMETER DROP MH
RM = ±829.8 (MATCH PAVEMENT)
18" FL IN = 611.87 18" FL OUT = 611.85

LOCATE & RAISE EX. SANL SERV. MH RM PER CITY CODE
EX. RM = ±824.0 PROPOSED RM = ±826.7 (MATCH PAVEMENT)
EX. 18" FL IN = 611.85
EX. 18" FL OUT = 611.85 TO BE REMOVED
PROPOSED 18" FL OUT = 611.85

EX. 18" VCT TO BE REMOVED OR ABANDONED
IN PLACE AFTER BYPASS IS INSTALLED
(±80 L.F. TO BE REMOVED)

PRESERVE AND PROTECT EXISTING 36" RCP
(UNLESS STORM LINE PREVIOUSLY REROUTED)

15" HOPE (PRIVATE) 18" HOPE (PRIVATE) 12" HOPE (PRIVATE)

18" D.I.P. UNDER BUILDING

DO WATTERS 6.08 MANAGER LLC
ALLEN WATTERS NTB, BLOCK A, LOT 1, 6.0804 ACRES
DOC. NO. 2013053000742820 P.R.C.T.

MICHAEL LEZ SURVEY, ABST. NO. 543

RISER ROOM

GREASE TRAP AND INSPECTION WELL
(SEE MEP PLANS FOR ADDITIONAL DETAILS)

12" STUDS FOR DOWNSPOUTS / AREA DRAINS IN COURTYARD

SANITARY SEWER CLEAN OUT
RM = 632.0
INV. 12" = 623.00

41.32 L.F. OF 12" SANITARY
(PRIVATE SCH 40 PVC) @ 14.52%

EX. SSJMH TO BE REMOVED OR ABANDONED
PER CITY & EX. 18" VCT TO BE REMOVED
OR PLUGGED AND ABANDONED IN PLACE

EX. 18" VCT TO BE REMOVED OR ABANDONED
IN PLACE AFTER BYPASS IS INSTALLED
(±80 L.F. TO BE REMOVED)

CONNECT TO EXISTING NTMMD MAINHOLE PER NTMMD SPECIFICATIONS
EX. RM = ±825.88
EXISTING FL 27" OUT = ±805.51
EXISTING FL 21" IN = ±806.01
EXISTING FL 18" IN = ±810.03 (TO BE REMOVED)
PROPOSED FL 18" = 610.85
(NOTE: EXISTING FRAMES AND LIDS ARE BOLD DOWN)

473' OF EX. 18 VCT TO BE REMOVED / ABANDONED (the "Old Line")

480' OF 18 SDR-26 TO BE INSTALLED ("the New Line")

CITY OF ALLEN
WATERS CROSSING #1,
LOT 1, 23.3247 ACRES
GREENBELT/FLOODPLAIN

NVS

SITE BM #2

EX. 21" NTMMD SANITARY SEWER LINE

FDCI DALLAS LTD
C/O FLORIDA CAPITAL
HIDDEN CREEK (CAL), BLOCK A, LOT 1, 14.2770 ACRES
VOLUME 2007, PAGE 149 P.R.C.T.