## LEASE AGREEMENT

This Lease Agreement (the "Agreement") is made and entered into as of the 52 day of October, 2006 between Keller Independent School District ("KISD") and Hillwood Alliance Residential., L.P., a Texas limited partnership ("Hillwood").

#### WITNESSETH:

WHEREAS, KISD and Hillwood entered into that certain Purchase and Sale Agreement (the "Contract") effective August 14, 2006, pursuant to which Hillwood agreed to sell, and KISD agreed to purchase, that certain real property in the City of Fort Worth, Tarrant County, Texas, and more particularly described therein (the "Land").

WHEREAS, KISD plans to build an elementary school on the Land.

WHEREAS, Hillwood is also the owner of the property on the west and south sides of the Land (the "Adjacent Land").

WHEREAS, as part of the construction of the school on the Land, KISD desires to extend a water line across the Land and the Adjacent Land, connect to a sewer connection on the Adjacent Land and expand an existing drainage easement located on both the Land and the Adjacent Land (collectively, the "Improvements"), which Improvements shall be constructed in accordance with the scope of work attached hereto as Exhibit "B".

WHEREAS Hillwood has agreed to enter into this non-exclusive Lease Agreement with KISD for the lease of a portion of the Adjacent Land in order that KISD may construct such improvements, such improvements being for the benefit of Hillwood and KISD. The location of the leased area is described and/or depicted on <a href="Exhibit "A" attached hereto and made a part hereof (the "Leased Premises")">Leased Premises</a>").

- NOW, THEREFORE, for and in consideration of KISD constructing the Improvements and other good and valuable consideration paid, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:
- 1. <u>Leased Premises.</u> Hillwood, in consideration of KISD constructing the Improvements and of the covenants and agreement to be performed by KISD herein set forth, does hereby grant to KISD a non-exclusive lease of and temporary construction easement in the Leased Premises.
- 2. <u>Non-Exclusivity.</u> This Lease and other rights and benefits herein created are not exclusive, and Hillwood hereby reserves the right to grant such other leases, licenses easements, rights, benefits, or privileges to such persons and for such purposes as Hillwood in its discretion may elect, so long as such purposes do not materially interfere with the rights and benefits granted herein to KISD.
- 3. <u>Term of Lease.</u> The term of this lease shall be until the earlier of (i) the completion of the Improvements or (ii) July 1, 2007; provided, however, that if KISD has commenced

construction of the improvements as of July 1, 2007, then the term shall be extended to the earlier of (a) the completion of the Improvements or (b) December 31, 2007.

- 4. Acceptance of the Leased Premises by KISD. KISD taking possession of the Leased Premises shall be conclusive evidence that (a) the Leased Premises are suitable for the purposes and uses for which same are leased; and (b) KISD waives any and all defects in and to the Leased Premises, its appurtenances, and in all the appurtenances thereto. Further, KISD takes the Leased Premises and all appurtenances, in "AS IS" condition without warranty, expressed or implied, on the part of Hillwood. Hillwood shall not be liable to KISD, KISD's agents, employees, contractors, invitees, or guests for any damage to any person or property due to KISD's actions or KISD's contractor's actions on the Leased Premises.
- 5. <u>No Services.</u> Hillwood shall not furnish KISD with any utilities, cleaning, lighting, security, fence, gate or any other items or services for the Leased Premises. Any services or utilities needed by KISD will be provided by KISD at its sole cost.
- 6. <u>Use and Occupancy.</u> KISD shall, at its expense, use and maintain the Leased Premises in a neat, clean, careful, safe, and proper manner and comply with all applicable laws, ordinances, orders, rules, and regulations of all governmental bodies (state, county, federal, and municipal). KISD shall use and occupy the Leased Premises in order to construct the Improvements and for no other purpose. KISD agrees not to use or to allow or permit the Leased Premises to be used for any purposes(s) prohibited by any law of the United States or the State of Texas or by any ordinance of the City of Fort Worth; and KISD agrees not to commit waste or permit waste to be committed or to allow, or permit any nuisance on or in the Leased Premises. At the termination of this lease, whether by lapse of time or otherwise, KISD shall deliver the Leased Premises to Hillwood in as good condition as the same was as of the date of the taking of possession thereof by KISD.
- 7. <u>Assignment and Subletting.</u> KISD shall not assign, sublet or transfer its interest herein without prior written consent of Hillwood, and any attempted assignment, sublease or transfer of all or any part hereof without such prior written consent shall be void and of no force or effect. Hillwood agrees that if it assigns or transfers the Leased Premises, it shall expressly assign or transfer the Leased Premises subject to the terms and conditions of this Agreement.
- 8. <u>Alterations, Additions, and Improvements.</u> Other than KISD constructing the improvements, KISD shall make no alterations in, or additions to, the Leased Premises without the prior written consent of Hillwood. All alterations, additions and improvements made to or fixtures or other improvements placed in or upon the Leased Premises shall be deemed a part of the Leased Premises and the property of the City of Fort Worth under the easements conveyed or dedicated to it by Hillwood or KISD upon expiration or termination of this Agreement. All such alterations, additions, improvements, and fixtures shall remain upon and be surrendered with the Leased Premises as a part thereof at the termination of this Agreement.

- 9. <u>Payment by Hillwood.</u> Upon the completion of the construction of the Improvements to Hillwood's reasonable satisfaction, Hillwood agrees to pay \$21,206.28 to KISD as reimbursement for installation of a 12" water line on the Leased Premises. The parties agree that \$21,206.28 is a fair and reasonable amount for the increased cost of a larger water line than is required by KISD for its new school on its property.
- 10. <u>Insurance.</u> KISD shall not enter the Leased Premises and commence construction of the Improvements until its contractors have obtained the following insurance coverage and shown proof of such coverage to Hillwood:

Comnercial General Liability (CGL) Insurance Policy

\$1,000,000 each occurrence \$2,000,000 aggregate limit

### Automobile Liability Insurance Policy

\$1,000,000 each accident on a combined single limit basis

or

\$250,000 Property Damage

\$500,000 Bodily Injury per person per occurrence

A commercial business policy shall provide coverage on "Any Auto", defined as autos owned, hired and non-owned.

## Workers' Compensation Insurance Policy

Statutory limits

Employer's liability

\$100,000 Each accident/occurrence

\$100,000 Disease - per each employee

\$500,000 Disease - policy limit

This coverage may be written as follows:

Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code, §401.001 et. sic.) and minimum policy limits for Employers' Liability of \$100,000 each accident/occurrence, \$500,000 bodily injury disease policy limit and \$100,000 per disease per employee

- 11. <u>Bonds:</u> Prior to the commencement of work on the Improvements, KISD shall provide Hillwood copies of the payment and performance bonds provided by KISD's contractors and /or subcontractors who will construct the Improvements.
- 12. <u>Liens.</u> KISD will not cause or permit any mechanics' liens or other liens to be filed against the Adjacent Land by reason of any work, labor, services, or materials supplied or claimed to have been supplied to KISD. If such a mechanic's lien or materialman's lien is recorded against the Adjacent Land, KISD must either cause it to be removed or, if KISD in.

good faith wishes to contest the lien, post a bond and take such action as may be reasonably required to diligently contest the lien, all at KISD's sole expense.

- 13. <u>No Hazardous Or Toxic Substances.</u> Under no circumstances during the term of this License shall KISD use or cause to be used or any hazardous or toxic substances or materials, or store or dispose of any such substances or materials on the Property.
- 14. <u>Default.</u> If either party defaults in the performance of any term of this Agreement the other party may send the defaulting party a certified letter explaining the deficiency in their performance of this Agreement. If the recipient of such written notice fails to cure such default within 10 business days after receiving such written notice, then either party shall have a right to terminate this Agreement, whereupon neither party shall have any further rights or obligations to the other except to the extent otherwise provided herein.
- 15. <u>Notice.</u> All notices, requests, and other communication under this Lease shall he in writing and shall be delivered in person or sent by certified mail, return receipt requested, addressed as follows:

#### If intended for **KISD**:

Bill Stone Keller ISD-Business Operations 350 Keller Parkway Keller, TX 76248 Telephone: 817.744.1000 Fax: 817.337.3264

## If intended for **HILLWOOD**:

Hillwood Alliance Residential, LP 13600 Heritage Parkway Suite 200 Fort Worth, TX 76177 Attn: Steven Howard

With a copy to: Hillwood Alliance Residential, L.P. 5430 LBJ Freeway Suite 800 Dallas, Texas 75240 Attn: Scott Norman

or at such other address, and to the attention of such other person, as the parties shall give notice as herein provided. All such notices, requests and other communications shall be deemed to have been sufficiently given for all purposes hereof, whether actually received or not, upon deposit of both the original and copy in a post office or official depository of

the United States Postal Service.

- 16. Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein.
- 17. <u>Contract Construction.</u> The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party must not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. Nothing in this Agreement is intended to alter or amend the terms and conditions of the Contract. All terms not defined herein shall have the meanings given such terms in the Contract. In the event of a conflict between the Contract and this Agreement, this Agreement shall control.
- 18. <u>No Third-Party Beneficiaries.</u> This Agreement shall inure only to the benefit of the parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third party beneficiary of this Agreement. Each party hereto shall be solely responsible for the fulfillment of its own contracts or commitments.
- 19. <u>Venue And Jurisdiction.</u> If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.
- 20. <u>Independent Contractor.</u> KISD shall perform all work and services hereunder as an independent contractor, and not as an officer, agent, servant or employee of Hillwood. KISD shall have exclusive control of, and the exclusive right to control the details of the work performed for the Improvements, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, employees and subconsultants (or subcontractors). Nothing herein shall be construed as creating a partnership or joint venture between KISD and Hillwood, its officers, agents, employees and subconsultants (or subcontractors), and doctrine of respondent superior has no application as between the KISD and Hillwood.
- 21. Compliance With Law. KISD, its officers, agents, employees, contractors and subcontractors, shall abide by and comply with all laws, federal, state and local, including the Charter and all ordinances, rules and regulations of the City of Fort Worth. It is agreed and understood that, if the City or Hillwood calls the attention of KISD to any such violations on the part of KISD, its officers, agents, employees, contractors or subcontractors, then KISD shall immediately desist from and correct such violation.
- 22. Counterparts. This Agreement may be executed in several counterparts, all of which

when taken together shall constitute one and the same agreement.

## 23. <u>Covenants and Agreements.</u>

- (a) KISD, at its expense, will obtain all governmental approvals (municipal, county, state and/or federal) required for the completion of the Improvements.
- KISD shall comply with all applicable Environmental Laws (hereinafter defined) and other laws and regulations, as such may now exist or later be enacted or adopted, in the completion of the Improvements. The term "Environmental Laws" means all applicable federal, state and local laws, statutes, ordinances, rules, regulations, orders and judgments relating to the protection or clean-up of the environment, the use, treatment, storage, transportation, generation, manufacture, processing, distribution, handling or disposal of, or emission, discharge or other release or threatened release of Hazardous Substances, the preservation or protection of waterways, groundwater, drinking water, air, wildlife, plants or other natural resources, the health and safety of persons or property, or the protection of the health and safety of employees, as the same may be amended, modified or supplemented from time to time, including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; all comparable state and local laws, laws of other jurisdictions or orders and regulations; and any and all common law requirements, rules and bases of liability regulating, relating to or imposing liability or standards of conduct concerning pollution or protection of human health or the environment, as now or may at any time hereafter be in effect.
- (c) KISD agrees not to use or to allow or permit the Leased Premises to be used for any purposes(s) prohibited by any law of United States or the State of the Texas or by an ordinances of the City of Fort Worth; and KISD agrees not to commit waste or permit waste to be committed or to allow, or permit any nuisance on or in the Leased Premises.
- (d) KISD will use and occupy the Leased Premises in order to construct the Improvements and for no other purpose.
- (e) KISD shall cause each of the contracts with its contractors/subcontractors to contain the following provision in the same case, font and size:

"[CONTRACTOR] AGREES TO DEFEND, INDEMNIFY, PROTECT AND HOLD HARMLESS KISD, HILLWOOD ALLIANCE RESIDENTIAL, L.P. AND THEIR RESPECTIVE PARTNERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, COSTS, EXPENSES, ATTORNEY'S FEES, DEMANDS AND/OR DAMAGES ARISING, DIRECTLY OR INDIRECTLY, FROM [CONTRACTOR'S] WORK HEREUNDER."

- 24. <u>Unpermitted Events.</u> KISD shall not cause or permit any Hazardous Substance (defined below) to be stored, released or discharged on, in, under or about the Leased Premises in connection with the Improvements in any manner as to violate any Environmental Laws, or in any manner as to require remediation or removal thereof under any Environmental Laws, including, without limitation, leaks and discharges from trucks, equipment and operations on the Leased Premises. Solely for purposes of this section, the storage, use, release or discharge of waste which violates the preceding sentence shall be referred to as an "Unpermitted Event." If KISD discovers an Unpermitted Event, then KISD shall immediately remedy, repair and remediate any damage or harm caused by such Unpermitted Even, and shall notify Hillwood of such Unpermitted Event as soon as possible, but in all cases within seven calendar days of the discovery by KISD of such Unpermitted Event. The term "Hazardous Substances" means any pollutant, contaminant, waste and any toxic, carcinogenic, reactive, corrosive, ignitable, flammable or infectious chemical, chemical compound or substance or otherwise hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any quantity of asbestos, urea formaldehyde, PCBs, radon gas, crude oil or any fraction thereof, all forms of natural gas, petroleum products, by-products or derivatives, radioactive substances, methane, hydrogen sulfide or materials, pesticides, waste waters, or sludges, any of the above of which are subject to regulation, control or remediation under any Environmental Laws.
- 25. Neither this Agreement, any memorandum of this Agreement nor any other document pertaining to this Agreement shall be recorded without the prior written consent of Hillwood.

[Remainder of page intentionally left blank. Signature page follows.]

In witness whereof, the parties hereto have caused this Lease to be executed as the day and year first above set forth.

## HILLWOOD ALLIANCE RESIDENTIAL, L.P.,

a Texas limited partnership

By: Hillwood Operating, L.P., a Texas limited partnership, its general partner

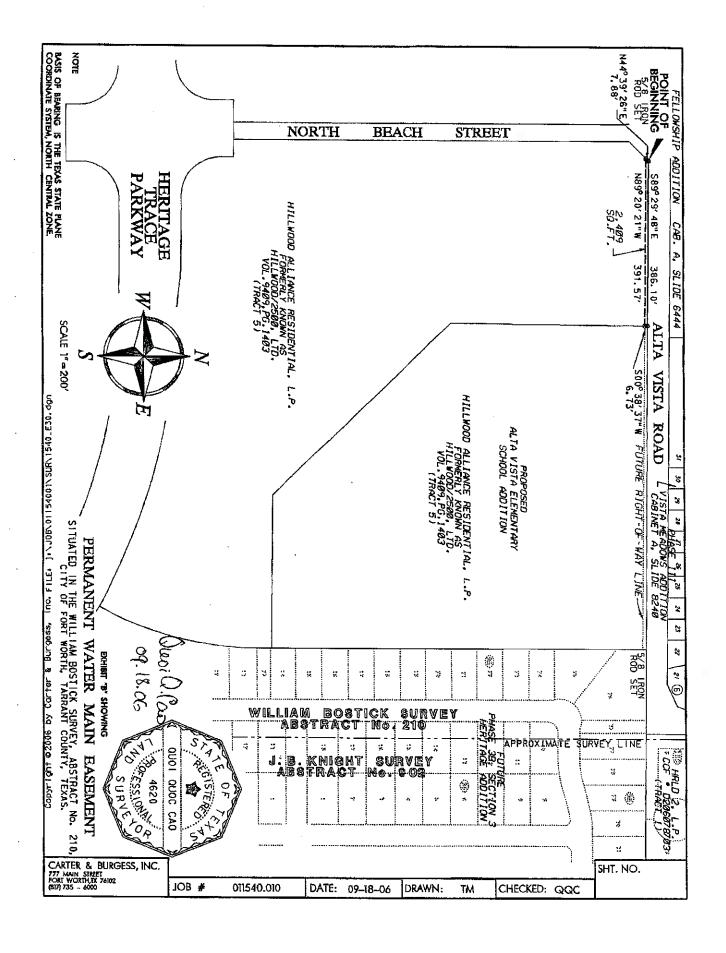
By: Hillwood Development Company, LLC, a Texas limited liability company, its general partner.

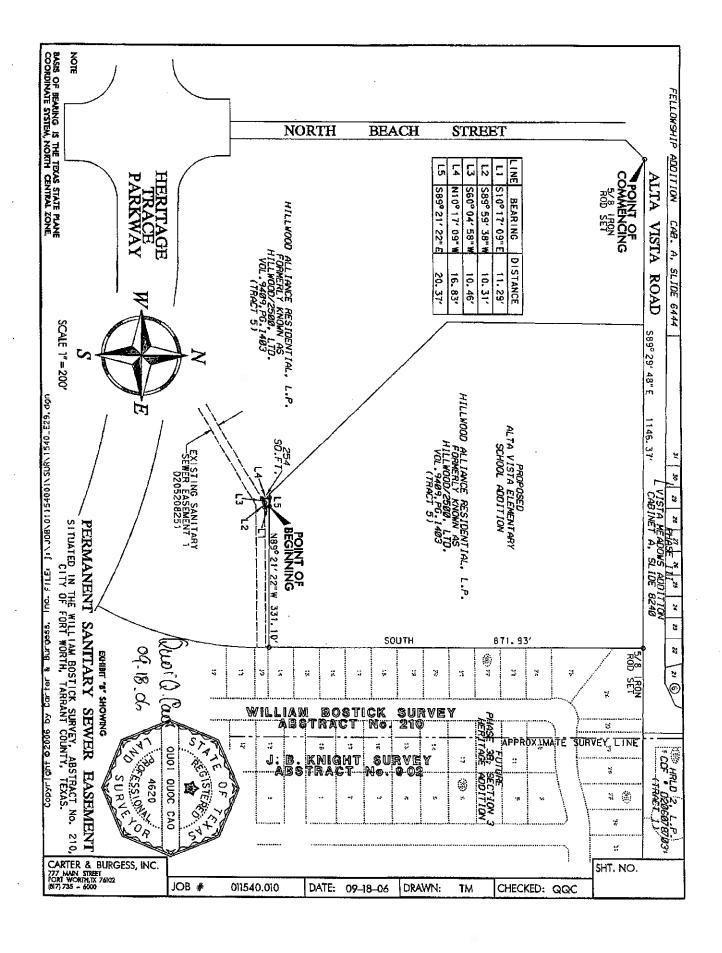
Name: Title:

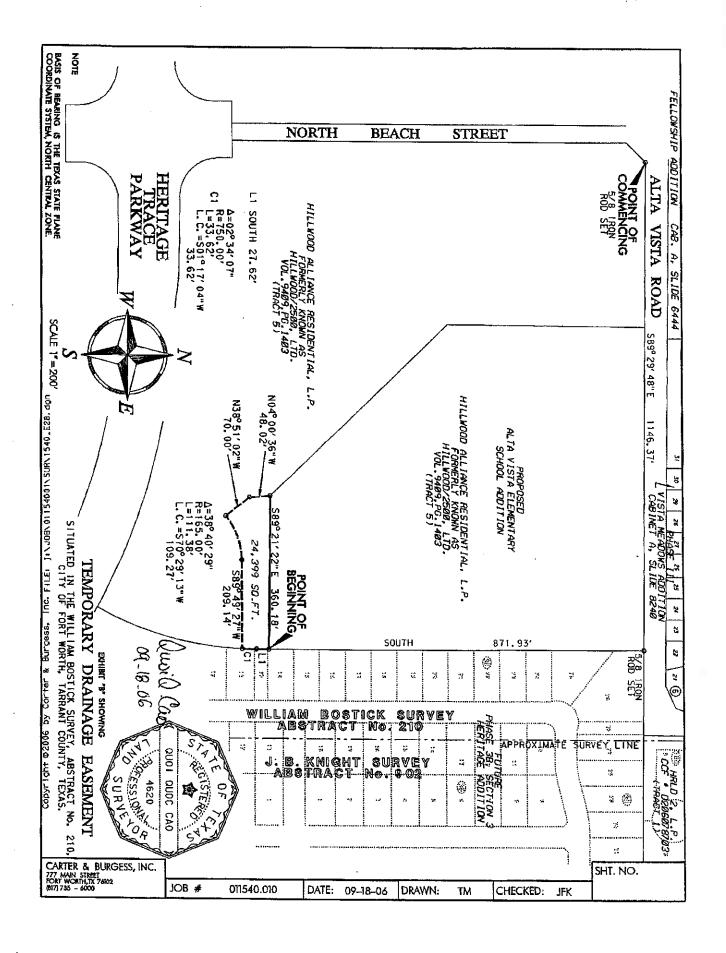
## KELLER INDEPENDENT SCHOOL DISTRCT

Ву:		
Name:	•	
Title:		

## EXHIBIT "A" (Attached)







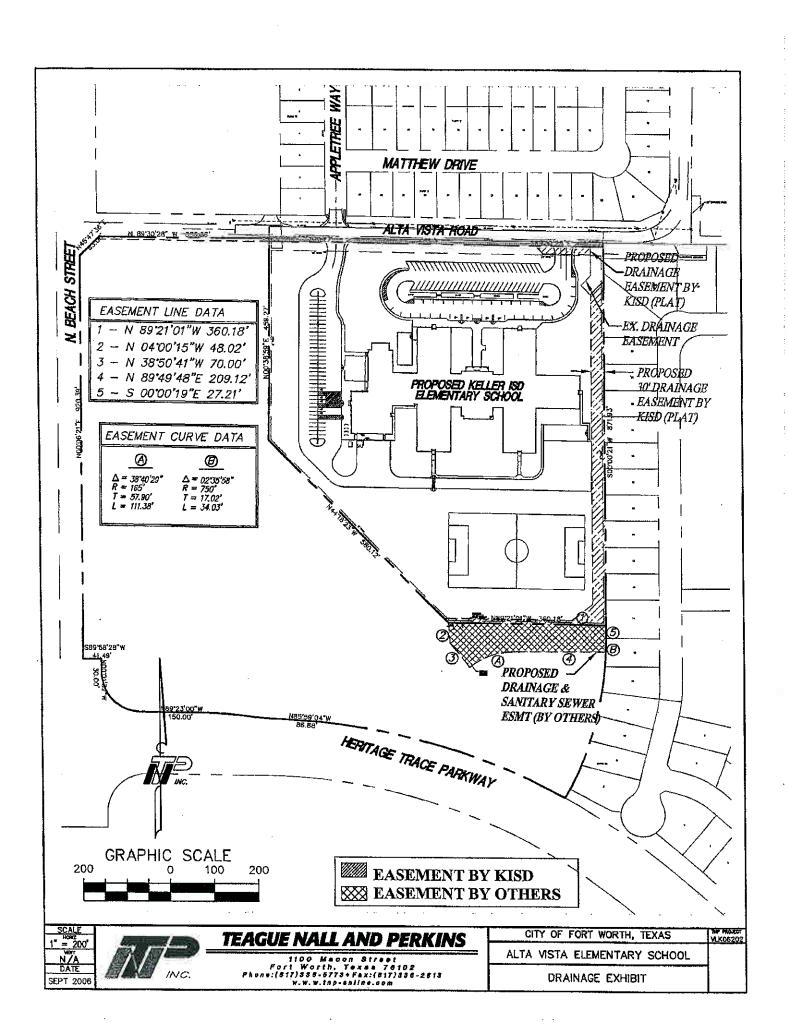


EXHIBIT "B" (Attached)

# CARTER & BURGESS, INC. 777 MAIN STREET, FORT WORTH, TEXAS 76102 PHONE NO. (817) 735-6000 or Metro (817) 429-0170

PRELIMINARY OPINION OF PROBABLE COST:

PROJECT NO.:

11540.030

Water Line in Alta Vista from N. Beach Street easterly

FILE NAME:

KISD-Water20060926.xls

to common property line of KISD and Heritage 3B

DATE:

09/28/06

City of Fort Worth

PREPARED FOR: Hillwood Residential

## **CONSTRUCTION COSTS**

12" WATER DISTRIBUTION SYSTEM	\$ 77,746.63
8" WATER DISTRIBUTION SYSTEM	\$ 49,596.80
DIFFERENCE IN CONSTRUCTION COSTS	\$ 28,149.83

#### 12" WATER DISTRIBUTION SYSTEM

ITEM#	DESCRIPTION	QTY	UNIT	PRICE	AMOUNT
1	12" Water Main	1,252	L,F.	30.00	37,560.00
	12" Valve	2	EA.	1,500.00	3,000.00
3	8" Valve	1	EA.	650.00	650.00
	24"x12" Tapping Sleeve & Valve	1	EA.	5,000.00	5,000.00
5	Bore 12" Wtr w/ 20" Casing (2 x-ings)	80	L.F.	155.00	12,400.00
6	CI Fittings (est)	0.5	TON	3,000.00	1,500.00
7	Trench Safety	1,252	L.F.	1.00	1,252.00
8	System Testing	1,332	L.F.	1.00	1,332.00
	Traffic Control	1	L.S.	2,500.00	2,500.00
	Seeding Disturbed Areas (40' wide)	50,080	S.F.	0.06	3,004.80
SUBTOTAL 12" WATER DISTRIBUTION SYSTEM			\$ 68,198.80		
1	Contingency	68,199	%	0.10	6,819.88
2	City Inspection Fee	68,199	%	0.02	1,363.98
3	City Material Testing Fee	68,199	%	0.02	1,363.98
TOTAL 12" WATER DISTRIBUTION SYSTEM			\$ 77,746.63		

#### **8" WATER DISTRIBUTION SYSTEM**

ITEM#	DESCRIPTION	QTY	UNIT	PRICE	,	AMOUNT
1	8" Water Main	1,252	L.F.	19.00		23,788.00
2	8" Valve	3	EA.	650.00		1,950.00
	24"x8" Tapping Sleeve & Valve	1	EA.	4,400.00		4,400.00
4	Bore 8" Water Main (2 locations)	80	L.F.	130.00		10,400.00
5	Cl Fittings	0.35	TON	3,000.00		1,050.00
6	Trench Safety	1,252	L.F.	1.00		1,252.00
7	System Testing	1,252	L.F.	1.00		1,252.00
8	Traffic Control	1	L.S.	2,500.00		2,500.00
9	Seeding Disturbed Areas (40' wide)	50,080	S.F.	0.06		3,004.80
SUBTO	TAL 8" WATER DISTRIBUTION SYSTI	EM			\$	49,596.80
1	Contingency	49,597	%	0.10		4,959.68
2	City Inspection Fee	49,597	%	0.02		991.94
	City Material Testing Fee	49,597	%	0.02		991.94
TOTAL	8" WATER DISTRIBUTION SYSTEM				\$	56,540.35

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