

[name of s/d]

Case No. \_\_\_\_\_

## Subdivision Construction Agreement

(Applicant, City & County)

### Recitals:

**A.** Subdivider owns the land included in the proposed final subdivision plat of the \_\_\_\_\_ [name] Subdivision, City or County Case No. \_\_\_\_\_ and more particularly described on the attached and incorporated **Exhibit A** (the “Property”).

**B.** City ordinances and/or State Law require Subdivider to complete various Subdivision improvements to protect the health, safety, and general welfare of the community and to limit the harmful effects of substandard subdivisions.

**C.** Subdivider desires to subdivide the Property in accordance with all applicable state and local laws, rules, and regulations.

**D.** This Agreement is authorized by and consistent with state law and the City’s ordinances, regulations, and other requirements governing development of a subdivision.

**E.** This document is executed to memorialize Subdivider’s responsibility to provide certain improvements to the Subdivision required by the respective City and/or County platting process (“Subdivision Improvements”).

**F.** The City of Austin will not accept the Subdivision and release the Subdivider from its obligations under this Agreement, until all City Required Subdivision Improvements have been approved and accepted by the City.

**G.** The City will not release the Subdivider from its obligations under this Agreement, until all County Required Subdivision Improvements have been approved and accepted by the County, and the County provides a written directive to the City to release the Subdivider.

**H.** Subdivider may not have provided fiscal surety for all Subdivision Improvements.

**I.** This Agreement requires the Subdivider to post fiscal guarantees for certain improvements, which protects the City and/or County from, at their respective expense, completing subdivision improvements required to be provided by the Subdivider. Subdivider’s fiscal surety may be used only to complete those improvements listed on the attached and incorporated **Exhibit B** (collectively called the “Exhibit B Improvements,” any one of which is an “Exhibit B Improvement”). The Subdivision Improvements will be listed on Exhibit B as either City Required or County Required Exhibit B Improvements, and will be so defined in this Agreement.

**J.** Under certain circumstances, outlined in the Agreement, Subdivider can assign all of its obligations hereunder to another subdivider.

IN CONSIDERATION of the mutual covenants set forth in this Agreement, the parties agree as follows:

**Agreement:**

**1. Incorporate Recitals.** The above Recitals, and all defined terms therein are incorporated in this Agreement for all purposes.

**2. Parties.** The parties to this Subdivision Construction Agreement (the “Agreement”) are

\_\_\_\_\_ [name, type of entity, state of incorporation/partnership] (individually and collectively, the “Subdivider”), acting through its duly authorized agent (“Subdivider’s Agent”) **and** the City of Austin, a Texas home-rule municipal corporation (the “City”) acting through its duly authorized City Manager, or designee, (“City Manager”), who for purposes of this Agreement is Development Services Department Director, or designee, (“DSD Director”) or Public Works Director, or designee, (“PW Director”), whichever is applicable **and/or** the County of \_\_\_\_\_ [insert county name], a political subdivision of the State of Texas (the “County”) acting through its duly authorized \_\_\_\_\_ [insert title], or designee, who for purposes of this Agreement is \_\_\_\_\_ [insert title, e.g.: Executive Director of Travis County Transportation and Natural Resources Department] or designee (“County Director”)

**3. Effective Date.** This Agreement is effective on the date the Subdivider signs (the “Effective Date”).

**Subdivider’s Obligations**

**4. Improvements.** Subdivider covenants to construct and install, at Subdivider’s expense, all external and internal subdivision improvements required to comply with City ordinances, and all applicable City and/or County regulations, and policies governing subdivision approval for \_\_\_\_\_ [name of s/d], including Exhibit B Improvements.

Prior to starting construction of the Subdivision Improvements, the construction plans and specifications must be certified by Subdivider’s engineer of record for the Subdivision as compliant with all applicable state and local development regulations (including environmental protections such as erosion controls and site restoration) and released for construction by the DSD Director and/or County Director, as applicable (collectively the construction plans and specifications are called “Released Construction Plans”). All Subdivision Improvements must be constructed in conformance with the Released Construction Plans. Final acceptance of the Subdivision Improvements after completion is subject to inspection, certification and acceptance by the DSD Director or PW Director and/or County Director, as applicable, as being in conformance with the Released Construction Plans.

**5. Fiscal Deposit.** Subdivider must provide and continually maintain financial guarantees in the estimated total cost to construct each Exhibit B Improvement in conformance with the Released Construction Plans, as shown on **Exhibit B** (“Stated Amount”) to assure performance of its obligations. The guarantee can be a surety bond or irrevocable letter of credit in a form acceptable to the City Attorney or designee (“City Attorney”) or a cash deposit held by the City (“Fiscal Deposit”). The Stated Amount of the Fiscal Deposit is \$ \_\_\_\_\_ [ \$ > ].

**(a) Cash Deposit.** A cash deposit must be in the full Stated Amount, held by the City, and placed in an interest bearing escrow fund and invested as if it were funds of the City. All interest earned on the cash deposit will be credited to the Subdivider. The City will maintain a balance of 100% of the cost of construction of the Exhibit B Improvements as shown on Exhibit B, all interest in excess of that amount may be disbursed to the Subdivider upon City’s receipt of Subdivider’s written request therefor. Subdivider cannot request interest disbursements more frequently than once a year, with the request being dated within 30 days of the Effective Date of this Agreement. Subdivider cannot request an initial disbursement of interest until the Fiscal Deposit has been placed with the City for 365 days.

**(b) Letter of Credit.** A letter of credit must: (a) be in the full Stated Amount; (b) be a standard form acceptable to the City Attorney; (c) have an expiration date no earlier than one year from the date of its issuance; and (d) be issued by a financial institution having a rating equivalent to the minimum acceptable rating established under the City’s financial institution rating system in effect at the time the initial Fiscal Deposit is issued pursuant to this Agreement (the “Issuer”). During this Agreement and subject to the terms of **Section 23**, the City Attorney may revise the standard form letter of credit as s/he reasonably considers acceptable and necessary to secure the performance of Subdivider’s obligations under this Agreement. If the standard letter of credit form is revised, the new form will not be required to be used until the next renewal period, if any.

**(c) Surety Bond.** A surety bond must: (a) be in the full Stated Amount; (b) be a standard form acceptable to the City Attorney; (c) be listed with the United States Treasury [ [www.fms.treas.gov/c570/index.html](http://www.fms.treas.gov/c570/index.html) ]; (d) be issued by an insurance company licensed to transact business in the state of Texas and (e) have a rating equivalent to the minimum acceptable rating established by the City’s Financial Services Department in effect at the time the initial Fiscal Deposit is issued pursuant to this Agreement (the “Issuer”). During this Agreement and subject to the terms of **Section 23**, the City Attorney may revise the standard form surety bond as s/he reasonably considers acceptable and necessary to secure the performance of Subdivider’s obligations under this Agreement. If the standard surety bond form is revised, the new form will not be required to be used until the next time the amount of the bond is adjusted, if any.

**(d) County delegation to City.** The County authorizes the City to require all Fiscal Deposits to be in the format approved by the City Attorney.

**6. Increase in Fiscal Deposit.** If, from time to time, the DSD Director determines the estimated total cost of constructing the Exhibit B Improvements exceeds the Stated Amount, the

DSD Director shall notify Subdivider of the increase in the Stated Amount. If, from time to time, the County Director determines the estimated total cost of constructing the Exhibit B Improvements exceeds the Stated Amount, the County Director shall notify the DSD Director of the amount of the deficiency, and the DSD Director shall notify Subdivider of the increase in the Stated Amount. Any increase of the estimated total cost of constructing the Exhibit B Improvements will be based on the Austin Public Works Construction Index (based upon unit prices taken from contracts issued by the City). Subdivider shall increase the Fiscal Deposit to equal the increased Stated Amount within 30 days after notification of the deficiency, by either amending the Fiscal Deposit or providing an additional Fiscal Deposit. All increased or new Fiscal Deposits must meet all requirements of **Section 5**. A revised **Exhibit B** showing the Stated Amount for each Exhibit B Improvement, as amended, will be filed of record as an amendment to the Subdivision Construction Agreement at Subdivider's expense. The revised **Exhibit B** replaces the Exhibit B originally filed of record effective on the date of its recordation. Subdivider, and all its lienholders, must sign or consent to the new **Exhibit B**, as applicable. Subdivider must provide an Updated Lien Search Certificate, which meets all the requirements of **Section 7**, and pay the recording fee to the City. City will file the amendment to the Agreement to substitute the revised **Exhibit B**.

**7. Lien Search Certificate.** Subdivider must provide a Lien Search Certificate prepared and signed by a title company acceptable to the DSD Director or PW Director and/or the County Director, as applicable. The Lien Search Certificate must name all owners of the Property, must name all lienholders having current liens against the Property, must identify the property, and must be dated no more than 5 business days prior to the Effective Date of this Agreement or the date of posting Fiscal, whichever is later. The Lien Search Certificate must be accompanied by a Consent of Lienholder that is signed by duly qualified representatives of all lienholders identified on the Lien Search Certificate. The Fiscal Deposit will not be accepted without the Lien Search Certificate and the executed Consent of Lienholder, if applicable.

### **City's and/or County's Obligations**

**8. Reduction in Fiscal Deposit.** After the City accepts any City Required Exhibit B Improvement or the County approves the construction of any County Required Exhibit B Improvement, the amount the City or County is authorized to draw on the Fiscal Deposit will be reduced by an amount equal to 90% of the actual cost of the accepted Exhibit B Improvement, as shown on **Exhibit B**, as amended, if applicable, if Subdivider is not in default under this Agreement.

If Subdivider is not in default under this Agreement, when an Exhibit B Improvement is accepted, Subdivider may request the DSD Director to recalculate the Stated Amount within 60 days after receipt of the request. The recalculated Stated Amount will include 10% of the estimated cost of any accepted Exhibit B Improvement and 100% of the "Estimated Remaining Cost", which means the cost to complete all incomplete Exhibit B Improvements at the time the recalculation request is received. After recalculating the Stated Amount, the DSD Director shall convey a letter to Issuer, if applicable, verifying City's acceptance or County's approval of each Exhibit B Improvement accepted or approved, and containing a reduced Stated Amount, if the recalculated Stated Amount exceeds the Estimated Remaining Cost. Notwithstanding the preceding sentence,

the DSD Director shall not authorize reductions in the Stated Amount more frequently than every 90 days; nor will the Stated Amount be reduced to zero until all Subdivision Improvements have been completed.

**9. Release of Fiscal Deposit.** (a) City Release. Upon Subdivider completing all City Required Subdivision Improvements, and complying with all requirements of the COA Standard Specifications Series 1800S – Private Development, Construction Requirements and Procedures, and upon DSD Director’s receipt of notice from the Construction Inspection Division of acceptance of all Subdivision Improvements, the Fiscal Deposit will be released and this Agreement will be terminated. If any item is missing or incomplete, this Agreement remains in effect.

(b) County Release. Upon Subdivider completing all County Required Subdivision Improvements, and complying with all requirements of the \_\_\_\_\_ [insert county name] \_\_\_\_\_ [insert name of standards, e.g.: Travis County Standards for Construction of Streets and Drainage in Subdivisions], and upon DSD Director’s receipt of notice from the County Director to release this Agreement, the Fiscal Deposit will be released and this Agreement will be terminated. If any item is missing or incomplete, this Agreement remains in effect.

**10. Inspection and Certification.** The DSD Director, the Public Works Director, or the County Director, as applicable, agree (a) to inspect Subdivision Improvements (i) during and (ii) at the completion of construction, and, (b) if completed in accordance with the Released Construction Plans, to certify the Subdivision Improvements as complying with the Released Construction Plans. The inspections and certifications will be conducted in accordance with standard City policies and requirements and/or standard County policies and requirements, as applicable. The Subdivider grants the City and/or the County, or their respective agents, employees, officers, and contractors an easement and license to enter the Property to perform such inspections as it deems appropriate.

**11. Notice of Defect.** The DSD Director or PW Director, as applicable, will provide timely notice to the Subdivider whenever inspection reveals that any City Required Subdivision Improvement is not constructed or completed in accordance with the Released Construction Plans or is otherwise defective, followed by written notice and period to cure, if Subdivider fails to cure the defect upon being given oral notice. The Subdivider must cure or substantially cure the defect within the time period set out in the written notice. The DSD Director or PW Director, as applicable, may declare a default under this Agreement if the defect is not cured to his satisfaction within the stated cure period.

**12. Use of Proceeds.** (a) Investment. The City will invest all funds obtained by one or more draws under the Fiscal Deposit (“Escrowed Funds”) in the same manner as if they were funds of the City. The City will invest such Escrowed Funds, and accrued interest thereon, until they are disbursed by the City. All Escrowed Funds and interest accrued thereon belong to the City and/or the County depending on whether the Fiscal Deposit was provided for a City Required or a

County Required Exhibit B Improvement and the Subdivider forfeits all rights to the Escrowed Funds and accrued interest.

The City will disburse Escrowed Funds, and interest thereon, to the City or its contractor only to complete the City Required Exhibit B Improvements or to the County or its contractor only to complete County Required Exhibit B Improvements, in conformance with the Released Construction Plans, or to correct defects in or failures of their respective Exhibit B Improvements. The City and/or the County may, in its respective sole discretion, complete some or all of their respective Exhibit B Improvements unfinished at the time of default, regardless of the extent to which development has taken place in the Subdivision or whether development ever commenced, and without incurring any obligation to complete any of the unfinished Exhibit B Improvements.

The DSD Director may disburse all or part of the Escrowed Funds to the City or its contractor as City Required Exhibit B Improvements are completed and accepted by the City, or in accordance with the terms of a written construction contract between the City and a third party to construct City Required Exhibit B Improvements.

The DSD Director may disburse all or part of the Escrowed Funds to the County or its contractor as County Required Exhibit B Improvements are completed and approved by the County, or in accordance with the terms of a written construction contract between the County and a third party to construct County Required Exhibit B Improvements.

If the City draws on the Fiscal Deposit under **Sections 13(a) or (e)** below, Subdivider's obligation under this Agreement with respect to the Exhibit B Improvement for which the Fiscal Deposit was drawn ceases. If Subdivider has no other Exhibit B Improvements remaining after a draw on the Fiscal Deposit, City will release this Agreement; however, partial releases will not be granted.

**13. Conditions of Draw on Fiscal Deposit.** The DSD Director may draw upon any financial guarantee posted in accordance with **Section 5** upon the occurrence of one or more of the following events:

- a. Subdivider commenced construction but did not properly construct or complete one or more Exhibit B Improvements and failed to remedy the construction deficiency within the cure period;
- b. Subdivider did not renew or replace the Fiscal Deposit at least 45 days prior to its expiration date;
- c. Subdivider did not replace the Fiscal Deposit within 45 days after notice that the Issuer failed to maintain the minimum rating acceptable to the City, in accordance with **Section 5**;
- d. The Issuer's acquisition of the Property or a portion of the Property, through foreclosure or an assignment or conveyance in lieu of foreclosure; or
- e. If City or County elect to construct an external **Exhibit B** Improvement, the DSD Director may draw on the Fiscal at any time. The County Director must provide the DSD Director written notice of the County's election before the City is obligated to draw on the County's behalf.

The PDRD Director or PW Director, as applicable, shall provide written notice of the occurrence of one or more of the above events to the Subdivider. In the event of a draw on a Fiscal Deposit for a County Required Exhibit B Improvement, the County Director must provide notice of the need for the draw to the PDRD Director, who will provide written notice of one or more of the above events to the Subdivider

If the City draws on the Fiscal Deposit under **Section 13(a)**, the notice must state the specific construction deficiency, the time period to cure, and include a statement that the City intends to perform some or all of Subdivider's obligations under **Section 4** for specified Exhibit B Improvements if the failure is not cured. If Subdivider has not cured the default within the stated cure period, the PDRD Director will send a draw letter to Issuer, with a copy to Subdivider, within 15 days after the cure period expires. The County Director's notice to the PDRD Director of the need for a draw must provide this same information in order for the City to notify the Subdivider.

If a renewal or replacement Letter of Credit is not provided at least 45 days prior to expiry, as required under **Section 13 (b), (c) and (d)**, then within 15 days prior to expiry of such Letter of Credit the PDRD Director will send a draw letter to Issuer, with a copy to Subdivider and the County Director, if applicable.

If the Issuer has acquired all or part of the Property through foreclosure or an assignment or conveyance in lieu of foreclosure, in lieu of honoring a draft based on a **Section 13 (d)** default, the Issuer may deliver a substitute or confirming Fiscal Deposit to the City.

If the City draws on the Fiscal Deposit under **Sections 13 (b), (c), or (d)**, the funds received will be converted to a Cash Deposit for the benefit of Subdivider, as if originally deposited as Cash under **Section 5 (a)**.

The notice for a drawing under **Section 13 (e)** must be given to Issuer, with a copy to Subdivider, and the County Director, if applicable, no less than 15 days before drawing on the Fiscal Deposit.

**14. Procedures for Drawing on the Fiscal Deposit.** The PDRD Director may draw upon the Fiscal Deposit in accordance with **Section 13** by submitting a draft to the Issuer that complies with the terms governing such draft. Non-cash Fiscal Deposits must be surrendered upon presenting any draft that exhausts the Stated Amount of such Fiscal Deposit. The PDRD Director may not draft under a Fiscal Deposit unless s/he has substantially complied with all obligations to the Issuer under this Agreement and has properly completed and executed the draft in strict accordance with its terms. To draw on a cash Fiscal Deposit requires a letter of explanation to the person who posted the cash Fiscal Deposit, which meets the requirements to draw upon the City's most currently approved Letter of Credit form.

If a draw is based on a default under **Section 13(a)**, the PDRD Director may draw the amount he considers necessary to perform Subdivider's City Required obligations under **Section 4**. For each City Required Exhibit B Improvement constructed by the City, the PDRD Director may draw 100% of the amount allocated in **Exhibit B** for any City Required Exhibit B Improvement the City intends to construct, complete, repair, or replace in accordance with the Released Construction Plans.

If a draw is based on a default under **Section 13(a)**, the PDRD Director may draw the amount the County Director in writing instructs is necessary to perform Subdivider's County Required obligations under **Section 4**. For each County Required Exhibit B Improvement constructed by the County, the PDRD Director may draw 100% of the amount allocated in **Exhibit B** for any County Required Exhibit B Improvement the County intends to construct, complete, repair, or replace in accordance with the Released Construction Plans.

**15. Cost Participation by City.** If the City agrees to participate in the expense of installing any of the Subdivision Improvements, the respective benefits and obligations of the parties will be governed by the terms of a Community Facilities Construction Agreement ("CFC") that will be executed subsequently and attached and incorporated as an **Exhibit** to this Agreement. The terms of that CFC agreement control to the extent of any inconsistency with this Agreement.

### **General Terms**

**16. Right of Entry.** The Subdivider hereby grants to the City and/or the County, as applicable, and their respective successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property to construct, maintain, and repair their respective Subdivision Improvements.

**17. Remedies.** The remedies available to the City and/or County, as applicable, and the Subdivider under this Agreement and the laws of Texas are cumulative in nature.

**18. Third Party Rights.** No person or entity who or which is not a party to this Agreement has any right of action under this Agreement. Nor does any such person or entity, other than the City, and/or County, as applicable, (including without limitation a trustee in bankruptcy) have any interest in or claim to Escrowed Funds drawn on the Fiscal Deposit in accordance with this Agreement.

**19. Indemnification.** Subdivider covenants to fully indemnify, save, and hold harmless the City of Austin, the County of \_\_\_\_\_ [insert county name], and their respective officers, employees, and agents (collectively called "Indemnitees") from, and against, all claims, demands, actions, damages, losses, costs, liabilities, expanses, and judgments recovered from or asserted against Indemnitees on account of injury or damage to person [including without limitation, Workers' Compensation and Death Claims], or property loss or damage of any kind whatsoever, to the extent any damage or injury may be incident to, arise out of, be caused by, or be in any way connected with, either proximately or remotely, wholly or in part, the construction, existence, use, operation, maintenance, alteration, repair, or removal of any Subdivision Improvement installed by or on behalf of Subdivider in the Property; the performance of this Subdivision Construction Agreement; an act or omission, negligence, or misconduct on the party of

**Subdivider, or any of its agents, servants, employees, contractors, patrons, guests, licensees, invitees, or other persons entering upon the Property under this Agreement, whether authorized with the expressed or implied invitation or permission of Subdivider (collectively called “Subdivider’s Invitees”); including any injury or damage resulting, proximately or remotely, from the violation by Subdivider or Subdivider’s Invitees of any law, ordinance, or governmental order of any kind, including any injury or damage in any other way arising from or out of the use of the Subdivision Improvements on the Property or the Property itself by any person, whether authorized to use the Subdivision Improvements.**

**Subdivider covenants and agrees that if the City, the County, or any other Indemnitee is made a party to any litigation against Subdivider or any litigation commenced by any party, other than Subdivider, relating to this Agreement, Subdivider shall, upon receipt of reasonable notice regarding commencement of litigation, at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend the City and/or County, as applicable, in all actions with counsel acceptable to City and/or County, as applicable, and pay all charges of attorneys and all other costs and expenses of any kind arising from any liability, damage, loss, claims, demands, and actions.**

**20. No Waiver.** No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement executed by duly authorized representatives of all parties. No waiver of any default under this Agreement will be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Agreement or any covenant by the City, and/or the County, as applicable, the Subdivider, or the Issuer, their respective heirs, successors or assigns, whether any violations thereof are known, does not constitute a waiver or estoppel of the right to do so.

**21. Attorney’s Fees.** If either party sues to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, is entitled to recover its costs, including reasonable attorney’s fees, court costs, and expert witness fees, from the other party. If the court awards relief to both parties, each will bear its own costs in their entirety.

**22. Assignability.** The benefits and burdens of this Agreement are personal obligations of the Subdivider and also are binding on the heirs, successors, and assigns of the Subdivider and on any person acquiring an ownership interest in the Property through the Subdivider. The Subdivider’s obligations under this Agreement may not be assigned without the express written approval of the PDRD Director for City Required Exhibit B Improvements or the County Director for County Required Exhibit B Improvements. The PDRD Director’s and/or the County Director’s written approval may not be withheld if the Subdivider’s assignee explicitly assumes all obligations of the Subdivider under this Agreement and has posted the required Fiscal Deposit.

An assignment alone does not release the Subdivider from Subdivider's obligations under this Agreement. Subdivider's obligations hereunder continue, notwithstanding any assignment approved pursuant to this **Section 22**, unless and until the City, and the County if applicable, executes and delivers to the Subdivider a written release of Subdivider from the obligations imposed by this Agreement. The PDRD Director agrees to release or reduce, as appropriate, the Fiscal Deposit provided by the Subdivider if he accepts substitute Fiscal Deposit for all or part of the Exhibit B Improvements. The City, in its sole discretion, may assign some or all of its rights under this Agreement, and any such assignment is effective upon notice to the Subdivider and the Issuer. The County, in its sole discretion, may assign some or all of its rights under this Agreement, and any such assignment is effective upon notice to the Subdivider and the Issuer.

**23. Notice.** Any notice required or permitted by this Agreement is deemed delivered when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Subdivider: >

if to City:

Development Services Department  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-8828  
Attn: Fiscal Officer

If to County:

\_\_\_\_\_ [insert county name & officer]  
\_\_\_\_\_ [insert mailing address]  
\_\_\_\_\_ [insert City, State, Zip Code]

if to the Issuer: at Issuer's address shown on the Fiscal Deposit

The parties may, from time to time, change their respective addresses listed above to any other location in the United States. A party's change of address is effective when notice of the change is provided to the other party in accordance with this **Section 23**.

**24. Severability.** If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability does not affect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of this Agreement.

**25. Personal Jurisdiction and Venue .** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement, whether arising out of or relating to the Agreement

or the Fiscal Deposit, is only deemed proper if commenced in District Court for Travis County, Texas, or the United States District Court for the Western District of Texas, Austin Division. The Subdivider expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal. The Issuer, by providing a Fiscal Deposit pursuant to the terms of this Agreement, expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal.

**26. Release.**

**A. Upon Completion.**

**(i) City.** Upon accepting all City Required Subdivision Improvements, the City agrees: (a) to provide a recordable release to the Subdivider and the Issuer releasing the Subdivider and Subdivider's heirs, successors and assigns, and the Property from all provisions of this Agreement and (b) to return the Fiscal Deposit to the Issuer.

**(ii) County.** Upon accepting all County Required Subdivision Improvements or Notification to the Commissioners Court of satisfactory completion of private improvements, the County agrees to provide written notice to the PDRD Director to release this Agreement. Upon receipt of the County's notice to release, the City agrees to (a) a recordable release to the Subdivider and the Issuer releasing the Subdivider and Subdivider's heirs, successors and assigns, and the Property from all provisions of this Agreement and (b) to return the Fiscal Deposit to the Issuer.

**B. Upon Vacation of Plat.** Upon receipt of notice of Vacation of Plat under the City's usual process for same, the City agrees: (i) to provide a recordable release to the Subdivider and the Issuer releasing the Subdivider and Subdivider's heirs, successors and assigns, and the Property from all provisions of this Agreement and (ii) to return the Fiscal Deposit to the Issuer.

**27. Captions Immaterial.** The numbering, order, and captions or headings of the paragraphs of this Agreement are for convenience only and must not be considered in construing this Agreement.

**28. Entire Agreement.** This Agreement contains the entire agreement between the parties and correctly sets forth the rights, duties, and obligations of each to the other as of the Effective Date.

**29. Amendment.** Any oral representations or modifications concerning this Agreement have no force or effect unless there is a subsequent written modification executed by duly authorized representatives of both parties.

**30. Authorization to Complete Blanks .** By signing and delivering this Agreement to the appropriate official of the City, the Subdivider authorizes completion of this Agreement by filling in the Effective Date below.

**31. Binding Agreement.** The execution and delivery of this Agreement and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate and governmental action of the City. Further, the execution and delivery of this Agreement and the performance of the transactions contemplated thereby have been duly authorized by a ll necessary corporate action of both the Subdivider and Issuer. This Agreement has been duly executed and

delivered by each party, and constitutes a legal, valid, and binding obligation of each party enforceable in accordance with the terms as of the Effective Date. These representations and agreements are for the benefit of the Issuer, and have been relied on by the Issuer in issuing the Fiscal Deposit.

**Executed** by the parties to be Effective on \_\_\_\_\_, 20\_\_.

**City of Austin:**

**Subdivider:**

Company Name, if any

By: \_\_\_\_\_  
\_\_\_\_\_, Principal Planner

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_ [insert name of county] **County:**

By: \_\_\_\_\_  
Name:  
Title:

*Acknowledgments*

State of \_\_\_\_\_ §  
County of \_\_\_\_\_ §

Before me \_\_\_\_\_ [Notary name], a Notary Public on this day personally appeared \_\_\_\_\_ [signer's name] as \_\_\_\_\_ [signer's title] of \_\_\_\_\_ [name of corporation or LLC], known to me personally through his/her \_\_\_\_\_ [state of] driver's license to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[Seal] Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

State of Texas §  
County of Travis §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ as Principal Planner for the Development Services Department of the City of Austin, a Texas municipal corporation, on behalf of said corporation.

[Seal]

\_\_\_\_\_  
Notary Public, State of Texas

State of Texas §  
County of \_\_\_\_\_ [insert] §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_  
[insert name] as \_\_\_\_\_ [insert title] for \_\_\_\_\_  
[insert county name], a Texas County.

[Seal]

\_\_\_\_\_  
Notary Public, State of Texas

**IF THERE IS A Lienholder**  
shown on the Lien Search Certificate  
Use the **Consent of Lienholder** form  
Next Document attached

**All highlighted areas must be filled in with correct information. I suggest leaving the highlighting**

**If Lien Search Certificate shows no lienholder delete this page and the Consent of Lienholder form and go straight to Exhibit List page**



STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

Before me \_\_\_\_\_ [name of notary], Notary Public of the State of \_\_\_\_\_, on this day personally appeared \_\_\_\_\_ [name of party], known to me by \_\_\_\_\_ [state] driver's license or identity card to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that s/he executed the same for the purposes and consideration expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_\_.

[SEAL]

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**EXHIBIT LIST:**

Exhibit A - Property Description

Exhibit B - Subdivision Improvements

**EXHIBIT A:**

**METES AND BOUNDS DESCRIPTION OF PROPERTY**

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# EXHIBIT B:

## SUBDIVISION IMPROVEMENTS

**External Subdivision Improvements.** Subdivider and City, and/or County, as applicable, agree the following improvements located outside the boundaries of the Subdivision are required in connection with the approval and development of the Subdivision (collectively, the “External Subdivision Improvements”). Subdivider agrees to deliver a financial guarantee acceptable in form and substance to the City Attorney in an amount equal to Subdivider’s pro -rata share of the estimated cost to construct and install the External Subdivision Improvements, in the amount listed below, as follows:

Description of City Required Subdivision Improvement(s)	Total Estimated Cost
a)	
b)	

Description of County Required Subdivision Improvement(s)	Total Estimated Cost
a)	
b)	

**Internal Subdivision Improvements.** Subdivider and City, and/or County, as applicable, agree the following improvements located inside the boundaries of the Subdivision are required in connection with the approval and development of the Subdivision (collectively, the “Internal Subdivision Improvements”). Subdivider agrees to deliver a financial guarantee acceptable in form and substance to the City Attorney in an amount equal to the Estimated Cost of Completion listed below, as follows:

Description of City Required Subdivision Improvement(s)	Estimated Cost of Completion
a)	
b)	
c)	
d)	

Description of County Required Subdivision Improvement(s)	Estimated Cost of Completion
a)	
b)	
c)	

**TOTAL** \$

AFTER RECORDING, RETURN TO:

City of Austin  
Development Services Department  
P.O. Box 1088  
Austin, Texas 78767  
Subdivision Name: \_\_\_\_\_  
Subdivision No. \_\_\_\_\_  
Attn: Fiscal Officer