

## **FIRST AMENDED AND RESTATED CONTRACT**

This First Amended and Restated Contract is hereby entered into by and among The Senna Hills Municipal Utility District ("MUD"), the Senna Hills Homeowners Association, Inc. ("HOA"), Senna Hills, Ltd. ("SHL") and The Senna Hills Trust ("Trust") which is as follows:

### RECITALS

WHEREAS, the MUD, HOA, SHL and Trust previously entered into that certain Contract with an Effective Date of May 23, 2018 ("Original Contract"); and

WHEREAS, the parties wish to amend and restate the Original Contract to incorporate amendments regarding use of the Subject Tract and other amendments that the parties have deemed necessary and as provided herein; and

WHEREAS, this First Amended and Restated Contract shall replace in its entirety the Original Contract.

NOW, THEREFORE, PREMISES CONSIDERED, and in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the MUD, HOA, SHL and Trust agree as follows:

#### I.

#### **Applications to the City of Austin and TXDOT**

SHL, at its expense, will apply to (a) the City of Austin (the "City") for modification of the First Amended and Restated Agreement Concerning Creation and Operation of Senna Hills Municipal Utility District, as amended by the Second Amendment to the First Amended and Restated Agreement Concerning Creation and Operation of Senna Hills Municipal Utility District (the "Consent Agreement") to amend the use restriction of the approximately 11.73 acre tract at the western edge of the Senna Hills Subdivision (the "Subdivision") fronting Bee Caves Road and identified on the Conceptual Plan to the Consent Agreement as "Lot 3" and "Lot 4" (collectively, the "Subject Tract") from "for school or for irrigation purposes only" to "school or office buildings"; (b) the City for a site development permit to

build office buildings on the Subject Tract under the existing plat, being subject to the Barton Creek Watershed Ordinance under which the Subject Tract was platted; (c) the City for approval of an amendment to the Senna Hills plat that includes the Subject Tract, to provide that access to the Subject Tract shall only be off Bee Caves Road and not off Senna Hills Drive; and (d) the Texas Department of Transportation (“TXDOT”) for authorization for access to office buildings on the Subject Tract off Bee Caves Road. The applications set forth in (a) – (d) above are collectively referred to hereinafter as the “Applications.” SHL currently has no plans to build a school on the Subject Tract and agrees it will not build a school on the Subject Tract without the prior written approval of the MUD and HOA.

**II.**

**MUD and HOA Approval of Initial Site Plan**

The MUD and HOA, conditioned on SHL’s agreement in Section III below, and subject to the conditions below, have reviewed and approved the “Initial Site Plan” for construction of office buildings, a copy of which is attached as **Exhibit A**. The MUD, by entering into this Contract, has not approved any utility plan and the MUD’s approval of the Initial Site Plan does not constitute its approval of any utility plan. All utility plans will be subject to review and approval by the MUD prior to actual site plan approval. In addition, the Initial Site Plan shall include an express condition providing that if the MUD has not obtained final and non-appealable approval of the amendment to the Permit described in Section VII below within five (5) years from the Effective Date of this Contract (as defined in Section XIV(j) below) or before termination of this Contract, whichever date occurs first, then the approval by the City of the final version of the Initial Site Plan shall be void and the Consent Agreement and the Conceptual Plan in the Consent Agreement shall automatically revert back to the original versions in effect prior to execution of this Contract. If the City refuses to include such express condition on the Initial Site Plan, then SHL agrees that if any of the events described in the foregoing sentence occur, SHL

shall file and pursue to approval of all applications that may be necessary to void the final version of the Initial Site Plan and amend the Consent Agreement and Conceptual Plan in the Consent Agreement back to the original versions in effect prior to execution of this Contract. Notwithstanding any provision in this Contract to the contrary, the requirements of the foregoing sentence shall survive termination of this Contract. Any material modification to the Initial Site Plan during the City, the Texas Commission on Environmental Quality (the "TCEQ"), TXDOT, or any other stakeholder review and approval process will also be subject to review and approval by the MUD and HOA. The MUD and HOA shall determine the level and extent of their participation in the approval process, in addition to the letters described below. SHL shall provide to the MUD and HOA quarterly updates on information available to SHL concerning the status and progress of the Applications and shall provide to the MUD and HOA at least two (2) weeks' advance notice of the date, location and time of any public meeting or hearing on any of the Applications. The MUD and HOA will support the Applications, provided that SHL and the Trust comply with all of their obligations in this Contract and further provided that SHL shall reimburse the MUD and HOA, within thirty (30) days after an invoice is mailed to SHL, for any expenses related to such support including consultant and attorney's fees. The MUD and HOA upon written request from SHL will send to the City and TXDOT letters evidencing their support in the forms attached as **Exhibits B-1** and **B-2**, respectively. The MUD and/or HOA may withdraw these letters if changes not contemplated under this Contract are made to the Initial Site Plan, the Consent Agreement or the Conceptual Plan in the Consent Agreement that are not acceptable to the MUD or HOA, or if SHL and/or the Trust fail to perform any material obligation in this Contract.

### III.

#### HOA Requirements

SHL agrees to make the HOA's requirements set forth in the attached **Exhibit C** a part of the Initial Site Plan and site development permit described in paragraphs I and II above.

### IV.

#### Deed Restriction and Dismissal of Lawsuits

SHL has, contemporaneously with execution of this Contract, executed and delivered to Gracy Title (the "Escrow Agent"), a signed and notarized deed restriction providing that there will be no traffic access from Senna Hills Drive (with exception of emergency vehicles) to the Subject Tract (**Exhibit D**; the "Deed Restriction") and Agreed Orders of Dismissal with Prejudice of Cause Nos. D-1-GN-12-0006002 and D-1-GN-14-004993 signed by all counsel of record (**Exhibit F**; the "Agreed Orders of Dismissal"). On the date all of the Applications are fully approved in form acceptable to SHL and not subject to appeal, and the amendment to the MUD's Texas Land Application Permit ("Permit") as described in Section VII below has received final approval from the TCEQ and is not subject to appeal (the "Governmental Approval Date"), then the Escrow Agent shall immediately (i) record the Deed Restriction and forward the recorded Deed Restriction to counsel for the HOA, and (ii) forward the Agreed Orders of Dismissal to counsel for the MUD. Counsel for the MUD will secure entry and filing of the Agreed Orders of Dismissal. In the event any of the Applications are not fully approved in form acceptable to SHL, or if the amendment to the Permit is not approved, then SHL shall provide the other parties and the Escrow Agent with written notice of same, whereupon the Escrow Agent shall immediately return the Deed Restriction and the Agreed Orders of Dismissal to SHL, and this Contract shall be automatically terminated and of no further force and effect. In

the event the amendment to the Permit is not approved by the TCEQ, SHL shall have the option to appeal the TCEQ's decision on its own and at SHL's sole expense.

**V.**

**CONVEYANCE OF LOTS TO HOA**

As consideration for the HOA's approval of the Initial Site Plan and support of the Applications, the Trust agrees, subject to the terms and conditions of this Contract, to convey to the HOA all properties the Trust owns in the Subdivision (being all properties in the Subdivision formerly owned by SHL other than the Subject Tract), which include the following lots (collectively, the "Deeded Lots"):

- Lot 11-A of Senna Hills Section ONE-A a subdivision as shown by the Plat recorded at Volume 93, Page 239, Plat Records of Travis County, Texas;
- Lot 37B, Block G, Senna Hills Section Two, a subdivision as shown by the Plat as recorded at Volume 93, Page 353, Plat Records of Travis County, Texas;
- Lot 1, Block G, Senna Hills Section Four, a subdivision as shown by the Plat recorded at Volume 100, Page 82, Plat Records of Travis County, Texas; and
- Lot 102, Block A, Senna Hills Section 5-B, a subdivision as shown by the Plat recorded as Document 20000084, Plat Records of Travis County, Texas minus and except for the 5.764 acres described as Tract I and described by the metes and bounds description on Exhibit A to that certain Special Warranty Deed from Senna Hills, Ltd. To Senna Hills Municipal Utility District dated to be effective October 30, 1998 and recorded in Volume 13305, at Page 1220, of the Real Property Records of Travis County, Texas.

Contemporaneously with the execution of this Contract, the Trust has executed and delivered to the Escrow Agent, a Special Warranty Deed (with restrictive covenants and reservation of easements) (**Exhibit E**; the "Deed"), which, when recorded, conveys to the HOA fee simple title to the Deeded Lots, subject to: (i) easements in favor of the Trust

described as the Perpetual Use Easement Area (the "Perpetual Use Easement Area") and the Access Easement Area in the Deed attached as **Exhibit E**; and (ii) a reservation of all minerals by the Trust, provided that all exploration, production, and/or development of the minerals shall occur offsite. In the event any of the Applications are not fully approved in form acceptable to SHL, or if the amendment to the Permit is not approved, then SHL shall provide the other parties and the Escrow Agent notice of same, whereupon the Escrow Agent shall immediately return the Deed to the Trust, and this Contract shall be automatically terminated and of no further force and effect.

Unless this Contract is terminated pursuant to a right granted hereunder, the Escrow Agent shall record the Deed on the date that is sixty (60) days after the Governmental Approval Date, provided that the HOA may elect to have the Deed recorded at any time after the Governmental Approval Date by giving the Trust and the Escrow Agent at least ten (10) days' written notice of such election. The date the Deed is recorded shall be the "Conveyance Date." Ad valorem taxes for the year in which the Conveyance Date occurs shall be prorated as of the Conveyance Date, with the Trust being responsible for all time periods prior to the Conveyance Date, and the HOA being responsible for all time periods from and after the Conveyance Date. If the amount of taxes for the year in which the Conveyance Date occurs is not known as of the Conveyance Date, the proration shall be based upon the previous year's taxes with an adjustment being made between the Trust and the HOA once the amount of taxes for the year in which the Conveyance Date occurs becomes known.

At any time prior to the Conveyance Date, the HOA may require SHL, at SHL's sole expense, to have the Phase 1 Environmental Site Assessment prepared by SWCA Environmental Consultants and dated December 2016 ("Phase 1 ESA") updated with respect to each of the Deeded Lots for the benefit of the HOA. If the updated Phase 1 ESA identifies any existing or potential environmental contamination, the HOA may then require

SHL, at SHL's sole expense, to obtain a Phase 2 Environmental Site Assessment ("Phase 2 ESA") for the benefit of the HOA. If the Phase 2 ESA confirms any existing environmental contamination, the HOA may elect not to take title to the contaminated part of the Deeded Lots. To the extent the HOA does not wish to take title to one or more of the Deeded Lots (or any portions thereof) as a result of the updated Phase 1 ESA or the Phase 2 ESA (if applicable) or otherwise, the HOA will provide the MUD, the Trust, SHL and Escrow Agent with written notice of such decision at least five (5) days prior to the Conveyance Date, and title to such lots (or portions thereof) shall be retained by the Trust and excluded from the Deed prior to its recordation by Escrow Agent.

SHL and the Trust shall also execute and deliver any and all other documents necessary for Escrow Agent to issue to the HOA an Owner's Policy of Title Insurance for the Deeded Lots (or portions thereof) conveyed to the HOA (the "Title Policy"), at SHL's expense, in a form satisfactory to the HOA, and for an amount equal to the 2019 Travis Central Appraisal District ("TCAD") assessed valuation. The Title Policy shall be dated as of the Conveyance Date and shall insure the HOA's fee simple title to the Deeded Lots (or portions thereof) conveyed to the HOA, subject to the reservations from conveyance set forth in the Deed. The Escrow Agent shall deliver the recorded Deed and the Title Policy to the HOA's attorney promptly after the Conveyance Date.

From the Effective Date of this Contract until the Conveyance Date or the earlier termination of this Agreement, neither the Trust nor SHL will:

- cause or permit any waste or hazardous substances to be deposited upon or released within the Deeded Lots;
- make or permit any modifications, alterations, or additions to the Deeded Lots or any improvements currently existing thereon, except for maintenance, repairs, reconstruction, and any modifications or alterations required by this Contract;

- enter into any lease, occupancy agreement, easement, license, restrictive covenant, or any other oral or written agreement affecting the Deeded Lots (or any portions thereof) that would be binding upon the HOA or otherwise encumber the Deeded Lots (or any portions thereof) after the Conveyance Date; or
- enter into any written or oral agreement (other than this Contract) for the purchase, sale, transfer, or conveyance of the Deeded Lots (or any portions thereof).

Prior to June 30, 2020, SHL or the Trust will permanently remove all bee hives and the temporary paint shed from the Deeded Lots and repair any damage to such property caused by such removal. Neither SHL nor the Trust shall construct or place any additional structure or facility, whether permanent or temporary, on the Deeded Lots.

## **VI.**

### **Agreement on Escrow Agent**

Prior to the filing of any of the Applications, SHL, the Trust, the MUD, and the HOA agree to execute an appropriate escrow agreement with the Escrow Agent providing for the Escrow Agent to act in accordance with this Contract and providing such other reasonable and customary provisions with respect to the duties and responsibilities of the Escrow Agent. SHL shall bear all expenses of the Escrow Agent, the recordation of any documents necessary to consummate this Contract, and all expenses associated with the Title Policy.

## **VII.**

### **Application to Amend the MUD's Texas Land Application Permit**

Subject to receipt of the deposit required in the next paragraph, within one hundred twenty (120) days after receiving notice that the City and TXDOT have approved the Applications set forth in Section I above, the MUD will apply to TCEQ to (1) amend the Permit in such a manner that would allow for development of the Subject Tract as may be authorized under the Applications, and (2) remove SHL as a co-permittee. SHL agrees



that it shall sign the application to the TCEQ for amendment of the Permit as co-permittee when requested to do so by the MUD.

Prior to the MUD's engineer commencing preparation of the application to amend the Permit and after receiving notice that the City and TXDOT have approved the Applications set forth in Section I above, SHL shall deposit the sum of \$25,000 with the MUD. The MUD will hold said funds and all other funds that may be paid by SHL in a dedicated account and shall only use such funds for payment of the reasonable costs of preparation and processing of the application to amend the Permit and the reasonable costs associated with obtaining approval of the amended Permit. The MUD shall draw upon the deposit to pay the costs above and will send SHL notice of its obligation to pay such amount to replenish the deposit account, which SHL shall pay within thirty (30) days of the date of such notice. A failure to pay any amount according to the foregoing sentence shall entitle the MUD to terminate this Contract.

When the amended Permit is in final draft form approved by the TCEQ staff and no longer subject to challenge by any party except for the MUD, the MUD shall obtain and provide to SHL an estimate of the costs necessary for making any changes to the extent necessary to comply with the final draft form amended Permit (the "SHL Costs") provided that the SHL Costs shall not include any construction required under the amended Permit that is not related to development of the Subject Tract as may be authorized under the Applications. Notwithstanding any provision in this Contract to the contrary, the MUD shall have the option to withdraw and/or amend its application to amend the Permit should there be construction costs associated with the final draft amended Permit that are not SHL Costs. Once the MUD has obtained an estimate of the SHL Costs, the MUD shall promptly provide written notice of same to SHL. In the event SHL objects to paying the SHL Costs, SHL may terminate this Contract by providing written notice of such termination to the MUD, the HOA, the Trust and the Escrow Agent within fifteen (15) days after SHL's receipt of the

estimated SHL Costs. Upon SHL's termination of this Contract, the MUD shall have the right but not the obligation to notify the TCEQ of its withdrawal of the application to amend the Permit and SHL shall agree to such withdrawal as the co-permittee under the Permit. If SHL does not terminate this Contract within such fifteen (15) day time period, this Contract shall continue in full force and effect, SHL shall deposit the amount of the estimated SHL Costs with the MUD within thirty (30) days after SHL's receipt of the estimated SHL Costs, and the MUD will hold that amount in a dedicated account, usable only for payment of the SHL Costs. In the event the actual SHL Costs exceed the amount deposited, the MUD will invoice SHL monthly for those additional costs, and SHL shall pay the invoices to the MUD within thirty (30) days of the date of mailing the invoices. Any failure by SHL to deposit the estimated SHL Costs or to pay any invoices for additional SHL Costs shall entitle the MUD to file suit to collect such amounts, to terminate this Contract, to withdraw the application to amend the Permit and/or file a new application to amend the Permit. SHL agrees that it shall sign any such withdrawal or new application for amendment of the Permit as co-permittee when requested to do so by the MUD.

Within fifteen (15) days after the Effective Date of this Contract, the Trust will dedicate to the MUD a buffer zone easement and an expanded treatment plant site easement (substantially in the forms attached as **Exhibit H**), with the legal descriptions to be prepared at the MUD's expense after the approval of this Contract by the HOA's membership) in accordance with TCEQ requirements for the proposed expansion of the MUD wastewater treatment plant capacity to 100,000 gallons per day.

#### **VIII.**

##### **MUD Charges for Service to Subject Tract**

The MUD agrees that it will charge SHL, or the then-current owner of the Subject Tract, water and sewer tap fees for the Subject Tract (as established in the MUD's rate order as amended from time to time). Volume charges to the Subject Tract shall be as

established in the MUD's rate order as amended from time to time. All other charges and fees will be established in the MUD's rate order as amended from time to time. After all Applications have been approved and the amended Permit is in final draft form approved by the TCEQ staff and no longer subject to challenge by any party except for the MUD, the MUD and SHL or the then-current owner of the Subject Tract agree in good faith to negotiate agreements for use of effluent for irrigation or disposal of effluent on the Subject Tract. SHL shall have the right at its own expense to drill and maintain a well on the Subject Tract to produce water to use for irrigation only.

## IX.

### Perpetual Use Easement Area

Within one hundred twenty (120) days after the Effective Date of this Contract, SHL or the Trust shall:

1. Remove all RVs, and trailers with living quarters from the Perpetual Use Easement Area described on **Exhibit E** attached hereto and destroy all sump pumps and seal all connections to the MUD's wastewater system and remove or fully remediate the manholes, even if not connected to the MUD's wastewater system, on the Perpetual Use Easement Area to the satisfaction of the MUD's engineer. SHL and the Trust will permit the HOA and MUD to inspect the Perpetual Use Easement Area including the interiors of the buildings thereon to confirm compliance with the foregoing.

After SHL or the Trust has complied with the foregoing, the HOA agrees, provided the activities conducted by SHL and/or the Trust on the Perpetual Use Easement Area do not constitute a nuisance as defined in common law in Texas, that the HOA shall not, during the existence of the perpetual use easement described in **Exhibit E** attached hereto (the "Perpetual Use Easement"), pursue any deed restriction enforcement action against SHL and/or the Trust for any of the existing structures or improvements on the Perpetual Use

Easement Area described in **Exhibit E** attached hereto. SHL and the Trust shall defend, indemnify, and hold harmless the MUD and the HOA against any claims arising out of the presence and/or use of the existing structures located within the Perpetual Use Easement Area. In addition, all parties to this Contract expressly agree that allowing the structures and use by SHL and/or the Trust on the Perpetual Use Easement Area is not a waiver of any restrictive covenants or a waiver of any applicable provision in the Consent Agreement, except as otherwise provided herein.

Within thirty (30) days of the Governmental Approval Date and before the Conveyance Date, SHL will remove the shed shown as D on the map attached as **Exhibit I**.

After the Governmental Approval Date and before the Conveyance Date, the MUD will, at SHL's expense, re-route the effluent and sewage lines from underneath the building shown as C on the map attached as **Exhibit I**.

#### **X.**

#### **Payment of Other Costs**

In addition to requirements of Paragraphs II and VII, above, SHL shall pay all reasonable fees and expenses (including legal, engineering and certain management company expenses) incurred by the MUD in connection with the negotiation, preparation, and performance of this Contract. As of November 16, 2017, the MUD had incurred \$139,010.86 for such fees and expenses, which included an estimated \$1,000 in legal fees to continue negotiations and to finalize this Contract. SHL has previously paid the MUD \$11,067.00 toward said amount. Also, pursuant to the letter of agreement signed by the Parties on December 11, 2017, and as supplemented by that certain Supplement to Letter of Agreement signed by the parties on March 1, 2018 ("Letter of Agreement") and prior to the Effective Date of this Contract, SHL paid \$63,971.93 to the MUD which approximated one-half of the remaining balance owed to the MUD as of the execution of the Letter of

Agreement. SHL shall pay the remaining balance to the MUD, which is \$63,971.93, concurrently with the execution of this Contract. The MUD shall invoice SHL monthly for all reasonable future fees and expenses associated with the MUD's performance of this Contract, which invoices shall provide reasonable detail of the services rendered and costs incurred, and the charges for the services or costs, and SHL agrees to pay such fees and expenses within thirty (30) days after each invoice is mailed. In the event SHL fails to timely pay a future invoice, the MUD shall be entitled to file suit to collect such amounts and/or terminate this Contract by providing the HOA, SHL, the Trust and the Escrow Agent with written notice of such termination.

SHL also agrees to pay all reasonable consultants' fees and expenses (including legal and engineering fees) incurred by the HOA in connection with the negotiation, preparation, and performance of this Contract. Pursuant to the Letter of Agreement signed by the parties prior to the Effective Date of this Contract, SHL paid \$45,817.10 to the HOA, which was the balance owed to the HOA as of the execution of the Letter of Agreement. The HOA shall invoice SHL monthly for all reasonable future fees and expenses associated with the performance of this Contract, which invoices shall provide reasonable detail of the services rendered and costs incurred, and the charges for the services or costs, and SHL agrees to pay such reasonable fees and expenses within thirty (30) days after each invoice is mailed. In the event SHL fails to timely pay a future invoice, the HOA shall be entitled to file suit to collect such amounts and/or terminate this Contract by providing the MUD, SHL, the Trust and the Escrow Agent with written notice of such termination.

## **XI.**

### **Assignment of Contract**

A party shall not transfer, convey, or assign all or any part of its rights and obligations under this Contract without the prior written consent of the other parties hereto. In the event the other parties consent to a party's transfer, conveyance, or

assignment of this Contract, all of the respective covenants, undertakings, and obligations of the assignor will bind the assignee and will apply to and bind any successors or assigns of the assignee and any party proposing to transfer, convey, or assign all or any part of its rights and obligations under this Contract shall provide a copy of this Contract to such prospective purchaser or assignee.

## **XII.**

### **Binding Effect and Memorandum of Contract**

The rights and obligations of SHL and the Trust under this Contract are in consideration of and for the purpose of protecting and enhancing the desirability of the Subject Tract and the Deeded Lots. Consequently, those rights and obligations shall run with the Subject Tract and the Deeded Lots and shall be binding on all parties having any right, title, or interest (in whole or in part) in the Subject Tract or the Deeded Lots, and their heirs, successors, and assigns. Concurrently with the execution of this Contract, the parties shall also execute a memorandum of this Contract suitable for filing of record, in the form attached hereto as **Exhibit G** at SHL's expense.

## **XIII.**

### **Term of Contract**

This Contract shall continue in full force and effect until the earlier of any of the following: (1) the release of the documents from escrow and the delivery of the documents to counsel for the MUD and HOA, as described in Section IV and Section V of this Contract; or (2) the return of the instruments to SHL and the Trust as described in Sections IV and Section V of this Contract; or (3) termination of this Contract pursuant to Sections VII or X of this Contract; or (4) the expiration of five (5) years from the Effective Date of this Contract. In the event this Contract is terminated for any reason other than as described in sub-

section (1) of the preceding sentence, the MUD and the HOA may immediately notify the City, TXDOT, TCEQ, and/or any other governmental agency that the letters attached as **Exhibit B-1** and **Exhibit B-2** to this Contract (as well as any other support by the HOA and/or MUD for SHL's construction of the proposed office buildings on the Subject Tract) are withdrawn, and the HOA may notify TCEQ of its opposition to the application to amend the Permit.

During the term of this Contract, all parties shall proceed diligently and in good faith to accomplish all actions and receive all executed documents that are necessary for the release of documents from escrow and delivery of the documents to counsel for the MUD and HOA, as described in Section IV and Section V of this Contract.

Termination of this Contract shall not affect the matters that will survive the Conveyance Date and survive termination of this Contract as described in Section II and Section XIV (a) of this Contract.

#### **XIV.**

##### **Miscellaneous Provisions**

(a) **Survival of Covenants.** Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the Conveyance Date, will survive after such Conveyance Date. Such provisions shall include any unpaid expenses and costs owed by SHL to the MUD and HOA pursuant to Sections VII, VIII and X of this Contract and the obligations of parties in Section IX of this Contract as well as the provisions contained in executed versions of **Exhibits C, D and E** of this Contract. In addition, SHL's agreement in Section

II of this Contract pertaining to reversion of approvals shall survive termination of this Contract.

(b) **Texas Law to Apply.** This Contract will be construed in accordance with the laws of the State of Texas, except as to matters exclusively controlled by the Constitution and Statutes of the United States of America, and all obligations of the parties created under this Contract are performable in Travis County, Texas.

(c) **Parties Bound.** This Contract will be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns, as permitted by this Contract. Notwithstanding anything to the contrary herein, SHL, the Trust and the MUD acknowledge and agree that the HOA's entering into and execution of this Contract shall not be construed or interpreted in any way as a waiver or release of any HOA member's individual rights to contest, protest, or oppose the applications referenced in paragraphs I and VII of this Contract, all of such rights being expressly reserved by each individual HOA member.

(d) **Legal Construction.** In case any one or more of the provisions contained in this Contract for any reason is held invalid, this invalidity will not affect any other provision of this Contract, which will be construed as if the invalid or unenforceable provision had never existed.

(e) **Execution; Counterparts.** To facilitate execution, this Contract may be executed in any number of counterparts, and it will not be necessary that the signatures of all parties be contained on any one counterpart. Additionally, for purposes of facilitating the execution of this Contract the signature pages taken from separate, individually executed counterparts of this Contract may be combined to form multiple fully executed



counterparts. All executed counterparts of this Contract will be deemed to be originals, but all such counterparts, when taken together, will constitute one and the same instrument.

(f) **Headings.** The captions and headings appearing in this Contract are inserted merely to facilitate reference and will have no bearing upon its interpretation.

(g) **Waiver.** Any waiver by any party of its rights with respect to a default or requirement under this Contract will not be deemed a waiver of any subsequent default or other matter.

(h) **Cooperation.** The parties agree to cooperate and to deal with one another fairly and in good faith at all times to effectuate the purposes and intent of this Contract. Each party agrees to execute and deliver such further legal documents or instruments and to perform such further acts as are reasonably necessary to effectuate the purposes and intent of this Contract.

(i) **No Third Party Beneficiaries.** Nothing in this Contract, express or implied, is intended to confer upon any person, other than the parties, any rights, benefits, or remedies under or by reason of this Contract.

(j) **Effective Date.** This Contract shall be effective from and after May 23, 2018 (the "Effective Date.")

(k) **Notices**

Any notice provided for under the terms of this Contract by any party to another party shall be in writing and shall be delivered by personal delivery or by registered or certified mail, return receipt requested.

Notice to the MUD shall be sufficient if made or addressed to:

General Manager  
InfraMark  
14050 Summit Drive, Suite 103  
Austin, TX 78728

With Copy to:

Bill Flickinger  
Willatt & Flickinger, PLLC  
12912 Hill Country Blvd., Ste. F-232  
Austin, Texas 78738  
Email: [bflickinger@wfaustin.com](mailto:bflickinger@wfaustin.com)

Notice to the HOA shall be sufficient if made or addressed to:

Senna Hills Homeowners Association, Inc.  
c/o Goodwin Management, Inc.  
P.O. Box 203310  
Austin, TX 78720-3310

With Copy to:

Lance T. Lackey  
Lackey & Smith PLLC  
3321 Bee Cave Rd. Ste. 204  
Austin, TX 78746  
Email: [llackey@lackeysmith.com](mailto:llackey@lackeysmith.com)

Notice to SHL shall be sufficient if made or addressed to:

Rip Miller  
P.O. Box 161507  
Austin, Texas 78716-1507  
Email: [rip@westlakemedical.com](mailto:rip@westlakemedical.com)

With Copy to:

Kemp Gorthey  
604 W. 12<sup>th</sup> Street  
Austin, TX 78701  
Email: [kemp@gortheylaw.com](mailto:kemp@gortheylaw.com)

Notice to the Trust shall be sufficient if made or addressed to:

Rip Miller  
P.O. Box 161507  
Austin, Texas 78716-1507  
Email: [rip@westlakemedical.com](mailto:rip@westlakemedical.com)

With Copy to:

Kemp Gorthey  
604 W. 12<sup>th</sup> Street  
Austin, TX 78701  
Email: [kemp@gortheylaw.com](mailto:kemp@gortheylaw.com)

Each party may change the address to which notice may be sent to that party by giving notice of such change to the other parties in accordance with the provisions of this section.

(l) **Incorporation of Exhibits.** Each exhibit attached to this Contract is a part of this Contract and is incorporated herein by reference.

***SIGNATURES ON FOLLOWING PAGES***

**SENNA HILLS MUNICIPAL  
UTILITY DISTRICT**

SIGNED: July 30, 2019

By:   
Chet A. Palesko, President,  
Board of Directors

**SENNA HILLS HOMEOWNERS  
ASSOCIATION, INC.**  
a Texas non-profit corporation

SIGNED: July 31, 2019

By: Scott Ramsower  
Scott Ramsower, President,  
Board of Directors

**SENNA HILLS, LTD.**

a Texas limited partnership

By: SH DEVELOPMENT, LLC,  
a Texas limited liability company

SIGNED: 7-30, 2019

By: \_\_\_\_\_  
Don Rip Miller,  
President

**SENNA HILLS TRUST**

SIGNED: 7-30, 2019

By: \_\_\_\_\_  
Don Rip Miller,  
Trustee

**EXHIBIT A**



## **EXHIBIT B-1**

To the City of Austin:

Senna Hills Municipal Utility District (the "MUD") and Senna Hills Homeowners Association, Inc. (the "HOA") write concerning the prospective development by Senna Hills, Ltd. ("SHL") of office buildings on an approximately 11.73 acre tract fronting Bee Caves Road and located at the western edge of the Senna Hills Subdivision (the "Subject Tract"). The MUD and the HOA have entered into a Contract with SHL to resolve disputes concerning the proposed development of office buildings on the Subject Tract. A copy of the Contract is attached. Pursuant to the Contract, the MUD and the HOA have agreed to approve and support the development subject to and on the terms and conditions of the Contract. Specifically, the MUD and the HOA approve and support the City of Austin's (i) modification of the First Amended and Restated Agreement Concerning Creation and Operation of Senna Hills Municipal Utility District, as amended by the Second Amendment to the First Amended and Restated Agreement Concerning Creation and Operation of Senna Hills Municipal Utility District (the "Consent Agreement") and any other necessary documents to (a) amend the use restriction of the Subject Tract from "for school or for irrigation purposes only" to "school or office buildings", (b) eliminate any irrigation easement in favor of the MUD or any other party affecting the Subject Tract, and (c) allow the Subject Tract to be developed as office buildings under the existing plat, being subject to the Barton Creek Watershed Ordinance under which the Subject Tract was platted, and (ii) issuance of permits to build office buildings on the Subject Tract. The MUD and the HOA also approve and support the City of Austin's approval of an amendment to the Senna Hills Plat to provide that access to



the Subject Tract shall only be off Bee Caves Road and not off Senna Hills Drive. This support and approval is only applicable if all of the conditions provided in the Contract occur so as to allow development of office buildings on the Subject Tract with access solely off Bee Caves Road. If they do not occur, then this support and approval are inapplicable and are withdrawn. In addition, all amendments to the Consent Agreement and all amendments to the Conceptual Plan in the Consent Agreement as well as all amendments to and final versions of the Initial Site Plan and Amended Plat shall include an express condition providing that if the MUD has not obtained final and non-appealable approval of the amendment to the Permit described in Section VII of the enclosed Contract within five (5) years from the Effective Date of that Contract, then the final version of the Initial Site Plan approval by the City of Austin shall be void and the Consent Agreement, the Conceptual Plan in the Consent Agreement and Amended Plat shall revert back to the original versions in effect prior to execution of the enclosed Contract.

SENNA HILLS MUNICIPAL  
UTILITY DISTRICT

By: \_\_\_\_\_  
Chet A. Palesko, President,  
Board of Directors

SENNA HILLS HOMEOWNERS  
ASSOCIATION, INC.

By: \_\_\_\_\_  
Scott Ramsower, President,  
Board of Directors

**EXHIBIT B-2**

To Texas Department of Transportation (TXDOT):

Senna Hills Municipal Utility District (the "MUD"), Senna Hills Homeowners Association, Inc. (the "HOA") and Senna Hills, Ltd. ("SHL") are involved in discussions concerning SHL's possible development of office buildings on an approximately 11.73 acre tract fronting Bee Caves Road and located at the western edge of the Senna Hills Subdivision (the "Subject Tract"). The MUD and the HOA understand that SHL has submitted a driveway application to TXDOT to secure a permit providing that any access to any office building built on the Subject Tract will be off Bee Caves Road and not off Senna Hills Drive. The purpose of this letter is to advise TXDOT that the MUD and the HOA support such application and permit. The MUD and the HOA do not intend by this letter to give consent to the proposed development. Rather, the purpose of this letter is merely to advise TXDOT that the MUD and the HOA support the application and issuance by TXDOT of a permit providing that, in the event there is an office building development on the Subject Tract, access would be off Bee Caves Road and not off Senna Hills Drive.

SENNA HILLS MUNICIPAL  
UTILITY DISTRICT

By: \_\_\_\_\_  
Chet A. Palesko, President,  
Board of Directors

SENNA HILLS HOMEOWNERS  
ASSOCIATION, INC.

By: \_\_\_\_\_  
Scott Ramsower, President,  
Board of Directors

## EXHIBIT C

1. All access and egress to the development (except for emergency vehicles) will be from Bee Caves Rd. and NOT Senna Hills Drive. SHL will not seek installation of a traffic light at the intersection of Bee Caves Rd. and the entrance to the development.
2. The project will consist of 3 office buildings containing not more than a total construction gross area (ANSI/BOMA Z65.3-2009 Standard) of 180,000 square feet similar to the Initial Site Plan attached as Exhibit A to the Contract, provided such size and configuration comply with all applicable government codes, ordinances, rules, and regulations. Additionally, no building shall be more than two stories above ground level.
3. SHL will be responsible for all landscape maintenance of public areas that border the office development including but not limited to the property immediately adjacent to Senna Hills Dr. and the adjacent right-of-way.
4. A detailed landscape plan will be submitted and agreed upon, with a representative of the HOA, concerning adequate screening of Senna Hills Dr. and the buffer area between the development and the homes to the north. This will include additional berming and tree planting.
5. Any and all up-lighting in the parking lot(s) or landscape lighting will turn off by 11:00 p.m. each day and all other down-lighting will be low density so as not to disturb the homes to the north.
6. SHL will set aside a community conference room type area in the new facility for Senna Hills community meetings such as HOA or MUD Board meetings. This will not be exclusive to Senna Hills but will be on a first sign up basis with other tenants in the new office development.
7. SHL will construct a playground (basketball half-court and climbing structure or other amenity at an equivalent cost, such as a tennis court or full size basketball court, as may be mutually agreed upon by SHL and the HOA) at a location approved by the HOA and at SHL's expense, and to the extent the project has an on-site gym, Senna Hills residents will be entitled to a discounted membership fee.
8. Any tenants offering food and/or beverage for sale will be required to close by no later than 11:00 p.m. each day.
9. The use of and/or operations at the office buildings shall be subject to and comply with Sections 3.5, 3.7, 3.19 and 3.22 of the Senna Hills Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions, recorded in Volume 12289 Page 0601 of the Real Property Records of Travis County, Texas, as has been amended or may be amended in the future.

10. SHL shall reimburse the HOA for any and all costs incurred by the HOA (including, but not limited to, attorneys' and consultants' fees) arising out of or associated with the performance and enforcement of this Exhibit C and/or the Contract.
  
11. All parking relating to the development, construction, operation, occupancy, and/or use of the office buildings will be confined to the Subject Tract. SHL, and/or its successors, will include in all lease agreements with tenants of the office buildings a requirement that all tenants and their employees, clients, patrons, guests, contractors, and other invitees are prohibited from parking on Senna Hills Drive or at any other location within the Senna Hills Subdivision other than in the parking areas provided within the Subject Tract (similar to the Initial Site Plan attached as Exhibit A to the Contract), and will enforce, and assist the HOA in the enforcement of this prohibition, including but not limited to ticketing, towing and/or booting vehicles parked in violation of this prohibition, and assess fines against tenants who fail to honor such lease terms, as SHL and the HOA's Board of Directors determine to be reasonable and appropriate in order to obtain compliance with this prohibition. In addition, SHL at its expense shall seek to obtain approval of the ESD and/or Travis County to create a no-parking zone or fire zone to prohibit parking on Senna Hills Drive to be enforced by ticketing, towing and/or booting.

**EXHIBIT D**

**DECLARATION OF RESTRICTIVE COVENANT AS TO ACCESS**

DATE: \_\_\_\_\_, 201\_\_\_\_

DECLARANT: SENNA HILLS, LTD.

DECLARANT'S MAILING ADDRESS:  
5656 Bee Caves Rd., Suite F-201  
Austin TX 78746

PROPERTY: Lot 1, Section One, Senna Hills Subdivision, a subdivision in Travis County, Texas, according to the map or plat filed of record in Volume 86, Page 121A of the Plat Records of Travis County, Texas.

For valuable consideration, the receipt and sufficiency of which are acknowledged, Declarant hereby declares, covenants and agrees that, with the exception of emergency vehicles, there shall be no vehicular access to the Property from Senna Hills Drive.

This restrictive covenant is perpetual and binding on Senna Hills, Ltd. and its successors and assigns and shall constitute a covenant running with the land.

This restrictive covenant shall be enforceable by Senna Hills Homeowners Association, Inc. and the Senna Hills Municipal Utility District.

This restrictive covenant may be terminated or amended only upon the prior written approval of the Senna Hills Homeowners Association, Inc. and the Senna Hills Municipal Utility District or their successors and assigns.

**ALL OWNERS AND LIENHOLDERS OF THIS PROPERTY MUST ALSO EXECUTE OR CONSENT IN WRITING IN A RECORDABLE DOCUMENT TO THIS RESTRICTION**

SENNA HILLS, LTD.  
a Texas limited partnership

By SH DEVELOPMENT, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Don Rip Miller, President

THE STATE OF TEXAS    )  
  )  
COUNTY OF TRAVIS    )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by Don Rip Miller, the President of SH DEVELOPMENT, LLC, a Texas limited liability company, on behalf of said company, and the company, as General Partner of SENNA HILLS, LTD., a Texas limited partnership, on behalf of said partnership.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**AFTER RECORDING, RETURN TO:**

Lackey & Smith, PLLC  
Attn: Lance Lackey  
900 S. Capital of Texas Highway, Suite 425  
Austin, TX 78746

**EXHIBIT E**

**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.**

**SPECIAL WARRANTY DEED**

**DATE:** \_\_\_\_\_, 201\_\_

**GRANTOR (whether one or more):**                    SENNA HILLS TRUST

**GRANTOR'S MAILING ADDRESS:**

PO Box 161507  
Austin, TX 78716-1507

**GRANTEE (whether one or more):** SENNA HILLS HOMEOWNERS  
ASSOCIATION, INC.

**GRANTEE'S MAILING ADDRESS:**

c/o Goodwin Management, Inc.  
P.O. Box 203310  
Austin, TX 78720-3310

**CONSIDERATION:**

TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

**PROPERTY (including any improvements):**

- Lot 11-A of Senna Hills Section ONE-A a subdivision as shown by the Plat recorded at Volume 93, Page 239, Plat Records of Travis County, Texas;
- Lot 37B, Block G, Senna Hills Section Two, a subdivision as shown by the Plat as recorded at Volume 93, Page 353, Plat Records of Travis County, Texas;
- Lot 1, Block G, Senna Hills Section Four, a subdivision as shown by the Plat recorded at Volume 100, Page 82, Plat Records of Travis County, Texas; and

- Lot 102, Block A, Senna Hills Section 5-B, a subdivision as shown by the Plat recorded as Document 20000084, Plat Records of Travis County, Texas, minus and except for the 5.764 acres described as Tract I and described by the metes and bounds description on Exhibit A to that certain Special Warranty Deed from Senna Hills, Ltd. to Senna Hills Municipal Utility District dated to be effective October 30, 1998 and recorded in Volume 13305, at Page 1220, of the Real Property Records of Travis County, Texas.

**RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:**

Easements and rights-of-way of record; ad valorem taxes for the year the conveyance is recorded; all presently recorded restrictions, reservations, covenants, conditions, and mineral severances, that affect the Property, any and all rights of the entity currently maintaining a propane facility on 37B, Block G, Senna Hills Section Two, a subdivision as shown by the Plat as recorded at Volume 93, Page 353, Plat Records of Travis County, Texas , and the restrictions, reservations and easements set forth herein below.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's successors or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, when the claim is by, through or under Grantor but not otherwise.

Except for the representations, warranties, and covenants expressly set forth in that certain Contract between Grantor, Grantee, Senna Hills, Ltd., and the Senna Hills Municipal Utility District (the "District") dated \_\_\_\_\_, 20\_\_\_\_, no representation or warranty, expressed or implied, is made by Grantor as to the (1) condition, usability, fitness for purpose or habitability of the Property; (2) the need (if any) for repairs thereto; (3) the existence of or presence of any environmental hazards, conditions or hazardous materials (including any flammable explosives, radioactive materials, hazardous wastes, and without limitation, those substances defined as "hazardous substances"; (4) the presence of asbestos or PCBs; (5) the existence or nonexistence of any presence or migration of any hazardous substances, hazardous material, or toxic substances as may be described herein; or (6) the existence or nonexistence of any presence of any wood destroying pests and organisms,



including without limitation termites, fungi and/or dry rot, and THE PROPERTY IS CONVEYED AND ACCEPTED IN "AS-IS" "WHERE-IS" CONDITION WITH ALL FAULTS.

When the context requires, singular nouns and pronouns include the plural.

### **RESTRICTIVE COVENANT**

For valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor hereby declares, covenants and agrees that the Property described above shall be used only for irrigation purposes and non-commercial use such as open areas, hike and bike trails, green belt, sports fields, tennis courts, and other recreational facilities to be used by Grantee's members and their invited guests, and that no construction of any improvements shall be permitted thereon, except for improvements incidental to the foregoing uses, the propane facilities currently maintained on Lot 37B, Block G, Senna Hills Section Two, a subdivision as shown by the Plat as recorded at Volume 93, Page 353, Plat Records of Travis County, Texas, and the permitted uses in the area contained in the easement reserved by Grantor herein below. This Restrictive Covenant is perpetual and binding on Grantee and its successors and assigns and shall constitute a covenant running with the land.

Notwithstanding any provision herein, the District shall not be restricted from constructing, maintaining, operating or expanding its wastewater treatment facilities or any of its facilities associated with effluent transportation, effluent irrigation or any other utility service provided by it.

This Restrictive Covenant shall be enforceable by Grantor, Grantee, and the District and. This Restrictive Covenant may be terminated or amended only upon the prior written approval of Grantor, Grantee, the District and/or their respective successors and assigns.

### **RESERVATION OF EASEMENTS IN FAVOR OF GRANTOR**

Grantor hereby reserves unto itself and Grantor's heirs, successors and assigns forever, a non-exclusive, free uninterrupted and perpetual easement over 0.527+/- acres out of Lot 37B, Block G, Senna Hills Section Two, a subdivision as shown by the Plat as recorded at Volume 93, Page 353, Plat Records of Travis County, Texas (the "Perpetual Use Easement Area") which 0.527 +/-acres is more particularly described in **Exhibit 1** attached to this Special Warranty Deed, along with a non-exclusive right of ingress and egress over the access easement area of 0.73 +/- acres (the "Access Easement Area") which is described in **Exhibit 2** attached to this Special Warranty Deed.

*NOTE: WE WILL NEED METES AND BOUNDS DESCRIPTIONS AND SURVEYOR PLATS FOR EXHIBIT 1 AND EXHIBIT 2 WHICH SHALL BE AT THE EXPENSE OF SHL.  
NOTE: THESE METES AND BOUNDS AND SURVEYOR PLATS WILL BE DONE AFTER HOA MEMBER APPROVAL AND PRIOR TO EXECUTION OF THIS CONTRACT.*

Grantor agrees that it shall not construct or permit to be constructed any buildings, improvements, structures or additional impervious cover on the Perpetual Use Easement Area other than the three (3) existing garages depicted on the attached **Exhibit 1** (which shall not be expanded in size but may be repaired or reconstructed in the event of casualty loss) and the existing pavement and road base. Grantor further agrees that such garages shall be used solely for storage and a wood working shop and for no other purposes. All of Grantor's activities on the Perpetual Use Easement Area, and all materials and/or equipment related to such activities, shall be conducted and maintained within the three (3) existing garages depicted on **Exhibit 1**. Grantor's activities on and uses of the Perpetual Use Easement Area shall not create a nuisance as defined at common law in Texas to other property owners in the subdivision. Grantor further agrees that it shall reimburse Grantee, on an annual basis, for any property taxes or insurance costs that Grantee may incur which are attributable to the buildings, structures, or other improvements maintained by Grantor in the Perpetual Use Easement Area. Grantee shall provide Grantor immediate notice of any proposed increase in tax valuation and Grantor shall have the right to contest same.

Grantor acknowledges and agrees that Grantor's rights to the Perpetual Use Easement Area and the Access Easement Area are non-exclusive and that: (i) the District (shall retain a wastewater line, lift station, irrigation and access easement over such areas, and (ii) that the entity currently maintaining propane facilities on Lot 37B, Block G, Senna Hills Section Two, a subdivision as shown by the Plat as recorded at Volume 93, Page 353, Plat Records of Travis County, Texas, retains its existing rights to access and maintain propane facilities over that area. Grantor agrees to reimburse the District for any damage that may be caused by Grantee or Grantee's contractors or agents to the District's lines or facilities within the Perpetual Use Easement Area and Access Easement Area and Grantor shall also reimburse the District for any fines or penalties assessed against the District that are a result of such damage, along with any associated attorney's fees or consultant fees expended by the District in connection with any administrative proceeding or litigation related to such fines or penalties.

The easements reserved herein in favor of Grantor shall automatically expire and automatically revert to Grantee if such easements are abandoned as demonstrated by nonuse for at least two (2) years, provided that Grantee shall give at least thirty (30) days' written notice to SHL and the Trust of Grantee's intent to declare the easements abandoned, and provided such nonuse is not cured within such thirty (30) day period.

The terms and conditions of the foregoing easements shall be enforceable by Grantor, Grantee, and the District. The foregoing easements may be terminated or amended only upon the prior written approval of Grantor, Grantee, and the District and/or their respective successors and assigns.

The easements reserved herein may be assigned by Grantor only with prior written consent of Grantee and the District.

**GRANTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE DISTRICT AND GRANTEE AND EACH OF THEIR RESPECTIVE DIRECTORS,**

OFFICERS, EMPLOYEES, OR AGENTS FROM AND AGAINST ANY AND ALL LOSSES, DEBTS, CLAIMS, SUITS, ACTIONS, DAMAGES, LIABILITIES, JUDGMENTS, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES AND COURT COSTS) ARISING DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH: (I) THE PRESENCE AND/OR USE OF THE EXISTING STRUCTURES LOCATED WITHIN THE PERPETUAL USE EASEMENT AREA, (II) THE EXERCISE OF THE EASEMENT RIGHTS GRANTED HEREIN BY GRANTOR AND GRANTOR'S EMPLOYEES, AGENTS, CONTRACTORS, AND INVITEES, AND/OR (III) GRANTOR'S BREACH OF ITS OBLIGATIONS WITH RESPECT TO THE EASEMENTS GRANTED HEREIN.

#### RESERVATION OF MINERAL INTEREST

Grantor and Grantor's heirs, successors, and assigns forever reserve from the conveyance all oil, gas, and other minerals in, under, or that may be produced from the Property (the "Minerals"). Provided however, that Grantor, and its heirs, successors, and assigns, shall have no right of ingress or egress or right to enter upon or use the surface of the Property for the purpose of exploring for, developing, drilling for, producing, transporting, mining, treating, or storing the Minerals, and Grantor hereby expressly waives, for itself and its heirs, successors, and assigns, all rights, interests, and/or privileges to use or access the surface of the Property for said purposes. It is expressly understood and agreed by Grantor and Grantee that any exploration, development, and production of the Minerals shall be from the surface of other adjacent lands and that there shall never be any exploration, development, or production of the Minerals that would require drilling, mining, shaft mining, strip mining, or pit mining on or about the surface of the Property. Notwithstanding the foregoing, Grantors' waiver of surface rights to the Property as set forth herein shall not prohibit the exploration, development, and/or production of the Minerals from pooling or unitization with lands other than the Property, or by means of wells drilled or mines opened on land other than the Property but enter or bottom under the Property, provided that such operations do not, in any manner whatsoever, interfere with the surface or subsurface support of the Property or any improvements constructed or to be constructed thereon.

**GRANTOR:**

SENNA HILLS TRUST

By: \_\_\_\_\_  
Don Rip Miller, Trustee

THE STATE OF TEXAS    )  
  )  
COUNTY OF TRAVIS     )

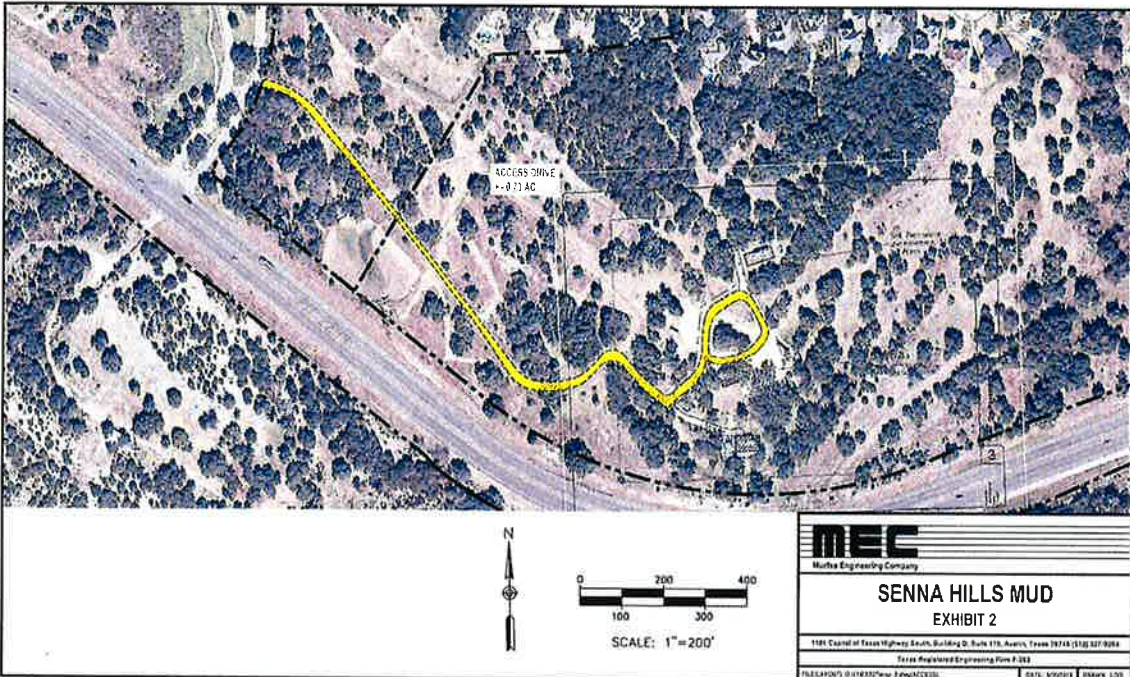
This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Don Rip Miller, Trustee of SENNA HILLS TRUST, acknowledged this instrument on behalf of said Trust.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING, RETURN TO:

Lance Lackey  
Lackey & Smith  
900 S. Capital of Texas Hwy., Ste. 425  
Austin, Texas 78746







**EXHIBIT F**

**CAUSE NO. D-1-GN-12-000602**

<b>SENNA HILLS, LTD.,</b>	§	<b>IN THE DISTRICT COURT OF</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	
	§	<b>TRAVIS COUNTY, TEXAS</b>
<b>SENNA HILLS MUNICIPAL UTILITY DISTRICT,</b>	§	
	§	
<b>Defendant.</b>	§	<b>250TH JUDICIAL DISTRICT</b>

**AGREED ORDER OF DISMISSAL WITH PREJUDICE**

Pursuant to the agreement of the parties as evidenced by the signatures of their counsel below, the Court hereby ORDERS that this case be and is hereby dismissed with prejudice to the refile of same, with all parties to bear their own costs of court.

SIGNED on \_\_\_\_\_.

\_\_\_\_\_  
PRESIDING DISTRICT JUDGE

**AGREED AND APPROVED  
AS TO FORM AND SUBSTANCE:**

\_\_\_\_\_  
KEMP W. GORTHEY  
State Bar No. 08221275  
604 West 12th Street  
Austin, Texas 78701  
Tele: 512/236-8007  
Fax: 512/479-6417  
ATTORNEY FOR PLAINTIFF

\_\_\_\_\_  
BILL FLICKINGER  
State Bar No. 07149050  
Willatt & Flickinger, PLLC  
12912 Hill Country Blvd., Ste. F-232  
Austin, Texas 78738  
Tele: 512/476-6604  
Fax: 512/469-9148  
ATTORNEYS FOR DEFENDANT

CAUSE NO. D-1-GN-14-004993

SENNA HILLS, LTD.,

Plaintiff,

v.

SENNA HILLS MUNICIPAL UTILITY  
DISTRICT AND THE CITY OF  
AUSTIN,

Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200TH JUDICIAL DISTRICT

**AGREED ORDER OF DISMISSAL WITH PREJUDICE**

Pursuant to the agreement of the parties as evidenced by the signatures of their counsel below, the Court hereby ORDERS that this case be and is hereby dismissed with prejudice to the refiling of same, with all parties to bear their own costs of court.

SIGNED on \_\_\_\_\_.

\_\_\_\_\_  
PRESIDING DISTRICT JUDGE



**AGREED AND APPROVED  
AS TO FORM AND SUBSTANCE:**

---

KEMP W. GORTHEY  
State Bar No. 08221275  
604 West 12th Street  
Austin, Texas 78701  
Tele: 512/236-8007  
Fax: 512/479-6417  
ATTORNEY FOR PLAINTIFF

---

BILL FLICKINGER  
State Bar No. 07149050  
Willatt & Flickinger, PLLC  
12912 Hill Country Blvd., Ste. F-232  
Austin, Texas 78738  
Tele: 512/476-6604  
Fax: 512/469-9148  
ATTORNEYS FOR DEFENDANT,  
SENNA HILLS MUNICIPAL UTILITY  
DISTRICT

---

PATRICIA L. LINK  
State Bar No. 24041343  
Assistant City Attorney  
City of Austin  
P. O. Box 1546  
Austin, Texas 78767  
Tele: 512/974-2173  
Fax: 512/974-1311  
ATTORNEY FOR DEFENDANT, CITY OF AUSTIN

## EXHIBIT G

AFTER RECORDING RETURN TO:

Lackey & Smith, PLLC  
Attn: Lance Lackey  
900 S. Capital of Texas Highway, Suite 425  
Austin, TX 78746

### MEMORANDUM OF AGREEMENT

Senna Hills Municipal Utility District (“MUD”), Senna Hills Homeowners Association, Inc. (“HOA”), Senna Hills, Ltd. (“SHL”) and Senna Hills Trust (the “Trust”) have entered into a Contract with an effective date of \_\_\_\_\_, 20\_\_\_\_ (the “Contract”) pursuant to which, under certain circumstances, the HOA will acquire title to the following properties:

- Lot 11-A of Senna Hills Section ONE-A, a subdivision as shown by the Plat recorded at Volume 93, Page 239, Plat Records of Travis County, Texas;
- Lot 37B, Block G, Senna Hills Section Two, a subdivision as shown by the Plat as recorded at Volume 93, Page 353, Plat Records of Travis County, Texas;
- Lot 1, Block G, Senna Hills Section Four, a subdivision as shown by the Plat recorded at Volume 100, Page 82, Plat Records of Travis County, Texas; and
- Lot 102, Block A, Senna Hills Section 5-B, a subdivision as shown by the Plat recorded as Document 20000084, Plat Records of Travis County, Texas, except for and excluding 5.764 acres, described as Tract I and described by the metes and bounds description on Exhibit A to that certain Special Warranty Deed from Senna Hills, Ltd. To Senna Hills Municipal Utility District dated to be effective October 30, 1998 and recorded in Volume 13305, at Page 1220, of the Real Property Records of Travis County, Texas.

The Contract also provides for certain rights and obligations with respect to the following property retained by SHL:

- Lot 1, Section One, Senna Hills Subdivision, a subdivision in Travis County, Texas, according to the map or plat filed of record in Volume 86, Page 121A of the Plat Records of Travis County, Texas.

The acquisition of title to any of the foregoing properties is subject to the terms stated in the Contract, and the rights and obligations of SHL and the Trust in and under the Contract run with the land and are binding upon anyone acquiring a right, title, or interest in the foregoing properties.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**SENNA HILLS TRUST**

By: \_\_\_\_\_  
Don Rip Miller, Trustee

**SENNA HILLS MUNICIPAL  
UTILITY DISTRICT**

By: \_\_\_\_\_  
Chet A. Palesko, President,  
Board of Directors

**SENNA HILLS HOMEOWNERS  
ASSOCIATION, INC.**

By: \_\_\_\_\_  
Scott Ramsower, President,  
Board of Directors

THE STATE OF TEXAS    )  
                                  )  
COUNTY OF TRAVIS    )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
201\_\_, by Don Rip Miller, Trustee of SENNA HILLS TRUST, on behalf of said Trust.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS    )  
                                  )  
COUNTY OF TRAVIS    )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
201\_\_, by CHET A. PALESKO, President of SENNA HILLS MUNICIPAL UTILITY DISTRICT,  
on behalf of said District.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS    )  
  )  
COUNTY OF TRAVIS     )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by SCOTT RAMSOWER, President of SENNA HILLS HOMEOWNERS ASSOCIATION, INC. on behalf of said Association.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**EXHIBIT "H"**

**BUFFER ZONE EASEMENT AND RESTRICTION**

DATE: April \_\_\_\_, 2018

GRANTOR: Don Rip Miller, Trustee of the Senna Hills Trust

GRANTOR'S MAILING ADDRESS: P.O. Box 161507  
Austin, Travis County, Texas 78716-1507

GRANTEE: Senna Hills Municipal Utility District

GRANTEE'S MAILING ADDRESS: c/o Willatt & Flickinger, PLLC  
12912 Hill Country Blvd., Ste. F-232  
Austin, Travis County, Texas 78738

PROPERTY: A 2.683 acre tract more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes.

For and in consideration of Ten Dollars and other valuable consideration, the receipt and sufficiency thereof hereby acknowledged, Senna Hills Trust being the owner of Lot 37 Block G of Senna Hills Section 2, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 100, Pages 82-85, of the Plat Records of Travis County, Texas, wherein the 37.6930 acre parcel more particularly described in Exhibit A, lies hereby grants and declares a 2.548 acre, 150 foot buffer zone easement declaring and prescribing land use prohibitions and dimensions to be compliant with the rules of the Texas Commission on Environmental Quality, Title 30, Texas Administrative Code, Chapter 309, Section 309.13 (e) addressing and regarding establishment of a buffer zone for purposes of odor abatement and management. Further, the grantor declares that no residential buildings, structures or domiciles will be allowed to be built within the buffer zone easement established by this instrument and further that no persons will be allowed to reside within any structures or buildings including mobile homes or recreational vehicles currently existing within the buffer zone now or in the future.

This easement and restriction (herein "Easement") is exclusive and perpetual as to the purposes stated to the benefit of the Senna Hills Municipal Utility District of Travis County or the entity or owner of the TCEQ TLAP wastewater permit number WQ13001-001.

The rights granted to Grantee in this Easement shall be and are assignable in whole or in part. This instrument, and the terms and conditions contained herein, shall inure to the benefit of and be binding upon Grantee and Grantor, and their heirs, successors, and assigns.

GRANTOR warrants and shall forever defend the Easement to Grantee against anyone lawfully claiming or to claim the easement or any part thereof, by, through or under Grantor but not otherwise.

This grant is subject to all matters of record and all matters a true and correct survey and visual inspection of the Easement would show. GRANTEE accepts the current Easement "as is" with all faults in current condition.

It is understood and agreed that this Easement does not grant or convey any part of the underlying fee simple estate of any lands owned by Grantor

This instrument may be executed in duplicate originals, and each counterpart shall be deemed an original and all such counterparts together shall constitute one and the same instrument.

SENNA HILLS TRUST

By: \_\_\_\_\_  
Don Rip Miller, Trustee

THE STATE OF TEXAS     )  
  )  
COUNTY OF TRAVIS     )

This instrument was acknowledged before me on this \_\_\_\_\_ day of April, 2018, by Don Rip Miller, Trustee of SENNA HILLS TRUST, acknowledged this instrument on behalf of said Trust.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING, RETURN TO:

Bill Flickinger  
Willatt & Flickinger, PLLC  
12912 Hill Country Blvd, Ste F-232  
Austin, Texas 78738



GRANTOR also grants to GRANTEE a temporary construction easement, in, upon, over, and across the land within one hundred feet (100') of the boundaries of the EASEMENT PROPERTY, for the purposes of constructing and laying the PROJECT in the EASEMENT PROPERTY. This temporary construction easement shall automatically expire upon completion of the construction of the PROJECT, but in no event shall it extend beyond the one (1) year period that begins with the first day of construction on the EASEMENT PROPERTY. Upon such termination, the temporary construction easement shall revert to the sole ownership and control of GRANTOR.

GRANTOR also grants to GRANTEE a temporary work easement, in, upon, over, and across the land within one hundred feet (100') of the boundaries of the EASEMENT PROPERTY, for the purposes of constructing and laying the PROJECT in the EASEMENT PROPERTY. This temporary work easement shall automatically expire upon completion of the excavating, operating, maintaining, reconstructing, replacing, rebuilding, upgrading, renewing, removing, changing or repairing of the PROJECT, but in no event shall it extend beyond the one (1) year period that begins with the first day of excavating, operating, maintaining, reconstructing, replacing, rebuilding, upgrading, renewing, removing, changing or repairing on the EASEMENT PROPERTY. Upon such termination, the temporary work easement shall revert to the sole ownership and control of GRANTOR.

GRANTEE shall have the right of ingress and egress at all times upon and across the EASEMENT PROPERTY for the above stated purposes. In the event that immediate access to the EASEMENT PROPERTY is not reasonably available over the EASEMENT PROPERTY, and only in that event, then GRANTEE shall have the right of ingress and egress over existing roads across the adjacent or remainder property of GRANTOR for the purpose of obtaining such access. In the event that such access is not reasonably available over the EASEMENT PROPERTY and not available over existing roads, and only in that event, GRANTEE shall have the right of reasonable ingress and egress over the adjacent property of GRANTOR along any route that is reasonable and appropriate under the circumstances then existing in order to obtain such access. GRANTEE shall have the right to install and maintain appropriate gates along and in any fence, as necessary or appropriate for the exercise of GRANTEE's right of ingress and egress on the EASEMENT PROPERTY or adjacent property of GRANTOR.

GRANTEE may install a fence, with a locked gate, around the perimeter of the EASEMENT PROPERTY. GRANTOR shall have no right to use the surface of the EASEMENT PROPERTY. GRANTEE shall have exclusive control of the EASEMENT PROPERTY and PROJECT during the terms of this Amended Wastewater Treatment Plant Easement and shall hold GRANTOR harmless from and against any liability or claim with respect to the EASEMENT PROPERTY or PROJECT.

GRANTEE agrees that upon completion of construction of the PROJECT, all surplus excavation, debris, trash, or litter resulting from construction shall be cleaned up and disposed of off GRANTOR's property. GRANTEE at all times after completing any work in connection with the construction will restore the surface of the EASEMENT PROPERTY, as nearly as possible, to the condition in which the EASEMENT PROPERTY was found immediately before such work



was undertaken; however, GRANTOR understands and agrees that vegetation cleared from the EASEMENT PROPERTY will not be replaced.

GRANTOR expressly reserves all oil, gas, and other minerals owned by GRANTOR, in, on, and under the EASEMENT PROPERTY, provided that GRANTOR shall not be permitted to drill or excavate for minerals on the surface of the EASEMENT PROPERTY, but GRANTOR may extract oil, gas, or other minerals from and under the EASEMENT PROPERTY by directional drilling or other means which do not interfere with or disturb GRANTEE's use of the EASEMENT PROPERTY.

The rights granted to GRANTEE in this EASEMENT shall be and are assignable in whole or in part. This instrument, and the terms and conditions contained herein, shall inure to the benefit of and be binding upon GRANTEE and GRANTOR, and their heirs, successors, and assigns.

GRANTOR warrants and shall forever defend the easement to GRANTEE against anyone lawfully claiming or to claim the easement or any part thereof, by, through or under GRANTOR but not otherwise.

This EASEMENT shall terminate at 5:00 p.m. on the 365<sup>th</sup> day after the Wastewater Treatment Plant located on the EASEMENT PROPERTY is no longer in service. Upon termination of the EASEMENT, GRANTEE shall, within ninety (90) days, or such longer period of time as may be required to receive approvals from the Texas Commission on Environmental Quality, decommission the wastewater treatment plant.

GRANTEE agrees to maintain the EASEMENT PROPERTY in good condition and free of debris and trash.

GRANTEE shall use the EASEMENT PROPERTY only for the purposes of the PROJECT. Grantee shall not allow, to the extent within GRANTEE'S control, the discharge of any waste or environmentally hazardous materials, other than incoming materials going to the PROJECT, discharges from the PROJECT and effluent, on the EASEMENT PROPERTY.

This grant is subject to all matters of record and all matters a true and correct survey and visual inspection of the EASEMENT PROPERTY would show. GRANTEE accepts the current easement "as is" with all faults in current condition. GRANTEE shall be responsible for maintenance of the PROJECT and shall maintain the EASEMENT PROPERTY in good repair and free from debris and trash.

It is understood and agreed that this agreement is an easement only and does not grant or convey any part of the underlying fee simple estate of any lands owned by GRANTOR. This grant is subject to all matters a true and correct survey and visual inspection of the EASEMENT PROPERTY would show.

When the context requires, singular nouns and pronouns include the plural. When appropriate, the term "GRANTEE" includes the employees, agents, subsidiaries, officers, servants, contractors, successors and assigns of GRANTEE.

This instrument may be executed in duplicate originals, and each counterpart shall be deemed an original and all such counterparts together shall constitute one and the same instrument.

**AGREED:**

**GRANTOR:**

**SENNA HILLS TRUST**

By: \_\_\_\_\_  
Don Rip Miller, Trustee

**ACCEPTED AND AGREED:**

**GRANTEE:**

**SENNA HILLS MUNICIPAL UTILITY  
DISTRICT**

By: \_\_\_\_\_  
Chet A. Palesko, President  
Board of Directors

**ATTEST:**

By: \_\_\_\_\_  
Lisa S. McKenzie, Secretary  
Board of Directors

[SEAL]

**ACKNOWLEDGMENTS**

**STATE OF TEXAS**                   §  
   §  
**COUNTY OF TRAVIS**           §

This instrument was acknowledged before me on this \_\_\_\_\_ day of April, 2018, by Don Rip Miller, Trustee of SENNA HILLS TRUST, acknowledged this instrument on behalf of said Trust.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**STATE OF TEXAS**                   §  
   §  
**COUNTY OF TRAVIS**           §

This instrument was acknowledged before me on April \_\_\_\_, 2018, by Chet A. Palesko, President of Senna Hills Municipal Utility District, on behalf of said District.

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

**AFTER RECORDING RETURN TO:**

**Bill Flickinger**  
**Willatt & Flickinger, PLLC**  
**12912 Hill Country Blvd., Ste. F-232**  
**Austin, Texas 78738**

