

Jon Niermann, *Chairman*  
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Bobby Janecka, *Commissioner*  
Kelly Keel, *Interim Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 31, 2023

Laurie Gharis, Chief Clerk  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC-105  
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2023-0861-DIS; Petition by 290 Betka, LLC for the Creation of  
290 Betka Municipal Management District No. 1; Request filed regarding Internal  
Control No. D-11212022-033

Dear Ms. Gharis:

Enclosed for filing with the Texas Commission on Environmental Quality are the  
following supplemental backup materials for the September 6, 2023 agenda item on  
the above referenced matter:

1. Description of Directors' Experience; and
2. Amended and Restated Limited Liability Company Agreement of 290 Betka, LLC.

Please do not hesitate to contact me at (512) 239-5930 if you have any questions  
regarding this material. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bobby Salehi".

Bobby Salehi, Staff Attorney  
Environmental Law Division

# Attachment 1

EXHIBIT B  
Description of Directors' Experience

**Director 1**

Name: Doug Johnson

Current Position: Principal – Texas Commercial Development, 5440 Harvest Hill Road Suite 250 Dallas, Texas 75230

Experience: Doug founded Industrial Developments International's (IDI) Dallas office in 1994. He held the titles of Regional Development Officer and Senior Vice President during his 23-year tenure at IDI and was responsible for directing IDI's development activities in all Texas markets. In addition to managing the day to-day operations of the Dallas office, he was responsible for overseeing land procurement, development, acquisitions, property management and the leasing of IDI buildings in all of Texas markets including the DFW area, Houston, Austin, San Antonio, El Paso, McAllen, and Laredo. During Doug's tenure, IDI became the leading developer of quality, high-performance distribution facilities in the Texas market, developing over 1,200 acres, numerous business parks, 63 buildings and 19.5 million square feet. In August of 2017, Doug formed Texas Commercial Development. Doug's vision for Texas Commercial Development is to provide principled real estate solutions and opportunities for industrial users, owners and investors with an appetite for quality facilities in core Texas markets. Texas Commercial Development is actively pursuing and looking for quality locations in the DFW market as well as select Houston sub-markets to construct superior logistics buildings for institutional investors as well as a build-to-suit opportunities. Since its inception, Texas Commercial Development has partnered with established national developers on five business parks for development of over 9.12 million square feet of quality logistics and manufacturing space. Doug is a licensed Real Estate Broker in the State of Texas and a member of the North Texas Commercial Association of Realtors (NTCAR). In 1995, Doug was voted to the Board of Directors of the North Texas Chapter of the National Association of Industrial and Office Properties (NAIOP). Under Doug's leadership, IDI was awarded, by NAIOP North Texas chapter, the Developer of the Year in 2000. In that same year, IDI was awarded Landmark Award from the Houston Business Journal for IDI's first development in Houston; Greenspoint Business Center. In 2004, Doug was chosen as President of the North Texas Chapter of NAIOP. Doug remains active with the North Texas Chapter of NAIOP as Board of Director and is or has chaired committees such as Developing Leaders, NAIOP's annual Golf Tournament and the Academic Challenge. He also is an associate member of the Society of Industrial and Office Realtors (SIOR) and past board member of the Plano Economic Developers Council and Dallas Area Economic Development Association.

## **Director 2**

**Name:** Mark Stewart

**Current Position:** President – Stewart Builders, Inc., Stewart Builders, Inc. d.b.a Keystone Concrete Placement, Stewart Builders, Inc. d.b.a Keystone Site Work and Key-Scape, LLC, AND Stewart Development and Construction LLC, 16575 Village Drive, Houston, Texas 77040

**Experience:** Mark began his career in commercial construction in 1983 by working part time with Spaw-Glass Construction Corporation while attending Texas A & M University in College Station. Mark started out as a Field Carpenter and Layout Engineer. After graduating with a Bachelor of Business Administration in Corporate Finance, Mark moved up to the position of Project Administrator. Some of the projects that Mark was involved in while with Spaw-Glass were: The Joe C. Richardson Petroleum Engineering Building at Texas A & M University in College Station, The West Campus Utilities Expansion at Texas A & M University in College Station, The St. Jude Medical Center in Kenner, Louisiana, and The Houston Astrodome Expansion Project Phases I & II in Houston, Texas. After several years with Spaw-Glass Mark moved to become the Senior Project Estimator and Assistant Purchasing Manager for Friendswood Development Company. After several years with Friendswood Mark left Company in 1992 to join his father and Brothers in starting Stewart Builders, Inc. and Keystone Concrete Placement a company focused on providing the construction market with a quality turnkey concrete product. Over the next 30 years Mark and his Brothers have formed and managed eight companies each focused on individual sections of the construction market, from landscaping to development. Mark has recruited, led and retained some of the top employees in the market to accumulate a resume of over 100,000,000 SF of concrete poured and 20,000,000 sf of buildings built across all markets sectors from schools, industrial to high-rise. Today, Mark leads all eight companies and is in charge of business development and employee retention throughout.



### **Director 3**

**Name:** Brett Barnes

**Current Position:** Vice President, Stewart development and Construction, 16575 Village Drive, Houston, Texas 77040

**Experience:** Brett found his passion for construction while completing a summer internship with D.E. Harvey Builders in Houston Texas. While studying for his BS at Texas Tech, he was actively involved in the AGC and was the Founder and President of the USGBC on campus. After graduating in 2009 during the recession, Brett was focused on getting back to Houston. He started his career working in the field for Epoxy Design Systems, a Structural Concrete Repair Company, where he quickly grew into a PM/Estimating position. Soon afterwards he was given the opportunity to work for Hardin Construction as an Estimator in a startup office in Houston. This lasted until 2010 when he received a call from D.E. Harvey Builders to re-join their team. Over the next 8 years Brett was given the opportunity to bid, manage and closeout multiple landmark projects in the Houston area. While with Harvey he also led their technology committee to implement PM software, Procore, across the entire company. Brett left Harvey in 2018 to work with the Stewart family to grow a design-build and development division within the already well know Stewart Companies.

Today Brett brings over 15 years of experience to the team, where his role is to lead all aspects of the division under the direct supervision of Mark Stewart. His daily responsibilities range greatly from evaluating new developments, land acquisition, due diligence, assisting in leading design teams, creating, and managing estimates & project buyout, all the way to project management and closeout. Brett's skills allow for a cradle to grave approach on our developments and design-build projects that brings a high level of quality to the table with the ability to stay on schedule and within budget. While with Stewart Brett has led the development and construction of 150,000 square feet of commercial buildings, 4,300,000 square feet of industrial development, 318 units of multifamily housing, and 450 acres of land.

#### **Director 4**

Name: Alexandra Gendron

Current Position: Director of Operations – Texas Commercial Development, 5440 Harvest Hill Road Suite 250 Dallas, Texas 75230

Experience: After receiving a business degree from Texas Christian University (TCU) in 2015, Ali began her career at Holt Lunsford Commercial in property management overseeing industrial product in North Texas. Subsequently, Ali shifted to office product when she joined Cawley Partners. While serving as property manager, Ali gained experience using multiple accounting software programs, ensured efficient daily operations, and managed financial budgets. As the Director of Operations at Texas Commercial Development, Ali focuses on the organization and coordination of the daily operations of the company, project management and accounting. Ali is a Member of the North Texas Chapter NAIOP Developing Leaders and a Member of NTCAR.

## **Director 5**

**Name:** Maggie Carpenter

**Current Position:** CFO / Controller – Stewart Builders, Inc., Stewart Builders, Inc. d.b.a Keystone Concrete Placement, Stewart Builders, Inc. d.b.a Keystone Site Work and Key-Scape, LLC, AND Stewart Development and Construction LLC, 16575 Village Drive, Houston, Texas 77040

**Experience:** After receiving her Bachelors of Business & Accounting from Sam Houston State University in 1996, Maggie began her career at Campbell Concrete & Materials where over the course of 10 years was rapidly promoted to their Controller. While service with Campbell, Maggie reported directly to the Regional Manager where she managed a staff of 5 accountants and was responsible for regional balance sheets and ledgers for the division. In 2008 Maggie moved to Stewart Builders where she currently holds the position of CFO and Controller. Maggie is responsible for the books for eight companies under the Stewart Company umbrella as well as managing and creating all LLC's for any development or land acquisition.

## Attachment 2

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "FEDERAL ACT"), OR THE SECURITIES LAWS OF THE VARIOUS STATES ("STATE LAW"). THEY HAVE BEEN ISSUED AND SOLD PURSUANT TO AN EXEMPTION FROM THE FEDERAL ACT AND STATE LAW AND MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED BY THE HOLDERS THEREOF AT ANY TIME EXCEPT IN ACCORDANCE WITH THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT, AS IT MAY BE AMENDED OR AMENDED AND RESTATED FROM TIME TO TIME.

AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
290 BETKA, LLC

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF 290 BETKA, LLC (as amended, restated and otherwise modified from time to time in accordance with the terms hereof, this "**Agreement**") is made as of this 30<sup>th</sup> day of November, 2020, by and among TCD Betka Member, LLC, a Texas limited liability company ("**TCD Member**"), Equity Trust Company Custodian FBO Douglas J Johnson IRA ("**Equity Trust Member**") and Stewart Builders, Inc., a Texas corporation, and Stewart Betka 290, LLC., (collectively the "**Stewart Member**"). TCD Member, Equity Trust Member, and the Stewart Member are collectively referred to herein as the "**Members**" and each a "**Member**".

**BACKGROUND:**

**WHEREAS**, 290 Betka, LLC, a Texas limited liability company (the "**Company**") was formed pursuant to a Certificate of Formation filed with the Secretary of State of the State of Texas (the "**Filing Office**") on May 10, 2019 (such Certificate of Formation, as amended, from time to time in accordance with the terms hereof, the "**Certificate**"). Capitalized terms used in this Agreement shall have the meaning set forth in the "Definitions" Section of this Agreement;

**WHEREAS**, the Company will be acquiring 265.572 acres of land situated in the Moses Merritt Survey, Abstract Number 578, Harris County, Texas, and being a part of and portion of the called 265.6310 acre tract as described in the Deed to McAlister Opportunity Fund 2012, LP and recorded as Harris County Clerk's File Number 20130588048 (the "**Property**");

**WHEREAS**, the Company plans to subdivide and develop the Property into an industrial park and/or sell the Property as a whole, and/or lease to third parties (as approved hereby, the "**Project**") and in the event of subdivision may thereby:

i. develop the land in phases (each an "**Investment**" and collectively, the "**Investments**"); or

ii. finance and construct speculative buildings in a professional and workmanlike manner at a pace to meet sub-market demand for speculative development with a focus on measured construction/leasing velocity; or

iii. operate/and develop/ and lease and/or immediately re-market the Investments for sale; and

**WHEREAS**, the original members of the Company entered into a Company Agreement, dated as of September 1, 2019 (the “**Original Agreement**”) and now desire to enter into this Amended and Restated Company Agreement to reflect certain changes in the Property, the Members and their capital contributions and ownership interests in the Company, and to set forth all of the rights, obligations and agreements of the Members regarding the Company.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Members, intending to be legally bound, hereby agree as follows:

### **DEFINITIONS**

“**AAR**” has the meaning set forth in Section 11.5(c)(ii).

“**Act**” means the Texas Business Organization Code, as amended from time to time (or any corresponding provisions of succeeding law).

“**Adjusted Capital Account**” means a Member’s Capital Account (a) reduced by the items described in clauses (4), (5) and (6) of Regulations Section 1.704-1(b)(2)(ii)(d) and (b) increased by any amount that such Member is obligated to restore or is treated as being obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c). For purposes of the preceding sentence, a Member’s share of Company Minimum Gain (such share being determined in accordance with Regulations Section 1.704-2(g)) and a Member’s share of Minimum Gain Attributable to a Partner Nonrecourse Debt (such share being determined in accordance with Regulations Section 1.704-2(i)(5)) shall be added to the dollar amount, if any, of the deficit balance in such Member’s Capital Account that such Member is obligated to restore, and a Member shall not otherwise be considered to have an obligation to restore a deficit balance in such Member’s Capital Account as a result of bearing the economic risk of loss for any Partner Nonrecourse Debt.

“**Affected Members**” has the meaning set forth in Section 11.5(i)(iv).

“**Affiliate**” means, with respect to a Person, (a) any other Person directly or indirectly Controlling, Controlled by or under common Control with, such Person, (b) any other Person owning or Controlling, directly or indirectly, ten percent (10%) or more of the outstanding voting securities of such Person, and (c) any officer, director, partner or trustee of such Person.

“**Agreement**” has the meaning set forth in the Preamble to this Agreement.

“**Annual Budget**” has the meaning set forth in Section 11.3(c).



**“Applicable Law”** means collectively, all federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including without limitation the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation or administration thereof, in each case whether or not having the force of law.

**“Approved Budget”** means, as approved (a) the Development Budget and/or (b) the then-current Annual Budget.

**“Bankruptcy”** means, as to a specified Person:

(a) the entry of a decree or order for relief by a court having jurisdiction in respect of such Person in an involuntary case under the any Bankruptcy Laws, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of his, her or its property, or ordering the winding-up or liquidation of his, her or its affairs and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days;

(b) the commencement by or with respect to such Person of a voluntary case under any Bankruptcy Law, or the consent by him, her or it to the appointment of, or taking possession by, a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of such Person or for any substantial part of his, her or its property, or the making by him, her or it of any assignment for the benefit of creditors;

(c) admitting in writing by such Person of his, her or its inability to pay his, her or its debts generally as they become due; or

(d) the taking of action in furtherance of any of the foregoing.

**“Bankruptcy Code”** means Title 11 of the United States Code entitled “Bankruptcy”, as amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights.

**“Bankruptcy Laws”** means the Bankruptcy Code and/or any other law or regulation relating to bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation whether now or hereafter in effect.

**“Business Day”** means any day excluding a Saturday, Sunday and any other day on which banks operating in the State of Texas are permitted or authorized to close by applicable legal requirements.

**“Capital Account”** has the meaning set forth in Section 4.2 hereof.

**“Capital Contribution”** means, with respect to any Member, the amounts (in cash, property or services) actually contributed to the capital of the Company by such Member from time to time. The amount of the Capital Contributions contributed (or deemed contributed) by each Member is as set forth on Schedule I attached hereto.

**“Capital Contribution Obligation”** means the commitment of a Member to contribute to the Company its Capital Contribution pursuant to the terms hereof. The amount of the Capital Contribution Obligation of each Member is as set forth on Schedule I attached hereto.

**“Capital Transaction”** means (a) the sale, exchange, transfer or other disposition (whether voluntary or involuntary) of all or any portion of the property or assets of the Company, (b) the condemnation (or similar eminent domain taking) of all or any portion of the property or assets of the Company, (c) the financing or refinancing of all or any portion of the property or assets of the Company or any direct interest therein, and/or (d) the receipt of insurance proceeds.

**“Certificate of Formation”** has the meaning set forth in the “Background” Section of this Agreement.

**“Claims”** means all fees, costs, losses, damages and expenses incurred in connection with or resulting from any claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys’ fees, disbursements and court costs, and all other professional, expert or consultants’ fees and costs incurred as a result of such claims or in enforcing the applicable indemnity provisions hereof) of every kind and nature whatsoever; and “Claim” means any such fee, cost, loss, damage or expense.

**“Code”** shall mean the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

**“Company”** has the meaning set forth in the “Background” Section of this Agreement.

**“Company Expenses”** means all cash costs and cash expenses paid by the Company of every kind and nature in connection with the Company’s management, business affairs and operations, including, without limitation, capital expenditures, amounts allocated to Company Reserves, debt service on all loans, and payment of any fees; provided that “Company Expenses” shall not include amounts paid from the proceeds of any loan financing or refinancing and/or from Capital Contributions or any non-cash expenses (such as depreciation, amortization or similar items). Any Company Expenses which relate to more than one (1) period shall be allocated pro rata to the periods to which such Company Expenses relate.

**“Company Minimum Gain”** means partnership minimum gain within the meaning of Regulations Section 1.704-2(d).

**“Company Nonrecourse Liability”** means any Company liability (or portion thereof) for which no Member bears the economic risk of loss.

**“Company Reserves”** means cash set aside for capital expenditures, contingent or unforeseen liabilities or obligations of the Company, maturing obligations and working capital, to pay for taxes, insurance premiums, debt service under approved loans, repairs, improvements, replacements or renewals, fluctuations in cash flow, and for other costs or expenses incident to the operation of the Company and the Property in such amounts as may be reasonably deemed sufficient by the Managers.



**“Control”** means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise, and the terms **“Controlled”**, **“Controlling”** and **“common Control”** shall have correlative meanings.

**“Depreciation”** means, for each taxable year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period for Federal income tax purposes, except that if the Gross Asset Value of an asset differs from its adjusted basis for Federal income tax purposes at the beginning of such year or other period, “Depreciation” shall be an amount which bears the same ratio to such beginning Gross Asset Value as the Federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that (a) if the Federal income tax depreciation, amortization or other cost recovery deduction for such year is zero, “Depreciation” shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managers and (b) if the Company uses the “remedial method” of allocation with respect to an asset in accordance with Regulations Section 1.704-3(d), “Depreciation” shall be computed in accordance with Regulations Section 1.704-3(d).

**“Designated Individual”** has the meaning set forth in Section 11.5(c)(i).

**“Development Budget”** means the budget for the development of the Project, as approved, as the same may be amended, supplemented or otherwise modified.

**“Distributable Cash”** means, for any period, (a) Gross Cash Receipts from Operations received during such period, plus (b) any amounts released during such period from Company Reserves pursuant to the terms hereof, minus (c) the Company Expenses incurred during such period.

**“Dissolution Event”** has the meaning set forth in Section 9.1(a).

**“Entity”** means any general partnership, limited partnership, corporation, joint venture, estate, trust, limited liability company, business trust, cooperative or association.

**“Exempt Income”** means any income and gain of the Company that is exempt from Federal income tax.

**“Federal Act”** has the meaning set forth in the prefacing paragraph of this Agreement.

**“Filing Office”** has the meaning set forth in the “Background” Section of this Agreement.

**“Fiscal Year”** means the fiscal year of the Company, which shall be the calendar year.

**“Funding Notice”** means a written notice requesting each applicable Member to fund or make additional Capital Contributions as and to the extent required pursuant to the terms of this Agreement.

**“Gross Asset Value”** means, with respect to any asset, such asset’s adjusted basis for Federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset on the date of contribution, as reasonably determined by the contributing Member and the Company;

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values (taking Code Section 7701(g) into account), as reasonably determined in good faith by the Managers as of the following times:

(i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution;

(ii) the distribution by the Company to a Member of more than a de minimis amount of assets as consideration for an Interest;

(iii) the grant of an Interest in the Company (other than a de minimis interest) as consideration for the provision of service to or for the benefit of the Company (it being agreed that services to the Company’s Affiliates are for the benefit of the Company); and

(iv) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);

provided, however, that in the case of clauses (i), (ii) and (iii), no adjustment shall be made if the applicable Members reasonably determine that such adjustment is not necessary or appropriate to reflect the relative economic interests of the Members within the meaning of Regulations Section 1.704.1(b)(2)(ii)(g);

(c) The Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value (taking Code Section 7701(g) into account) of such asset on the date of distribution; and

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining the Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m). If the Gross Asset Value of an asset has been determined or adjusted pursuant to clauses (a), (b) or (d) of this definition of “Gross Asset Value”, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

**“Gross Cash Receipts from Operations”** means all cash receipts of the Company from whatever source derived, other than from (a) Capital Contributions, (b) Capital Transactions or (c) deposits and interest with respect to any of the foregoing.

**“Indemnitees”** and **“Indemnitee”** have the meanings set forth in Section 7.15(a).

**"IRS"** means the United States Internal Revenue Service.

**"Manager"** means Mark Stewart and subsequently, any replacement or substitute therefor designated as the Manager(s) of the Company pursuant to the terms of this Agreement.

**"Members"** and **"Member"** have the meaning set forth in the Preamble to this Agreement.

**"Membership Interest"** or **"Interest"** means, with respect to a Member, the entire ownership interest of such Member in the Company at any particular time, including the right of such Member to vote and to any and all benefits to which such Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all of the terms and provisions of this Agreement. Each Member's initial Membership Interest as of the date hereof is set forth on Schedule I attached hereto.

**"Minimum Gain Attributable to a Partner Nonrecourse Debt"** means minimum gain attributable to such Partner Nonrecourse Debt within the meaning of Regulations Section 1.704-2(i)(3).

**"NAAP"** has the meaning set forth in Section 11.5(c)(ii).

**"Necessary Expenses"** means the expenses required to be paid by the Company for (a) Real Estate Taxes, (b) insurance premiums for insurance required to be maintained pursuant to the terms of this Agreement, (c) utility charges necessary for the Project, (d) amounts required to be paid under contracts entered into in accordance with the terms hereof (including construction and development costs), (e) amounts required to be paid for emergency repairs or replacements to the Project which are needed to protect life, health or safety or to avoid imminent damage to property and (f) amounts required to comply with all legal requirements and insurance requirements now or hereafter applicable to the Property and the Project.

**"Net Capital Proceeds"** means, with respect to a Capital Transaction, the cash proceeds (including any applicable insurance proceeds) realized by the Company as a result of such Capital Transaction, plus any cash interest payments received on such proceeds, decreased by the sum of (a) the amount of such proceeds applied by the Company to pay debts and liabilities of the Company encumbering the assets of the Company which are the subject of such Capital Transaction, (b) the amount of such proceeds used, set aside or committed by the Company for restoration and repair of the Property if damage or destruction occurs to the Property in accordance with the terms of this Agreement and (c) any incidental or ancillary reasonable and customary expenses, costs or liabilities incurred by the Company in effecting such Capital Transaction or obtaining the proceeds thereof (including without limitation reasonable out-of-pocket attorneys' and accountants' fees, court costs, expert witness fees, recording fees, transfer taxes and fees, appraisal costs and brokerage fees).

**"Nondeductible Expenditure"** means an expenditure described in Code Section 705(a)(2)(B) or treated as such an expenditure under Regulations Section 1.704-1(B)(2)(iv)(i).

**"Nonrecourse Deductions"** means the nonrecourse deductions within the meaning of Regulations Section 1.704-2(c).



**“Partner Nonrecourse Debt”** means any nonrecourse debt (within the meaning of Regulations Section 1.704-2(i)(1)) for which no Member bears the economic risk of loss.

**“Partnership Representative”** has the meaning set forth in Section 11.5(c)(i).

**“Permitted Transfer”** has the meaning set forth in Section 8.2.

**“Permitted Transferee”** means the Persons (including Transfers to heirs resulting from the death of a natural person) to whom a Transfer is made in accordance with the terms of Section 8 and the other terms and conditions of this Agreement.

**“Person”** means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits; and, unless the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter and vice versa.

**“Profits and Losses”** has the meaning set forth in Section 5.1.

**“Project”** has the meaning set forth in the “Background” Section of this Agreement.

**“Property”** has the meaning set forth in the “Background” Section of this Agreement.

**“Proportionate Share”** means, unless and until there has been a transfer of an Interest or an admission of a new Member, and subject to dilution and adjustment from time to time in accordance with the terms of this Agreement, with respect to each Member, a fraction (expressed as a percentage) (a) the numerator of which is the aggregate amount of all Capital Contributions contributed (or deemed contributed) to the Company by such Member as of the time of calculation and (b) the denominator of which is the aggregate amount of all Capital Contributions contributed (or deemed contributed) to the Company by all Members.

**“Push-Out Election”** has the meaning set forth in Section 11.5(i)(iii).

**“Qualified Mediator or Arbitrator”** means a person who has had over ten (10) years of experience in the ownership, development, leasing and operation of commercial real estate of substantially similar type as the Project and in the same geographical location as the Project, or a Texas licensed attorney who is experienced in real estate law and land development; and who is disinterested in the dispute or controversy or deadlock at hand and is impartial with respect to all Members.

**“Real Estate Taxes”** means all taxes, payments in lieu of taxes, assessments, water and sewage charges, governmental impositions, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the real property comprising the Property, ground rents, maintenance charges, impositions other than Taxes, and any other similar charges now or hereafter levied or assessed or imposed against the Property or any part thereof.

**“Regulations”** means the Income Tax Regulations promulgated from time to time by the U.S. Treasury Department under the Code.

**“Reimbursement Notice”** has the meaning set forth in Section 11.5(i)(ix)(1).

**“Revocation Notice”** has the meaning set forth in Section 11.5(c)(iii).

**“Section 6225 Indemnity Payment”** has the meaning set forth in Section 11.5(i)(ix)(2).

**“State Law”** has the meaning set forth in the prefacing paragraph of this Agreement.

**“Taxes”** means all taxes (including, without limitation, Real Estate Taxes, ad valorem, sales (including those imposed on lease rentals), use, single business, gross receipts, value added, intangible transaction privilege, privilege or license or similar taxes), any payments in lieu of taxes, assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof), ground rents, water, sewer or other rents and charges, excises, levies, fees (including, without limitation, license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Property, the Company and/or the Project (including all interest and penalties thereon), which at any time prior to, during or in respect of the term of this Agreement may be assessed or imposed on or in respect of or be a Lien upon (a) the Company (including, without limitation, all franchise, single business or other taxes imposed for the privilege of doing business in the jurisdiction in which the Property is located), (b) the Property or any part thereof or any rent therefrom or any estate, right, title or interest therein or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Property, or any part thereof, or the leasing or use of the Property, or any part thereof, or the acquisition or financing of the acquisition of the Property, or any part thereof or interest therein.

**“Transfer”** means any sale, exchange, assignment, encumbrance, hypothecation, pledge, foreclosure, exchange, conveyance in trust, gift, conveyance by will or intestate succession or other transfer or disposition of any kind, whether direct or indirect, voluntary or involuntary.

## **SECTION 1 REGISTERED OFFICE AND AGENT; QUALIFICATION; PRINCIPAL PLACE OF BUSINESS**

**1.1 Registered Agent and Registered Office.** The address of the registered office of the Company in the State of Texas is c/o Candice C. Smith, 3730 Kirby Drive, Suite 650, Houston, Texas 77098. The Managers may from time to time change such registered office from time to time, provided that the Managers shall notify the Members in writing at least ten (10) days prior to the effective date of such change.

**1.2 Qualification in Other Jurisdictions.** The Managers shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business in accordance with the terms hereof.

## SECTION 2 PURPOSE

The Company has been formed for, and the primary purpose of the Company is, investing in the Property, specifically acquisition, development, holding, maintaining and leasing the Property and the Project and engaging in any and all lawful business for which a limited liability company may be organized under the Act as incident, necessary or appropriate to the foregoing.

## SECTION 3 TERM

The Company was formed by the filing of the Certificate with the Filing Office pursuant to the Act. The existence of the Company as a separate legal entity shall continue until December 31, 2054, unless earlier terminated in accordance with this Agreement.

## SECTION 4 CONTRIBUTION TO CAPITAL AND STATUS OF MEMBERS

**4.1 Initial Capital Contributions.** As of the date of this Agreement, each Member has made or is deemed to have made, for all purposes hereunder, the initial Capital Contributions to the Company in the respective amounts set forth on the Schedule I attached hereto.

**4.2 Additional Capital Contributions of Necessary Expenses.** Subject to the terms of Section 4.3, if the Managers determine that, at any time and from time to time, the Company requires additional capital, over and above the Capital Contributions, to pay for Necessary Expenses, then the Managers may issue a Funding Notice to call for additional capital from the Members, and each Member shall have the right, but not the obligation, to contribute its Proportionate Share of such additional capital requirement as set forth in the Funding Notice. Upon receipt of a Funding Notice pursuant to the terms of this Section 4.2, each Member shall have the right, but not the obligation, to contribute to the Company, as an additional Capital Contribution, its Proportionate Share of the additional capital required by the Company for Necessary Expenses as set forth in such Funding Notice within fifteen (15) days of delivery of such Funding Notice, and the Capital Contributions and Proportionate Share of each such Member contributing additional Capital Contributions for Necessary Expenses shall be adjusted accordingly to take in account such additional Capital Contributions.

### **4.3 Additional Contributions of Necessary Funds.**

(a) If any Member (a “**Non-Contributing Member**”) fails to contribute its share of Necessary Funds within the time prescribed for such contribution, then: (i) the Company and the other Members shall have the remedies set forth in this Section 4.4, but shall have no other remedies against the Non-Contributing Member on account of such failure, (ii) the Manager shall send an additional notice to all Members setting forth the fact of such failure and the amount unpaid, and (iii) the other Members who have contributed their respective shares of Necessary Funds (each, a “**Contributing Member**”) shall have the right, but not the obligation, to loan the Non-Contributing Member’s share of Necessary Funds to the Company and such funds shall be treated as a Member Loan as set forth in (b) below.

(b) A Contributing Member may elect to loan to the Company the Non-Contributing Member’s share of Necessary Funds as a non-recourse loan to the Non-Contributing



Member (a "**Member Loan**"), which shall bear interest at the rate of sixteen percent (16%) per annum, compounded quarterly. The principal amount of the Member Loan shall be treated as a contribution to the capital of the Company made by the Non-Contributing Member. Member Loans shall be repaid only as set forth in Section 5.6 hereof. Such election shall be made by a Contributing Member giving notice thereof in writing to the Company and the Non-Contributing Member at the time the Contributing Member pays to the Company all or a portion of the Non-Contributing Member's share of Necessary Funds.

(c) The other Members shall, at the request of any Contributing Member, execute and deliver such amendments to this Agreement and, if necessary or appropriate, the Certificate, as the Contributing Member may reasonably request to reflect the adjustments pursuant to this Section 4.3.

**4.4 Limitations.** Except as expressly required pursuant to the terms of this Agreement, including this Section 4, no Member shall be entitled or required to make any Capital Contributions, including to restore any negative balance in such Member's Capital Account.

**4.5 Form of Capital Contributions.** All Capital Contributions shall be paid in cash by wire transfer of immediately available funds in U.S. Dollars.

**4.6 Membership Interest.** The interest of each of the Members in the Company shall be represented by such Member's Membership Interest as set forth on Schedule I attached hereto, which Membership Interest shall be subject to dilution and adjustment pursuant to the terms of this Agreement.

**4.7 Registration.** Upon the admission of a Person as a Member or substitute Member, such Person shall be registered on the records of the Company as a Member, together with his, her or its address and the Membership Interest owned and the Capital Contribution made (or deemed to have been made) by such Member, and the Managers shall cause Schedule I attached hereto to be updated accordingly. Each Person registered as a holder of record of a Membership Interest shall continue to be the holder of record of such Membership Interest until notification of the transfer of any such Membership Interest is given in accordance with the terms of this Agreement. A holder of record shall be entitled to all distributions and all allocations of Profits and Losses with respect to the Membership Interest registered in his, her or its name and to all other rights of such Member, as the case may be, until his, her or its rights in such Membership Interest have been transferred in accordance with this Agreement and the Managers are notified as required herein. The Company shall not be affected by any notice or knowledge of transfer of any Membership Interest, except as expressly provided in Section 8 hereof. The payment to the holder of record of any distribution with respect to such Membership Interest shall discharge the Company's obligations in respect thereto.

**4.8 Continuation of Member Status.** Once admitted as a Member, a Person shall continue to be a Member, for all purposes of this Agreement until a substitute Member is admitted in place of such Person pursuant to the provisions of Section 8 hereof.

**4.9 Limited Liability of Members.** No Member, in his, her or its capacity as such, shall be liable for the debts, liabilities, contracts or any other obligations of the Company. Except

as expressly provided in Sections 4.1 and 4.2 hereof or the Act, no Member shall be obligated to make contributions to the capital of the Company or other payments to the Company or the Managers. The Managers shall have no obligation to amend the Certificate or any other document to reflect any returned Capital Contributions. Under no circumstances shall a Member at any time be required to restore any deficit balance in his, her or its Capital Account.

**4.10 Withdrawal and Return of Capital.** No Member shall withdraw any of his, her or its Capital Contributions or his, her or its Capital Account except as expressly permitted or required under this Agreement. Each Member will look solely to the assets of the Company for the return of its Capital Contributions, and if the Company assets remaining after the payment or discharge of the debts and liabilities of the Company are insufficient to return the investment of each Member, no Member will have recourse against any other Member other than as expressly set forth herein. No Member will have any right to demand or receive property other than cash upon dissolution, liquidation and termination of the Company or to demand the return of its Capital Contributions prior to dissolution, liquidation and termination of the Company. Any property distributed in kind in a liquidation will be valued and treated as though the property were sold and cash proceeds distributed.

**4.11 Interest on Capital.** No interest shall be payable on any Capital Contributions made to the Company, other than as expressly set forth in this Agreement.

**4.12 Company Reserves; Working Capital.** The Managers shall establish and maintain such Company Reserves as it deems to be reasonably necessary and appropriate to provide for Company Expenses, including capital expenditures, contingent or unforeseen liabilities or obligations of the Company, maturing obligations and working capital.

## **SECTION 5 ALLOCATION OF PROFITS OR LOSSES FOR INCOME AND ACCOUNTING PURPOSES**

**5.1 Profits and Losses.** As used in this Agreement the term “**Profits and Losses**” means, for each Fiscal Year or other period, an amount equal to the Company’s taxable income or loss for such Fiscal Year or period, determined under the accrual method of accounting and in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(a) Any Exempt Income not otherwise taken into account shall be added to such taxable income or loss;

(b) Any Nondeductible Expenditure not otherwise taken into account shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits and Losses;



(d) Gain or loss resulting from any disposition of Company assets with respect to which gain or loss is recognized for Federal income tax purposes shall be computed by reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation; and

(f) Any special allocations described in Section 5.5 hereof shall not be taken into account.

**5.2 Capital Accounts.** The Company shall maintain for each Member an account to be designated as such Member's "**Capital Account**". Each Member's Capital Account shall be maintained and adjusted in accordance with Federal income tax principles as specified in the Regulations promulgated under Section 704(b) of the Code. At the election of the Managers, the value of Company property shall be adjusted in accordance with Regulations Section 1.704-1(b)(2)(iv)(f) to reflect a re-valuation of Company property in the event of either (a) a contribution of money or other property to the Company by a new or existing Member as consideration for an Interest in the Company or (b) a distribution of money or other property by the Company to a retiring or continuing Member as consideration for an Interest in the Company. If a Member contributes to the Company property to which Section 704(c) of the Code applies, or if a re-valuation of Company property occurs under one of the circumstances described in the preceding sentence, Capital Accounts shall be adjusted as provided in Regulations Section 1.704-1(b)(2)(iv)(g).

### **5.3 Allocation of Profits and Losses.**

(a) Losses. Except as otherwise provided herein, Losses for each Fiscal Year shall be allocated among the Members pro rata in proportion to their respective Membership Interests; provided, however, that no Member shall be allocated Losses that would cause its Adjusted Capital Account to be negative.

(b) Profits. Except as otherwise provided herein, Profits for each Fiscal Year shall be allocated among the Members pro rata in proportion to their respective Membership Interests.

**5.4 Profits and Losses from a Capital Transaction or Dissolution Event.** Any Profits or Losses resulting from a Capital Transaction shall be allocated among the Members as provided in this Section 5. It is the intention and understanding of the Members that the allocation provisions of this Section 5 will result in final Capital Account balances of the Members that would cause liquidating distributions to be made substantially in the same manner as Distributable Cash is required to be distributed under Section 6.1 hereof. To the extent that such final Capital Account balances would not result in the intended distributions, notwithstanding anything contained herein to the contrary, such allocations of items of income, profit, gain or loss shall be made so as to effectuate the intent of the Members set forth in this Section 5.

## 5.5 Special Allocations.

(a) Special Rules to Comply With Minimum Gain Chargeback Requirement of Regulations Section 1.704-2(f). If there is a net decrease in Company Minimum Gain during a Fiscal Year, then, in accordance with Regulations Section 1.704-2, each Member shall be allocated items of Company income and gain for such Fiscal Year (and, if necessary, succeeding Fiscal Years) equal to such Member's share of the net decrease in Company Minimum Gain (such share being determined in the manner provided in Regulations Section 1.704-2(f)), except to the extent that the Member's share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing or other change in the debt instrument causing it to become partially or wholly recourse debt or Member Nonrecourse Debt, and such Member bears the economic risk of loss for the newly guaranteed, refinanced or otherwise changed liability, and except to the extent a Member contributes capital to the Company that is used to repay the Company Nonrecourse Liability and such Member's share of the net decrease in Company Minimum Gain results from such repayment.

(b) Special Rules to Comply With Chargeback of Minimum Gain Attributable to Partner Nonrecourse Debt Under Regulations Section 1.704-2(i)(4). If there is a net decrease during a Fiscal Year of the Company in the Minimum Gain Attributable to a Partner Nonrecourse Debt, then any Member with a share of the Minimum Gain Attributable to such Partner Nonrecourse Debt at the beginning of such Fiscal Year (this share being determined in the manner provided in Regulations Section 1.704-2(i)(5)) shall be allocated items of Company income and gain for such Fiscal Year (and, if necessary, for succeeding Fiscal Years) equal to such Member's share of the net decrease in the Minimum Gain Attributable to such Partner Nonrecourse Debt, except to the extent the net decrease in Minimum Gain Attributable to Partner Nonrecourse Debt arises because the liability ceases to be Partner Nonrecourse Debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a Company Nonrecourse Liability.

If for any Fiscal Year the application of the minimum gain chargeback provisions of Section 5.5(a) or (b) above would cause a distortion in the economic arrangement among the Members and it is not expected that the Company will have sufficient other income to correct that distortion, the Managers may request a waiver from the Commissioner of the IRS of the application in whole or in part of Section 5.5(a) or (b) above in accordance with Section 1.704-2(f)(4) of the Regulations. Furthermore, if additional exceptions to the minimum gain chargeback requirements of the Regulations have been provided through revenue rulings or other IRS pronouncements, the Managers may cause the Company to take advantage of such exceptions if to do so would be in the best interest of each Investor Member.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or 1.704-1(b)(2)(ii)(d)(6), items of Company income and gain shall be allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the deficit in such Member's Adjusted Capital Account as quickly as possible, provided that an allocation pursuant to this Section 5.5(c) shall be made only if and to the extent that such Member would have a deficit in its Adjusted Capital Account after

all other allocations provided for in this Section 5 have been tentatively made and as if this Section 5.5(c) were not in this Agreement.

(d) Partner Nonrecourse Deductions. Any item of Company loss, deduction or Nondeductible Expenditure that is attributable to a Partner Nonrecourse Debt shall be allocated to the Member that bears the economic risk of loss for such debt. If more than one (1) Member bears the economic risk of loss for a Partner Nonrecourse Debt, any such item attributable to such debt shall be allocated among such Members in accordance with the ratios in which the Members share the economic risk of loss for such debt. The determination of the items of Company loss, deduction and Nondeductible Expenditure that are attributable to a Partner Nonrecourse Debt shall be made in accordance with Regulations Section 1.704-2(i)(2).

(e) Tax Allocations. A Member's allocable share of the Company's items of income, gain, deduction and loss for tax purposes shall be determined under the foregoing provisions of this Section 5, except as provided in this Section 5.5(e).

(i) Contributed Property. Income, gain, loss and deduction, as computed for the purpose of determining taxable income, with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for Federal income tax purposes and its initial Gross Asset Value in accordance with Code Section 704(c) and the Regulations thereunder.

(ii) Other Property with Gross Asset Value Different from Tax Basis. In the event that the Gross Asset Value of any Company asset is adjusted, subsequent allocations of income, gain, loss and deduction with respect to such asset, as computed for the purpose of determining taxable income, shall take account of any variation between the adjusted basis of such asset for Federal income tax purposes and its Gross Asset Value in the manner provided in Regulations Section 1.704-11(b)(4)(i).

(iii) Tax Elections; Effect on Capital Accounts. Any elections or other decisions relating to the allocations addressed by this Section 5.5(e) shall be made in a manner that reasonably reflects the purposes and intentions of this Agreement. Allocations made pursuant to this Section 5.5(e) are solely for purposes of Federal, state and local taxes and shall not affect, or be taken into account in computing, any Member's Capital Account, share of Profits and Losses or distributions pursuant to any provision of this Agreement.

(f) Limitation on Loss Allocations. Notwithstanding anything herein to the contrary, Losses shall not be allocated to any Members if they would create an Adjusted Capital Account deficit in such Member's Capital Account, and such Losses shall be reallocated under this Section 5 to Members with a positive Capital Account balance.

(g) Compliance with Code and Regulations. The provisions of this Agreement that relate to the allocations for Federal income tax purposes of items of Company income (including Exempt Income), gain, loss, deduction and Nondeductible Expenditure (including, without limitation, the allocation of such items with respect to property having a Gross Asset Value different from adjusted Federal income tax basis), that relate to the determination and maintenance



of Capital Accounts, and that relate to the distribution of Company property upon the liquidation of the Company or a Member's Interest therein, are intended to comply with Regulations Section 1.704-1(b) (to the extent not superseded by Regulations Section 1.704-2) and Regulations Section 1.704-2, and with Code Section 704(c) and the Regulations promulgated thereunder, and, except as otherwise provided in the definition of "Capital Account" as set forth in Section 5.2 hereof, shall be interpreted and applied in a manner consistent with such statutory and regulatory provisions, which statutory and regulatory provisions are expressly incorporated into and made a part of this Agreement. Should such statutory and regulatory provisions be amended, to the extent that such amendments are applicable to this Agreement, the affected provisions of this Agreement shall be interpreted and applied in accordance with such amended provisions.

(h) Allocation in Event of Transfer. If all or any portion of a Membership Interest is transferred in accordance with Section 8 hereof, there shall be allocated to each Member who held the transferred Membership Interest during the Fiscal Year in which such transfer occurred, the product of (a) the Company's Profits or Losses allocable to such transferred Membership Interest for such Fiscal Year and (b) a fraction, the numerator of which is the number of days the Member has held the Membership Interest and the denominator of which is the total number of days in such Fiscal Year; provided, however, that the Managers may, in their discretion, allocate such Profits or Losses by closing the books of the Company immediately after the transfer of such Membership Interest. Such allocation shall be made without regard to the date, amount or recipient of any distributions which may have been made with respect to such transferred Membership Interest.

**5.6 Member Loans and Distributions to Non-Contributing Members.** Notwithstanding anything to the contrary contained in this Agreement, distributions payable by the Company to a Non-Contributing Member (as defined herein) shall be paid by the Company on behalf of such Non-Contributing Member to each Contributing Member or Member that has made a Member Loan until the principal of and interest on each such Member Loan to the Non-Contributing Member has been paid in full. Such distributions shall be applied on account of such Member Loans first to interest and any balance to principal thereof.

## **SECTION 6- DISTRIBUTIONS**

### **6.1 Timing of Distributions.**

(a) Ordinary Distributable Cash. Distributable Cash, other than Net Capital Proceeds, if any, shall be distributed to the Members, in the amounts and at the times that the Managers shall determine, but, to the extent available, no less frequently than once each quarter.

(b) Distributions from Capital Transactions. Net Capital Proceeds shall be distributed to the Members within sixty (60) days of receipt thereof.

**6.2 Priority of Distributions.** Distributions of Distributable Cash and Net Capital Proceeds made pursuant to Sections 6.1(a) and 6.1(b) above shall be made pro rata.

### **6.3 Application of Proceeds of a Dissolution Event.**

(a) In the event of the termination and winding up of the Company pursuant to a Dissolution Event, the Net Capital Proceeds shall be distributed to the Members in accordance with the terms of Section 6.1.

(b) For purposes of determining distributions to the Members under this Section 6.3, if any of the assets of the Company are to be distributed in-kind, the fair market value of each such asset shall be determined as of the time of such distribution (or at such other date reasonably close to the date of such distribution as the Managers shall determine. There shall be allocated among the Members, in accordance with Section 5 hereof, the amount of Profits and Losses, if any, which would have been realized by the Company if each such asset had been sold by the Company for a price equal to the greater of its respective fair market value as so determined or the amount of nonrecourse indebtedness secured by such asset. The fair market value of any such assets shall be determined by a qualified independent appraiser to be selected by the Managers.

### **6.4 Limitation Upon Distributions.**

(a) Notwithstanding any provision to the contrary contained in this Agreement, no distribution shall be declared and paid to the extent that such distribution would violate the Act or other Applicable Law.

(b) If any Member shall receive a distribution in excess of the amounts required to be distributed to such Member pursuant to Section 6.1 and 6.3, taking into account all of Capital Contributions made to, and all of the distributions received from, the Company, such Member shall be personally liable to the Company for the amount of the distribution.

(c) For any calendar quarter, Distributable Cash of the Company need not be distributed to the extent that such Distributable Cash is required for a reasonable working capital reserve for the Company or for the development of real property, the amount of such reasonable working capital reserve and/or development funds to be determined by the Managers.

(d) Notwithstanding the above, before a Member's withdrawal herefrom and before the winding up of the Company, the Member is entitled to receive distributions from the Company when the net profits of Company for a quarterly accounting period exceed forty-five percent (45%) of the total of all contributions made to the Company by all Members. The term "net profits" means income or gain of any kind received or deemed to be received by the Company according to generally accepted accounting procedures.

The Company may not make any distribution that will impair the ability of the Company to pay its debts and obligations as they mature.

## **SECTION 7 MANAGEMENT OF THE COMPANY; RIGHTS; DUTIES; CERTAIN PAYMENTS**

**7.1 Designation of Manager.** The Company shall have one (1) Manager, unless increased by affirmative vote of Members owning ninety percent (90%) or more ownership Interest in the

Company. Effective as of the date of this Amended and Restated Agreement, Mark Stewart shall serve as the sole Manager of the Company. The Manager shall be responsible for delegating administration of ordinary course decisions to one or more persons. The Manager shall serve as manager hereunder unless removed hereunder or until his successor(s) are elected by affirmative vote of Members owning ninety percent (90%) or more ownership Interest in the Company.

**7.2. Removal of Manager for Cause.** An affirmative vote of Members owing ninety percent (90%) or more ownership Interest in the Company may remove any Manager prior to the expiration of the Manager's term specified in this Company Agreement if:

- (a) the Manager acts outside the scope of the Manager's authority;
- (b) the Manager is deemed to not be acting in the interest of the Company; and/or
- (c) the Manager is no longer a Member of the Company or employed by a Member of the Company.

**7.3. Removal of Managers by Consent of Members.** At any meeting of Members called expressly for the purpose, any Manager may be removed for any reason, with or without cause, on a resolution adopted by Members owning ninety percent (90%) or more of the ownership Interest of the Company.

**7.4 Reserved.**

**7.5 Reserved.**

**7.6 Reserved.**

**7.7 Reserved.**

**7.8 Rights and Powers of the Manager.** The Manager shall have the exclusive right to manage the business of the Company and are hereby authorized to take any action of any kind and to do anything and everything it deems necessary, desirable or convenient with respect thereto in accordance with, and subject to, the other terms of this Agreement. The Manager for, in the name and on behalf of, the Company is hereby authorized to:

(i) Execute any and all agreements, contracts, documents, certifications and instruments in connection with the management, maintenance and operation of the Company's assets and business as set forth in Section 2 hereof;

(ii) Employ such Persons to perform the duties required of the hereby, including attorneys, accountants, consultants, finders and brokers, as may be necessary or desirable;

(iii) Care for and distribute, at such time or times as is required or permitted pursuant to the terms hereof, funds of the Company by way of cash, income, return on capital, property in-kind or otherwise and perform all matters in furtherance of the objectives of the Company as set forth in Section 2 hereof;



(iv) Open, maintain and close bank accounts and draw checks or other orders for the payment of moneys;

(v) Maintain one or more offices and, in connection therewith, rent or acquire office space and do such other acts as may be advisable in connection with the maintenance of such offices;

(vi) Expend the capital and revenues of the Company in furtherance of the Company's purposes and business as set forth in Section 2 hereof;

(vii) Sell, lease, trade, exchange or otherwise dispose of all or any portion of the property of the Company or make Investments;

(viii) Employ, on behalf of the Company, such Persons as the Managers deems necessary or advisable for the operation of the Company's business on such terms and for such compensation as it shall determine;

(ix) Maintain, at the expense of the Company, such insurance coverage necessary or appropriate to the business of the Company, in such amounts and of such types as it shall determine from time to time; and

(x) Borrow money and issue evidences of indebtedness necessary, convenient or incidental to the accomplishment of the purposes of the Company as set forth in Section 2 hereof, which indebtedness may be secured by a mortgage, pledge or other lien on any of the Company's properties or assets;

(xi) Sell, Transfer, exchange, assignment or otherwise dispose of the Property;

(xii) Grant any mortgage (including the mortgage securing the Loan) or other indebtedness secured by the Property or (ii) modify, extend, renew, refinance or prepay, in whole or in part, any indebtedness, financing or refinancing;

(xiii) Initiate, consent to or collude in a Bankruptcy with respect to the Company;

(xiv) Liquidate, dissolve, wind up, merge, consolidate or terminate the Company;

(xv) Permit a sale, Transfer, exchange, assignment or other disposition of any membership interest or economic interest in the Company or any direct or indirect ownership interests in any Member, other than as expressly permitted pursuant to the terms of Section 8;

(xvi) Commit to doing any of the foregoing actions; and/or

(xvii) To adopt, alter, amend, or repeal the Company Agreement unless otherwise required by the Act.

## **7.9 Compliance with Legal Requirements.**

(a) The Manager is hereby authorized, on behalf of the Company, to execute and deliver on behalf of the Company, the documents, contracts, agreements or instruments to which the Company may be a party in accordance with the terms hereof, and the Manager shall cause the Company to perform all of its respective obligations thereunder and under all Applicable Laws, regulations and other legal requirements.

(b) The Manager shall cause the Company to do or cause to be done all things necessary to preserve, renew and keep in full force and effect the existence, rights, licenses, permits and franchises for the Company, the Project and the Property to comply, in all material respects, with all applicable legal requirements. The Manager shall cause the Company to, at all times, maintain, preserve and protect all franchises and trade names and preserve all of its property used or useful in the conduct of its business and keep the Property and the Project in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto. The Manager shall cause the Company and the Property to be insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is necessary.

## **7.10 Investments.**

(a) As and to the extent an Investment is approved as set forth herein, then the approved Investment will be subdivided from the Property and conveyed to an Investment single purpose entity (each an "**Investment SPE**"). If the Members choose to invest in the Investment SPE, then the Members will invest as a manager single purpose entity, which entity will be owned by the Members in the same percentages as set forth herein and governed by the same terms and conditions set forth herein.

(b) All matter relating to Investments, including, but not limited to, Investment strategy, capital, loans and approval of Investments, refinancing and disposition thereof, will be decided by unanimous consent of the members of an investment committee consisting of two members, initially the Managers.

## **7.11 Reserved**

**7.12 Role of the Members.** Except as otherwise provided in this Agreement or required under the Act or other Applicable Law, no Member shall have any right or obligation to take part in, or interfere in any manner with, the management or control of the business or affairs of the Company or to act for or bind the Company. Members shall have the right to vote, consent to and/or take only those matters expressly provided in this Agreement or as required by Act or other Applicable Law. The Members hereby consent to the exercise by the Manager of the powers conferred on it by this Agreement.

**7.13 Activities of Members.** The Members acknowledge that the Manager is and will be engaged in other activities and occupations unrelated to the Company and that the Managers shall be required to devote only so much of its time as it may, in its reasonable discretion, deem



necessary to the affairs of the Company. Any Member and its Affiliates may engage in and have an interest in other business ventures of any nature or description, independently or with others, including, but not limited to, the ownership, financing, leasing, operating, construction, rehabilitation, renovation, improvement, management and development of real property whether or not such real property is directly or indirectly in competition with the Project; provided, however, that nothing herein shall be construed to relieve the Manager of any of its fiduciary obligations with respect to the management of the Project and the Company. Neither the Company nor any Member shall have any rights by virtue of this Agreement in and to such independent ventures or the income or profits derived therefrom, regardless of the location of such real property and whether or not such venture was presented to such Member as a direct or indirect result of his, her or its connection with the Company or the Project.

**7.14 Payment of Expenses.** All expenses of the Company (including, without limitation, premiums for any blanket liability insurance policies covering the Property and/or the Project) shall be billed directly to and paid by the Company. The Manager may get reimbursed by the Company and/or pay out of Company funds, as and when available, all reasonable third-party expenses incurred by the Manager in the operation of the Company, including, but not limited to, the (a) the acquisition and preliminary development costs, (b) attorneys' fees and court costs and (c) accounting fees and costs. Other than as expressly set forth herein or in the then-current Approved Budget, the Manager shall not be entitled to receive any fee or compensation for the performance of its duties as the Manager of the Company.

**7.15 Limitation of Liability; Indemnification.**

(a) Neither any Member nor any of its direct or indirect officers, directors, shareholders, partners, employees, managers or Affiliates (collectively, "**Indemnitees**" and each an "**Indemnitee**") shall be personally liable for the return of any Capital Contribution made to the Company by a Member. Other than as expressly provided otherwise herein, including pursuant to this Section 7.15, the Manager and its Indemnitees shall have no liability to the Company or to any Member for any Claim suffered or incurred by the Company or any Member that arises out of or relates to any action or inaction of any of such Persons if such action or omission to act was undertaken, in good faith, upon a determination that such course of conduct was in the best interests of the Company and was done in accordance with the terms of this Agreement. The Manager and its Indemnitees shall have no liability to the Company or to any Member for any indirect, incidental, special or consequential damages, or damages for loss of profits, reputational harm, revenue, or loss incurred by the other party, whether in an action in contract or tort, even if such party has been advised of the possibility of such damages.

(b) The Company shall indemnify the Manager and its Indemnitees to the fullest extent permitted by law, and defend, save and hold them harmless from and in respect of, any Claim arising out of, by reason of or in any way related to the Company. Notwithstanding the foregoing, neither the Manager nor any Indemnitee shall be entitled to any indemnification hereunder for any Claims arising under Federal and state securities laws, unless (i) there has been a successful adjudication on the merits of such count involving securities law violations, (ii) such claim or claims have been dismissed with prejudice on the merits by a court of competent jurisdiction or (iii) a court of competent jurisdiction approves a settlement of such claim or claims. In addition

to the indemnification conferred in this Section 7.15(b), the indemnified Person shall also be entitled to have paid directly by the Company the expenses reasonably incurred in defending any such proceeding against such indemnified Person in advance of its final disposition, to the fullest extent authorized by Applicable Law, provided that if the Claim involved in such proceeding is determined to be the result of any matter for which such Person is not entitled to indemnification pursuant to the terms hereof, the Manager shall, upon demand by any Member, promptly reimburse the Company for all such paid expenses. Notwithstanding anything to the contrary contained herein, the indemnification obligations of the Company pursuant to the terms of this Section 7.15(b) shall be made solely from assets of the Company and no Member shall be personally liable to the Manager or any Indemnitee.

**7.16 No Obligation to Make Additional Payments.** No Member shall have any obligation to make Capital Contributions or other payments to the Company in excess of the amounts required to be contributed by such Member pursuant to the terms hereof, nor shall any Member be obligated to lend or otherwise provide funds to the Company, even if the failure to do so would result in a default by the Company of its obligations to a lender or other consequence adverse to the Company, except as otherwise provided in the Act.

**7.17 General Contractor/ Construction Services.** Stewart Development & Construction, LLC, an Affiliate of Stewart Member, will be engaged by the Company to act as the general contractor of each Investment per the terms and conditions set forth in Exhibit 1, attached hereto.

**7.18 Development Services.** Each Member shall provide development services to Company and each Investment per the terms and conditions set forth in Exhibit 1.

**7.19 Investment Services.** Each Member will have the right to identify investors for the Property and each Investment, and will be responsible for identifying potential investors and negotiating terms of each Investment.

**7.20 Vote on Action by Members.** Unless provided for differently herein, an act of the Members of record is effective if ninety (90%) percent of Members' Interests votes adopt the act at a meeting at which a quorum of Members is present, in accordance with the following voting regulations:

(a) Notice of Meetings. For any meeting at which a matter is to be voted on by the Members, the Company must give to each Member notice of the time, place, and purpose of the meeting. Written notice of the time and place of the meeting shall be delivered personally to the Manager or sent to the Manager by U.S. Mail or facsimile machine at the Manager's address as shown on the records of the Company. Notice that is mailed must be deposited in the U.S. mail at least one hundred twenty-four (124) hours prior to the time of the holding of the meeting. Meetings of Members may be called by the Manager or by a written notice of meeting signed by ninety (90%) percent of the Members.

(b) Waiver of Notice. Action taken at any meeting of the Members without the required notice shall be as valid as though made at a meeting after notice if a quorum is present and each of the Members not present signs a written waiver of notice of a consent to the holding of that

meeting. Attendance of a Member at a meeting constitutes waiver of notice of the meeting unless the Member attends the meeting for the express purpose of objecting to the transaction of business on the grounds that the meeting is not lawfully convened.

(c) Action by Consent Without Meeting. Any action permitted to be taken by the Members may be taken without a meeting if all Members individually or collectively consent by signing a written approval of the action. Any action by written consent shall have the same force and effect as a unanimous vote of the Members.

(d) Reserved.

(e) Record Date. Only persons whose names are listed as Members in the official records of the Company ten (10) days before any meeting of the Members shall be entitled to notice of or to vote at that meeting.

(f) Quorum. At all meetings of the Members, two-third (2/3) in numbers of the Members shall be necessary and sufficient to constitute a quorum for the transaction of business.

(g) Vote by Proxy. Members may vote either in person or by proxy. Proxies must be executed in writing by the Members. A telegram, telex, cablegram or similar transmission by the shareholder, or a photographic, photostatic, facsimile, or similar reproduction of a writing executed by a Member is deemed an execution in writing for purposes of this regulation.

(h) Telephone Meetings. Any or all Members may participate in a Members' meeting by, or through the use of, any means of communications by which all Members participating may simultaneously hear each other during the meeting. A Member so participating is deemed to be present in person at the meeting.

(i) Appointment of Secretary. At any Members' meeting the Members must appoint a person to preside at the meeting and a person to act as secretary of the meeting. The secretary of the meeting must prepare minutes of the meeting which are placed in the minute books of the Company.

## **SECTION 8: TRANSFERABILITY OF MEMBERSHIP INTERESTS**

**8.1 Restrictions on Transfer.** Except as expressly permitted or required by this Agreement, no Member shall Transfer or permit the Transfer of all or any portion of its Interest in the Company or a direct or indirect interest in its Interest in the Company, without the consent of the other Member. To the fullest extent permitted by law, any Transfer or attempted Transfer in violation of this Agreement shall be null and void and of no force and effect whatsoever. Each Member hereby acknowledges the reasonableness of the restrictions on Transfer imposed by this Agreement in view of the Company purposes and the relationship of the Members. Accordingly, to the fullest extent permitted by law, the restrictions on Transfer contained herein shall be specifically enforceable. Each Member hereby further agrees to indemnify, to the fullest extent permitted by law, and defend, save and hold harmless the Company and each Member (and each Member's successors and assigns) wholly and completely harmless from any Claims (including



liabilities for income taxes, transfer taxes and costs of enforcing this indemnity) incurred as a result of a Transfer or an attempted Transfer in violation of this Agreement.

**8.2 Permitted Transfers.** Subject to the conditions and restrictions set forth in Section 8.3 hereof, a Transfer of an Interest in the Company, or of a direct or indirect interest in a Member's Interest in the Company, by means of a Permitted Transfer shall be permitted without the consent of any Member. A "**Permitted Transfer**" means (a) with respect to the Interest of TCD Member, any Transfer of a direct or indirect interest in TCD Member, so long as, after giving effect to such Transfer, TCD Member shall continue to be Controlled, directly or indirectly, by Doug Johnson; (b) with respect to the Interest of a Stewart Builders, Inc., any Transfer of a direct or indirect interest in Stewart Builders, Inc., so long as, after giving effect to such Transfer, Stewart Builders, Inc. shall continue to be Controlled, directly or indirectly, by Mark Stewart.

**8.3 Conditions to All Transfers.** Notwithstanding anything to the contrary set forth herein, in no event shall any Transfer, including a Permitted Transfer, be permitted hereunder unless and until all of the following conditions are satisfied:

(a) in the case of a Transfer of a direct Interest in the Company, the transferor and Permitted Transferee shall execute such documents and instruments of conveyance and assumption as may be necessary or appropriate in the opinion of counsel to the Company to effect such Transfer and to confirm the Permitted Transferee's agreement to be bound by the provisions of this Agreement and to assume all monetary obligations of the transferor with respect to the Interest being transferred;

(b) if reasonably required by any of the non-transferring Members, the Company shall receive, prior to such Transfer, an opinion of counsel satisfactory to the Company confirming that such Transfer shall not violate any applicable securities law, or result in a Transfer of the transferring Member's interests without the proper withholding of taxes under Section 1445 or 1446 of the Code or any other applicable tax law provision;

(c) the Permitted Transferee has paid all reasonable costs and expenses incurred by the Company in connection with such Transfer, including, without limitation, the cost of the preparation, filing and publishing of any amendment to the Certificate and/or any amendments or filings of this Agreement or any other organizational documents of the Company;

(d) all prior consents of the Members required for such Transfer pursuant to the terms hereof have been obtained;

(e) such Transfer complies with all requirements of the Act and all other Applicable Laws (including the receipt of any required consents thereunder);

(f) such Transfer (i) may be effected without registration of any Interest under the Federal Act, (ii) does not cause the violation of any State Laws (including any investment suitability standards) applicable to the Company, and (iii) will not cause the Company to be subject to the registration requirements of the Investment Company Act of 1940 or to lose the "safe harbor" exemption from such registration which relates to the number of investors;

(g) such Transfer does not result in the termination of the Company under Section 708 of the Code, or any successor provision, or would prevent the Company from being taxed as a partnership rather than as an association taxable as a corporation for Federal income tax purposes; and

(h) if such Transfer is of the direct Interest in the Company, the Permitted Transferee complies with the requirements of Section 8.4 below.

#### **8.4 Substitution of Members.**

(i) No Permitted Transferee of all or any portion of the direct Membership Interest from a Member shall have the right to be admitted to the Company as a substitute Member unless all of the following conditions are satisfied:

(i) the Managers has received a fully executed and acknowledged written instrument of assignment which sets forth the intention of the assignor that the assignee become a Member in his, her or its place; and

(ii) the assignor and Permitted Transferee execute and acknowledge such other instruments as the Managers may deem necessary or desirable to effect such admission, including the written acceptance and adoption by the Permitted Transferee of the provisions of this Agreement and the assumption by the Permitted Transferee of all obligations of the assignor under this Agreement.

(j) Once the above conditions have been satisfied, the Permitted Transferee shall become a Member on the date on which all of such conditions have been satisfied. The Company shall, upon substitution of Members pursuant to the provisions of this Section 8.4, thereafter make all further distributions on account of the Membership Interest so assigned to the Permitted Transferee for such time as the Membership Interest is transferred on its books in accordance with the above provisions. Any Permitted Transferee so admitted to the Company as a Member shall be subject to all provisions of this Agreement as if originally a party hereto.

**8.4 Withdrawal of Members.** No Member may withdraw or resign from the Company, except in connection with an assignment of all of such Member's Membership Interest in accordance with the terms of this Agreement (including any consent required to be obtained hereunder) or upon the dissolution and winding up of the Company in accordance with the terms of this Agreement.

### **SECTION 9– TERMINATION OF THE COMPANY**

#### **9.1 Dissolution.**

(a) The Company shall be dissolved upon the earlier to occur of any of the following events (each a “**Dissolution Event**”):

(i) December 31, 2054;

(ii) the sale or other disposition (not including an exchange) of all or substantially all of the Company's assets in accordance with the terms of this Agreement (including any consent required to be obtained hereunder), except under circumstances where all or a portion of the purchase price therefor is payable after the closing of the sale or disposition;

(iii) there are no Members of the Company, unless the Company is continued in accordance with the Act and this Agreement;

(iv) the written determination of all of the Members that the Company should be dissolved; or

(v) a decree of judicial dissolution of the Company entered under the Act.

(b) Dissolution of the Company shall be effective on the day on which the first (1<sup>st</sup>) Dissolution Event occurs, but the Company shall not terminate until the Company's Certificate shall have been cancelled and the assets of the Company shall have been distributed as provided in Section 9.2 hereof. Notwithstanding the dissolution of the Company prior to the termination of the Company, as aforesaid, the business and affairs of the Company and the affairs of the Members, as such, shall continue to be governed by this Agreement.

(c) The Bankruptcy, insolvency, dissolution, death or adjudication of incompetency of a Member shall not cause the dissolution of the Company. In the event of the Bankruptcy, death or incompetency of a Member, his, her or its executors, administrators or personal representatives shall, subject to the Investment Company Act of 1940, as amended, and the requirements of Section 9.4 hereof, have the same rights that such Member would have if such Member had not suffered the foregoing, and the interest of such Member in the Company shall, until the termination of the Company, be subject to the terms, provisions and conditions of this Agreement as if such Member had not suffered the foregoing. Upon the occurrence of any event that causes the last remaining Member of the Company to cease to be a member of the Company, to the fullest extent permitted by law, the personal representative of such Member is hereby authorized to, and shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of such Member in the Company, agree in writing to (i) continue the Company and (ii) the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining Member of the Company.

## **9.2 Liquidation.**

(a) Except as otherwise provided in this Agreement, upon dissolution of the Company, the Managers shall liquidate the assets of the Company, apply and distribute the proceeds thereof as contemplated by this Agreement and cause the filing of the Company's Articles of Dissolution. As soon as possible after the dissolution of the Company, a full account of the assets and liabilities of the Company shall be taken, and a statement shall be prepared setting forth the assets and liabilities of the Company. A copy of such statement shall be furnished to each Member within ninety (90) days after such dissolution. Thereafter the assets shall be liquidated as promptly as possible and the proceeds thereof shall be applied in the following order:



(i) *First*, the expenses of liquidation and the debts of the Company, other than the debts owing to the Members, shall be paid. Any reserves shall be established or continued which the Managers deems reasonably necessary for any liabilities to be satisfied in the future for any contingent or unforeseen liabilities or obligations of the Company or for its liquidation. Such reserves shall be held by the Company for the payment of any of the aforementioned contingencies, and at the expiration of such period as the Managers shall deem advisable, the Company shall distribute the balance thereafter remaining in the manner provided in the following clauses of this Section 9.2(a);

(ii) *Second*, such debts as are owing to a Member, including unpaid expense accounts or advances made to or for the benefit of the Company, shall be paid; and

(iii) *Lastly*, the balance, if any, shall be distributed to the Members in accordance with the provisions set forth in Section 6.3 hereof.

Such distribution shall be made after (x) the final allocations of Profits and Losses in connection with the dissolution of the Company and the liquidation of its assets have been made and (y) all such events, transactions and allocations have been fully reflected in the Members' Capital Accounts as required by Regulations Section 1.704-1(b). Such distribution required by this Section 9.2 shall, to the fullest extent permitted by law, be made by the end of the Fiscal Year in which such dissolution occurs, or, if later, within ninety (90) days after the date of such dissolution, and shall otherwise comply with the requirements of Regulations Section 1.704-1(b). Distributions pursuant to this Section 9.2 may be made to a trust established for the benefit of the Members for the purposes of liquidating the Company's assets, collecting amounts owed to the Company and paying any contingent or unforeseen liabilities or obligations of the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Managers, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to this Agreement. Notwithstanding anything in this Agreement to the contrary, in the event the Company is "liquidated" (as that term is defined in Regulations Section 1.704-1(b)(2)(ii)(g)) and any Member's Capital Account (or, as the case may be, the Capital Account of the Member whose Interest is "liquidated") has a deficit balance (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such "liquidation" occurs), such Member(s) shall not have a requirement to contribute to the capital of the Company in an amount necessary to restore such deficit balance to zero.

(b) Upon dissolution of the Company, each Member shall look only to the assets of the Company for the return of his, her or its investment in the Company, and if the Company's assets remaining after payment and discharge of debts and liabilities of the Company, including any debts and liabilities owed to any one or more of the Members, are not sufficient to satisfy the distributions due to a Member, such Member shall have no recourse or further right or claim against the Company, the Managers or any other Member.

(c) If any assets of the Company are to be distributed in-kind, such assets shall be distributed on the basis of the fair market value thereof, and any Member entitled to any interest in such assets shall receive such interest therein as a tenant-in-common with all other Members so

entitled. The fair market value of such assets shall be determined by an independent appraiser to be selected by the Managers.

(d) The Profits and Losses, if any, arising from the dissolution and liquidation of the Company shall be allocated to the Members as provided in Section 5 hereof.

**9.3 Bankruptcy.** Each Member agrees that it shall not file or cause to be filed any petition or other proceeding by or against the Company pursuant to which the Company would become subject to any Bankruptcy proceeding, nor shall it consent to acquiesce in any such filing.

**9.4 No Action for Dissolution.** Except as expressly permitted in this Agreement, a Member shall not take any voluntary action that directly causes a Dissolution Event. The Members acknowledge that irreparable damage would be done to the goodwill and reputation of the Company if any Member should bring an action in court to dissolve the Company under circumstances where dissolution is not otherwise required by Section 9.1. This Agreement has been drawn carefully to provide fair treatment of all parties. Accordingly, except where the Managers has failed to liquidate the Company as required by Section 9.2, each Member hereby waives and renounces its right to initiate legal action to seek the appointment of a receiver or trustee to liquidate the Company or to seek a decree of judicial dissolution of the Company on the ground that (a) it is not reasonably practicable to carry on the business of the Company in conformity with this Agreement or (b) dissolution is reasonably necessary for the protection of the rights or interests of the complaining Member. To the fullest extent permitted by law, damages for breach of this Section 9.4 shall be monetary damages only (and not specific performance), and the damages may be offset against distributions by the Company to which such Member would otherwise be entitled.

## **SECTION 10 COMPANY FUNDS**

All deposits in and withdrawals from Company bank accounts shall be made by the Manager or such other person or persons employed by the Manager as it may from time to time designate and in the event in excess of \$25,000, then only with the written consent and authorization of the Manager and the TCD Member.

## **SECTION 11 BOOKS AND RECORDS; REPORTS**

**11.1 Books and Records.** The Company shall keep adequate books and records at the principal place of business of the Company or at such other place as the Manager may determine, setting forth a true and accurate account of all business transactions arising out of and in connection with the conduct of the Company. Such books and records shall be open to the inspection and examination of all Members or their duly authorized representatives upon request to the Managers during ordinary business hours.

**11.2 Reserved.**

**11.3 Reports.** The Stewart Member shall be responsible for the preparation of financial reports of the Company and the coordination of financial matters of the Company with the accountant.



(a) The Stewart Member shall cause the accountants to prepare financial statements (which will be audited if required by a lender or member) and the Company's annual income tax return. The Stewart Member shall provide, within seventy-five (75) days after the end of the Fiscal Year to each Person who was a Member during such Fiscal Year, a report indicating such Person's respective Proportionate Share of the Profits, Losses, all relevant tax items of the Company and tax credits, if any, for such Fiscal Year for Federal income tax purposes and, upon the request of any Member, within one hundred twenty (120) days after the end of the Fiscal Year, a copy of the Company's annual income tax return for such Fiscal Year.

(b) The Stewart Member shall cause to be prepared, as of the last day of each month, financial statements for the Company for such month and if requested by a lender or member an Approved Budget reconciliation that compares the actual results for such month to the budgeted amount set forth in the corresponding month in the Approved Budget. Such statements shall be prepared in accordance with tax accounting principles applied on a consistent basis. Such monthly statements shall be promptly (but no later than twenty (20) days after the end of each calendar month) provided by the Stewart Member to each Member.

(c) The Stewart Member shall prepare an annual operating budget for the Company for the immediately succeeding Fiscal Year (each an "**Annual Budget**"). Notwithstanding the foregoing provisions of this Section 11.3(c), the Development Budget shall be considered the Approved Budget for all purposes of this Agreement until the Stewart Member prepares, the first (1<sup>st</sup>) Annual Budget.

(d) The Stewart Member shall furnish written notification to all of the Members, within five (5) Business Days of the Company receiving and/or delivering the same, of any (i) litigation or governmental proceedings pending or threatened in writing against the Company, the Property, the Project or any part thereof, or (ii) any violation or threatened violation of any laws, rules or regulations applicable to the Company, the Property or the Project.

(e) With reasonable promptness, the Stewart Member shall furnish such other information and financial data concerning the Company, the Project and/or the Property as any Member may reasonably request.

**11.4 Tax Elections.** All tax elections on behalf of the Company, including the election under Section 754 of the Code, may be made, not made or rescinded in the discretion of the Stewart Member.

#### **11.5 Revised Partnership Audit Rules Under Bipartisan Budget Act of 2015.**

(a) Except as expressly set forth otherwise in this Section 11.5, audits of the Company shall be governed by the Revised Partnership Audit Procedures.

(b) Notwithstanding anything herein to the contrary:

(i) In any year in which the Company has one hundred (100) or fewer Members during the year, all of whom are Eligible Persons, the Partnership Representative shall cause the Company to make an election to elect out of the Revised Partnership Audit Procedures

(an “**Opt-Out Election**”). Any Opt-Out Election shall comply with the provisions of Section 6221(b) of the Code and any Applicable Guidance.

(ii) No Member may make a Transfer or take any action (or permit any owner of such Member to make a Transfer or take any action) that, based solely on the facts and circumstances immediately after such Transfer or action, would adversely affect the Company’s ability to make an Opt-Out Election. Any such attempted Transfer or action is null and void *ab initio* and shall not bind the Company.

(iii) Any Member that for purposes of Section 6221 of the Code under the Revised Partnership Audit Procedures is looked through to determine the Company’s eligibility to make an Opt-Out Election shall impose similar limitations on transfers and shall promptly notify the Company of the name and taxpayer identification number of each partner or shareholder upon becoming a Member and upon any change in its partners or shareholders and of any other information required to be provided under the Revised Partnership Audit Procedures with respect to the Company being able to make the Opt-Out Election for such taxable year, and such Member shall take reasonable steps to prevent a breach thereof by its partners or shareholders.

(c) **Partnership Representative.**

(i) For any year in which the Revised Partnership Audit Procedures are effective, the Members hereby appoint the Stewart Member as the partnership representative of the Company (the “**Partnership Representative**”) pursuant to Section 6223(a) of the Code. The individual (the “**Designated Individual**”) through whom the Partnership Representative will act for all purposes of the Revised Partnership Audit Procedures shall be designated by the Stewart Member and, at all times during which the Stewart Member is the Partnership Representative, by hereunder, by Mark Stewart.

(ii) Unless otherwise permitted under any Applicable Guidance, the designation of the Partnership Representative may not be changed (either by resignation or revocation) until the IRS issues a notice of administrative proceeding to the Company (a “**NAP**”), except when the Company files a valid an administrative adjustment request under Section 6227 of the Code (an “**AAR**”) in accordance with Section 6227 of the Code and any applicable Regulations. Without limiting the generality of the foregoing, the Partnership Representative may not resign prior to the issuance of a NAP (except in conjunction with the filing of an AAR), but may resign at any time after the issuance of a NAP. If required by Applicable Guidance, the Partnership Representative shall notify both the Company and the IRS of its resignation for any reason in accordance with applicable forms and instructions prescribed by the IRS. Any successor Partnership Representative must have a substantial presence in the United States and must otherwise satisfy all statutory and regulatory requirements imposed by the Revised Partnership Audit Procedures. A Person who is not an individual may be the Partnership Representative only if a Designated Individual who satisfies all such statutory and regulatory requirements is appointed by the Company as the sole individual through whom the Partnership Representative will act for all purposes of the Revised Partnership Audit Procedures. Any Designated Individual status shall automatically terminate on the date on which the designation of the applicable Entity as Partnership Representative is no longer in effect.

(iii) The Company may revoke the designation of the Partnership Representative for a Company taxable year with or without cause by notice (a “**Revocation Notice**”) from Mark Stewart submitted in accordance with any applicable forms and instructions prescribed by the IRS. Any Revocation Notice shall comply with all Applicable Guidance and shall include the designation of a successor Partnership Representative for the Company taxable year for which the designation was in effect. In the event of such removal of the Partnership Representative, the designation of the Designated Individual shall automatically be revoked. Additionally, any Designated Individual shall resign at the time the individual ceases to be an employee or officer of the Partnership Representative or an Affiliate thereof. Following any such removal of the Partnership Representative and Designated Individual (or the resignation thereof), their successors shall be appointed in accordance with any Applicable Guidance.

(d) The Partnership Representative shall give the Members prompt notice of any inquiry or other communication received from the IRS or other applicable tax authority regarding the tax treatment of the Company or the Members, and shall, to the extent possible, give the Members prior notice of and a reasonable opportunity to review and comment upon any written communication the Partnership Representative intends to make to any such taxing authority in connection with any examination, audit or other inquiry involving the Company. Without limiting the generality of the foregoing, the Company shall send to all of the Members copies of any NOPPA or FPA received by the Partnership Representative from the IRS within five (5) days following receipt thereof.

(e) The Partnership Representative shall receive no fees or compensation for its services in such capacity but shall be reimbursed by the Company for all reasonable costs and expenses incurred by it in discharging its duties and responsibilities as Partnership Representative.

(f) The Partnership Representative shall have the duties and responsibilities set forth in Section 6223 of the Code and any Applicable Guidance.

(g) The Partnership Representative shall have the duties and responsibilities set forth in Section 6223 of the Code and any Applicable Guidance; provided, however, that, except as specifically provided in the Section 11.5(i) below, the Partnership Representative shall not, without the consent of the Members, do any of the following: (i) make an Opt-Out Election; (ii) make a Push-Out Election; (iii) file an AAR; (iv) select any judicial forum for the litigation of any Company tax dispute; (v) engage attorneys, accountants, experts, or other professionals to represent the Company in any tax dispute; (vi) file any protests or complaints, enter into any settlement agreement, waive or extend any tax statute of limitations, or commence any judicial proceedings, with respect to any Company tax items; (vii) file any election or execute any agreement with respect to the same; (viii) take any other action that would have a material impact on the economic or tax consequences of the investment of the Members in the Company; or (ix) take any other action (or fail to take any action) that might reasonably be expected to require the payment of any material tax, penalties, additions to tax, additional amounts, or interest by the Members or otherwise have a material adverse impact on the tax or economic position of the Members.



(h) The relationship of the Partnership Representative to the Members shall be that of a fiduciary, and the Partnership Representative shall have a fiduciary obligation to perform its duties in such manner as will serve the best interests of the Members.

(i) Modifications and Partnership Adjustments and Elections.

(i) If the Company receives a NOPPA from the IRS, the Partnership Representative shall so notify the Members in accordance with the provisions above and, if requested to do so by any Member, shall request modification of a proposed Imputed Underpayment set forth in the NOPPA in accordance with any Applicable Guidance. Any such request by a Member shall describe the modifications or adjustment factors that the Member believes affect the calculation of the Imputed Underpayment in sufficient detail to substantiate the request for modification. Unless an extension of time is granted by the IRS, all information required to support a requested modification shall be submitted by the Member to the Partnership Representative no later than one hundred eighty (180) days after the Member receives notice of the NOPPA from the Partnership Representative, and the Partnership Representative shall submit such information to the IRS no later than two hundred seventy (270) days after the date the NOPPA was mailed by the IRS.

(ii) If requested to do by any Member, the Partnership Representative shall request a modification of an Imputed Underpayment based on an amended return filed by a Reviewed Year Partner (or Indirect Member) that takes account of all of the Company adjustments properly allocable to such Member (or Indirect Member). Any such request shall be accompanied by an affidavit from the requesting Member (or Indirect Member) signed under penalties of perjury that the requesting Member (or Indirect Member) has filed each required amended return and paid all amounts due under Section 6225(c)(2)(A)(iii) of the Code in accordance with the Applicable Guidance.

(iii) In lieu of filing an amended return, any Reviewed Year may elect to comply with the “pull-in” procedure described in Section 6225(c)(2)(B) of the Code (the “**Pull-In**”). In such event, such Reviewed Year Partner shall (x) pay all amounts due under Section 6225(c)(2)(A)(iii) of the Code, (y) take into account, in the form and manner set forth in any Applicable Guidance, the adjustments to the tax attributes of such Reviewed Year Partner and (z) provide, in the form and manner specified by the IRS (including, if so specified, in the same form as on an amended return), such information as the IRS may require to carry out the terms and intent of the Pull-In procedure described in Section 6225(c)(2)(B) of the Code. Copies of all notices and filings made pursuant to this Section 11.5(i)(iii) shall be provided by the Reviewed Year Partner to the Partnership Representative.

(iv) In the case of a Partnership Adjustment that reallocates the distributive share of any item from one Member to another, the Partnership Representative shall be required to submit a modification request to the IRS only if all Members (or Indirect Members) affected by such adjustment (the “**Affected Members**”) have complied with the provisions of Sections 6225(c)(2)(A) or 6225(c)(2)(B) of the Code.

(v) If the Company receives an FPA from the IRS, the Partnership Representative shall so notify the Members and any Former Members in accordance with the



applicable provisions of this Section 11.5 and, if requested to do so by the Members, shall make an election (a **"Push-Out Election"**) under Section 6226 of the Code with respect to one or more Imputed Underpayments identified in the FPA. Except as hereinafter provided, if a Push-Out Election is made, each Reviewed Year Partner shall take into account its allocable share of the Partnership Adjustments that relate to the specified Imputed Underpayment and shall be liable for any Taxes as described in Section 6226 of the Code and any Applicable Guidance. Notwithstanding the foregoing, to the extent permitted by law, any Reviewed Year Partner that is a partnership or S corporation may, at its option and in accordance with any Applicable Guidance, elect, in lieu of paying its allocable share of such Partnership Adjustments, to push out the liability for Taxes attributable to such Partnership Adjustments to its Members (including Indirect Members).

(vi) Any Push-Out Election shall be filed within forty-five (45) days of the date the FPA is mailed by the IRS and shall be in such form, and shall contain such information, as required by any Applicable Guidance.

(vii) If a Push-Out Election is made, the Partnership Representative shall furnish to each Reviewed Year Partner and the IRS, for each Reviewed Year within sixty (60) days after the date all of the Partnership Adjustments to which the statement relates are finally determined, a statement that includes all items and information required under any Applicable Guidance.

(viii) If the Company pays an Imputed Underpayment under Code Section 6255, (x) the Company shall allocate such item to and among the Adjustment Year Partners in the Adjustment Year and (y) the book value of Company property and the Capital Accounts and outside basis of the Adjusted Year Partners shall be adjusted to reflect such allocation, in each case in the manner provided in any Applicable Guidance or, in the absence of such Applicable Guidance, in accordance with any reasonable tax accounting method selected by the Partnership Representative with the consent of the Members.

(ix) If the Company pays any Imputed Underpayment under Code Section 6225:

(1) each Adjustment Year Partner who also is a Reviewed Year Partner shall, within thirty (30) days after written notice from the Partnership Representative (a **"Reimbursement Notice"**), contribute to the capital of the Company an amount equal to such Adjustment Year Partner's allocable share of the Imputed Underpayment, as determined in the manner set forth herein;

(2) any Former Member who was a Reviewed Year Partner shall, within thirty (30) days after the date of a Reimbursement Notice, pay to the Company an amount that, on an After-Tax Basis, is equal to such Former Member's allocable share of the Imputed Underpayment, as determined in the manner set forth in herein. Any such payment (a **"Section 6225 Indemnity Payment"**) shall not be treated as a Capital Contribution; and

(3) Any amount due under this Section and not paid by a Member (or Former Member) within such thirty (30) day period set forth in clause (2) above shall accrue interest at the Stipulated Base Rate until paid.

(j) Notwithstanding anything to the contrary contained herein, the Stewart Member may cause the Company to withhold from any distribution or payment due to any Member (or Former Member) under this Agreement any amount due to the Company. Any amount withheld pursuant to this Section 11.5(j) shall be applied by the Company to discharge the obligation in respect of which such amount was withheld. All amounts withheld pursuant to the provisions of this Section 11.5(j) with respect to a Member (or Former Member) shall be treated as if such amounts were distributed or paid, as applicable, to such Member (or Former Member).

(k) Except as hereinafter provided, each Member agrees that its treatment on its own Federal income tax return of each item of income, gain, loss, deduction or credit attributable to the Company shall be consistent with the treatment of such items on the Company return, including the amount, timing, and characterization of such items. Notwithstanding the foregoing general requirement, any Member may file a statement identifying certain items that are inconsistent (or that may be inconsistent) in accordance with any Applicable Guidance. Any such statement shall be attached to the Member's tax return on which the item is treated inconsistently.

(l) The obligations of each Member or Former Member under this Section 11.5 shall survive the transfer or redemption by such Member of its Interest and the termination of this Agreement or the dissolution of the Company.

(m) Notwithstanding any other provision of this Agreement, the Stewart Member, is authorized to amend the provisions of this Agreement to comply with the provisions of any future amendments to the Code or Applicable Guidance.

## SECTION 12 GENERAL PROVISIONS

**12.1 Amendments.** No alteration, modification or amendment of this Agreement shall be made unless in writing and signed (in counterpart or otherwise) by the Managers and the other Members required to consent to such amendment, modification or alteration pursuant to the terms hereof.

**12.2 Notices.** Except as otherwise specifically provided herein, all notices, demands or other communications hereunder shall be in writing and shall be deemed to have been given when the same are (i) three (3) Business Days after the same is deposited in the United States mail and sent by certified or registered mail, postage prepaid, (ii) one (1) Business Day after the same is delivered to a nationally recognized overnight delivery service, (iii) the date on which the same is sent by telecopier or other facsimile transmission, answerback requested, during ordinary business hours on a Business Day, or otherwise on the immediately succeeding Business Day or (iv) on the date the same is delivered personally, in each case, to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to the Company:

(a) If to the Company, at the principal office of the Company set forth in Section 1.1, with copies to Fox Rothschild LLP, 2000 Market Street, 20<sup>th</sup> Floor, Philadelphia, Texas 19103-3222, Attention: Marcy N. Hart, Esq.;

(b) If to any Member, at its address set forth in Schedule I attached hereto; and

Any Member may change the address to which notice is to be sent by giving notice of such change to the Company, and to each Member in the case of a change by the Managers, in conformity with this Section 12.2.

**12.3 Governing Law.** This Agreement, and the application or interpretation of this Agreement, shall be governed exclusively by its terms and by the internal laws of the State of Texas without regard to principles of conflict of laws. The rights and liabilities of the Members shall be determined pursuant to the Act and this Agreement. To the extent that the rights or obligations of any Member are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control.

**12.4 Binding Nature of Agreement.** Except as otherwise provided, this Agreement shall be binding upon and inure to the benefit of the Members and their personal representatives, successors and assigns.

**12.5 Additional Documents and Acts.** Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and the transactions contemplated hereby.

**12.6 Validity.** In the event that all or any portion of any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

**12.7 Entire Agreement.** This Agreement and the Indemnification Agreement constitute the entire understanding and agreement among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as contained herein. This Agreement may not be modified or amended other than by an agreement in writing.

**12.8 Indulgences, Etc.** Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and signed by the party asserted to have granted such waiver.

**12.9 Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature



appears thereon, and all of such shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof shall bear the signatures of all the parties reflected hereon as the signatories.

**12.10 Paragraph Headings.** The paragraph headings in this Agreement are for convenience only, form no part of this Agreement and shall not affect its interpretation.

**12.11 Gender, Etc.** Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

**12.12 Business Days.** In computing the number of days for the purposes of this Agreement, all days shall be counted, including non-Business Days; provided, however, that if the final day of any time period falls on a day that is not a Business Day, then the final day shall be deemed to be the immediately succeeding day Business Day.

**12.13 Interpretation.** No provision of this Agreement is to be interpreted for or against any party because that party or that party's legal representative drafted such provision.

**12.14 Authority.** Any Entity signing this Agreement represents and warrants that the execution, delivery and performance of this Agreement by such Entity has been duly authorized by all necessary corporate or other applicable action.

**12.15 Third Party Beneficiaries.** Notwithstanding anything to the contrary set forth herein, no provision of this Agreement is intended to benefit any person other than the Members hereto, and their respective permitted successors and assigns in the Company, and no provision of this Agreement shall be enforceable by any other Person.

**12.16 Jurisdiction and Venue.** Each Member hereby consents to the exclusive jurisdiction of the state and federal courts sitting in Texas in any action on a claim arising out of, under, or in connection with this Agreement or the transactions contemplated by this Agreement. To the extent permitted by law, each Member further agrees that personal jurisdiction over such Member may be effected by service of process by registered or certified mail addressed as provided in Section 12.2, and that when so made shall be as if served upon such Member personally. Each Member hereby waives any right to file any action with any court outside of Texas, and with respect to any action filed with a court in Texas, each Member hereby waives any right to seek to change venue.

**[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]**



**MEMBER SIGNATURE  
PAGE TO AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT OF  
290 BETKA, LLC**

**IN WITNESS WHEREOF**, the undersigned hereby duly executes this signature page to the Amended and Restated Limited Liability Company Agreement of 290 Betka, LLC and agrees to be bound as a party thereto.

**STEWART BUILDERS INC.**

By: Mark A. Stewart  
Name: Mark Stewart  
Title: Vice President

**TCD BETKA MEMBER, LLC**

By: D  
Name: Doug Johnson  
Title: Manager

**EQUITY TRUST CUSTODIAN, FBO, Douglas J  
Johnson, IRA**

By: D  
Name: Douglas J. Johnson IRA owner  
Title: IRA owner

**Stewart Betka 290, LLC.**

By: Mark A. Stewart  
Name: Mark A. Stewart  
Title: Manager

## **SCHEDULE I**

### **NAMES, NOTICE ADDRESSES, CAPITAL CONTRIBUTIONS AND PROPORTIONATE SHARES OF THE MEMBERS**

Stewart Builders, Inc.  
16575 Village Drive  
Houston, Texas 77040  
Percentage Interest: 65.52%  
Initial Contribution: \$9,500,000.00

TCD Betka Member, LLC  
4090 Deep Valley Drive  
Dallas, Texas 75244-7265  
Percentage Interest: 11.32%  
Initial Contribution: \$1,641,577.80

Equity Trust Company Custodian, FBO Douglas J Johnson, IRA  
4090 Deep Valley Drive  
Dallas, Texas 75244  
Percentage Interest: 9.37%  
Initial Contribution: \$1,358,422.20

Stewart Betka 290, LLC  
16575 Village Drive  
Houston, Texas 77040  
Percentage Interest: 13.79%  
Initial Contribution: \$2,000,000.00

## EXHIBIT 1

### EXHIBIT 1 – OBLIGATIONS OF EACH PARTY FOR DEVELOPMENT SERVICES

Development Fee shall be split equally 50/50 between TCD Member and Stewart Member.

Each party shall have the right (at its option) to attend meetings (including through teleconference or video conference). Upon request either party shall provide updates the other in sufficient detail relating to any aspect each other's responsibilities.

The following identifies each party's general roles and responsibilities:

#### Texas Commercial Development:

1. Head up land acquisition
2. Manage the due diligence process
3. Provide design criteria for site infrastructure, landscaping and buildings
4. Provide engineering and architecture design oversight
5. Set initial project pro forma with oversight of monthly pro forma updates
6. Manage and hire brokerage firms for marketing and leasing
7. Manage and hire property management
8. Provide leasing oversight
9. Arrange and manage debt financing
10. Provide all underwriting services
11. Head up final asset sales

#### Stewart Development & Construction:

1. Advise Management Committee of all developments affecting construction of the Project.
2. Manage overall budget/pro forma
3. Selection and coordination of the engineer, architect, and all contractors in the pricing, buyout and construction of the Project.
4. Negotiate and coordinate all agreements with appropriate municipal authorities and utility companies.

5. Coordinate all permitting and inspections
6. Manage all construction onsite including TI buildouts
7. Monthly reports & pay application/draw requests
8. Assist with Tenant pricing scenarios
9. Provide accounting services; provide accounting and tax prep oversight
10. Manage the day to day maintenance

General Contractor Agreement:

Stewart Development & Construction, LLC to act as General Contractor under the following terms:

- AIA A102/201 Agreement, 2.85% fee, 100% savings back to Investment SPE.
- Open book arrangement.
- Single source Dirt/Utilities/Concrete on the project to in house subcontractors at mutually agreeable fees.
- Other trades will be bid out via bid tab review process with minimum of 3 bids.



Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Kelly Keel, *Interim Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 17, 2023

Laurie Gharis, Chief Clerk  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC-105  
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2023-0861-DIS; Petition by 290 Betka, LLC for the Creation of 290 Betka Municipal Management District No. 1; Request filed regarding Internal Control No. D-11212022-033.

Dear Ms. Gharis:

Transmitted herewith for filing with the Texas Commission on Environmental Quality (Commission or TCEQ) are the following items to be filed as backup materials for the September, 6 2023, Agenda on a hearing request for the creation of 290 Betka Municipal Management District No. 1:

1. Proposed Order
2. Petition;
3. Vicinity Map;
4. Proof of ownership;
5. Technical memo prepared by staff;
6. City Consent Resolution;
7. Temporary Director Affidavits;
8. Notice of Hearing and proof of publication;
9. Mailing List; and
10. Caption.

Please do not hesitate to contact me if you have any questions regarding this material. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bobby Salehi".

Bobby Salehi, Staff Attorney  
Environmental Law Division

Ex. 1      Proposed Order

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## AN ORDER GRANTING THE PETITION FOR CREATION OF 290 BETKA MUNICIPAL MANAGEMENT DISTRICT NO. 1 AND APPOINTING INITIAL DIRECTORS

**DOCKET NO. 2023-0861-DIS**

On September 6, 2023, the Texas Commission on Environmental Quality (Commission) met in regular session at its offices in Austin, Texas, with notice of the meeting issued in compliance with the Open Meetings Act, Texas Government Code §§ 551.001-551.146, and the Administrative Procedure Act, Texas Government Code §§ 2001.001-2001.903, to consider the petition (Petition) filed by 290 Betka, LLC, as authorized, to create 290 Betka Municipal Management District No. 1 (District) of Harris County pursuant to Article XVI, § 59, and Article III, §§ 52 and 52(a) of the Texas Constitution and Chapter 375 Texas Local Government Code, and Chapter 49, Texas Water Code.

The Commission has jurisdiction to consider this matter and the following Findings of Fact and Conclusions of Law are appropriate after examining the application and supporting documentation:

### FINDINGS OF FACT

1. On November 21, 2022, an application (including the Petition) by 290 Betka, LLC (Petitioner) was filed with the Commission pursuant to Chapter 375, Texas Local Government Code; Chapter 49, Texas Water Code; and Chapter 293, Title 30 Texas Administrative Code.
2. The Petition was signed by a duly authorized officer of the Petitioner.
3. The Petitioner holds a majority in value of title to the land to be included within the proposed District's boundaries.
4. Petitioner requested that the Commission hold a public hearing on the question of the creation of the District pursuant to Texas Local Government Code § 375.023; Chapter 49, Texas Water Code; and Title 30 Texas Administrative Code § 293.12(g).
5. The Petition contains a metes and bounds description of the boundaries of the District; states the specific purpose for which the District will be created; states the general nature of the work, the necessity for the work, and the approximate cost of the work; includes the name of the District; includes a proposed list of initial directors, their experience, and their initial term of service; and includes a Resolution by the City of Houston, which expresses the city's consent to create the District.
6. There are no lienholders on the land in the proposed District.
7. Harris County is the county in which the District is to be located.

8. Notice of the hearing on the application was published on August 2 and August 9, 2023, in the *Houston Chronicle*, a newspaper regularly published and generally circulated in Harris County, Texas, which is the county in which the proposed District is to be located.

9. The notices of the hearing on the application contained the statement, "Each person has a right to appear and present evidence and testify for or against the allegations in the petition, the form of the petition, the necessity and feasibility of the district's project, and the benefits to accrue."

10. Submitted within the petition were notarized affidavits for each of the proposed initial directors, listed as follows and indicating that each meets the qualification requirements of Texas Local Government Code § 375.063:

<u>Two-Year Term</u>	<u>Four-Year Term</u>
Alexandra Gendron	Doug Johnson
Maggie Carpenter	Mark Stewart
	Brett Barnes

Pursuant to Texas Local Government Code § 375.062, Petitioner requests that the Commission divide the initial directors into two groups, with two directors serving two-year terms and three directors serving four-year terms, as indicated above.

11. By Ordinance No. 2022-374, passed and adopted May 18, 2022, the City of Houston has consented to the creation of the District, as required by 30 Texas Administrative Code § 293.11(j)(1)(F).

12. The Executive Director conducted a review of the application and memorialized his findings in a technical memorandum dated March 31, 2023 (Memorandum). The Memorandum is attached as Exhibit "B" and is incorporated as part of this Order.

13. The creation of the District as set out in the Petition is feasible, would be necessary as a means to finance utilities and to provide utility service to future customers, and would be a benefit to the public.

14. The District and its system and subsequent development within the District will not have an unreasonable effect on the following: land elevations; subsidence; groundwater level within the region; recharge capability of a groundwater source; natural run-off rates and drainage; and water quality.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction to consider this Petition and is authorized to make and enter its Findings of Fact, Conclusions of Law, and Orders with respect to the creation of the proposed District.

2. All of the land and property proposed may properly be included within the District.

3. The Petition conforms to the requirement of Texas Local Government Code § 375.022.

4. Proper notice of this application was given pursuant to Texas Local Government Code §§ 375.023 and 375.024.

5. All statutory and regulatory requirement for creation of 290 Betka Municipal Management District No. 1 have been fulfilled in accordance with Chapter 375, Texas Local Government Code and Title 30 Texas Administrative Code § 293.11(j).



NOW THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The Petition for the creation 290 Betka Municipal Management District No. 1 is hereby granted.

2. The District is created under the terms and conditions of Article XVI, § 59, and Article III, §§ 52 and 52(a) of the Texas Constitution, and Chapter 375, Texas Local Government Code, and Chapter 49, Texas Water Code.

3. The District shall have, and shall be subject to, all of the rights, duties, powers, privileges, authority, and functions conferred and imposed by the Commission and the general laws of the State of Texas relating to municipal management districts.

4. The general nature of the work proposed to be done by the District at the present time is to purchase, lease, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for domestic, industrial and commercial purposes; to purchase, lease, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to collect, transport, process, dispose of and control domestic, industrial, and commercial wastes, all as more particularly described in an engineer's report filed simultaneously with the filing of this Petition, to which reference is made for a more detailed description, and such other purchase, design, acquisition, lease, improvement, maintenance, construction, and operation of such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created.

5. The District shall be composed of the area situated within the extraterritorial jurisdiction of the City of Houston, Texas, described by meets and bounds in Exhibit "A" attached hereto and incorporated herein for all purposes.

6. The following five persons with terms, as noted, are hereby named, and appointed as initial directors of the District to serve until their successors are elected or have been appointed in accordance with applicable law:

<u>Two-Year Term</u>	<u>Four-Year Term</u>
Alexandra Gendron	Doug Johnson
Maggie Carpenter	Mark Stewart
	Brett Barnes

7. The foregoing initial directors shall, as soon as practicable after the date of entry of this Order, execute their official bonds and take their official oath of office. All such bonds shall be approved by the Board of Directors of the District and each bond and oath shall be filed with the District and retained in its records.

8. This Order shall in no event be construed as an approval of any proposed agreements or of any particular items in any documents provided in support of the petition for creation, nor as a commitment or requirement of the Commission in the future to approve or disapprove any particular items or agreements in future applications submitted by the District for Commission consideration.

9. This order shall not constitute approval or recognition of the validity of any provision in the City of Houston consent Ordinance No. 2022-374, passed and adopted May 18, 2022, and any other ordinance/resolution incorporated therein by reference to the extent that such provisions exceed the authority granted to the City of Houston, by the laws of the State of Texas.

10. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to all affected persons.

11. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date: (DRAFT)

---

For the Commission

Ex. 2

Petition

**PETITION FOR CREATION OF 290 BETKA  
MUNICIPAL MANAGEMENT DISTRICT NO. 1**

STATE OF TEXAS           §

COUNTY OF HARRIS       §

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The undersigned, 290 Betka, LLC, a Texas limited liability company ("Petitioner"), respectfully petition the Commissioners of the Texas Commission on Environmental Quality (the "Commission") for the creation of a municipal management district in Harris County, Texas. Petitioner holds title to a majority of the assessed value of the real property described in Exhibit "A", attached hereto and incorporated herein for all purposes, as indicated by the appraisal rolls of Harris County, Texas. Petitioner, acting pursuant to the provisions of Chapter 375, Texas Local Government Code and the provisions of Chapter 49 of the Texas Water Code, together with all amendments and additions thereto, and in support thereof would respectfully show the following:

I.

The name of the proposed District shall be 290 BETKA MUNICIPAL MANAGEMENT DISTRICT NO. 1 ("District"). There is no other conservation or reclamation district in Harris County, Texas with the same name.

II.

The District shall be created and organized and shall exist under the terms and provisions of Article XVI, Section 59, and Article III, Sections 52 and 52-a, of the Texas Constitution, Chapter 375, Texas Local Government Code, and Chapter 49, Texas Water Code, together with all amendments and additions thereto.

III.

The District shall have all the rights, powers, privileges, authority, and functions conferred by and be subject to all duties imposed by the Texas Water Code and the general laws relating to municipal management districts.

IV.

The area proposed to be within the District consists of one tract as described by metes and bounds in Exhibit "A", attached hereto and incorporated herein for all purposes ("Property"). The Property described in Exhibit "A" is approximately 265.572 acres, situated in Harris County, Texas. All of the land to be included in the District is within the extraterritorial jurisdiction of the City of Houston, Texas (the "City"). All of the land proposed to be included may properly be included in the District.

V.

The undersigned Petitioner constitutes a majority of value of the holders of title of the land within the proposed District, as indicated by the tax rolls of the central appraisal district of Harris



County, Texas, and by conveyances of record since the date of preparation of said tax rolls. There are no lienholders on the Property.

## VI.

The general nature of the work proposed to be done by the District at the present time is to purchase, lease, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for domestic, industrial and commercial purposes; to purchase, lease, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to collect, transport, process, dispose of and control domestic, industrial, and commercial wastes, all as more particularly described in an engineer's report filed simultaneously with the filing of this Petition, to which reference is made for a more detailed description, and such other purchase, design, acquisition, lease, improvement, maintenance, construction, and operation of such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created.

## VII.

There is a necessity for the improvements above described. The territory to be included in the District is located wholly within the extraterritorial jurisdiction of the City of Houston, Texas, and will be developed for commercial and industrial purposes. There is not available within the area proposed to be included in the District an adequate waterworks system, sanitary sewer system, or drainage and storm sewer system, and the health and welfare of the present and future inhabitants, property owners, and businesses of the District and of the areas adjacent thereto require the purchase, lease, construction, acquisition, maintenance and operation of an adequate waterworks system and sanitary sewer system.

## VIII.

The proposed improvements are feasible and practicable. There is an ample supply of water available, and the terrain of the territory to be included in the proposed District is such that a waterworks system, a sanitary sewer system, and drainage and storm sewer system can be constructed at a reasonable cost.

## IX.

A preliminary investigation has been made to determine the cost of the Project and it is now estimated by the Petitioner, from such information as they have at this time, that the cost of the Project will be \$19,786,340. Construction of these improvements shall be paid by the Developer and purchased by the District through owner finance and the District shall make payments through reasonable debt service assessments on a basis of square foot of land area against all property in the District as allowed by §375.119 of the Texas Local Government Code. The District is not considering issuance of bonds or the levy of taxes at the current time.

## X.

The following five (5) individuals are duly qualified to serve on the governing body of the District and are proposed to be appointed to the initial board of directors of the District:

1. Doug Johnson (four-year term)
2. Mark Stewart (four-year term)
3. Brett Barnes(four-year term)
4. Alexandra Gendron (two-year term)
5. Maggie Carpenter (two-year term)

A description of each individual's experience is attached hereto as Exhibit "B". Pursuant to Chapter 375.062, Texas Local Government Code, the Petitioner requests that the Commission divide the initial directors into two groups, with two directors serving two-year terms and three directors serving four-year terms, as described above.

## XI.

The City of Houston, Texas ("City"), has heretofore granted consent and support of the District, in accordance with the City's policy for giving such consent, and has consented to the creation of the District over the Property. A copy of the City's consent is attached hereto as Exhibit "C".

The Petitioner respectfully prays that this petition be properly filed, as provided by law; that all interested persons be notified of the procedures for requesting a public hearing on this petition as required by 30 Tex. Admin. Code §293.12; that this petition be set for consideration at a date to be fixed in keeping with the provision of Chapter 375, Texas Local Government Code, and Chapter 49, Texas Water Code, and the rules of the TCEQ; that, if necessary, a hearing be held and notice thereof be given as provided in Chapter 375, Texas Local Government Code, and Chapter 49, Texas Water Code, and the rules of the TCEQ; that this petition be in all things granted; that the District be created and five directors thereof appointed to serve until their successors are duly elected and qualified; and that such other orders, acts, procedure and relief be granted as are proper and necessary and appropriate to the creation and organization of the District, as the TCEQ shall deem proper and necessary.

[Execution page follows.]

RESPECTFULLY SUBMITTED on this the 28<sup>th</sup> day of September, 2022.

290 BETKA, LLC,  
a Texas limited liability company

By: STEWART BETKA 290, LLC,  
Member

By: Mark A. Stewart  
Mark A. Stewart, Manager

THE STATE OF TEXAS

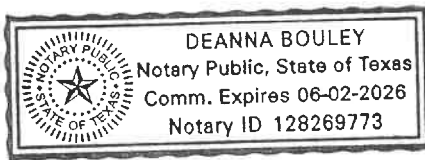
§

§

COUNTY OF HARRIS

§

This instrument was acknowledged before me on the 28<sup>th</sup> day of September, 2022, by Mark Stewart, as Manager of 290 Betka, LLC, a Texas limited liability company, on behalf of said company.



Deanna Bouley  
NOTARY PUBLIC, STATE OF TEXAS

**Attachments:**

Exhibit A - Description of the Property

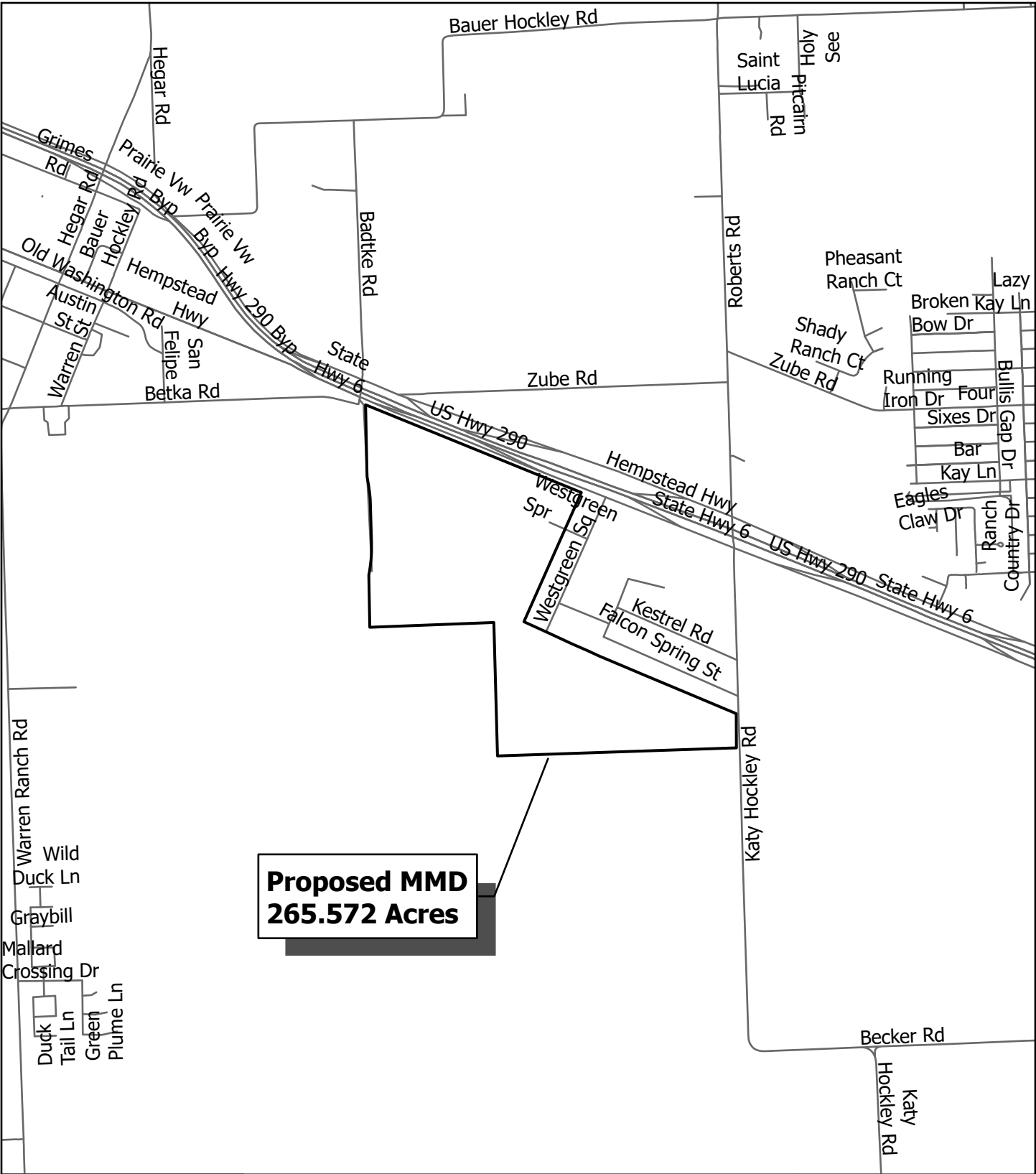
Exhibit B - Description of Directors' Experience

Exhibit C - City of Houston Ordinance Consenting to Creation of District

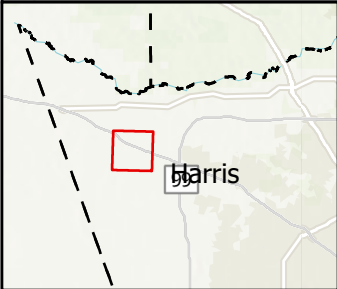
Ex. 3      Vicinity Map



EXHIBIT "A"



**Proposed MMD  
265.572 Acres**



**HOCKLEY 290 BETKA MUNICIPAL  
MANAGEMENT DISTRICT NO. 1**



Proposed District  
Boundary CRT



Roads



County



Coordinate System: NAD 1983 StatePlane Texas South Central FIPS 4204 Feet

N



0 1,000 2,000 Feet

0 375 750 Meters

Ex. 4      Proof of ownership



# Harris Central Appraisal District

13013 Northwest Freeway  
Houston TX 77040  
Telephone: (713) 812-5800

P.O. Box 920975  
Houston TX 77292-0975  
Information Center: (713) 957-7800



## Jurisdiction Communications Division

November 15, 2022

Earl & Associates  
Attorneys at Law  
10007 Huebner Road, Ste., 303  
San Antonio TX 78240

Re: Certificate(s) of Ownership  
290 Betka Municipal Management District 1

### Board of Directors

Mike Sullivan, Chairman  
Martina Lemond Dixon, Secretary  
Al Odom, Assistant Secretary  
Ann Harris Bennett, Director  
Tax Assessor-Collector, Ex-Officio Director  
Jim Robinson, Director  
Jonathan Cowen, Director  
Kathy Blueford-Daniels, Director

### Chief Appraiser

Roland Altinger  
Deputy Chief Appraiser  
Jason Cunningham  
Taxpayer Liaison Officer  
Teresa S. Terry

In accordance with Section 49.184 subsection (f) of the Water Code, Harris Central Appraisal District is enclosing the following information:

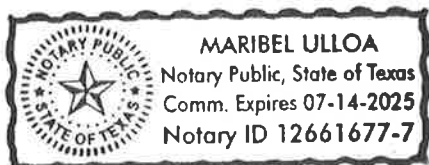
1. A copy of the metes and bounds of the proposed creation of 265.572 acres of land in 290 Betka Municipal Management District 1 that were verified by appraisal district facet maps.
2. A copy of a boundary map of the proposed creation of 265.572 of land in 290 Betka Municipal Management District 1.
3. One (1) certified copies of each account as identified by the metes and bounds received on November 11, 2022. This is the current ownership information shown on the 2022 appraisal roll.


The information attached is correct to the best of our knowledge.

Roland Altinger, CAE, RPA, CTA  
Chief Appraiser  
Harris Central Appraisal District

By   
Celeste Kelly  
Director of Jurisdiction Communications

Sworn to and subscribed before me, a Notary Public on this the 15<sup>th</sup> day of November, 2022.



  
MARIBEL ULLOA  
Notary Public in and for Harris County  
State of Texas

My Commission Expires 07-14-2025

CERTIFICATE OF OWNERSHIP

THE STATE OF TEXAS


COUNTY OF HARRIS

I, the undersigned, hereby certify that I have examined the tax rolls of Harris County, Texas, and find that the property described in the attached two- page property description, is assessed on the tax rolls of Harris County, Texas, for the tax year 2022 in the name(s) of:

290 BETKA LLC, ACCOUNT # 0440040000063.

CERTIFIED this the 15<sup>th</sup> day of November, 2022.

HARRIS CENTRAL APPRAISAL DISTRICT

By   
Name: Celeste Kelly  
Title: Director of Jurisdiction Communications



Owner Names (1)

#	Owner Name	% Own	M	Role
1	290 BETKA LLC	100.00%	N	O

Owner Address: CASS Centry Undeliverable  
Address: 18575 VILLAGE DR  
City: HOUSTON State: TX Zip: 77040-1124  
Country: New Own. Date: 12/21/2020

Legal Lines (2)

#	Legal Description
1	TRIS 1 & 1A
2	ABST 578 M MERRITT

Site Address: 26103 BETKA RD, HOCKLEY 77447  
AKA:  
Mail To:

State Class: Real, Qualified Agricultural Land Prior Account #:  
Jurisdictions: WBE 003 040 678 Prior State Class:  
Facet Map: 4267B Year Created: 1990  
Acreage: 265.4100 Year Improved:  
Account Type: N Normal Year Split:  
Exemption Codes: Penalty Type:

Center Code: AG Zone: 4016  
Market Area 1: 4016 F2  
Market Area 2: 210 IS  
Economic Area: <None>  
Economic Bldg Class: <None>

Heating Center: AG  
Omitted Flag:

Certification

Jurisdiction	Release Date	Roll Type	Roll Date	Roll ID
040 - HARRIS COUNTY	08/19/2022	Certified	08/19/2022	20220819

Market Value: \$3,587,275 Appraised Value: \$18,579 Exemption Total: \$0 Taxable Value: \$18,579

Owner's Opinion of Value: \$0.00 Expected Value: \$0.00

Noticing

Notice Date:	Noticed Market Value:	Noticed Appraised Value:	Early Protest Deadline:	Protest Deadline:	Batch ID:	Batch Seq Number:
04/29/2022	\$3,587,275	\$18,579	05/31/2022	2022000122	75	

Alt Cost Summary

Primary Method: Certified

Land: \$18,579 (Ag)  
Building: \$0  
XF0B: \$0  
New Construction: \$0  
Total Market: \$18,579  
Cap Reduction: \$0  
Total Appraised: \$18,579

Notice: ☒ Certified Appraised

**EXHIBIT A –  
Description of the Property**

**Exhibit A**

**Legal Description of Land**

**METES AND BOUNDS DESCRIPTION  
265.572 ACRES (11,568,308 SQUARE FEET)  
MOSES MERRITT SURVEY, ABSTRACT NUMBER 578  
HARRIS COUNTY, TEXAS**

Being a tract or parcel containing 265.572 acres (11,568,308 square feet) of land situated in the Moses Merritt Survey, Abstract Number 578, Harris County, Texas, and being out of and a portion of the called 265.6310 acre tract as described in the deed to McAlister Opportunity Fund 2012, LP, recorded under Harris County Clerk's File Number 20130588048; said 265.572 acre tract being more particularly described by metes and bounds as follows (bearings stated herein are based on the Texas State Plane Coordinate System, South Central Zone);

BEGINNING at an Axle found in the south right-of-way line of the Southern Pacific Railroad (100 feet wide) marking the northeast corner of said called 265.6310 acre tract common with the northwest corner of the called 2.18 acre tract as described in the deed recorded under Harris County Clerk's File Number 20090473189 and the northeast corner of the herein described tract;

THENCE, South 24°01'08" West, along the northwest lines of those certain tracts of land as described in the deeds recorded under Harris County Clerk's File Numbers 20090473189, 20110004917, X570652, 20060027934, 20130140909, Z166989, 20090266422, H786791, 20120203875, 2017376459, 20060028695, Z308949, J509863, 20090208832, 20130181372, Z333393, 2016223747, and 20130062391 a distance of 2,046.25 feet (called 2,045.87 feet) to a 5/8-inch iron rod found marking an angle corner of the aforesaid called 265.6310 acre tract, common with an angle corner of the herein described tract;

THENCE, South 65°43'52" East, along the southwest lines of those certain tracts of land as described in the deeds recorded under Harris County Clerk's File Numbers 20130062391, H786791, and W949018 a distance of 737.40 feet to a 5/8-inch iron rod with plastic cap stamped "TERRA SURVEYING" set marking an angle corner of the herein described tract;

THENCE, South 66°31'25" East, along the southwest lines of those certain tracts of land as described in the deeds recorded under Harris County Clerk's File Numbers 20120065537, 20130124992, V787189, 20150062006, V618847, 20060252010, W606386, W645670, Y608824, 20180182619, 20120108194, 2013017028, 20140141172, Y968323, 20110237611, H789678, W645670, Z166992, Lot 11-Block 1 (no recording info), and X805306 a distance of 2,615.65 feet (called 2615.71 feet) to an angle corner of the herein described tract in the west right-of-way line of Katy Hockley Road (60 feet wide public right-of-way), from which a found 5/8-inch iron rod bears North 01°41'21" West, 31.92, and a 3/4-inch iron pipe found in a tree bears South 34°30' East, 3.4 feet;

THENCE, South 01°41'21" East (called South 01°44'50" East), along said west right-of-way line, a distance of 465.14 feet (called 464.36 feet) to a 5/8-inch iron rod found marking the northeast corner of Tract 2 as described in the deed recorded under Harris County Clerk's File Number 2017245402 and the southeast corner of the herein described tract, from which a found 3/4-inch iron rod marking the southeast corner of said Tract 2 bears South 01°41'21" East, 1,702.17 feet;

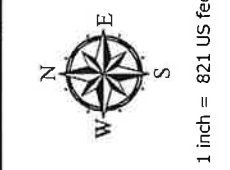
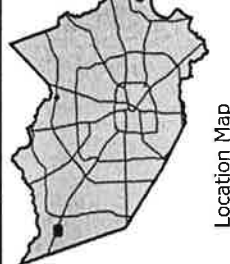
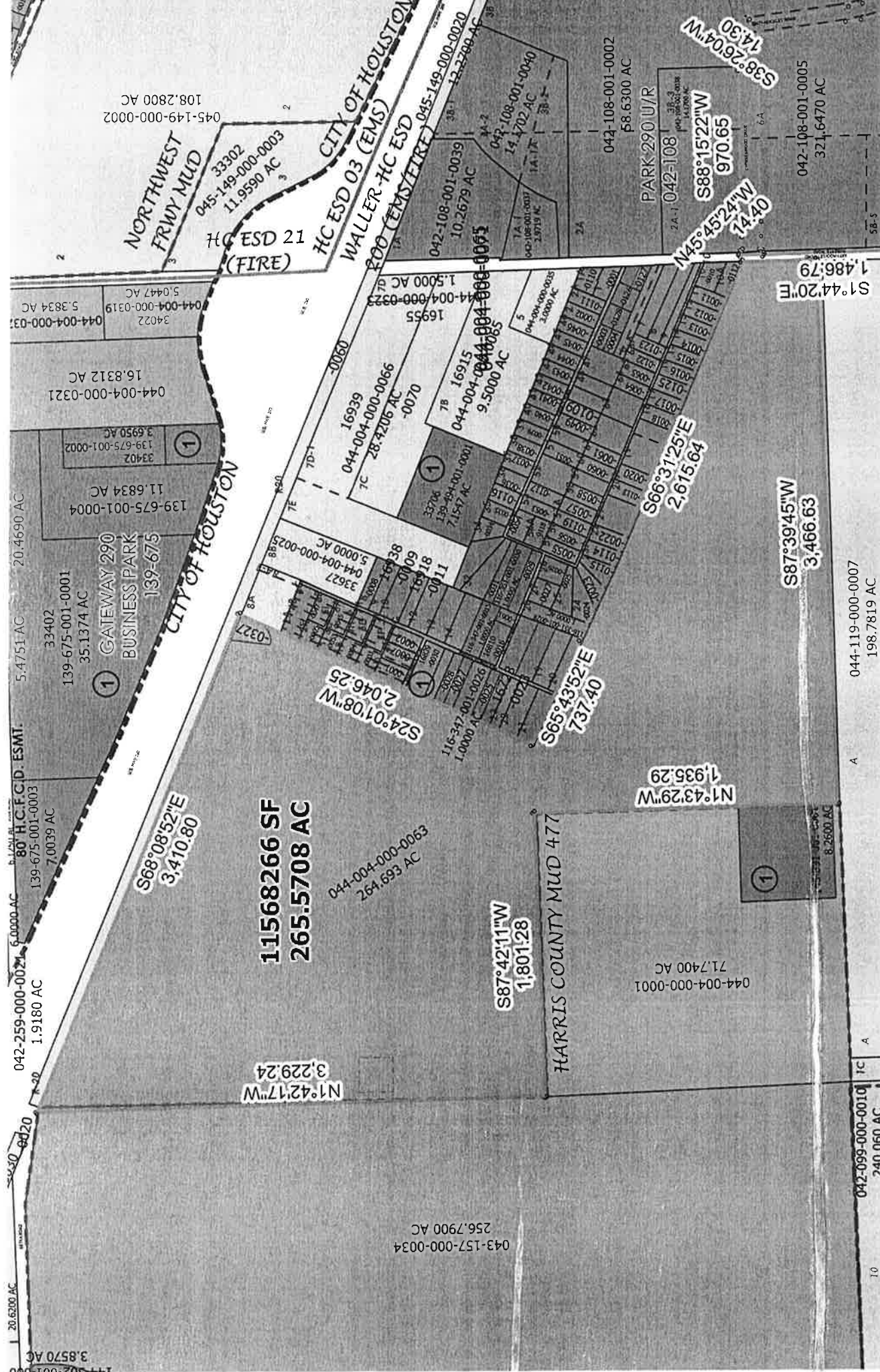
THENCE, South 87°39'45" West (called South 87°39'14" West), along the north line of said Tract 2, a distance of 3,466.64 feet (called 3,467.87 feet) to a 1/2-inch iron rod found marking an angle corner of Tract 1 as described in the deed recorded under Harris County Clerk's File Number 2017245403 common with an angle corner of the herein described tract;

THENCE, North 01°43'29" West (called North 01°42'22" West), along the east line of said Tract 1, a distance of 1,935.29 feet (called 1934.77 feet) to a 1/2-inch iron rod with plastic cap stamped "RPLS 2085" found marking an angle corner of said Tract 1 common with an angle corner of the herein described tract;

THENCE, South 87°42'11" West (called South 87°41'12" West), along the northerly line of said Tract 1, a distance of 1,801.28 feet (called 1,803.41 feet) to a 1/2-inch iron rod with plastic cap stamped "RPLS 2085" found marking an angle corner of Tract 1 common with the southwest corner of the herein described tract, from which a found 1/2-inch capped iron rod bears South 85°27' West, 2.6 feet, and a found 5/8-inch iron rod bears South 01°42'17" East, 1,935.09 feet;

THENCE, North 01°42'17" West (called North 01°40'04" West), along the east line of said Tract 1 and thence along the west right-of-way line of Betka Road (non-standard width varies), a distance of 3,229.25 feet (called 3,229.72 feet) to a 5/8-inch iron rod with plastic cap stamped "TERRA SURVEYING" set marking in the aforesaid south right-of-way line of the Southern Pacific Railroad, from which a found pinch top 1-inch iron pipe bears North 68°09' West, 5.6 feet;

THENCE, South 68°08'52" East, along said south right-of-way line a distance of 3,410.81 feet (called 3,410.73 feet) to the POINT OF BEGINNING and containing 265.572 acres (11,568,308 square feet) of land. This description is based on the ALTA/NSPS Land Survey prepared by Terra Surveying Company, Inc., dated September 09, 2019, TSC Project Number 2539-1802-S.



- Parcel
- Subdivision
- Condominium
- Boundary
- ROW Easement
- Construction Parcel
- Construction Line
- Public Right Of Way
- ROW Easement

**SKETCH MAP**  
290 BETKA MUNICIPAL MANAGEMENT  
DISTRICT NO 1  
( 0440400000063 AND -0327 )  
265.572 AC

Harris Central Appraisal District  
13013 Northwest Fwy  
Houston, TX 77040 - 6305  
<https://www.hcad.org>  
User: hmcDonald Date: 11/11/2022



Ex. 5            Technical memo prepared by staff

# Texas Commission on Environmental Quality

## TECHNICAL MEMORANDUM

**To:** Justin P. Taack, Manager  
Districts Section

**Date:** March 31, 2023

**Thru:** Andrew Paynter, Technical Specialist  
Districts Section

**From:** James Walker  
Districts Creation Review Team

**Subject:** Docket No. 2023-0861-DIS; Petition by 290 Betka, LLC for the Creation of 290 Betka Municipal Management District No. 1; Pursuant to Chapter 375, Texas Local Government Code and Chapter 49, Texas Water Code.  
TCEQ Internal Control No. D-11212022-033 (TC)  
CN: 606137214 RN: 111609301

### **A. GENERAL INFORMATION**

The Texas Commission on Environmental Quality (TCEQ) received a petition within the application requesting approval for the creation of Betka Municipal Management District No. 1 (District) of Harris County. The petition was signed by Mark A. Stewart, as the manager of Stewart Betka 290, LLC, member of 290 Betka, LLC, a Texas limited liability company (Petitioner). In compliance with 30 Texas Administrative Code (30 TAC) Section 293.11(j)(1), the petition states that the Petitioner constitutes a majority of the value of the holders of title of the land within the proposed District, as indicated by the tax rolls of Harris Central Appraisal District. There are no lienholders on the property to be included in the proposed District.

The District is proposed to be created and organized according to the terms and provisions of Article XVI, Section 59, and Article III, Sections 52 and 52(a) of the Texas Constitution, and Chapter 375, Texas Local Government Code (TLGC), and Chapter 49, Texas Water Code (TWC).

### **Location and Access**

The proposed District is located in Harris County, Texas. The proposed District includes one tract of land that totals 265.572 acres. The proposed district is located adjacent to and southwest of the intersection of Betka Road and Highway 290. The proposed District is located within the extraterritorial jurisdiction of the City of Houston, Texas. Access to the proposed District will be provided by Betka Road adjacent to the intersection of Betka Road and Highway 290.

### **Metes and Bounds Description**

The proposed District contains one tract of land totaling 265.572 acres. The metes and bounds description of the proposed District has been checked by TCEQ staff and has been found to form an acceptable closure.

### City Consent

By Ordinance No. 2022-374, passed and adopted May 18, 2022, the City granted its consent to the petition for creation of the proposed District. Accordingly, the requirement of 30 TAC Section 293.11(j)(1)(F) has been satisfied.

### Statements of Filing Petition

Evidence of filing the petition with the City Secretary's office, Harris County, the TCEQ's Houston regional office, the Texas State Representative, and the Texas State Senator was included in the application.

### Notice Requirements

Proper notice of the application was published on August 2 and August 9, 2023, in the *Houston Chronicle*, a newspaper regularly published or circulated in Harris County, the county in which the District is proposed to be located. Accordingly, the notice requirements of 30 TAC Section 293.12(g) have been satisfied.

### Type of Project

The proposed District will be considered a "developer project" as defined by 30 TAC Section 293.44(a). Therefore, developer cost participation in accordance with 30 TAC Section 293.47 will be required.

### Developer Qualifications

Application material indicates that 290 Betka, LLC is a single-purpose entity created to develop land in the proposed District. 290 Betka, LLC is comprised of four entities, as shown in the Amended and Restated Limited Liability Company Agreement. These entities and the individuals behind them have development and construction experience. Such individuals include Mark Stewart, Doug Johnson, and Brett Barnes. Mark Stewart and his brothers have formed and managed eight companies, each focused on individual sections of the construction market, from landscaping to development, over the last 30 years. Doug Johnson founded Texas Commercial Development in August 2017 and partnered with established national developers on five business parks to develop over 9.12 million square feet of quality logistics and manufacturing space. Brett Barnes started to work with the Stewart family to grow a design-build and development division within the Stewart Companies. Brett Barnes brings over 15 years of experience to the team, where his role is to lead all aspects of the division under the direct supervision of Mark Stewart.

### Appraisal District Certificate

By certificate dated November 15, 2022, the Harris Central Appraisal District has certified that the appraisal roll indicates that the Petitioner represents the majority of value of the property in the proposed District.

### Initial Director Affidavits

The TCEQ has received affidavits for consideration of the appointment of initial directors for the following:

Two-Year Term  
Alexandra Gendron  
Maggie Carpenter

Four-Year Term  
Doug Johnson  
Mark Stewart

Brett Barnes

Submitted within the application were notarized affidavits for each of the proposed initial directors, indicating that each meets the qualification requirements of Texas Local Government Code Section 375.063.

Pursuant to Texas Local Government Code Section 375.062, the Petitioner requests that the TCEQ divide the initial directors into two groups, with two directors serving two-year terms and three directors serving four-year terms, as indicated above.

## **B. ENGINEERING ANALYSIS**

### **Availability of Comparable Service**

The proposed District is within the extraterritorial jurisdiction of the City of Houston. According to the information provided, the proposed District is intended to serve approximately 265.572 acres of industrial park development. It is anticipated that the Developer will construct the water and sanitary sewer infrastructure for the entire development, and the proposed District will purchase such improvements through owner finance. All systems and facilities will be designed according to applicable criteria established by Harris County, the TCEQ, and all other applicable laws and regulations.

### **Water Supply and Distribution**

The Developer will construct and sell to the District a ground water treatment plant consisting of two ground water wells capable of producing 250 gallons per minute each, one 165,464-gallon bolted steel ground storage tank, three 30-hp service pumps, two 8,000-gallon hydropneumatics tanks, and a liquid chlorine chemical disinfectant system. All proposed facilities and equipment are designed in accordance with all applicable TCEQ rules and regulations per 30 TAC Chapter 290. It is expected that the ground water treatment plant will deliver the necessary supply of water to the proposed District. The water distribution system for the full development will receive water from the ground water treatment plant and will consist of approximately 6,000 linear feet (LF) of 6-inch and 650 LF of 8-inch diameter water lines and various fittings, valves, and appurtenances as needed.



### Wastewater Treatment and Collection

The proposed District will provide wastewater service to the development located within its boundary through a proposed activated sludge treatment facility that will be constructed in four phases. The plant is designed to treat an average daily flow of 0.06 million gallons per day (MGD) upon completion of Phase 1, 0.12 MGD for Phase 2, 0.18 MGD for Phase 3, and 0.24 MGD for Phase 4 or ultimate buildout with a 2-hour peaking factor of 4 times average daily flow. The construction of each subsequent phase will begin once the actual wastewater produced by the development exceeds 70% of the current phase's allowable daily discharge. The system is currently authorized to discharge the treated effluent water from the plant under the approved Texas Pollutant Discharge Elimination System permit number WQ0015879001. The wastewater collection system will consist of approximately 5,000 linear feet of 8-inch diameter gravity lines, manholes, and lift station(s).

### Storm Water Drainage System and Drainage Improvements

The stormwater from the proposed District will be collected in private storm inlets and pipes and conveyed into a private detention pond system. The ponds will outfall into a tributary of Harris County Flood Control Channel, a tributary to Cypress Creek. The design and construction of these facilities will be in conformance with the Harris County Flood Control drainage criteria. The proposed District improvements are expected to have no unreasonable effect on natural runoff rates or drainage.

### Topography/Land Elevation

The proposed District's existing elevations range from approximately 213 feet above mean sea level to 211 feet above mean sea level. The natural topography drains from north to south, into and through the neighboring tracts to the south. The fill and/or excavation associated with the development of the District's systems will not cause any changes in land elevation other than that normally associated with the construction of the underground utility systems.

### Floodplain

According to the Federal Emergency Management Agency Flood Insurance Rate Map (FIRM) No. 48201C0190L effective June 18, 2007, none of the areas within the district is in the 100-year floodplain.

### Subsidence

The proposed District is located within the Harris-Galveston Subsidence District's regulatory boundaries meaning that the proposed groundwater wells will be permitted, approved, and allotted a specified amount of groundwater to be produced annually by the water wells. Because of this, there should be no substantial effect on local subsidence within the proposed District's boundary.

### Dam Safety Analysis

The TCEQ Dam Safety Program personnel reviewed the location of the proposed District and confirmed by letter dated November 3, 2022, that there are no dam safety issues associated with the proposed District.

Groundwater Level/Recharge

The proposed District improvements are expected to have no unreasonable effect on groundwater levels. The proposed District improvements are expected to have no unreasonable effect on the recharge capabilities of the groundwater source.

Water Quality

The proposed District improvements are expected to have no unreasonable effect on water quality.

**C. SUMMARY OF COSTS**

**WATER, WASTEWATER, AND DRAINAGE**

<u>Construction Costs</u>	District's <sup>(1)</sup> <u>Share</u>
A. Water Plant	\$ 4,839,905
B. Wastewater Treatment Plant & Lift Station	5,333,168
C. Water and Wastewater Distribution	2,849,726
D. Engineering	<u>781,368</u>
TOTAL CONSTRUCTION COSTS	\$ 13,804,167
 <u>Non-construction Costs</u>	
A. Legal Fees	\$ 913,645
B. Fiscal Agent Fees	304,548
C. Interest	4,623,981
D. Creation Costs	<u>139,999</u>
TOTAL NON-CONSTRUCTION COSTS	\$ 5,982,173
 TOTAL W, WW, & D ESTIMATED COSTS	 \$ 19,786,340

Notes:

(1) Assumes 100% funding of anticipated developer contribution items, where applicable.

**D. ECONOMIC ANALYSIS**

Land Use

The land use for the proposed District is projected in the following table:

<u>Development</u>	<u>Acres</u>
Industrial Lots - Phase 1	118.9
Industrial Lots - Phase 2	70.6
Open Space	61.0
Private Roads	<u>9.9</u>
Total	260.4

### Market Study

A market study prepared on October 24, 2022, by Earl Development Consulting, LLC, has been submitted in support of the creation of the proposed District. The Subject, a planned contiguous 265.572-acre Class-A Industrial Park is in the path of growth along Texas State Highway 290 Northwest of Houston, Texas. The proposed District consists of five industrial warehouse buildings consisting of 3,661,295 square feet with 1,824 parking spaces for automobiles, 921 parking spaces for trailers, and planned extension of 400 parking spaces.

### Project Financing

The proposed District intends to levy assessments in accordance with Local Government Code Chapter 375 Subchapter F.

### Water and Wastewater Rates

According to information provided, the District will provide retail water and wastewater services to the proposed District's customers. The estimated monthly fee for 10,000 gallons of water and wastewater would be \$113.50.

## **E. SPECIAL CONSIDERATIONS**

### 1. Hearing Action

Pursuant to Texas Local Government Code Section 375.023, the TCEQ shall conduct a hearing to consider the petition received requesting the creation of a municipal management district and its necessity, the feasibility of the proposed District's projects, and the benefit it represents for the land within its boundary.

### 2. Powers of Municipal Management Districts

Municipal management districts have the general powers granted to conservation and reclamation districts pursuant to Article XVI, Section 59 of the Texas Constitution, including those conferred by Chapter 49, Texas Water Code. Pursuant to Article III, Sections 52 and 52(a) of the Texas Constitution municipal management districts also have the powers and authorities granted to road utility districts which includes the power to levy ad valorem taxes for construction and maintenance of roads, and for the provision of mass transit services. Municipal management districts may borrow money, purchase, or lease property, enter into agreements for joint use of facilities, establish fees for use of district facilities or property, pursue grants from government or private entities, among other things. Municipal management districts do not have the power of eminent domain.

A municipal management district may levy assessments to finance improvements or services.

## **F. CONCLUSIONS**

1. Based on TCEQ policy, compliance with TCEQ rules, and review of the engineering report and supporting documents, the proposed District is considered feasible, would be necessary as a means to finance utilities and to provide utility service to future customers, and would be a benefit to the public.
2. Based on a review of the preliminary engineering report and market study, the proposed District is considered feasible.

3. The recommendations are made under authority delegated by the Executive Director of the TCEQ.

**G. RECOMMENDATIONS**

1. Grant the petition for creation of 290 Betka Municipal Management District No. 1.
2. Appoint the following to serve as initial directors, with terms as noted, until permanent directors are elected and qualified:

<u>Two-Year Term</u>	<u>Four-Year Term</u>
Alexandra Gendron	Doug Johnson
Maggie Carpenter	Mark Stewart
	Brett Barnes

3. The order granting the petition should include the following statements:

“This Order shall in no event be construed as an approval of any proposed agreements or of any particular items in any documents provided in support of the petition for creation, nor as a commitment or requirement of the TCEQ in the future to approve or disapprove any particular items or agreements in future applications submitted by the District for TCEQ consideration.”

“This order shall not constitute approval or recognition of the validity of any provision in the City of Houston consent Ordinance No. 2022-374, passed and adopted May 18, 2022, and any other ordinance/resolution incorporated therein by reference to the extent that such provisions exceed the authority granted to the City of Houston, by the laws of the State of Texas.”

**H. ADDITIONAL INFORMATION**

The petitioner’s professional representatives are:

Attorney: Mr. Jeffrey Earl – Earl & Associates, PC

Engineer: Mr. Jerry G. Ince, P.E. – Ward, Getz & Associates

Ex. 6      City Consent Resolution



City of Houston, Texas, Ordinance No. 2022 - 374

**AN ORDINANCE CONSENTING TO THE CREATION OF 290 BETKA MUNICIPAL MANAGEMENT DISTRICT No. 1, AND INCLUSION OF 265.572 ACRES OF LAND INTO THE DISTRICT; MAKING FINDINGS AND CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; AND DECLARING AN EMERGENCY.**

\* \* \* \* \*

**WHEREAS**, 290 Betka, LLC, a Texas limited liability company ("Petitioner"), owner of the land hereunder described, has submitted a petition (Petition") to the City of Houston, Texas ("City") requesting the City's consent to the creation of 290 Betka Municipal Management District 1 (the "District"), containing 265.572 acres of land, consisting of one (1) tract, and within the City's extraterritorial jurisdiction ("ETJ");

**WHEREAS**, the District will be created and organized under the terms and provisions of Article XVI, Section 59, and Article III, Sections 52 and 52a, of the Texas Constitution, Chapter 375 of the Texas Local Government Code, and Chapter 49, of the Texas Water Code, as amended; and

**WHEREAS**, City Ordinance No. 2006-160, passed and adopted by the City Council on February 21, 2006, sets forth conditions for the creation or inclusion of land within a conservation and reclamation district in the City's ETJ, and permitting such district to issue bonds for certain recreations, road, and fire-fighting facilities; and

**WHEREAS**, the District is located in Harris Country, Texas ("County"), and one or more drainage plans for grading, fill, construction of buildings or infrastructure with the proposed area of the District, will be required to be submitted to, and approved by, the County; and

**WHEREAS**, components of the drainage plan may include a variety of engineering

solutions to manage and mitigate flooding based on the County's floodplain management rules and regulations; **NOW, THEREFORE,**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** That the findings and recitals contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

**Section 2.** That attached to this ordinance as Exhibit "A" and made a part hereof is the Petition requesting the consent of the City to the creation of the District, containing 265.572 acres of land, described in the Petition, and within the City's ETJ. The Petition is hereby granted, subject to the terms and conditions set forth in Exhibit "B" to this Ordinance.

**Section 3.** That the City Council further hereby notifies the District, its resident and property owners of the provisions of applicable law allowing the City to create a district and annex land of the district located within the City's ETJ including, without limitation, the creation of this District and annexation of the land authorized to be included in this District. The City requests that the District include a statement in its form required under § 49.455, Texas Water Code, reflecting such creation and annexation by the City.

**Section 4.** That a public emergency exists requiring that this ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this ordinance shall take effect immediately upon its passage and approval by the Mayor; provided, however that if the Mayor fails to sign this ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 18th day of May, 2022.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is MAY 24 2022.

AT Daniel  
City Secretary

for Prepared by Legal Dept.  
KM/llm 5/11/22

Requested by Margaret Wallace Brown, Director  
Planning and Development Department  
L.D. File No. 0612200154001

[Signature]  
Senior Assistant City Attorney

Meeting 5/18/2022

Aye	No	
✓		<b>Mayor Turner</b>
....	....	<b>Council Members</b>
✓		Peck
✓		Jackson
✓		Kamin
✓		Evans-Shabazz
✓		Martin
✓		Thomas
✓		Huffman
Absent on personal business		Cisneros
✓		Gallegos
✓		Pollard
✓		Castex-Tatum
✓		Knox
✓		Robinson
✓		Kubosh
✓		Plummer
✓		Alcorn
Caption	Adopted	

Captions Published in DAILY COURT REVIEW

Date: 5/24/2022

PETITION FOR CONSENT TO  
THE CREATION OF A MUNICIPAL MANAGEMENT DISTRICT

THE STATE OF TEXAS	§
	§
COUNTY OF HARRIS	§

TO THE HONORABLE MAYOR AND CITY  
COUNCIL OF THE CITY OF HOUSTON TEXAS:

The undersigned, 290 BETKA, LLC, a Texas limited liability company ("Petitioner"), respectfully petition the City of Houston, Texas for its consent and support of the creation of 290 BETKA MUNICIPAL MANAGEMENT DISTRICT NO. 1 ("Proposed District"). In support of this Petition, the Petitioner would show the following:

I.

The land sought to be included in the Proposed District (the "Tract") is described by metes and bounds in Exhibit "A", attached hereto and made apart hereof for all purposes.

II.

The Tract is located wholly within Harris County, Texas and not within the boundaries of any incorporated city or town. The Tract lies wholly within the exclusive extraterritorial jurisdiction of the City of Houston, Texas, as such term is determined by Chapter 42 V.T.C.A. Local Government Code.

III.

Petitioner is the holder of title to the Tract as shown by the Harris County Tax Rolls and conveyance of record.

IV.

There are no tenants on the Tract, and no one is residing on the Tract.

V.

The Petitioner seeks to petition the Texas Commission on Environmental Quality to create and organize the Proposed District organized and authorized under the terms and provisions of Article XVI, Section 59, and Article III, Sections 52 and 52-a, of the Texas Constitution, Chapter 375, Texas Local Government Code, and Chapter 49, Texas Water Code, together with all amendments and additions thereto.



VI.

The general nature of work to be done by and within the Proposed District at the present time is the purchase, construction, maintenance and operation of a waterworks system for providing retail water service to a Class A industrial park; the purchase, construction, maintenance and operation of a sanitary sewer collection system and sewage disposal plant for providing retail wastewater service to a Class A industrial park; the control, abatement and amendment of the harmful excess of waters and the reclamation and drainage of overflowed lands within the Proposed District and the purchase, construction, installation, maintenance and operation of such additional facilities, systems, plants and enterprises as shall be consonant with the purposes for which the Proposed District will be organized.

VII.

There is a necessity for the improvements above described as the Tract is located within an area that is experiencing substantial and sustained growth and is not supplied with adequate water, sanitary sewer, and other services. The purchase, construction, extension, improvement, maintenance and operation of such waterworks, sanitary sewer, and other services will conserve and preserve the natural resources of this State by promoting and protecting the purity and sanitary condition of the State's waters and will promote and protect the public health and welfare of the community; therefore, a public necessity exists for the City's consent and support of the creation of the Proposed District.

VIII.

Said improvements are practicable and feasible, in that the terrain of the Tract is of such a nature that a waterworks, sanitary sewer, and other improvements can be constructed or purchased at a reasonable cost; and said land will be rapidly developed for industrial purposes.

IX.

The Proposed District and Petitioner at the present time do not anticipate issuing bonds for the construction or purchase of said improvements.

WHEREFORE, the undersigned respectfully pray that this Petition be granted in all respects and that the City Council of the City of Houston, Texas, adopt a resolution giving its written support for the Proposed District to be created by the Texas Commission on Environmental Quality.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

RESPECTFULLY SUBMITTED THIS 3<sup>rd</sup> DAY OF MAY, 2022.

"PETITIONER"

290 BETKA LLC, a Texas limited liability company

By: Mark A. Stewart

Name: Mark Stewart

Title: Manager

ADDRESS:

c/o Earl & Associates, P.C.

10007 Huebner Road, Suite 303

San Antonio, Texas 78240

THE STATE OF TEXAS

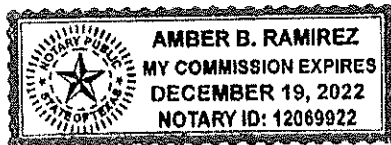
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§

COUNTY OF HARRIS

§

This instrument was acknowledged before me on the 3<sup>rd</sup> day of May, 2022, by Mark Stewart, as Manager of 290 Betka, LLC, a Texas limited liability company, on behalf of said company



Amber B. Ramirez  
NOTARY PUBLIC, STATE OF TEXAS

**Exhibit "A" to Ordinance**

Petition

## **Exhibit A**

### **Legal Description of Land**

**METES AND BOUNDS DESCRIPTION  
265.572 ACRES (11,568,308 SQUARE FEET)  
MOSES MERRITT SURVEY, ABSTRACT NUMBER 578  
HARRIS COUNTY, TEXAS**

Being a tract or parcel containing 265.572 acres (11,568,308 square feet) of land situated in the Moses Merritt Survey, Abstract Number 578, Harris County, Texas, and being out of and a portion of the called 265.6310 acre tract as described in the deed to McAlister Opportunity Fund 2012, LP, recorded under Harris County Clerk's File Number 20130588048; said 265.572 acre tract being more particularly described by metes and bounds as follows (bearings stated herein are based on the Texas State Plane Coordinate System, South Central Zone);

BEGINNING at an Axle found in the south right-of-way line of the Southern Pacific Railroad (100 feet wide) marking the northeast corner of said called 265.6310 acre tract common with the northwest corner of the called 2.18 acre tract as described in the deed recorded under Harris County Clerk's File Number 20090473189 and the northeast corner of the herein described tract;

THENCE, South 24°01'08" West, along the northwest lines of those certain tracts of land as described in the deeds recorded under Harris County Clerk's File Numbers 20090473189, 20110004917, X570652, 20060027934, 20130140909, Z166989, 20090266422, H786791, 20120203875, 2017376459, 20060028695, Z308949, J509863, 20090208832, 20130181372, Z333393, 2016223747, and 20130062391 a distance of 2,046.25 feet (called 2,045.87 feet) to a 5/8-inch iron rod found marking an angle corner of the aforesaid called 265.6310 acre tract, common with an angle corner of the herein described tract;

THENCE, South 65°43'52" East, along the southwest lines of those certain tracts of land as described in the deeds recorded under Harris County Clerk's File Numbers 20130062391, H786791, and W949018 a distance of 737.40 feet to a 5/8-inch iron rod with plastic cap stamped "TERRA SURVEYING" set marking an angle corner of the herein described tract;

THENCE, South 66°31'25" East, along the southwest lines of those certain tracts of land as described in the deeds recorded under Harris County Clerk's File Numbers 20120065537, 20130124992, V787189, 20150062006, V618847, 20060252010, W606386, W645670, Y608824, 20180182619, 20120108194, 2013017028, 20140141172, Y968323, 20110237611, H789678, W645670, Z166992, Lot 11-Block 1 (no recording info), and X805306 a distance of 2,615.65 feet (called 2615.71 feet) to an angle corner of the herein described tract in the west right-of-way line of Katy Hockley Road (60 feet wide public right-of-way), from which a found 5/8-inch iron rod bears North 01°41'21" West, 31.92, and a 3/4-inch iron pipe found in a tree bears South 34°30' East, 3.4 feet;

THENCE, South 01°41'21" East (called South 01°44'50" East), along said west right-of-way line, a distance of 465.14 feet (called 464.36 feet) to a 5/8-inch iron rod found marking the northeast corner of Tract 2 as described in the deed recorded under Harris County Clerk's File Number 2017245402 and the southeast corner of the herein described tract, from which a found 3/4-inch iron rod marking the southeast corner of said Tract 2 bears South 01°41'21" East, 1,702.17 feet;

THENCE, South 87°39'45" West (called South 87°39'14" West), along the north line of said Tract 2, a distance of 3,466.64 feet (called 3,467.87 feet) to a 1/2-inch iron rod found marking an angle corner of Tract 1 as described in the deed recorded under Harris County Clerk's File Number 2017245403 common with an angle corner of the herein described tract;

THENCE, North 01°43'29" West (called North 01°42'22" West), along the east line of said Tract 1, a distance of 1,935.29 feet (called 1934.77 feet) to a 1/2-inch iron rod with plastic cap stamped "RPLS 2085" found marking an angle corner of said Tract 1 common with an angle corner of the herein described tract;

THENCE, South 87°42'11" West (called South 87°41'12" West), along the northerly line of said Tract 1, a distance of 1,801.28 feet (called 1,803.41 feet) to a 1/2-inch iron rod with plastic cap stamped "RPLS 2085" found marking an angle corner of Tract 1 common with the southwest corner of the herein described tract, from which a found 1/2-inch capped iron rod bears South 85°27' West, 2.6 feet, and a found 5/8-inch iron rod bears South 01°42'17" East, 1,935.09 feet;

THENCE, North 01°42'17" West (called North 01°40'04" West), along the east line of said Tract 1 and thence along the west right-of-way line of Betka Road (non-standard width varies), a distance of 3,229.25 feet (called 3,229.72 feet) to a 5/8-inch iron rod with plastic cap stamped "TERRA SURVEYING" set marking in the aforesaid south right-of-way line of the Southern Pacific Railroad, from which a found pinch top 1-inch iron pipe bears North 68°09' West, 5.6 feet;

THENCE, South 68°08'52" East, along said south right-of-way line a distance of 3,410.81 feet (called 3,410.73 feet) to the POINT OF BEGINNING and containing 265.572 acres (11,568,308 square feet) of land. This description is based on the ALTA/NSPS Land Survey prepared by Terra Surveying Company, Inc., dated September 09, 2019, TSC Project Number 2539-1802-S.



**Exhibit "B" to Ordinance**

Conditions

## EXHIBIT "B"

(a) To the extent authorized by law, the District will issue bonds only for the purpose of purchasing and constructing, or purchasing, or constructing under contract with the City of Houston, or otherwise acquiring waterworks systems, sanitary sewer systems, storm sewer systems, drainage facilities, recreational facilities, road facilities, or facilities for fire-fighting services, or parts of such systems or facilities, and to make any and all necessary purchases, construction, improvements, extensions, additions, and repairs thereto, and to purchase or acquire all necessary land, right-of-way, easements, sites, equipment, buildings, plants, structures, and facilities therefor, and to operate and maintain same, and to sell water, sanitary sewer, and other services within or without the boundaries of the District. Such bonds will expressly provide that the District reserves the right to redeem the bonds on any interest-payment date subsequent to the fifteenth (15<sup>th</sup>) anniversary of the date of issuance without premium and will be sold only after the taking of public bids therefor, and none of such bonds, other than refunding bonds, will be sold for less than 95% of par; provided that the net effective interest rate on bonds so sold, taking into account any discount or premium as well as the interest rate borne by such bonds, will not exceed two percent (2 %) above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the one-month period next preceding the date notice of the sale of such bonds is given, and that bids for the bonds will be received not more than forty-five (45) days after notice of sale of the bonds is given. The resolution authorizing the issuance of the District's bonds will contain a provision that any pledge of the revenues from the operation of the District's water and sewer and/or drainage system to the payment of the District's bonds will terminate when and if the City of Houston, Texas, annexes the District, takes over the assets of the District and assumes all of the obligations of the District. No land located within the extraterritorial jurisdiction of the City of Houston will be added or annexed to the District until the City of Houston has given its written consent by resolution or ordinance of the City Council to such addition or annexation.

(b) (1) Before the commencement of any construction within the District, its directors, officers, or developers and landowners will submit to the Director of the Department of Public Works and Engineering of the City of Houston, or to their designated representatives, all plans and specifications for the construction of water, sanitary sewer, drainage, and road facilities and related improvements to serve the District and obtain the approval of such plans and specifications therefrom. All water wells, water meters, flushing valves, valves, pipes, and appurtenances thereto, installed or used within the District, will conform exactly to the specifications of the City of Houston. All water service lines and sewer service lines, lift stations, sewage treatment facilities, and road facilities, and appurtenances thereto, installed or used within the District will comply with the City of Houston's standard plans and specifications as amended from time to time. Prior to the construction of any water, sanitary sewer, drainage or road facilities within or by the District, the District or its engineer will give written notice by registered or certified mail to the Director of Public Works and Engineering, stating the date that such construction will be commenced. The construction of the District's water, sanitary sewer, drainage and road facilities will be in accordance with the approved plans and specifications, and with applicable standards and specifications of the City of Houston; and during the progress of the construction and installation of such facilities, the Director of Public Works and Engineering of the City of Houston, or an employee thereof, may make periodic on-the-ground inspections.

(2) Before the expenditure by the District of bond proceeds for the acquisition, construction or development of recreational facilities, the District shall obtain and maintain on file,

from a registered landscape architect, registered professional engineer or a design professional allowed by law to engage in architecture, a certification that the recreational facilities, as constructed, conform to the applicable recreational facilities design standards and specifications of the City of Houston's Department of Parks and Recreation and shall submit a copy of the certification and the "as built" plans and specifications for such recreational facilities to the Director of the City of Houston Parks and Recreation Department.

(3) Before the expenditure by the District of bond proceeds for the acquisition, construction or development of facilities for fire-fighting services, the District shall obtain and maintain on file, from a registered architect, registered professional engineer or a design professional allowed by law to engage in facility design and construction, a certification that the facilities for fire-fighting services, as constructed, conform to the applicable fire-fighting facilities design standards and specifications of the City of Houston's Fire Department and shall submit a copy of the certification and the "as built" plans and specifications for such facilities for fire-fighting services to the Chief of the City of Houston Fire Department.

(c) The District will agree to engage a sewage plant operator holding a valid certificate of competency issued under the direction of the Texas Commission on Environment Quality, or such successor agency as the legislature may establish ("TCEQ"), as required by Section 26.0301, Texas Water Code, as may be amended from time to time. The District will agree to make periodic analyses of its discharge pursuant to the provisions of Order No. 69-1219 of the Texas Water Quality Board (predecessor agency to the TCEQ) and further to send copies of all such effluent data to the Department of Public Works and Engineering, City of Houston, as well as to the TCEQ. The District will agree that representatives of the City of Houston may supervise the continued operation of the sewage treatment facility by making periodic inspection thereof.

(d) The District, its board of directors, officers, developers, and /or landowners will not permit the construction, or commit to any development within, the District that will result in a wastewater flow to the serving treatment facility which exceeds that facility's legally permitted average daily flow limitations or the District's allocated capacity therein.

(e) Prior to the sale of any lot or parcel of land, the owner or the developer of the land included within the limits of the district will obtain the approval of the Planning Commission of the City of Houston of a plat which will be duly recorded in the Map and Plat Records of Harris County, Texas, and otherwise comply with the rules and regulations of the Department of Planning and Development and the Department of Public Works and Engineering of the City of Houston.

(f) As a specific condition to the consent of the Annexation Tract, which is located within 0.61 miles of the City limits of the City of Houston, and some distance from the original District, the District and the City have agreed that the Annexation Tract shall remain within the extraterritorial jurisdiction of the City of Houston. The District has caused the Developer to file a Declaration of Restriction in the Harris County Real Property Records, which restricts the District's authority to designate the Annexation Tract as part of the City of Tomball's extraterritorial jurisdiction unless and until the governing body of the City of Houston affirmatively releases the Annexation Tract from the extraterritorial jurisdiction of the City of Houston and records the appropriate documents.

Ex. 7      Temporary Director Affidavits

**AFFIDAVIT OF MARK STEWART**

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF Harris

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Before me, the undersigned Notary Public, personally appeared MARK STEWART, known to me to be the persons who signed this Affidavit who being duly sworn, on oath, stated the following:

“My name is MARK STEWART. I am over the age of eighteen years and have never been convicted of a crime. I am fully competent to make this Affidavit and the facts stated herein are within my personal knowledge and are true and correct.” I understand that if I lie in this statement, I may be held legally responsible.

I affirm the information provided in Section X and Exhibit B in the document “Petition for Creation of 290 Betka Municipal Management District No. 1” accurately represents my personal qualifications as they apply to the position of initial director for the District. I affirm the validity of the information provided in the petition as it applies to my own singular person, and do not affirm the validity of personal information as it applies to other initial directors. I affirm to the best of my knowledge that I am qualified for the position of initial director and comply with the applicable provisions within Chapter 375 of the Texas Local Government Code.

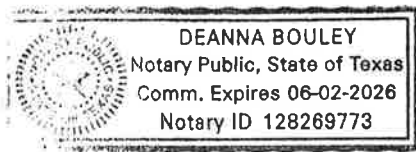
Further Affiant Sayeth Naught.

  
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MARK STEWART

THE STATE OF TEXAS     §

COUNTY OF Harris     §

On this the 2<sup>nd</sup> day of September 2022, personally appeared MARK STEWART, known to me to be the individual who signed the foregoing document, and after being duly sworn by me in my official capacity as a Notary Public for the State of Texas, swore, that he had personal knowledge of the facts and statements set forth in the foregoing affidavit, and that each of the facts and statements were true and correct. In witness thereof, I am placing my office seal and signature in the capacity of a licensed Notary Public for the State of Texas.



Deanna Bouley  
NOTARY PUBLIC, STATE OF TEXAS



**AFFIDAVIT OF BRETT BARNES**

STATE OF TEXAS

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§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF Harris

Before me, the undersigned Notary Public, personally appeared BRETT BARNES, known to me to be the persons who signed this Affidavit who being duly sworn, on oath, stated the following:

“My name is BRETT BARNES. I am over the age of eighteen years and have never been convicted of a crime. I am fully competent to make this Affidavit and the facts stated herein are within my personal knowledge and are true and correct.” I understand that if I lie in this statement, I may be held legally responsible.

I affirm the information provided in Section X and Exhibit B in the document “Petition for Creation of 290 Betka Municipal Management District No. 1” accurately represents my personal qualifications as they apply to the position of initial director for the District. I affirm the validity of the information provided in the petition as it applies to my own singular person, and do not affirm the validity of personal information as it applies to other initial directors. I affirm to the best of my knowledge that I am qualified for the position of initial director and comply with the applicable provisions within Chapter 375 of the Texas Local Government Code.

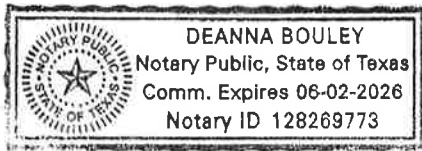
Further Affiant Sayeth Naught.

  
BRETT BARNES

THE STATE OF TEXAS     §

COUNTY OF Harris     §

On this the 2<sup>nd</sup> day of September 2022, personally appeared BRETT BARNES, known to me to be the individual who signed the foregoing document, and after being duly sworn by me in my official capacity as a Notary Public for the State of Texas, swore, that he had personal knowledge of the facts and statements set forth in the foregoing affidavit, and that each of the facts and statements were true and correct. In witness thereof, I am placing my office seal and signature in the capacity of a licensed Notary Public for the State of Texas.



Deanna Bouley  
NOTARY PUBLIC, STATE OF TEXAS

**AFFIDAVIT OF MAGGIE CARPENTER**

STATE OF TEXAS

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§

COUNTY OF Harris

§

KNOW ALL MEN BY THESE PRESENTS:

Before me, the undersigned Notary Public, personally appeared MAGGIE CARPENTER, known to me to be the persons who signed this Affidavit who being duly sworn, on oath, stated the following:

“My name is MAGGIE CARPENTER. I am over the age of eighteen years and have never been convicted of a crime. I am fully competent to make this Affidavit and the facts stated herein are within my personal knowledge and are true and correct.” I understand that if I lie in this statement, I may be held legally responsible.

I affirm the information provided in Section X and Exhibit B in the document “Petition for Creation of 290 Betka Municipal Management District No. 1” accurately represents my personal qualifications as they apply to the position of initial director for the District. I affirm the validity of the information provided in the petition as it applies to my own singular person, and do not affirm the validity of personal information as it applies to other initial directors. I affirm to the best of my knowledge that I am qualified for the position of initial director and comply with the applicable provisions within Chapter 375 of the Texas Local Government Code.

Further Affiant Sayeth Naught.

  
MAGGIE CARPENTER

THE STATE OF TEXAS     §  
COUNTY OF Harris     §

On this the 22 day of September 2022, personally appeared MAGGIE CARPENTER, known to me to be the individual who signed the foregoing document, and after being duly sworn by me in my official capacity as a Notary Public for the State of Texas, swore, that he had personal knowledge of the facts and statements set forth in the foregoing affidavit, and that each of the facts and statements were true and correct. In witness thereof, I am placing my office seal and signature in the capacity of a licensed Notary Public for the State of Texas.

Lisa R. Rodriguez  
NOTARY PUBLIC, STATE OF TEXAS



**AFFIDAVIT OF ALEXANDRA JOHNSON GENDRON**

STATE OF TEXAS

COUNTY OF

Dallas

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KNOW ALL MEN BY THESE PRESENTS:

Before me, the undersigned Notary Public, personally appeared ALEXANDRA JOHNSON GENDRON, known to me to be the persons who signed this Affidavit who being duly sworn, on oath, stated the following:

“My name is ALEXANDRA JOHNSON GENDRON. I am over the age of eighteen years and have never been convicted of a crime. I am fully competent to make this Affidavit and the facts stated herein are within my personal knowledge and are true and correct.” I understand that if I lie in this statement, I may be held legally responsible.

I affirm the information provided in Section X and Exhibit B in the document “Petition for Creation of 290 Betka Municipal Management District No. 1” accurately represents my personal qualifications as they apply to the position of initial director for the District. I affirm the validity of the information provided in the petition as it applies to my own singular person, and do not affirm the validity of personal information as it applies to other initial directors. I affirm to the best of my knowledge that I am qualified for the position of initial director and comply with the applicable provisions within Chapter 375 of the Texas Local Government Code.

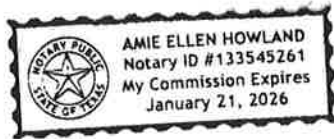
Further Affiant Sayeth Naught.

  
ALEXANDRA JOHNSON GENDRON

THE STATE OF TEXAS     §

COUNTY OF Dallas     §

On this the 26<sup>th</sup> day of September 2022, personally appeared ALEXANDRA JOHNSON GENDRON, known to me to be the individual who signed the foregoing document, and after being duly sworn by me in my official capacity as a Notary Public for the State of Texas, swore, that he had personal knowledge of the facts and statements set forth in the foregoing affidavit, and that each of the facts and statements were true and correct. In witness thereof, I am placing my office seal and signature in the capacity of a licensed Notary Public for the State of Texas.



NOTARY PUBLIC, STATE OF TEXAS



**AFFIDAVIT OF DOUG JOHNSON**

STATE OF TEXAS

COUNTY OF Dallas

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§  
§


KNOW ALL MEN BY THESE PRESENTS:

Before me, the undersigned Notary Public, personally appeared DOUG JOHNSON, known to me to be the persons who signed this Affidavit who being duly sworn, on oath, stated the following:

“My name is DOUG JOHNSON. I am over the age of eighteen years and have never been convicted of a crime. I am fully competent to make this Affidavit and the facts stated herein are within my personal knowledge and are true and correct.” I understand that if I lie in this statement, I may be held legally responsible.

I affirm the information provided in Section X and Exhibit B in the document “Petition for Creation of 290 Betka Municipal Management District No. 1” accurately represents my personal qualifications as they apply to the position of initial director for the District. I affirm the validity of the information provided in the petition as it applies to my own singular person, and do not affirm the validity of personal information as it applies to other initial directors. I affirm to the best of my knowledge that I am qualified for the position of initial director and comply with the applicable provisions within Chapter 375 of the Texas Local Government Code.

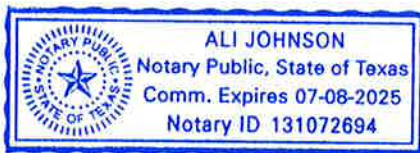
Further Affiant Sayeth Naught.

  
\_\_\_\_\_  
DOUG JOHNSON

THE STATE OF TEXAS     §

COUNTY OF Dallas     §

On this the 22<sup>nd</sup> day of September 2022, personally appeared DOUG JOHNSON, known to me to be the individual who signed the foregoing document, and after being duly sworn by me in my official capacity as a Notary Public for the State of Texas, swore, that he had personal knowledge of the facts and statements set forth in the foregoing affidavit, and that each of the facts and statements were true and correct. In witness thereof, I am placing my office seal and signature in the capacity of a licensed Notary Public for the State of Texas.



Ali Johnson  
NOTARY PUBLIC, STATE OF TEXAS

Ex. 8            Notice of Hearing and proof of publication



# Legal Notices

To place legal notices  
email [legals@chron.com](mailto:legals@chron.com) or call 713.224.6868.

Legals/Public Notices | Legals/Public Notices

Texas Commission on Environmental Quality



## NOTICE OF APPLICATION AND PRELIMINARY DECISION FOR TPDES PERMIT FOR MUNICIPAL WASTEWATER RENEWAL

PERMIT NO. WQ0014434001

**APPLICATION AND PRELIMINARY DECISION.** Quadvest, L.P., 26926 Farm-to-Market 2978 Road, Magnolia, Texas 77354, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014434001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day. TCEQ received this application on February 10, 2023.

The facility is located at 21118 West Farwood Terrace, Cypress, in Harris County, Texas 77433. The treated effluent is discharged to Little Cypress Creek, thence to Cypress Creek in Segment No. 1009 of the San Jacinto River Basin. The unclassified receiving water use is high aquatic life use for Little Cypress Creek. The designated uses for Segment No. 1009 are primary contact recreation, public water supply, and high aquatic life use. All determinations are preliminary and subject to additional review and/or revisions. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://gisweb.tceq.texas.gov/locationMapper/?marker=-95.754166,30.026666&level=18>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Barbara Bush Branch Library, 6817 Cypresswood Drive, Spring, Texas.

**ALTERNATIVE LANGUAGE NOTICE.** Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notice>. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notice>.

**PUBLIC COMMENT / PUBLIC MEETING.** You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:** your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "I/we request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence. Identify by name and

Notice to Creditors | Notice to Creditors

## Notice To Creditors Ad \$74.00\*

Call the Legals Team  
713-224-6868  
Ext. 6435 or 4204

\*\$74.00 includes first 36 lines and 1 Affidavit of Publication  
\*\$1.92 per line over 36 lines

Legal Bids & Proposals | Legal Bids & Proposals | Legal Bids & Proposals

### Request for Proposal - Houston-Galveston Area Council - Public Services - Fire Apparatus and Related Vehicles - FS12-23

The Houston-Galveston Area Council (H-GAC) is soliciting responses for selecting qualified manufacturers, distributors, installers, and service providers of Fire Apparatus and Related Vehicles to make these types of products and services available to Customers of the HGACBuy Cooperative Purchasing Program under blanket type contracts.

To view the solicitation documents, visit <https://www.hgacbuy.org/bid-notices> or [ESBD \(txsmartbuy.com/esbd/\)](https://www.esbd.com/esbd/).

Response Deadline: September 7, 2023 @ 12:00 P.M. CST

The Houston Housing Authority (HHA), is soliciting sealed bids with the intent to establish a fixed price contract with the lowest responsive and responsible bidder who can supply and deliver approximately 1615 Window Air Conditioning (AC) units and the required installation materials for Cuney Homes, Irvin Village, and Kelly Village properties; in accordance with the requirements, terms and conditions specified in Invitation for Bid (IFB) 23-40. Installation of the AC units are excluded.

Interested parties who wish to respond to this solicitation must submit the required documents in a sealed envelope by 2 P.M. CDT August 17, 2023 to the Houston Housing Authority Attn: Austin Crofts, Subject: IFB 23-40 Supply and Delivery of Window Air Conditioner (AC) units at various HHA properties. - DO NOT OPEN 2640 Fountain View Drive Houston, Texas 77057.

IFB 23-40 can be obtained by going to the doing business with HHA section of HHA's website at [www.housingforhouston.com](http://www.housingforhouston.com), or by sending an e-mail to HHA's Procurement Dept. at [Purchasing@housingforhouston.com](mailto:Purchasing@housingforhouston.com) with IFB 23-40 in the subject line.



A Fair and Equal Employment Opportunity Agency. For assistance: Individuals with disabilities may contact the 504/ADA Administrator at 713-260-0528, TTY 713-260-0574 or [504ADA@housingforhouston.com](mailto:504ADA@housingforhouston.com)

To place bids or proposal notices email [legals@chron.com](mailto:legals@chron.com)

Legal Bids & Proposals | Legal Bids & Proposals

### INVITATION TO BIDDERS - SEALED

Seven Acres Jewish Senior Care Services (Seven Acres)  
Project Name: Resident Room Furnishings 2023  
Manufacturers: Leisters Case Goods/Chairs, Med-Care Electric Beds.

To receive invitation to bid packer contact: [mcayton@sevenacres.org](mailto:mcayton@sevenacres.org) or call 713-778-5790. Sealed bids are due: 2 PM, Tues, Aug 15, 2023. Seven Acres reserves the right to reject any or all responses or waive any and all irregularities.

Legal Bids & Proposals | Legal Bids & Proposals | Legal Bids & Proposals | Citation by Publication

### Texas Association of School Boards-Local Government Purchasing Cooperative

Proposal Number, Proposal Name, Proposal Deadline, Contract Effective Date, Contract Expiration Date

725-24	Photovoltaic Power System Equipment and Components, 9/28/2023 at 4:00 PM, 3/1/2024 to 2/28/2027
726-24	Custodial and Lawn Care Services, 10/5/23 at 4:00 PM, 3/1/2024 to 2/28/2027
727-24	Electric Bus Fleet Leasing and Management Services, 10/12/2023 at 4:00 PM, 3/1/2024 to 2/28/2027
728-24	Job Order Contracting (RS Means), 10/26/2023 at 4:00 PM, 3/1/2024 to 2/28/2029
729-23	Tires, Tubes, Supplies and Equipment, 10/26/2023 at 4:00 PM, 3/1/2024 to 2/28/2027
730-24	Cured in Place Pipe (CIPP) for Pipeline Rehabilitation (Thermo Cured Products), 11/2/2023 at 4:00 PM, 3/1/2024 to 2/28/2027
731-24	Cured in Place Pipe (CIPP) for Pipeline Rehabilitation (Ultraviolet-Light Cured Products), 11/2/2023 at 4:00 PM, 3/1/2024 to 2/28/2027
732-23	Modular Buildings, Classrooms, and Relocation Services, 11/9/2023 at 4:00 PM, 3/1/2024 to 2/28/2027
733-24	Trade Services, 11/9/2023 at 4:00 PM, 3/1/2024 to 2/28/2027
734-24	Pavement Assessment Service for Roads and Highways, 12/14/2023 at 4:00 PM, 6/1/2024 to 5/31/2027
735-24	Holiday Lighting and Decorations, 12/14/2023 at 4:00 PM, 6/1/2024 to 5/31/2027
736-24	Carpet and Tile Flooring, Stage Floor Finishing, Concrete Polishing, Grinding and Staining, 1/18/2024 at 4:00 PM, 6/1/2024 to 5/31/2027
737-23	Indoor and Outdoor Sports Surfaces, Repair and Renovation, and Gym Floor Refinishing, 1/18/2024 at 4:00 PM, 6/1/2024 to 5/31/2027
738-24	Moving Services and Supplies, 1/25/2024 at 4:00 PM, 6/1/2024 to 5/31/2027
739-24	Audio Visual Equipment and Supplies, 2/8/2024 at 4:00 PM, 6/1/2024 to 5/31/2027
740-23	Rental Services of Construction Equipment, Vehicles, and Other Equipment, 2/15/2024 at 4:00 PM, 7/1/2024 to 6/30/2027
724-23	Facility Maintenance and Operation Services, 2/29/2024 at 4:00 PM, 12/1/2023 to 11/30/2026

"Completed sealed proposals will be received by the Local Government Purchasing Cooperative either by submitting the Proposal electronically through the Cooperative's designated website or by hard copy submission at Local Government Purchasing Cooperative, Cooperative Purchasing Office, 12007 Research Blvd., Austin, TX 78759 or as set out in the Instructions to Proposers."

NOTE: Proposal Invitations will be available at [www.vendor.buyboard.com](http://www.vendor.buyboard.com). The Cooperative reserves the right to reject any or all bids and to waive any formalities in bidding except time of filing.

### INVITATION TO BIDDERS

Bids will be received via [www.civcastusa.com](http://www.civcastusa.com) until 3:00 PM on Thursday, August 31, 2023, for:

West Harris County Municipal Utility District No. 11 Water Plant No. 1 Generator (Jacobs Project No. WHX16016)

All required bidding documentation, including but not limited to the Bid Form and Bid Security, are to be submitted via [www.civcastusa.com](http://www.civcastusa.com). At the above time the bids will be publicly opened and read aloud via teleconference and retained by the Owner for tabulation, verification, and evaluation. The call-in information for the public Bid Opening follows: Telephone Number +1 (469) 214-8538, Phone Conference ID No. 941 290 001#. NO BIDS WILL BE ACCEPTED UNLESS SUBMITTED VIA [WWW.CIVCASTUSA.COM](http://WWW.CIVCASTUSA.COM). ALL BIDS MUST BE ELECTRONICALLY SIGNED OR OTHERWISE AFFIRMED BY THE BIDDER. NO BIDS WILL BE ACCEPTED AFTER 3:00 PM ON THURSDAY, AUGUST 31, 2023.

### CAUSE NUMBER:

202255960

PLAINTIFF: CHAVEZ-CODOZO, JUAN

vs.

DEFENDANT: AMAYA, ISABEL

In the 133rd Judicial District Court of Harris County, Texas

CITATION

THE STATE OF TEXAS County of Harris

TO: AMAYA, ISABEL

2310 CRESCENT PARK DRIVE APARTMENT 1807 HOUSTON, TX 77077 OR WHEREVER SHE MAY BE FOUND

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION

This instrument was filed on September 2, 2022, in the above numbered and styled cause on the docket in the above Judicial District Court of Harris County, Texas, in the courthouse in the City of Houston, Texas. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgement may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at [texascourts.org](http://texascourts.org)

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY NOTICE OF HEARING

TCEQ Docket No. 2023-0861-DIS  
TCEQ Internal Control No. D-11212022-033

**PETITION.** 290 Betka, LLC, a Texas limited liability company (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) for the creation of 290 Betka Municipal Management District No. 1 (District). The TCEQ will conduct this hearing under the authority of Chapter 375, Texas Local Government Code; Chapter 49 of the Texas Water Code; Title 30, Chapter 293 of the Texas Administrative Code and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at:

9:30 a.m., Wednesday, September 6, 2023  
Building E, Room 2015  
12100 Park 35 Circle  
Austin, Texas

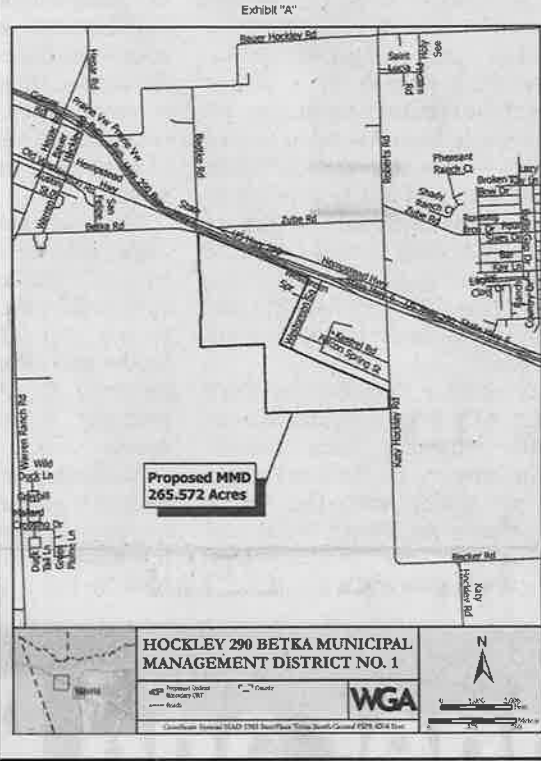
The agenda meeting may be held in person, virtually, or both in person and virtually. To confirm how the meeting will be held, please visit the Commissioners' Agenda webpage at <https://www.tceq.texas.gov/goto/agendas> eight days before the agenda.

The proposed District will contain approximately 265,572 acres of land located within the extrajurisdictional jurisdiction of the City of Houston, Texas. The territory to be included in the proposed District is depicted in the vicinity map designated as Exhibit "A," which is attached to this document. The Petition states that the creation of the proposed District would be a benefit to the land within its boundary.

**HEARING.** As required by the Texas Local Government Code §§ 375.023 and 375.024 and Title 30 of the Texas Administrative Code § 293.12(g)(2)(A), the above hearing regarding this application will be held no earlier than 31 days after notice of this hearing is published in a newspaper with general circulation in the county or counties in which the District is located. The purpose of this hearing is to provide all interested persons the opportunity to appear and offer testimony for or against the proposal contained in the petition. Each person has a right to appear and present evidence and testify for or against the allegations in the petition, the form of the petition, the necessity and feasibility of the district's project, and the benefits to accrue. At the hearing, pursuant to Chapter 375, Texas Local Government Code; Chapter 49 of the Texas Water Code; and Chapter 293 of Title 30 of the Texas Administrative Code, the TCEQ will determine if creating 290 Betka Municipal Management District No. 1 would be a benefit to the land and property included in the District, or, if there is any opposition to the proposed creation, the Commission may refer the application to the State Office of Administrative Hearings for a contested case hearing on the application.

**INFORMATION.** For information regarding the date and time this application will be heard before the Commission, please submit written inquiries to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087, or by phone at (512) 239-3300. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact James Walker of the Districts Creation Review Team at (512) 239-2532. General information regarding TCEQ can be found at our web site at <https://www.tceq.texas.gov/>.

**Si desea información en Español, puede llamar al (512) 239-0200.** Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the TCEQ External Relations Division at (800) 687-4040 or (800) RELAY-TX (TDD), at least one week prior to the hearing. Issued: July 25, 2023









TCEQ - Office of the Chief Clerk  
MC-105 Attention: Agenda Team  
PO Box 13087  
Austin TX 78711-3087

Applicant Name: 290 Betka MMD No. 1

TCEQ Tracking No. 2023-0861-DIS

CID Item No. 133025

Application Type: Creation

## AFFIDAVIT OF PUBLICATION

STATE OF TEXAS §

COUNTY OF: Harris §

Before me, the undersigned authority, on this day personally appeared

Victoria Bond

(name of newspaper representative)

, who being by me duly

sworn, deposes and says that (s)he is the

HR Clerk

(title of newspaper representative)

of the

Houston Chronicle

(name of newspaper)

; that said newspaper is

regularly published or circulated in

Harris

(name of county or counties)

County/Countries,

Texas; that the attached notice was published in said newspaper on the following dates:

August 24, 2023, Ad # 34287657

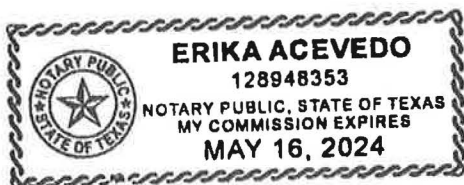
(date or dates of publication)

Victoria Bond

Newspaper Representative's Signature

Subscribed and sworn to before me this the 10 day of August,

20 23, to certify which witness my hand and seal of office.



(Seal)

Erika Acevedo

Notary Public in and for the State of Texas

ERIKA ACEVEDO

Print or type Name of Notary Public

My Commission Expires MAY 16, 2024



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
NOTICE OF HEARING

TCEQ Docket No. 2023-0861-DIS

TCEQ Internal Control No. D-11212022-033

**PETITION.** 290 Betka, L.L.C., a Texas limited liability company (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) for the creation of 290 Betka Municipal Management District No. 1 (District). The TCEQ will conduct this hearing under the authority of Chapter 375, Texas Local Government Code; Chapter 49 of the Texas Water Code; Title 30, Chapter 293 of the Texas Administrative Code and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at:

9:30 a.m., Wednesday, September 6, 2023  
Building E, Room 2015  
12100 Park 35 Circle  
Austin, Texas

The agenda meeting may be held in person, virtually, or both in person and virtually. To confirm how the meeting will be held, please visit the Commissioners' Agenda webpage at <https://www.tceq.texas.gov/goto/agendas> eight days before the Agenda.

The proposed District will contain approximately 265.572 acres of land located within the extraterritorial jurisdiction of the City of Houston, Texas. The territory to be included in the proposed District is depicted in the vicinity map designated as Exhibit "A," which is attached to this document. The Petition states that the creation of the proposed District would be a benefit to the land within its boundary.

**HEARING.** As required by the Texas Local Government Code §§ 375.023 and 375.024 and Title 30 of the Texas Administrative Code § 293.12(g)(2)(A), the above hearing regarding this application will be held no earlier than 31 days after notice of this hearing is published in a newspaper with general circulation in the county or counties in which the District is located. The purpose of this hearing is to provide all interested persons the opportunity to appear and offer testimony for or against the proposal contained in the petition. Each person has a right to appear and present evidence and testify for or against the allegations in the petition, the form of the petition, the necessity and feasibility of the district's project, and the benefits to accrue. At the hearing, pursuant to Chapter 375, Texas Local Government Code; Chapter 49 of the Texas Water Code; and Chapter 293 of Title 30 of the Texas Administrative Code, the TCEQ will determine if creating 290 Betka Municipal Management District No. 1 would be a benefit to the land and properly included in the District, or, if there is any opposition to the proposed creation, the Commission may refer the application to the State Office of Administrative Hearings for a contested case hearing on the application.

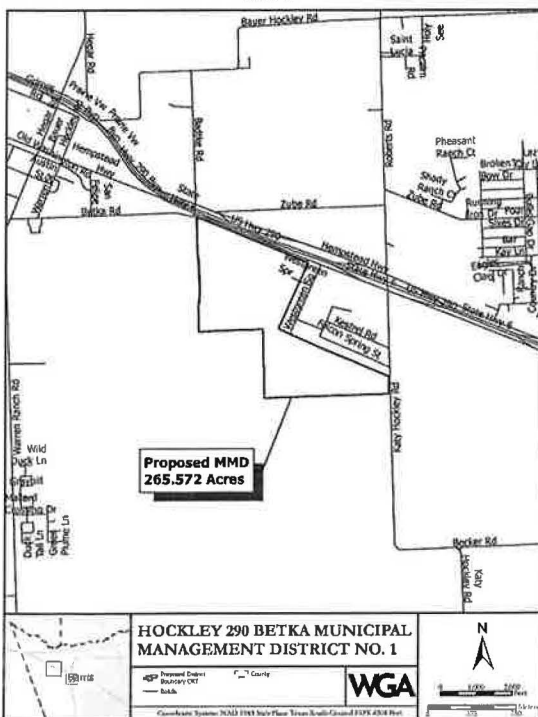
**INFORMATION.** For information regarding the date and time this application will be heard before the Commission, please submit written inquiries to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087, or by phone at (512) 239-3300. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact James Walker of the Districts Creation Review Team at (512) 239-2532. General information regarding TCEQ can be found at our web site at <https://www.tceq.texas.gov/>.

**Si desea información en Español, puede llamar al (512) 239-0200.**

Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the TCEQ External Relations Division at (800) 687-4040 or (800) RELAY-TX (TDD), at least one week prior to the hearing.

Issued: July 25, 2023

Exhibit "A"



Ex. 9

Mailing List

## MAILING LIST

290 Betka Municipal Management District No. 1  
TCEQ Internal Control No. D-11212022-033

<p>Mr. Jeffrey Earl Earl &amp; Associates, PC 10007 Huebner Road, Suite 303 San Antonio, Texas 78240-1646</p> <p>Mr. Jerry G. Ince, P.E. Ward, Getz &amp; Associates 2500 Tanglewilde Street, Suite 120 Houston, Texas 77063-2123</p> <p>Ms. Nicole Bealle TCEQ Region 12 5425 Polk Street, Suite H Houston, Texas 77023-1452</p> <p>The Honorable Tom Oliverson State Representative, District No. 130 12345 Jones Road, #221 Houston, Texas 77070-4960</p> <p>The Honorable Lois Kolkhorst State Senator, District No. 18 P.O. Box 12068 Capitol Station Austin, Texas 78711-2068</p> <p>City of Houston Attn: Pat J. Daniel, City Secretary 900 Bagby Street, Room P101 Houston, Texas 77002-2527</p> <p>Harris County Clerk Attn: Teneshia Hudspeth, County Clerk 201 Caroline Street, 3<sup>rd</sup> Floor Houston, Texas 77002-4824</p> <p>Chuck Wemple, Executive Director Houston-Galveston Area Council P.O. Box 22777 Houston, Texas 77227-2777</p>	<p>Texas Commission on Environmental Quality P. O. Box 13087 Austin, Texas 78711-3087</p> <p>Todd Galiga, Senior Attorney, Environmental Law Division, MC-173</p> <p>Bobby Salehi, Attorney, Environmental Law Division, MC-173</p> <p>Cindy Rojas Annicchiarico, Technical Manager, Districts Creation Review Team, MC-152</p> <p>Stephanie DeSouza, Districts Creation Review Team, MC-152</p> <p>Justin P. Taack, Manager, Districts Section, MC-152</p> <p>Michelle Voytko, Drinking Water Special Functions Section, Water Supply Division, MC-153</p> <p>Garrett Arthur, Office of the Public Interest Counsel, MC-103</p>
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Ex. 10

Caption

**AGENDA CAPTION FOR TCEQ DOCKET NO. 2023-0861-DIS**

**Docket No. 2023-0861-DIS.** Consideration and hearing on a petition from 290 Betka, LLC (Petitioner) for creation of 290 Betka Municipal Management District No. 1 (District), pursuant to Chapter 375, Texas Local Government Code. The proposed District is comprised of approximately 265.572 acres of land within Harris County, Texas. (Bobby Salehi, James Walker)