

**AGREEMENT**

This Agreement is made and entered into on this \_\_\_ day of December, 2011 (“Execution Date”), by, between and among the CITY OF DUNWOODY, GEORGIA (the “City”) on the one hand, and on the other hand, the undersigned owners of real property located in and adjacent to Leisure Ridge (“Property Owners”) which is more particularly described in the Final Plat with the Superior Court Clerk of DeKalb County, Georgia at plat book 206, pages 39 - \_\_\_, (“Final Plat”) incorporated herein.

**WITNESSETH:**

**WHEREAS**, on June 12, 2008, Leisure Ridge, LLC, the developer of Leisure Ridge dedicated to DeKalb County all streets and right-of-ways, water mains and sewer lines in fee simple;

DeKalb

**WHEREAS**, the City came into existence during December 2008;

**WHEREAS**, Leisure Ridge, LLC is out of business and no developer of Leisure Ridge exists;

**WHEREAS**, the City has denied building permits to some Property Owners and development of Lot 16 identified on the Final Plat because of alleged deficient street construction, road design, and water flow issues as identified in the August 9, 2011 letter from the City of Dunwoody to Leisure at Dunwoody LLC, a copy of which is attached hereto as Exhibit “A” (collectively the “Deficiencies”);

DeKalb

**WHEREAS**, the parties hereto have agreed to fully and finally settle, and forever resolve all of the claims and disputes among them.

**NOW THEREFORE**, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. **Acknowledgment.** The City acknowledges, agrees and affirms that the Final Plat is true and correct and that the City, as the successor in interest to DeKalb County, Georgia has accepted the property dedicated in the Final Plat, including the dedication of any and all streets and rights of way, water mains and sewer lines roads, and any other property dedicated therein (“Accepted Property”).

2. **Payment.** The Property Owners, as separately apportioned among them, agree to pay to the City, Eighty Five Thousand and 00/100 Dollars (\$85,000.00) subject to the terms of this Agreement. Within five (5) days after work commences on the Repairs, Property Owners will deliver funds to the City Attorney made payable to the City in the amount of EightyFive Thousand and 00/100 Dollars (\$85,000.00. The City shall not seek any further payment from Property Owners or their successors and assigns relating to the repair of the Deficiencies or the repair, maintenance, and upkeep of the Accepted Property through special assessment, legal or administrative proceedings, demands against Property Owners or otherwise. To the extent allowed by law, the City shall indemnify, defend and hold harmless Property Owners, their agents, principals, successors and assigns against all liability, claims, attorneys fees, demands, causes of action, or judgments for damages arising from injury to persons or property, due to any action, inaction, negligent act, willful act or omission by the City or its agents, contractors, subcontractors, their employees, servants, or agents relating to or resulting from the performance of the work on the Repairs.

3. **Repairs.** The City shall commence working on the Repairs with one hundred twenty (120) days from the Execution Date. The City shall complete the work on the Repairs in a good and workmanlike manner by September 30, 2012 (“Construction Period”). During the Construction Period, the Property Owners may use the access road from North Peachtree Road to Leisure Valley Drive located between lots 16 and 17 [for ingress and egress to the Leisure Ridge Subdivision. The City is aware that the Property Owners plan to commence construction and marketing of the lots in the Leisure Ridge Subdivision during the Construction Period. The City shall use reasonable efforts to ensure that the property owners along Leisure Valley Drive shall have reasonable access for ingress and egress to the lots during the Construction Period.

4. **Lien Waiver.** The City shall ensure that no liens or encumbrances shall be placed on any of the property of the Property Owners located at the Leisure Ridge Subdivision relating to the work on the Repairs under this Agreement provided that the payments specified in section 2 are made. In a timely manner.

5. **Lot 16.** The City approves and accepts the Leisure Ridge Subdivision Replat dated July 12, 2011 to include Lot 16 as previously submitted to the City as described in the attached Exhibit “B” hereto. Furthermore, the City agrees that the approval of Lot 16 shall maintain the same stream buffer as previously approved by DeKalb County.

6. **No Admission.** Nothing herein shall be construed as an admission by any party of any breach of any duty, obligation, or contract, a violation of any right of other parties or any other individual, or a violation of any federal, state, or local statute, regulation, judicial doctrine, or other law. The parties are entering into this Agreement to avoid the expense and inconvenience of litigation, and the parties specifically disclaim any liability to, any breach of any duty to, or any unlawful action to the other parties or any other individual or entity.

7. **Advice of Counsel.** Each party has had the option to seek advice of counsel of its own choice in the negotiating, drafting, and execution of this Agreement, and the language in all parts of this Agreement is a product of the efforts of all of the parties. Accordingly, neither the entire Agreement nor any provision contained herein shall be deemed to have been proposed

or drafted by any party or construed against any party. This Agreement shall be construed as a whole according to its plain meaning. This Agreement shall be governed by and construed in accordance with the laws of the state of Georgia, without regard to the application to conflicts of law principles.

**8. Voluntary Agreement.** The parties have read this Agreement and fully understand its terms. The parties hereby voluntarily accept the consideration set forth herein for the purpose of making a full and final compromise and settlement of all claims, demands, causes of action, and rights arising from the dispute addressed in this Agreement. All agreements and understandings between the parties are embodied and expressed herein. The terms of this Agreement are contractual and not mere recitals.

**9. Severability.** The provisions of this Agreement are severable, and the invalidity of any part or portion of this Agreement shall not affect the validity of any other provision of this Agreement.

**10. Time is of the Essence.** Time is of the essence as to each and every provision of this Agreement where specific time periods for performance are identified. Time is of the essence is not a mere recital. The City agrees, understands and represents that this time is of the essence provision is critical regarding the paragraph 3 which sets the Repair timetable. In the event that legal action is taken related to this Agreement and/or a breach of this Agreement, the prevailing party shall be entitled to recover from the other party all attorney’s fees and expenses of litigation incurred related to such suit or other proceeding, in addition to all other compensatory damages and further relief as the court or other tribunal may deem appropriate.

**11. Authority.** By their respective signatures below, each person executing this Agreement represents that they have due authority to bind the party on whose behalf they have signed to the terms and conditions of this Agreement.

**12. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement, and the signatures of either party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

CITY OF DUNWOODY, GEORGIA

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST :

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
Dunwoody, Georgia

SIGNATURES CONTINUE ON FOLLOWING PAGES

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