

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

AMENDMENT NUMBER ONE

TO THE

SUBDIVISION CONSTRUCTION AGREEMENT

Dated: _____, 20__

This Amendment Number One to the Subdivision Construction Agreement (the "**Amendment**") is made and entered into by _____ (the "**Subdivider**"), with notice address of _____, _____ County, _____ and executed, acknowledged and approved by the Director of the Development Services Department or assignee, **CITY OF AUSTIN, TEXAS** (the "**City**"), with notice address of P.O. Box 1088, Austin, Travis County, Texas 78767-1088 for the purposes and considerations stated below:

WHEREAS, the Subdivider desires to amend the Subdivision Construction Agreement regarding the _____ Subdivision granted to the City on or about _____ and recorded as Document No. _____ of the Official Public Records of _____ County, Texas (the "**Original Agreement**") to modify the required fiscal amount; and

WHEREAS, Section 29 of the Original Agreement allows an amendment provided the amendment is in writing and executed by duly authorized representatives of both parties;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by all of the parties to this Amendment, City and Subdividers severally and collectively agree and by the execution hereof Subdivider shall be bound to the obligations and to the performance and accomplishment of the hereinafter described modifications, alterations and changes to the Original Agreement in the following respects only and all other terms and conditions remain as stated in the Original Agreement:

Section 1 City and Subdivider agree to amend Subdivider's Obligations 5. of the Original Agreement by eliminating and striking out 5. in its entirety and substituting in its place the following new 5:

Section 2

Fiscal Deposit. Subdivider must provide and continually maintain financial guarantees in the estimated total cost to construct each improvement(s) listed in **Exhibit B** in conformance with the Released Construction Plans, as shown on **Exhibit B** to assure performance of its obligations. The guarantee can be a cash deposit, surety bond, or irrevocable letter of credit in a form acceptable to the City Attorney, or designee held by the City ("Fiscal Deposit"). The stated amount of the Fiscal Deposit is _____ and ____/100 (\$_____) (the "Stated Amount").

- (a) **Cash Deposit.** A cash deposit must be received for the full 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 improvements 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 an initial disbursement of interest until the Fiscal Deposit has been placed with the City for 365 days. Subdivider cannot request interest disbursements more frequently than once a year.
- (b) **Surety Bond.** A surety bond must: (i) be in the full Stated Amount; (ii) be a standard form acceptable to the City Attorney; (iii) be listed with the United States Treasury http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm (iv) be issued by an insurance company licensed to transact business in the state of Texas and (v) 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 24**, the City Attorney may revise the standard form surety bond as is reasonably considered 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.
- (c) **Letter of Credit.** A letter of credit must: (i) be in the full Stated Amount; (ii) be a standard form acceptable to the City Attorney; (iii) have an expiration date no earlier than one year from the date of its issuance; and (iv) 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 24**, the City Attorney may revise the standard form letter of credit as 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.

Section 3 City and Subdivider agree to amend the Original Agreement by deleting Exhibit B of the Original Agreement and substituting in its place a new Exhibit B attached to this Amendment as **Attachment One**.

Section 4 Except as expressly amended or modified by this Amendment, the Original Agreement shall continue in full force and effect. The City and Subdivider each hereby ratify, affirm, and agree that the Original Agreement, as herein modified, represents the valid, binding and enforceable obligations of the City and Subdivider respectively. The City and Subdivider each promise and agree to perform and comply with the terms, provisions and conditions of and the agreements in the Original Agreement, as modified by this Amendment. In the event of any conflict or inconsistency between the provisions of the Original Agreement and this Amendment, the provisions of this Amendment shall control and govern.

Section 5 All capitalized terms not otherwise defined in this Amendment have the meanings assigned to them in the Original Agreement.

Section 6 This Amendment may be executed in multiple counterparts, each of which shall be considered an original, but all of which together shall constitute one agreement.

THIS WRITTEN AMENDMENT TO THE ORIGINAL AGREEMENT, THE ORIGINAL AGREEMENT AND ANY OTHER AGREEMENTS OR WRITTEN DOCUMENTS REFERRED TO BY SUCH AGREEMENTS REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

EXECUTED AND DELIVERED effective as of the date first above written.

_____,
a _____

BY: _____

NAME: _____

TITLE: _____

STATE OF _____ §

§

COUNTY OF _____ §

Before me, the undersigned notary, on this day personally appeared _____ of _____, a _____ known to me through valid identification to be the person whose name is subscribed to the preceding instrument and acknowledged to me that the person executed the instrument in the person's official capacity for the purposes and consideration expressed in the instrument.

Given under my hand and seal of office on _____, 20____.

Notary Public, State of Texas

APPROVED BY: **CITY OF AUSTIN, TEXAS**

BY: _____
NAME: _____, Managing Engineer, Or Designee

Delegated by: Keith Mars, Interim Director
Development Services Department

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me the undersigned notary, on this day personally appeared _____, Managing Engineer or Designee of Development Services Department as delegated by Keith Mars, Interim Director for the Development Services Department of the City of Austin, a Texas municipal corporation situated in the counties of Hays, Travis, and Williamson, known to me through valid identification to be the person whose name is subscribed to the preceding instrument and acknowledged to me that the person executed the instrument in the person's official capacity for the purposes and consideration expressed in the instrument.

Given under my hand and seal of office on _____ 20____.

Notary Public, State of Texas

REVIEWED:
CITY OF AUSTIN, TEXAS
DEVELOPMENT SERVICES DEPARTMENT

By: _____
Name: _____
Title: _____

ATTACHMENT ONE

EXHIBIT B:
Subdivision Improvements

External Subdivision Improvements and Internal Subdivision Improvements are collectively referenced as the “Subdivision Improvements”.

External Subdivision Improvements. Subdivider and City 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 Fiscal Surety Office 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 Improvement(s)		Total Estimated Cost
a)	Street Construction	\$ _____
b)	Drainage Collection System	\$ _____
c)	Detention Pond(s)	\$ _____
d)	Water Quality Pond(s)	\$ _____
e)	Erosion and Sedimentation Controls	\$ _____
f)	Restoration	\$ _____
g)	Sidewalks	\$ _____
h)	Other: _____	\$ _____
i)	Water	\$ _____
j)	Waste Water	\$ _____
k)	Parkland	\$ _____

EXHIBIT B (continued):
Subdivision Improvements

Internal Subdivision Improvements. Subdivider and City 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 Fiscal Surety Office in an amount equal to the Estimated Cost of Completion listed below, as follows:

Description of Improvement(s)		Estimated Cost of Completion
a)	Street Construction	\$ _____
b)	Drainage Collection System	\$ _____
c)	Detention Pond(s)	\$ _____
d)	Water Quality Pond(s)	\$ _____
e)	Erosion and Sedimentation Controls	\$ _____
f)	Restoration	\$ _____
g)	Sidewalks	\$ _____
h)	Other: _____	\$ _____
i)	Water	\$ _____
j)	Waste Water	\$ _____
k)	Parkland	\$ _____
TOTAL FISCAL REQUIRED		\$ _____
LESS FISCAL RECEIVED TO DATE		\$ _____
TOTAL DUE		\$ _____

AFTER RECORDING, RETURN TO:

City of Austin
Permitting & Development Center (PDC)
Development Services Department
Attn: Fiscal Surety Office 4th Floor
P.O. Box 1088
Austin, Texas 78767