

WATER PROVISION AGREEMENT

This Water Provision Agreement (this “Agreement”) is entered into by and between the San Antonio Water System, a wholly owned municipal utility of the City of San Antonio (the “System”) and Lumbermen’s Investment Corporation, a Delaware corporation (the “Developer”), together the “Parties.”

Recitals

WHEREAS, the Developer owns land located within the System’s certificated service area and desires to develop a high quality, master-planned community; and

WHEREAS, the Developer and the City of San Antonio (“City”) have negotiated an “Agreement for Services in Lieu of Annexation” (the “Services Agreement”) concerning the provision of services to, and annexation of, the real property described therein (the “Property”); and

WHEREAS, Article V of the Services Agreement references the execution of this Agreement.

NOW THEREFORE, for and in consideration of the mutual agreements, covenants and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows:

Article I. Purpose

The purpose of this Agreement is to set forth the terms and conditions pursuant to which the System shall provide a water supply for irrigation of the golf course(s), golf learning center, and roadway medians within the boundaries of the Property. This Agreement is in addition to that certain Water Service Agreement granted to Developer pursuant to the San Antonio Water System Board of Trustees Resolution No. 02-362, which sets forth the terms and conditions pursuant to which the System will provide retail potable water service to the proposed residential and commercial development within the Property. Except as expressly provided otherwise herein, the water to be provided pursuant to this Agreement shall be used solely within the boundaries of the Property and shall be used for irrigation of the golf course(s), golf learning center, and/or roadway medians only; provided, however, at such time as the System makes a supply of potable water available to the Property for domestic purposes, the water supply furnished under this Agreement may be used for irrigation of the golf courses and golf learning center only, and may not be used for irrigation of roadway medians.

Article II. Conveyance of Well Facilities

2.01 Transfer of Groundwater Well Facilities and Related Rights.

- (a) The Developer agrees to dedicate and convey to the System certain wells, pumps, pipes, tanks, and other structures, facilities, equipment and

appurtenances located on the Property used or capable of being used for the production of groundwater or monitoring water quality (the "Well Facilities"); provided, however, it is specifically acknowledged and agreed that the Well Facilities shall not include the transmission pipe(s) and related equipment and appurtenances that deliver irrigation water from the Well Facilities to the golf course irrigation lake(s) and/or golf course irrigation system. The Well Facilities to be conveyed by the Developer to the System are more particularly described in "**Exhibit A**" attached hereto and incorporated herein for all purposes, and the Developer further agrees to convey and assign to the System all contracts, permits, consents, contractor's bonds, certificates, licenses, guarantees, warranties, and other intangible assets relating to the Well Facilities, but excluding any debts, liabilities or obligations related thereto not expressly assumed by the System herein.

- (b) In addition to the Well Facilities, the Developer agrees to grant, convey, transfer and assign unto the System an easement interest in those certain tracts of real property on which each groundwater well is located, such easement tracts more particularly described on "**Exhibit B**" attached hereto and incorporated herein for all purposes, together with the Developer's right to explore, develop, produce, sever, and transport groundwater from the Property (collectively, the "Real Property Interests"). Each easement tract collectively constituting the Real Property Interests consists of an 1.623-acre (approximately 70,685 square feet) easement area, representing a 150-foot radius area, surrounding each of the Well Facilities. The System agrees that it shall not withhold its approval of any request by Developer to modify the easement area surrounding any individual Well Facilities if such easement area would unreasonably interfere with Developer's proposed use of the surface estate, provided that the proposed alternate easement area is reasonably adequate for the System to operate and maintain the Well Facilities in accordance with the terms and conditions of this Agreement. The Real Property Interests shall include a right of ingress and egress over the Property as reasonably necessary for the System to conduct the operation, maintenance, repair, upgrade, replacement of, and other authorized activities relating to, the Well Facilities. The right of ingress and egress shall be exercised to minimize disruption of hotel, golf and residential uses within the Property.
- (c) The Developer acknowledges and agrees that the provision of water service in accordance with the terms and conditions of this Agreement, including the charges set forth herein, constitutes full consideration for the transfer of ownership of the Well Facilities and Real Property Interests and no other payment of any kind will be made by the System to the Developer for the Well Facilities or Real Property Interests.

2.02 Manner of Transfer. Transfer by the Developer to the System of the Well Facilities and Real Property Interests shall be by an instrument reasonably acceptable to the attorneys for the System and shall be substantially in the form of the "Groundwater Production Easement, Bill of Sale and Assignment" attached hereto as "**Exhibit C**" and made a part hereof for all purposes.

2.03 Timing of Transfer. Upon execution of this Agreement by the Parties, the Developer shall promptly complete construction and installation of the Well Facilities. Thereafter, the Developer shall be authorized to operate the Well Facilities for purposes of producing a water supply for construction on and within the Property and for irrigation of roadway medians located within the Property, and for no other purposes. The Developer shall transfer and convey the Well Facilities, and the related Real Property Interests, to the System after completion of the Well Facilities but on or before such time as Developer commences irrigation of any golf course or golf course learning center lands located within the Property, and in no event later than five (5) years after the effective date hereof. If, during Developer's use of the Well Facilities prior to conveyance to the System, the System determines that such use or operation adversely impacts or may impact the production of groundwater by wells in the vicinity of the Property, then the System may notify the Developer accordingly, and the Developer agrees to immediately discontinue operation of the Well Facilities in the manner and to the extent directed by the System. In the event of any such curtailment, the System agrees that the Developer may obtain a supply of water for construction purposes from fire hydrants located on or near the Property at the System's standard retail rates for such water supply.

2.04 Representations by Developer.

In relation to the Well Facilities and Real Property Interests, the Developer acknowledges, represents and agrees as follows:

- (a) The Developer has not created or permitted, and will not create or permit, any third person to create any liens, leases, options, claims, encumbrances or any other adverse rights, claims or interests with respect to the Well Facilities or Real Property Rights that will prevent or hinder the ability of the Developer to transfer good and warrantable title in same to the System;
- (b) The Developer is the true and lawful owner of the Well Facilities and Real Property Interests and no other third person or entity, public or private, possesses or will possess a right or interest, legal or equitable, nor any lien, encumbrance or other adverse claim, present or contingent, in or to the Well Facilities or Real Property Interests;
- (c) The Developer has not previously sold, assigned, transferred, leased, pledged or hypothecated its interest in or to the Well Facilities and Real Property Interests to any third person or entity, and will not do so prior to conveyance to the System;

- (d) The Well Facilities and each appurtenance thereto is located within property owned in fee by the Developer;
- (e) The transfer of the Well Facilities and Real Property Interests will not violate any term, condition or covenant of any agreement to which the Developer is or may become privy;
- (f) Execution of this Agreement and the consummation of the transactions contemplated hereunder will not constitute an event of default under any contract, covenant or agreement binding upon the Developer;
- (g) The Developer has not previously granted, and will not grant, any right or option to any other person, entity or political subdivision to acquire or operate the Well Facilities, and agrees to indemnify, defend and hold the System harmless from all claims or causes of action asserted by any third person, entity or political subdivision alleging a right or option to acquire or use the Well Facilities;
- (h) The Developer has not previously entered into, and will not enter into, any agreement, nor has the Developer caused or otherwise authorized any action, that would diminish, eliminate or adversely affect the System's contemplated ownership or use of the Well Facilities or the value of same;
- (i) The Well Facilities were and will be installed in accordance with Texas Commission on Environmental Quality ("TCEQ") construction specifications for public water supply wells, will be in serviceable condition at the time of conveyance to the System, will have all regulatory permits and approvals required for the production of a municipal irrigation water supply in an amount at least equal to the Estimated Annual Yield at the time of conveyance, and the Developer has no knowledge of any defects, apparent or latent, that would affect materially the System's operation and maintenance of same; and
- (j) The System is executing this Agreement and providing an irrigation water supply in reliance on each of the warranties and representations set forth above and each such representation and warranty of the Developer shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

On the date of conveyance of the Well Facilities to the System, the Developer agrees to deliver to the System a certificate, dated as of the date of such conveyance, confirming the accuracy in all material respects of all of the foregoing representations.

2.05 Representations by the System. The System acknowledges, represents, and agrees as follows:

- (a) The System has the requisite power and authority to take all necessary action to execute and deliver this Agreement and to perform all obligations hereunder;
- (b) The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of the System and the person executing this Agreement on behalf of the System has been fully authorized and empowered to bind the System to the terms and provisions of this Agreement; and
- (c) The execution and delivery of this Agreement and the performance by the System of its obligations hereunder do not contravene the provisions of, or constitute a default under, the terms of any contract, resolution, or other instrument to which the System is a party or by which the System is bound.
- (d) The Developer is executing this Agreement and conveying the Well Facilities and Real Property Interests in reliance on each of the warranties and representations set forth above and each such representation and warranty of the System shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

Article III. Operation of Well Facilities

3.01 Operation of Well Facilities. The System shall be solely responsible for the ownership, operation, maintenance, repair and replacement of the Well Facilities upon receipt of ownership thereof. The Developer acknowledges and agrees that the System reserves the right to enter into an agreement with any owner or operator of the golf courses for operation or lease of the Well Facilities, but shall be under no obligation to do so. Prior to conveyance of the Well Facilities to the System, the Developer shall operate and maintain such facilities in proper operating condition and in accordance with the highest industry standards. Upon conveyance of the Well Facilities to the System, the Developer shall be entitled to request that the System upgrade the Well Facilities by installing larger pumps or making other improvements, or after giving reasonable notice to System and in a manner which does not materially adversely affect the Well Facilities, itself install larger pumps or make other improvements, but the Developer shall be obligated to pay all costs and expenses associated therewith, and the System shall have no obligation to provide the quantity of irrigation water attributable to the Well Facilities in question while they are out of service during the improvement project. If Developer desires to install other pumps or make other improvements to the Well Facilities, it shall furnish plans and specifications for such work to System for approval prior to initiation of construction, and shall allow representatives of the System to inspect such work as it is performed. The System shall either approve the plans and specifications, or specify required revisions thereto, within fifteen (15) business days of receipt of such plans and

specifications. The System shall own all improvements to the Well Facilities constructed by Developer. The Developer shall be responsible for ownership, operation and maintenance of all transmission pipes and related equipment and appurtenances utilized for purposes of delivering irrigation water from the Well Facilities to irrigation lakes on the golf courses and/or to the golf course irrigation system, and the System shall have no responsibility therefor.

3.02 Impact on Surrounding Landowners. Upon receipt of ownership of the Well Facilities, the System shall operate the Well Facilities as it deems appropriate in compliance with all applicable laws and regulations, and so as to minimize any adverse impact on the production of groundwater by wells in the vicinity of the Property. The System shall be authorized to take all actions reasonably necessary to mitigate the impact on the neighboring well(s), including by way of example and not in limitation, reduction in pumpage near the impacted area, shifting pumpage from Well Facilities in the impacted area to non-impacted areas, and/or utilizing other water supply sources available to the System for irrigation of the golf courses and golf learning center for so long as necessary to protect surrounding landowners and production from their wells.

3.03 Calculation of Yield.

- (a) Based upon preliminary studies relating to the Well Facilities, the Parties acknowledge and agree that the aggregate sustainable yield of the Well Facilities, defined as the aggregate sustainable yield of the Well Facilities that may be produced in accordance with all applicable regulatory restrictions and without adversely impacting the production of wells owned or operated by landowners in the vicinity of the Property, is estimated to be not less than 1100 acre feet of water per calendar year (the "Estimated Annual Yield").
- (b) The Parties acknowledge that the actual production of the Well Facilities may vary from the Estimated Annual Yield (as set forth in Section 3.03(a)). As a result, the System may adjust the Estimated Annual Yield once each calendar year commencing approximately five years after the effective date of this Agreement to reflect any limitations affecting the total quantity of irrigation water that the Well Facilities are capable of producing in accordance with all applicable regulatory restrictions and without adversely impacting the production of wells owned or operated by landowners in the vicinity of the Property based on historical pumping, available modeling, and any applicable regulatory restrictions. The System agrees to make available to Developer documentation and data in support of any such adjustment, and further agrees to act in good faith and in a reasonable manner in connection with making any such adjustments.
- (c) In connection with any future permitting proceedings that may be conducted by an underground water district with jurisdiction over the

proposed construction and operation of new well facilities on real property located in the vicinity of the Property and that may adversely impact the production of groundwater by the Well Facilities, the System agrees to participate in good faith in such permitting proceedings for purposes of protecting the production of groundwater by the Well Facilities.

Article IV. Provision of Irrigation Water by System

4.01 Irrigation Supply. Upon execution of this Agreement by the Parties and the conveyance of the Well Facilities and Real Property Interests by the Developer to the System, the payment of all applicable impact fees and other charges to the System, and compliance with all terms and conditions of the System's rules and policies as amended from time to time, the System shall, subject to the terms and conditions set forth herein, make available to the golf courses, golf learning center, and roadway medians a supply of irrigation water; provided, however, at such time as the System makes a supply of potable water available to the Property for domestic purposes, the water supply furnished under this Agreement may be used for irrigation of the golf courses and golf learning center only, and may not be used for irrigation of roadway medians.

4.02 Infrastructure Limitations. The Developer recognizes that the potable water delivery infrastructure for the golf course, golf learning center, and roadway median irrigation has been sized to accommodate nine hundred (900) EDUs. Therefore, the Developer agrees that the demand on the infrastructure system located within the boundaries of the Property for the golf courses, golf learning center, and roadway medians shall not exceed nine hundred (900) EDUs or otherwise adversely affect service to the System's other customers. Furthermore, the Developer agrees that the System shall have no responsibility for capacity limitations associated with the internal irrigation lines and other water supply or transmission facilities designed and constructed by Developer within the Property.

4.03 Irrigation Supply Source(s).

- (a) The System shall be solely responsible for determining the source of irrigation water to be made available to the golf course(s), golf learning center, and roadway medians under the terms of this Agreement. The Developer acknowledges and agrees that the System contemplates providing an irrigation water supply from the Well Facilities in a quantity equal to the Estimated Annual Yield, and supplementing such supply, as necessary, from other water supply sources available to the System. However, the System shall be under no obligation to make the irrigation water supply available from any particular source and in connection therewith, the Developer acknowledges and agrees that the System shall operate the Well Facilities in a manner that the System deems appropriate, in the exercise of its sole discretion, to protect the Trinity Aquifer and the rights and interests of surrounding landowners who may rely upon the Trinity Aquifer. At such time as the System determines appropriate, in the

exercise of its sole discretion, the System may discontinue operation of the Well Facilities on a temporary or permanent basis, at which time it will provide an irrigation water supply to the golf course(s) and golf learning center from other sources available to the System under the terms and conditions hereinafter set forth, provided the Developer otherwise remains in good standing under the terms of this Agreement.

- (b) The irrigation water to be supplied by the System pursuant to this Agreement shall be the sole source of irrigation water for the golf courses and golf learning center, save and except stormwater that may be captured in irrigation lakes located within the Property.

4.04 Quality. THE WATER THAT THE SYSTEM OFFERS TO PROVIDE THE DEVELOPER FOR THE GOLF COURSE(S) AND GOLF LEARNING CENTER MAY BE NON-POTABLE, RAW AND UNTREATED GROUNDWATER. THE DEVELOPER HAS SATISFIED ITSELF THAT SUCH WATER IS SUITABLE FOR ITS NEEDS. THE SYSTEM EXPRESSLY DISCLAIMS ANY WARRANTY AS TO THE QUALITY OF THE GROUNDWATER OR SUITABILITY OF THE GROUNDWATER FOR ITS INTENDED PURPOSE. THE SYSTEM EXPRESSLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY AND FITNESS. THE DEVELOPER AGREES THAT ANY VARIATION IN THE QUALITY OR CHARACTERISTICS OF THE GROUNDWATER OFFERED TO DEVELOPER UNDER THIS AGREEMENT SHALL NOT ENTITLE THE DEVELOPER TO AVOID OR LIMIT ITS OBLIGATION TO MAKE PAYMENTS PROVIDED FOR UNDER THIS AGREEMENT. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTIONS CONTAINED IN THIS AGREEMENT. THE DEVELOPER HEREBY RELEASES THE SYSTEM AND AGREES TO INDEMNIFY AND HOLD HARMLESS THE SYSTEM FROM ANY AND ALL CLAIMS THAT THE DEVELOPER MAY HAVE AGAINST THE SYSTEM FOR OR RELATED TO ANY DIMINUTION OR IMPAIRMENT OF THE QUALITY OF WATER SUPPLIED UNDER THIS AGREEMENT. Without limiting the foregoing, the System agrees that prior to delivering to the golf courses or golf learning center a substitute supply of non-potable irrigation water from a source other than the Well Facilities, it shall provide a representative sample thereof to Developer for approval, which approval will not be unreasonably withheld or delayed. The Parties agree that any rejection of the non-potable substitute water supply by Developer for reasons unrelated to the potential impact of such water supply on the health of turfgrasses or potential adverse impact on golf course play shall be unreasonable. The System shall not furnish to the golf courses or golf learning center any substitute non-potable water supply reasonably rejected by the Developer.

4.05 Terms of Service. The water, if any, provided pursuant to this Agreement shall be made available in accordance with the terms and conditions of this Agreement, the Services Agreement (including the "Golf Course Environmental Management

Plan” attached as an exhibit thereto) and all applicable policies and regulations adopted by the System concerning the provision of water service to customers located inside or outside the corporate boundaries of the City (as applicable, depending upon whether the City has annexed the Property at any given time), as amended from time to time, except as specifically provided otherwise hereunder.

Article V. Water Conservation

5.01 Generally. The Developer agrees to comply with the water conservation measures set forth in the Services Agreement, the Golf Course Management Plan and this Agreement, including the following:

- (i) Irrigation of the golf courses shall be limited to no more than an average of ninety (90) acres of land per golf course;
- (ii) Best management practices shall be utilized for all golf course and golf learning center irrigation;
- (iii) An on-site weather station and computer-controlled irrigation systems which automatically control irrigation based on actual weather and moisture conditions shall be used for all golf course and golf learning center irrigation; and
- (iv) The Developer shall ensure that the golf courses and golf learning center will only use the amount of irrigation water actually needed. Water needs will be determined by scientific-based calculations of evapotranspiration, based on soil moisture, plant intake, evaporation, temperature and other weather and moisture conditions.

5.02 Edwards Permits.

- (a) Service Request. During the term of this Agreement, the Developer may provide a written request to the System for a supplemental quantity of irrigation water (the “Supplemental Water Supply”) not less than one hundred eighty (180) days prior to the requested date of such service (the “Service Request”). During the term of this Agreement, the Developer shall be entitled to submit a Service Request for a Supplemental Water Supply to the System on not more than three (3) separate occasions. All Service Requests must be exercised by the Developer while the Services Agreement remains in effect, and in the event of termination of the Services Agreement prior to the exercise by Developer of one or more Service Requests, the Developer shall have forfeited its right to submit such Service Request(s).
- (b) Transfer of EAA Permitted Water Rights. As a condition precedent to delivery of each Supplemental Water Supply, the Developer shall convey ownership of transferable Edwards Aquifer Authority (“EAA”) permitted water rights (the “EAA permitted water rights”) to the System in a

quantity equal to twice the quantity of the Supplemental Water Supply requested by the Developer in each Service Request. Conveyance of the EAA permitted water rights shall be made no later than thirty (30) days following the date of submission of the Service Request by the Developer to System, and shall be made by instrument(s) in a form approved by the System, which approval shall not be unreasonably withheld. The conveyed EAA permitted water rights shall be final permits that authorize the System to withdraw groundwater from the Edwards Aquifer at the System's existing groundwater pumping facilities for municipal purposes, which are uncontested, and such permitted water rights must be approved by the System, which approval will not be unreasonably withheld or delayed. Developer must execute all documents required by the EAA to effectuate the transfer of such EAA permitted water rights and shall be responsible for all costs associated with the conveyance of such rights including but not limited to recordation and filing fees. The System shall not provide a Supplemental Water Supply prior to the System's receipt of such EAA permitted water rights (or other water rights pursuant to Section 5.02(c)).

- (c) Other Water Rights. Notwithstanding anything to the contrary contained in this Agreement, the System and the Developer may agree, in their independent discretion and pursuant to a written agreement, that the Developer may convey ownership of permanent water rights to the System from an alternative source approved by the System, other than the Edwards Aquifer, in a quantity equal to that required herein in order to fulfill the obligation to convey the EAA permitted water rights in accordance with Section 5.02(b).
- (d) During the term of this Agreement, the Supplemental Water Supply may be adjusted by the System from time to time, such adjustment to occur not more frequently than every five years, to reflect any relative curtailment of the conveyed EAA permitted water rights by the EAA (or its successor or any other entity with jurisdiction), or relative curtailment of other water rights conveyed pursuant to Section 5.02(c), which occur during the time period after the date of conveyance of such water right to the System. In this manner, the risks associated with the value of the conveyed EAA water rights (or other water rights) shall be shared equally among the Developer and the System. Notwithstanding the terms of Section 5.02(a) above which limit the number and timing of Service Requests, in the event of adjustment of the Supplemental Water Supply under this Section 5.02(d), the Developer shall be entitled to submit an additional Service Request to the System for a Supplemental Water Supply equal in quantity to the relative curtailment. All terms and conditions set forth in Section 5.02(b) and (c) shall apply to such Supplemental Water Supply.

5.03 Drought and Conservation Restrictions.

- (a) The Developer shall comply with the water conservation practices required in the Services Agreement, the Golf Course Environmental Management Plan and this Agreement on a year-round basis. In consideration of the permanent water conservation practices and transfer of the Well Facilities and Real Property Interests, irrigation of the golf courses, golf learning center and roadway medians shall be subject to the following drought management provisions:
- (i) the irrigation supply generated from the Well Facilities, in an amount not to exceed the Estimated Annual Yield, as adjusted from time to time, will not be subject to the drought restriction requirements imposed by the “Aquifer Management Plan Ordinance No. 80574,” as set forth in the City Code, Chapter 34, Article IV, Divisions 1-4, Sections 287-350, inclusive, also known as the “Critical Period Management Rules”, as they are amended and superceded from time to time, except as provided in Section 5.03(b) and Section 5.03(a)(iv) below; provided, however, that irrigation of the roadway medians with water supplied from the Well Facilities prior to the availability of potable water by the System for domestic uses on the Property shall be subject to the Critical Period Management Rules;
 - (ii) any Supplemental Water Supply made available to Developer in accordance with the terms and conditions of this Agreement will not be subject to the Critical Period Management Rules, as amended or superceded from time to time, except as provided in Section 5.03(b) below;
 - (iii) any potable water (including any water made available because the demand for irrigation water exceeds the Maximum Production (as hereinafter defined)) other than the Supplemental Water Supply made available by the System to Developer for irrigation of the golf courses, golf learning center or roadway medians shall be subject to the Critical Period Management Rules, as amended or superceded from time to time; provided, however, in the event that the System restricts production of irrigation water from the Well Facilities to protect the production of groundwater by wells in the vicinity of the Property, any potable water supply made available by the System to the golf courses or golf learning center in place thereof will be subject to the same drought restrictions as the irrigation water that could have been produced from the Well Facilities; and
 - (iv) upon commencement of application of the Critical Period Management Rules, all irrigation practices on the golf courses, golf learning center, and roadway medians shall remain subject to the drought restrictions set forth in the Critical Period Management

Rules for a period equal to thirty days or the remainder of the period during which the regulatory drought restrictions remain in effect, whichever is shorter in duration. Furthermore, each delivery of irrigation water that triggers application of the Critical Drought Period Management Rules shall commence a new thirty-day drought restriction period.

- (b) Notwithstanding any provision of this Agreement to the contrary, all irrigation water to be made available by the System to the Developer under this Agreement shall be subject to any drought restrictions imposed by declaration of the City Council of the City pursuant to City Code, Chapter 34, Article IV, Division 4, Section 324(c), as amended or superceded from time to time, provided, that, such declaration is not specifically applied only to the Property, or applied only to golf course operations on the Property, or which ultimately has such effect. Developer further acknowledges and agrees that the production of irrigation water from the Well Facilities may become subject to regulation or restriction by an existing or future groundwater conservation district with jurisdiction over such facilities, and the water supply to be made available by the System from the Well Facilities under this Agreement is subject to any valid restriction imposed by such groundwater conservation district.

Article VI. Rates, Fees and Charges

6.01 Impact Fees. The Developer hereby agrees to pay to the System the amount of impact fees determined by meter size as a representation of Equivalent Dwelling Units (“EDU’s”) for all irrigation water to be made available to the golf courses, golf learning center, and roadway medians under this Agreement from sources other than the Well Facilities. The term “impact fee” includes the flow impact fee, the system development impact fee, water supply impact fee, as well as any other impact fees assessable at the time of meter set, each as amended from time to time. The impact fees to be paid by the Developer shall be paid at the time of meter set. The Developer further agrees that it will not seek, and is not entitled to, a credit against impact fees for the EAA permitted water rights (or other water rights) to be conveyed by Developer pursuant to Section 5.02 herein, such agreement to survive the termination of this Agreement.

6.02 Operation and Maintenance Charges.

- (a) In partial consideration of the conveyance of the Well Facilities to the System, the System agrees to deliver irrigation water to Developer in accordance with the terms of this Agreement, and the System further agrees to charge, and the Developer agrees to pay, the charges set forth

herein for the supply of irrigation water to the golf courses, golf learning center, and roadway medians, as follows:

- (i) For all such irrigation water delivered by the System from the Well Facilities (or other sources pursuant to Section 4.03(a)) during a calendar year in a total quantity equal to or less than the Estimated Annual Yield, the System shall charge, and the Developer shall pay, a sum equal to \$0.37 per 1,000 gallons of irrigation water delivered (the “O&M Charge”), as measured by the meter located at each point of delivery, which sum represents the System’s estimated costs of operation and maintenance of the Well Facilities (including general, administrative and overhead costs associated therewith). The O&M Charge shall remain in effect during the term of this Agreement; provided, however, that the Parties by mutual written agreement may change the O&M Charge from time to time to more accurately reflect the System’s true costs of operation and maintenance of the Well Facilities. Each Party agrees to consider and act in good faith with respect to any request by the other Party to change the O&M Charge for such purposes. The System shall review and calculate its actual costs of operation and maintenance of the Well Facilities on a quarterly basis after receipt of ownership of the Well Facilities. To the extent that the total O&M Charge collected by the System during such quarterly period does not equal the System’s total costs of operation and maintenance of the Well Facilities during said period, the System shall prepare a written invoice identifying the amount of any deficiency, and a summary of the operation and maintenance costs related thereto. Upon receipt of the written invoice, the Developer may request, and the System shall provide, a list of the actual operation and maintenance charges for the given period in reasonable detail. The Developer shall have thirty (30) days to pay such deficiency after receipt of the invoice. To the extent that the System collects more than its actual operation and maintenance costs during any quarterly period, then such additional amount shall be applied by the System as a credit against operation and maintenance costs incurred by the System in connection with the subsequent quarterly calculation of the O&M Charge.
- (ii) With respect to all irrigation water delivered to the golf course(s) and golf learning center from other sources available to the System for the sole purpose of mitigating the impact of production by the Well Facilities on surrounding property owners pursuant to Section 4.03(a) and for no other reason, the System shall charge, and the Developer shall pay, the O&M Charge.
- (iii) With respect to all irrigation water delivered by the System to the golf course(s), golf learning center, and/or roadway medians in

excess of the Estimated Annual Yield, or to satisfy any irrigation demands of the golf courses, golf learning facility, and/or roadway medians that exceeds the instantaneous production of groundwater from the Well Facilities at any given time (the “Maximum Production”), the System shall charge, and the Developer shall pay, the System’s standard retail water rates (the “Standard Retail Rates”), as amended from time to time, for golf course irrigation customers located inside or outside the corporate boundaries of the City (as applicable, depending upon whether the City has annexed the Property at the time of delivery).

- (iv) For purposes of applying the correct charges or rates to the irrigation water supplied to the golf courses, golf learning center, and/or roadway medians, the Parties agree to the following order of priority of water supply:

- (A) The System shall initially deliver a quantity of irrigation water to the golf courses, golf learning center, and/or roadway medians from the Well Facilities (or other sources identified by the System pursuant to Section 4.03(a)), in a quantity not to exceed the Estimated Annual Yield (as adjusted), and not to exceed the Maximum Production. The O&M Charge shall apply to such water supply to recover the System’s costs as indicated herein.

- (B) Any quantity of irrigation water delivered by the System to the golf courses, golf learning center, and/or roadway medians during a calendar year in excess of the Estimated Annual Yield (as adjusted), or because the demand of the golf courses, golf learning center, and/or roadway medians exceeds the Maximum Production, shall be attributed to the Supplemental Water Supply obtained by Developer, if any. The Standard Retail Rates shall apply to such water supply.

- (C) In the event that the System delivers a supply of irrigation water in excess of the Supplemental Water Supply, or Developer has not acquired a Supplemental Water Supply, then the System may utilize any water source available to it for purposes of supplying a water supply in excess of the adjusted Estimated Annual Yield and/or to meet any demand for irrigation water that exceeds the Maximum Production of the Well Facilities. In such event, the Standard Retail Rates shall apply to such supply of irrigation water.

- (b) Upon receipt of ownership of the Well Facilities, the System shall be responsible for operation and maintenance of the Well Facilities, and shall pay all costs associated therewith; provided, however, in the event that the

cost of any repair, replacement or other required improvement to the Well Facilities will exceed five thousand dollars (\$5000), the System shall provide to Developer a written invoice for all such costs and expenses, along with a description of the proposed improvement(s) (the "Repair Notice"). The Developer shall have thirty (30) days to pay such costs after receipt of the Repair Notice. In the event the Developer elects not to pay all such costs, or fails to pay such amount, within said period, then the System shall have no further obligation to provide the amount of irrigation water attributable to the Well Facilities in need of repair, as described in the Repair Notice. Simultaneously therewith, the Estimated Annual Yield shall be adjusted by the System to reflect such reduction. Any improvement costs paid by Developer hereunder shall not be incorporated into costs of the System to be recovered through the O&M Charge.

- (c) Provided the Well Facilities are capable of producing the Estimated Annual Yield (as adjusted) but the System elects to discontinue operation of all or a portion of the Well Facilities on a temporary or permanent basis for reasons other than Developer's failure or refusal to pay for an improvement in excess of \$5000 pursuant to Section 6.02(b) above, the System shall make available a supply of irrigation water from other sources; and the System shall charge, and the Developer shall pay, the O&M Charge for all such irrigation water supplied in a quantity up to the Estimated Annual Yield, as in effect at the time of cessation of operation of the Well Facilities.

6.03 Payment Terms. The Developer shall pay for all water that is delivered through the point(s) of delivery to the golf course(s), golf learning center, and/or roadway medians, as measured by the meter(s) installed at each point of delivery. Payments shall be made by the Developer to the System in accordance with the System's standard rules and procedures for its retail customers; provided, however, that all payments under this Agreement shall be paid to the System on or before the due date specified on the invoice, or if no due date is specified, on or before thirty (30) days from the date of the invoice. Payments shall be mailed to the address indicated on the invoice, or can be hand-delivered to the System's headquarters in San Antonio, Texas, upon prior arrangement. Payment must be received at the System's headquarters by the due date in order not to be considered past due or late. In the event payment is not received by the due date, the System shall be authorized to take any and all actions set forth under the City's Code of Ordinances and/or the System's rules for a customer who fails to timely pay for service.

Article VII. Effective Period

7.01 Conditional Effectiveness. This Agreement shall become effective simultaneously with the effectiveness of the Services Agreement. In the event that the Services Agreement does not become effective according to its terms, then this Agreement shall also not become effective, and shall be null and void for

all purposes. In no event shall this Agreement become effective prior to the last date of execution by any Party hereto.

7.02 Expiration of Term. This Agreement shall remain in effect for an initial term of twenty five (25) years, unless sooner terminated by mutual agreement of the Parties or otherwise according to the terms hereof. Upon the expiration of the initial term, this Agreement shall automatically renew for two additional twenty five year terms, unless the Developer provides written notice to the System prior to the expiration of either such term that Developer desires for this Agreement to terminate upon the expiration of the term, in which event this Agreement shall terminate upon the expiration of such term.

7.03 Effect of Expiration or Termination. Upon the expiration or termination of this Agreement, the System and Developer shall negotiate in good faith the terms and conditions of a new agreement pursuant to which the System shall make available to the golf courses and golf learning center a supply of irrigation water. The Parties acknowledge and agree that such agreement shall provide that the System shall serve as the exclusive source of irrigation water and shall further provide for the System to make available a supply of irrigation water equal in quantity to the sum of Estimated Annual Yield, as in effect at the time thereof, and the Supplemental Water Supply, as adjusted, at substantially the same cost and drought restriction terms as set forth herein. Nothing in this Section 7.03 shall be deemed to limit the quantity of irrigation water that may be requested by Developer following the expiration or termination of this Agreement, and any volume of water to be made available to the Developer in excess of the Estimated Annual Yield and Supplemental Water Supply shall be furnished upon substantially the same terms and conditions as other System customers similarly situated.

Article VIII. Remedies

8.01 Remedies.

- (a) After providing notice and an opportunity to cure in accordance with Section 8.02 below, the Parties shall each have the right to terminate this Agreement or to enforce this Agreement by specific performance, injunction, or any other remedy at law or in equity, in a court of competent jurisdiction including but not limited to an action for damages.
- (b) Notwithstanding Section 8.01(a) above, in the event that the System fails to provide a supply of irrigation water to the golf courses or golf learning center that jeopardizes the viability of turfgrasses on the golf courses and golf learning center in breach of the terms and conditions of this Agreement (a “Material Breach”), then the Developer may provide immediate written notice thereof to the System and such notice shall describe in detail the nature of the System’s alleged Material Breach of this Agreement. The System shall have twenty-four (24) hours to cure the

alleged Material Breach by commencement of operation of the Well Facilities, or by providing a substitute water supply, in accordance with the terms of this Agreement. In the event that the System fails to cure the alleged Material Breach within said period, then Developer shall be authorized to access and operate the Well Facilities on an interim basis until such time as either: (i) the System cures the alleged Material Breach; or (ii) a final, non-appealable judgment is rendered by a court of competent jurisdiction that the System has or has not committed a Material Breach of this Agreement. During any such period of interim operations by Developer, Developer shall not produce from the Well Facilities a supply of irrigation water in excess of the amount that would otherwise be produced by the System from the Well Facilities during such period in accordance with the terms and conditions of this Agreement. The Developer agrees to maintain, and make available to the System upon not less than 48 hours prior written notice, records identifying the quantity of all irrigation water produced from the Well Facilities, and the System shall be authorized to continue to use its right of ingress and egress for authorized purposes, including the purpose of monitoring such production and performing meter reading. Moreover, Developer shall be responsible for any and all damage or injury (to persons or property, including the Well Facilities) caused by or arising out of its interim operation of the Well Facilities. Except for providing adequate access to the Well Facilities and not interfering with Developer's operation thereof, the System shall have no obligation to cooperate, assist, or take any affirmative action to assist Developer in connection with the interim operation of the Well Facilities. In the event that it is determined in the court's final judgment that the System has committed a Material Breach of this Agreement, then the System shall promptly transfer ownership of the Well Facilities and Real Property Interests to Developer by executing transfer documents in a form reasonably acceptable to Developer and the System. In the event that it is determined in the final judgment that the System has not committed a Material Breach of its obligations under this Agreement, then the Developer's right to operate the Well Facilities on an interim basis shall terminate immediately. Moreover, in the event it is determined by the court that the Developer has made such allegation of Material Breach in bad faith, then Developer agrees that it shall pay to the System immediately a sum equal to \$1,000.00 for each day between the date of assumption of interim operation of the Well Facilities by Developer, and the date of the final judgment, and shall pay to the System all costs and expenses incurred by the System related to or arising out of the Developer's allegation of Material Breach (including legal fees).

- 8.02** Notice and Opportunity to Cure. If either Party (referred to herein as the "Defaulting Party") fails to comply with its obligations under this Agreement or is otherwise in breach (including a Material Breach) or default under this Agreement (collectively, a "Default"), then the other Party (referred to herein as the "Non-Defaulting Party") may not invoke any rights or remedies with respect to the

Default until and unless: (i) the Non-Defaulting Party delivers to the Defaulting Party a written notice (the “Default Notice”) which specifies all of the particulars of the Default and specifies the actions necessary to cure the Default; and (ii) the Defaulting Party fails to cure, within ten (10) days after the Defaulting Party’s receipt of the Default Notice, any matters specified in the Default Notice which may be cured solely by the payment of money or the Defaulting Party fails to commence the cure of any matters specified in the Default Notice which cannot be cured solely by the payment of money within a reasonable period of time after the Defaulting Party’s receipt of the Default Notice or fails to thereafter pursue curative action with reasonable diligence to completion. Prior to invoking the remedy of termination of this Agreement, or adjusting the Estimated Annual Yield as a result of Developer’s failure to pay for the costs of a required improvement to the Well Facilities that exceeds \$5000 pursuant to Section 6.02(b), then in addition to the notices provided for in this section or in section 6.02(b), the Non-Defaulting Party or SAWS in the case of an adjustment to the Estimated Annual Yield as described in this paragraph, shall send a second notice to the Defaulting Party repeating the Default Notice and in all capitals adding the following phrase: “YOU ARE ABOUT TO LOSE VALUABLE RIGHTS. PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION” and no termination or adjustment of the Estimated Annual Yield will be effective until at least 30 days after the delivery of such second notice. In addition to the persons designated to receive notices under Section 9.04, the Non-Defaulting Party (or SAWS in the case of an adjustment as described in this paragraph) shall send such second notice to, in the case of Developer, Temple-Inland Inc., 1300 Mopac Expressway, Austin, Texas 78746, Attn: General Counsel; and in the case of System, to System at the address set out in Section 9.03 but to the attention of the General Counsel.

- 8.03** Waiver of Special and Consequential Damages. Notwithstanding any provision herein to the contrary, Developer waives all present and future claims for special and consequential damages against the System arising from or related to this Agreement. Such waiver shall survive any termination or expiration of this Agreement.

Article IX. Miscellaneous Provisions

- 9.01** Estoppel Certificates. Within thirty (30) days of written request by either Party, the other Party will execute and deliver to the requesting Party a statement certifying that: (a) this Agreement is unmodified and in full force and effect or, if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of each modification; (b) there are no known current uncured defaults under this Agreement, or specifying the date and nature of each default; and (c) any other information that may be reasonably requested. A Party’s failure to deliver a requested certification within this 30-day period will conclusively be deemed to constitute a confirmation that this Agreement is in full force without modification, and that there are no known uncured defaults on the part of the requesting Party. The President/Chief

Executive Officer, or General Counsel, of the System, or their respective successors, shall be authorized to execute any requested certificate on behalf of the System.

9.02 Force Majeure. In the event that any Party is rendered unable, wholly or in part, to perform any of its obligations under this Agreement by force majeure, upon the provision of written notice which fully relates the particulars of the claimed force majeure, including but not limited to the dates on which it commenced and ceased or is expected to cease by the Party claiming force majeure to the other as soon as is reasonably practicable after the occurrence of the cause relied upon, the obligations of the Party claiming force majeure, to the extent they are affected by the force majeure, shall be suspended during the continuance of any inability of performance so caused. This Agreement shall not be terminated by reason of any such cause but shall remain in full force and effect. Any Party rendered unable to fulfill any of its obligations under this Agreement by reason of force majeure shall exercise the reasonable and timely diligence to remove such inability. The suspension of obligations of a Party to this Agreement pursuant to this Section shall be added to the time specified in other provisions of this Agreement for the purpose of calculating the date on which certain conditions of this Agreement are to be satisfied. For purpose of this Agreement, “force majeure” includes, but is not limited to, acts of God, strikes, lockouts, acts of the public enemy, orders of any kind of the government of the United States or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or dams that result in partial or entire failure of water supply, insofar as each of the foregoing or such other circumstances are beyond the reasonable control of the Party in question, but not including an action taken by City in restricting the System’s ability to perform under this Agreement which is specifically applied only to the Property, or applied only to golf course operations on the Property, or which ultimately has such effect. During any such force majeure event that results in failure of the water supply hereunder, Developer shall be entitled to replace such lost irrigation water supply from other sources that it may identify, but only during the period of force majeure. The System shall have no obligation to assist Developer in connection with the acquisition or development of such temporary replacement water supply.

9.03 Assignment. No assignment of this Agreement, in whole or in part for any purpose shall be made by the Developer (or its permitted assignee as indicated herein) without the prior written consent of the System. Anything to the contrary contained in the prior sentence notwithstanding, the Developer may assign all of its rights and obligations hereunder to the Professional Golfers’ Association, or a wholly-owned indirect subsidiary or affiliate thereof that meets the criteria for assignment set forth in the Services Agreement (collectively, “PGA”), and thereupon shall be released from all further obligation hereunder. Any such assignment to PGA will be effective only after notice to the System of the assignment and provided that PGA agrees to assume and perform all duties and

obligations of the Developer hereunder. The System may require any assignee, including PGA, to execute an instrument evidencing its assumption of all terms and obligations of this Agreement. Subject to the limitations contained herein, this Agreement shall bind and inure to the benefit of the successors and assigns of the Parties.

- 9.04** Notices. All written notices required by the terms of this Agreement shall be in writing and deposited in the United States mail addressed to such Party at the address set forth below:

If to the Developer:

Lumbermen's Investment Corporation
5495 Beltline Road, Suite 225
Dallas, Texas 75240
Attention: President

And copy to:
Lumbermen's Investment Corporation
1300 S. Mopac Expressway
Austin, Texas 78746
Attention: General Counsel

If to the System:

San Antonio Water System
Eugene E. Habiger, General, USAF (Ret.)
President/Chief Executive Officer
P.O. Box 2449
San Antonio, Texas 78298-2449

Each Party's address, and the addressee of the second notice provided for in Section 8.02 hereof, may be changed by such Party by notice in writing to the other Parties hereto.

- 9.05** Interpretation of Agreement. This Agreement or any portion hereof shall not be interpreted by a court of law to the detriment of a Party based solely upon that Party's authorship of the Agreement or any portion hereof. The use of the word "including" shall not be interpreted to mean a limitation of the terms following such word.
- 9.06** Severability. If for any reason, any one or more paragraphs of this Agreement are held legally invalid, such judgment shall not prejudice, affect, impair or invalidate the remaining paragraphs of the Agreement as a whole. Moreover, in the event of any such judgment, the Parties agree to use their best efforts to revise this

Agreement as necessary to accomplish the original purposes and intent of the invalidated provision.

- 9.07** Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior agreements, understandings and arrangements, oral or written, between the Parties with respect to the subject matter hereof.
- 9.08** Cooperation. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.
- 9.09** Governing Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Texas. The sole venue for any disputes arising out of this Agreement shall be the Courts of Bexar County, Texas.
- 9.10** Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to one and the same instrument.
- 9.11** Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the party against whom enforcement of any such modification or amendment is sought. The waiver by any party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.
- 9.12** Authority to Agreement. The signatory below for the Developer has the authority to execute this Agreement on behalf of the Developer. The System has the authority to enter into this Agreement pursuant to a duly adopted resolution of its Board of Trustees and its President/Chief Executive Officer has the authority to execute this Agreement.

ACCEPTED AND AGREED to in all things by the Parties.

LUMBERMEN'S INVESTMENT CORPORATION

By: _____
Name: _____
Title: _____

Date: _____

SAN ANTONIO WATER SYSTEM

By: _____ Date: _____
Name: Eugene E. Habiger, General USAF (Ret.)
Title: President/Chief Executive Officer

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on _____, 2002, by
_____, in his position as
_____ of LUMBERMEN'S INVESTMENT
CORPORATION, a Delaware corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on _____, 2002, by
Eugene E. Habiger, General USAF (Ret.), in his position as President/Chief Executive
Officer of the SAN ANTONIO WATER SYSTEM, a Texas municipal water utility, on
behalf of said utility.

Notary Public, State of Texas

Exhibit A

Description of Well Facilities

Exhibit B

Description of Real Property Interests

Exhibit C

Form of Groundwater Production Easement, Bill of Sale, and Assignment