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**FIRST AMENDMENT
TO THE
GRANT OF ACCESS AND RESTRICTIVE COVENANTS REGARDING MAINTENANCE
AND MONITORING FOR CRITICAL FEATURES, WATER QUALITY FACILITIES, AND
RELATED FACILITIES IN THE BRODIE SPRINGS II SUBDIVISION, PHASES ONE AND
TWO, AUSTIN, TEXAS**

Dated: July 18, 2019

This First Amendment to the Grant of Access and Restrictive Covenants regarding Maintenance and Monitoring for Critical Features, Water Quality Facilities, and Related Facilities in the Brodie Springs II Subdivision, Phase One and Two, Austin, Texas (the "**First Amendment**") is made and entered into by Brodie Springs Homeowners Associations, Inc., a *Texas non profit corporation* (the "**Association**") and the City of Austin, Texas, through its Director of the Watershed Protection Department, (the "**City**") for the purposes and considerations stated below:

WHEREAS, the parties desire to amend the Grant of Access and Restrictive Covenants regarding Maintenance and Monitoring for Critical Features, Water Quality Facilities, and Related Facilities in the Brodie Springs II Subdivision, Phase One and Two, Austin, Texas granted to the City on or about October 8, 2003 and recorded as Document No. 2004114140 of the Official Public Records of Travis County, Texas (the "**Original Agreement**"); and

WHEREAS, Section 10(K) of the Original Agreement states that the Original Agreement may be amended upon the filing of an amendment in the Official Records of Travis County, Texas, executed, acknowledged, and approved by the Director of the Watershed Protection and Development Review Department of the City of Austin and the developer of the subject property (“**Owners**”) before the Association is formed or a majority of the Board of Directors of the Association; and

WHEREAS, the successor to the responsibilities of the Director of the Watershed Protection and Development Review Department relevant to this First Amendment is the Director of the Watershed Protection Department; and

WHEREAS, having properly formed the Association, the Owner is no longer a necessary party to this First Amendment;

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 First Amendment, City and Association severally and collectively agree and by the execution hereof Association 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 Paragraph A (*Definitions*) of the General Recitals is amended by deleting the original definition of “Water Quality Facilities” in its entirety and adding new definitions for “Water Quality Facilities” and “Stormwater Control Measures” as follows:

- (2) “Water Quality Facilities” means all Subdivision improvements relating to water quality and critical environmental feature protection facilities that are generally described on **ATTACHMENT A**, attached hereto and incorporated by reference. The Water Quality Facilities include, without limitation, all swales, berms, required elevations, vegetative buffers, and required fencing and protective berms related to Kentucky Sink and Frog Sink.
- (5) “Stormwater Control Measures” means all Subdivision improvements relating to drainage that are generally described on **ATTACHMENT A**. The Stormwater Control Measures include, without limitation, all drainage conveyances, collection and treatment systems, pumps and irrigation systems, water quality/retention facilities, and surface water irrigation facilities.

Section 2 The General Recitals are amended by adding a new Paragraph F to read as follows:

- F. City intends to provide inspection, structural operation, repair and replacement, and complaint response for the Stormwater Control Measures beginning on the effective date of the First Amendment.

Section 3 Paragraph 2 of the Specific Agreements and Restrictions is amended by deleting the original language of Paragraph 2 and replacing it with a new Paragraph 2 to read as follows:

- 2. Operating Permit. Developer and Association shall obtain and cause to be maintained at all times an Operating Permit from the City for all water quality ponds in the Subdivision, which are the same operating permits and same types of requirements for water quality ponds as required for commercial property within the Barton Springs Zone in the City.

Section 4 Paragraph 5 of the Specific Agreements and Restrictions is amended by deleting the original language of Paragraph 5 and replacing it with a new Paragraph 5 to read as follows:

- 5. Notice. TCMA, District, and SBC shall give the Owner or the Association seven-day notice of intent to enter the Access Tracts to monitor or inspect; however, only one hour's notice is required for a rain event. Rain event means any time rain results in an accumulation of water in any water quality/retention pond on the Property.

Section 5 Paragraph 6 of the Specific Agreements and Restrictions is amended by deleting the original language of Paragraph 6 and replacing it with a new Paragraph 6 to read as follows:

6. **Maintenance.** The Association shall maintain the Water Quality Facilities, perform all vegetation maintenance associated with the Water Quality Facilities and Stormwater Control Measures, and perform all other obligations in accordance with the Operating Plan attached and incorporated as **ATTACHMENT D**. The Association must levy assessments against each Owner to discharge the maintenance obligations in this Agreement. The Association shall reimburse the City's costs for inspection and structural repairs or replacement of the Stormwater Control Measures up to an amount of \$4,000 per year. The Association will receive credit against this reimbursement for the cost of the Operating Permit under Section 2, above. If the Association fails to fulfill its maintenance obligations as required by this Agreement, after notice and a reasonable opportunity to perform, the City may cause the necessary work to be done and recover all its costs from the Association. The Association must reimburse the City for its costs no later than 14 days after receipt of an invoice from the City. The City must provide 30 days notice to the Association prior to undertaking required maintenance. This 30-day period may overlap the time granted to the Association to perform said maintenance.

Section 6 ATTACHMENT A of the Original Agreement is deleted and replaced with a new ATTACHMENT A attached to this First Amendment as **Exhibit One**.

Section 7 ATTACHMENT B of the Original Agreement is deleted and replaced with a new ATTACHMENT B attached to this First Amendment as **Exhibit Two**.

Section 8 ATTACHMENT C of the Original Agreement is deleted and replaced with a new ATTACHMENT C attached to this First Amendment as **Exhibit Three**.

Section 9 ATTACHMENT D of the Original Agreement, the Operating Plan, is deleted and replaced with a new ATTACHMENT D attached to this First Amendment as **Exhibit Four**.

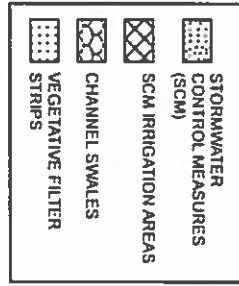
Section 10 Except as expressly amended or modified by this First Amendment, the Original Agreement shall continue in full force and effect. The City and Association each hereby ratify, affirm, and agree that the Original Agreement, as herein modified, represents the valid, binding and enforceable obligations of the City and Association respectively. The City and Association 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 First Amendment. In the event of any conflict or inconsistency between the provisions of the Original Agreement and this First Amendment, the provisions of this First Amendment shall control and govern.

Section 11 All capitalized terms not otherwise defined in this First Amendment have the meanings assigned to them in the Original Agreement.

Section 12 This First 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 REPRESENT 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.

EXHIBIT ONE



June 26, 2019

BRODIE SPRINGS II WATER QUALITY & STORMWATER CONTROL MEASURES ATTACHMENT A

EXHIBIT TWO



**BRODIE SPRINGS II
 WATER QUALITY & STORMWATER CONTROL MEASURES
 ATTACHMENT B**

June 26, 2019

EXHIBIT THREE

EXHIBIT FOUR

**ATTACHMENT D
BRODIE SPRINGS II SUBDIVISION
WATER QUALITY AND DRAINAGE FACILITIES OPERATING PLAN**

INTRODUCTION

This is a Water Quality and Drainage Facilities Operating Plan (“Plan”) for the water quality and drainage facilities located in Brodie Springs II Subdivision Phase One and the Brodie Springs II Subdivision Phase Two in Austin, Travis County, Texas (the “Subdivision”). The Plan is required by and attached to that certain restrictive covenant entitled “Grant of Access and Restrictive Covenants regarding Maintenance and Monitoring for Critical Water Quality Features, Water Quality Facilities, and Related Facilities in the Brodie Springs II Subdivision, Phases One and Two, Austin, Texas” (the “Restrictive Covenant”). All capitalized terms, unless otherwise defined in this Plan, have the meanings assigned to them in the Restrictive Covenant.

The Subdivision covers approximately 91.552 acres at the northeast quadrant of Brodie Lane and Squirrel Hollow Drive in southwest Austin. The Subdivision includes two branches of Slaughter Creek, two sinkholes (Kentucky Sink and Niemann Sink), a clay filled depression (Frog Sink) and one cave (Brodie Cave). Kentucky Sink is located adjacent to Brodie Lane. Frog Sink is located adjacent to Squirrel Hollow Drive on the south boundary of the Subdivision. Niemann Sink is located in the south fork of the creek. Brodie Cave is located in the north fork of the creek.

The purpose of this plan is to generally describe elements of an overall plan to achieve water quality in the Subdivision and to assure maintenance and repair of all elements of the overall water quality plan, including, without limitation, all swales, berms, required elevations, vegetative areas, and required fencing and protective berms related to Kentucky Sink and Frog Sink.

The Water Quality Facilities required by the City of Austin exist throughout the Subdivision. The Brodie Springs Homeowners Association, Inc. (the “Association”) must maintain the Water Quality Facilities.

A. DESCRIPTION OF PLAN ELEMENTS

1. **Maintenance and Monitoring Requirements.** Periodic requirements for maintenance and monitoring of the facilities described above by the Association for the Subdivision are contained in Section B of this Plan.
2. **Technical Manual.** A technical manual for operating and maintaining the Water Quality Facilities will be prepared by the Developer’s engineers and approved by the City of Austin prior to acceptance of the Subdivision by City. The technical manuals must be filed of record in the Official Public Records of Travis County, Texas and kept on file at the Association’s professional management company’s office.

3. Environmental Management Plan and Integrated Pest Management Plan. An Integrated Pest Management Plan is on file with the City in file numbers C8-00-2135.1B and C8-00-2135.2B and attached as Exhibit J to the Declaration of Covenants and Restrictions for the Brodie Springs II Subdivision (the "Declaration"). The Declaration also contains a comprehensive Environmental Management Plan (see Exhibit 1 of the Declaration).
4. Homeowner Education. State statute (Section 207.003 of the Texas Property Code) requires that each new homeowner be furnished with a copy of the Declaration which has been recorded and which is incorporated into each homeowner's chain of title. Exhibit 1 of the Declaration provides for annual seminars to which all homeowners are invited and which are sponsored by the Association. The subjects covered in that education will include, among other subjects, responsibilities under the Agreement to which this Plan is attached, use of pesticides and fertilizers, silt control, vegetation and oak wilt.
5. Subdivision Construction Plans. The Construction Plans for the Subdivision will be prepared by professional engineers for review and approval by the City of Austin (the "Construction Plans"). The Construction Plans include streets, water/wastewater plans, and water quality and drainage facility plans for the Subdivision. The Association must retain a copy of the Construction Plans since they are an integral part of the drainage and water quality programs for the Subdivision. The Construction Plans for the amenities areas immediately west of the Kentucky Sink must comply with the drainage plan approved by the City as part of the preliminary plan for the Subdivision, subject to the detail site plan to be prepared by professional engineers and approved by the City. The improvements in the amenities area shall not vary substantially for the map.

B. PERIODIC REQUIREMENTS FOR MAINTENANCE AND MONITORING BY THE ASSOCIATION

The following are general requirements for maintenance and monitoring by the Association.

1. All swales, berms, vegetative filter strips, sinkholes and cave entry points, and other important aspects of the overall Water Quality Facilities must be inspected regularly by the Association.
2. During each inspection, all erosion areas must be identified and repaired or revegetated promptly.
3. Grass areas in and around Stormwater Control Measures must be mowed and the debris removed as needed to limit the vegetation height to 18 inches.
4. Debris and litter accumulated in the Water Quality Facilities must be removed after each major rainfall event but no less than quarterly.

C. GOVERNMENT INSPECTION

1. Inspection and advance notice. The City of Austin, the Texas Cave Management Association, Barton Springs Edward's Aquifer Conservation District, and the Save Barton Creek Association have the right to inspect the Water Quality Facilities and critical environmental features upon notice as required in Paragraph 5 of the section entitled "Specific Agreements and Restrictions" of the Restrictive Covenant.
2. Reports and remediation. The City of Austin may notify the Developer and/or Association of any malfunction of the Water Quality Facilities or any need for repair or maintenance. Notification from the City shall be in writing addressed to the Developer and/or Association, outlining what problems need to be remedied. The Association shall have 45 days within which to begin to make necessary repairs or modifications or corrections to remedy the problems. Commencement of such repair must be within a reasonable period of time after notice, considering weather and the need to get bids (if any). In no event shall commencement of such work commenced later than 45 days from the time of notice from the City. The Developer and/or the Association shall communicate to the City of Austin in writing its plan of action for remediation prior to commencement of the work.

D. DOCUMENTATION

1. Permanent documents. The approved Construction Plans for the Subdivision and the engineering reports for the Subdivision that are submitted to the City during the approval process must be permanent records of the Association, along with Declaration of the Restrictive Covenant (include this Plan). All the foregoing documents contain important aspects of the overall water quality plan for the Subdivision. The Restrictive Covenant (to which this Plan is attached) are recorded in the Travis County Official Public Records. The construction drawings and engineering reports are retained by both the City and the Developer and/or the Association. The City's records are retained by the Watershed Protection Department, or successor department, of the City of Austin. The Association's records shall be kept in the possession of the Association's professional management company and/or officers of the Association.
2. Permanent records. Records of the Association's inspection and actions shall be kept by the Association for a period of at least three years, along with any governmental correspondence relating to the water quality.

3. **Points of Contact.** The point of contact for the City of Austin is the Director of the Watershed Protection Department, or successor department. The contacts for the Developer is Larry Neimann, or his successors. The contact for the Association shall be the Association's management company. When the Association is created, a certificate of management will be recorded in the Travis County Official Public Records, indicating the name, address and phone number and contact person within the professional management company managing the Association. The certificate of management may change from time to time as management companies for the Association change.

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

BRODIE SPRINGS HOMEOWNERS ASSOCIATIONS, INC., A Texas non-profit
CORPORATION

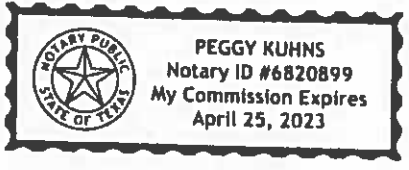
BY: Rachel Galindo
NAME: Rachel Galindo
TITLE: Board Secretary

STATE OF Texas §
 §
COUNTY OF Tarrant §

Before me, the undersigned notary, on this day personally appeared Rachel Galindo, Board Secretary of Brodie Springs Homeowners Association, Inc, a non-profit Corp. 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 18 July 2019.

[Seal]



Peggy Kuhns
Notary Public, State of Tx

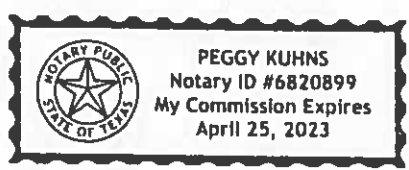
BY: LB
NAME: Lauren Bean
TITLE: Board Vice President

STATE OF Texas §
 §
COUNTY OF Gravis §

Before me, the undersigned notary, on this day personally appeared Lauren Bean, Board Vice President of Brodie Springs Homeowners Association, Inc, a TX corporation, 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 18 July 2019

[Seal]



Peggy Kuhns
Notary Public, State of TX

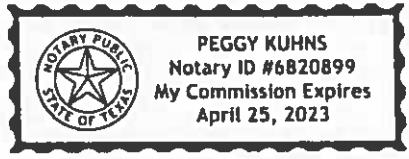
BY: Harvester Pope
NAME: Harvester Pope
TITLE: Treasurer

STATE OF Texas
COUNTY OF Texas

Before me, the undersigned notary, on this day personally appeared Harvester Pope, Treasurer of Brodie Springs Homeowners Association, Inc, a TX Non-Profit Corp., 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 18 July 2017.

[Seal]



Peggy Kuhns
Notary Public, State of TX

CITY OF AUSTIN, TEXAS

BY: Jose M. Guerrero
NAME: Jose Guerrero
TITLE: Acting Director, Watershed Protection Department

STATE OF TEXAS §
COUNTY OF TRAVIS §

Before me, the undersigned notary, on this day personally appeared Jose Guerrero, Acting Director of the WATERSHED PROTECTION DEPARTMENT OF THE CITY OF AUSTIN, TEXAS, a Texas home-rule 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 September 16, 2019

[Seal]



Olga M. Jimenez
Notary Public, State of Texas

APPROVED AS TO FORM:
CITY OF AUSTIN, TEXAS
LAW DEPARTMENT

By: [Signature]
Name: Cindy Silva
Title: Assistant City Attorney

REVIEWED:
CITY OF AUSTIN, TEXAS
WATERSHED PROTECTION DEPARTMENT

By: [Signature]
Name: Kovanne Jackson
Title: DIVISION MGR

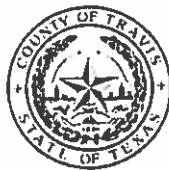
AFTER RECORDING, RETURN TO:

City of Austin, Texas
Watershed Protection Department
P.O. Box 1088
Austin, Texas 78767

Project Name: Brodie Springs

Attn: Roxanne Jackson

Case No. _____



COPY
OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

Dana DeBeauvoir, County Clerk
Travis County, Texas

2019160307

Oct 15, 2019 08:28 AM

Fee: \$106.00 TOMSR