

## FIRST AMENDMENT TO THE PORTER COUNTRY DEVELOPMENT AGREEMENT

This First Amendment to the Porter Country Development Agreement (the "First Amendment") is made and entered into as of the September 6, 2022 (the "**Effective Date**"), by and between the **CITY OF KYLE, TEXAS**, a home rule municipality located in Hays County, Texas (the "City") and **HILLSIDE TERRACE DEVELOPMENT, LLC**, a Texas limited liability company (the "Owner"). The City and the Owner are hereinafter sometimes referred to as a "Party" and collectively as the "Parties".

### RECITALS

**WHEREAS**, the Parties previously entered into that certain Porter Country Development Agreement dated May 17, 2022 (the "Development Agreement") for that certain Project (as defined therein) located in the City of Kyle, Hays County, Texas, as more particularly described in the Development Agreement; and

**WHEREAS**, to address the maintenance of improvements within the Project, the Parties wish to modify and amend the Development Agreement to reflect the agreed upon terms as set forth in this First Amendment.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual promises contained herein along with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties hereto agree as follows:

#### I. RECITALS

1.01. Recitals Incorporated. The above recitals are incorporated herein and made a part of this First Amendment to the same extent as if set forth herein in full.

#### II. AMENDMENT

2.01. Alleys. Section 4.9 is hereby added to the Development Agreement as follows:

4.09 Alleys. All alleys dedicated to the City by plat to the City shall be maintained and by the Association, and the Owner and/or the Association and the City will enter into a maintenance agreement substantially in the form attached hereto as Exhibit "G" concurrently with the recordation of the plat(s) dedicating the alleys."

2.02. Property Owners Association. Section 10.1 of the Development Agreement is hereby deleted in its entirety and replaced as follows:

“10.1 Property Owners Association. Owner will create a Property Owners Association (“Association”), and shall establish bylaws, rules, regulations, and restrictive covenants (collectively, the “Association Regulations”) to assure the Association performs and accomplishes the duties and purposes required to be performed and accomplished by the Association pursuant to this Agreement. The owner of each lot in the subdivision shall be required to be a member of the Association, and unpaid dues or assessments shall be and constitute a lien on the lot for which they are assessed. The Association Regulations will establish periodic Association dues and assessments, to be charged and paid by the lot owners in the Project, that are and will be sufficient to maintain (a) the drainage easements and improvements within the Property that are dedicated to the City but not maintained and operated by the City (the “Drainage”); (b) the alleys dedicated to the City but not maintained by the City; (c) any part or portion of the Property that is dedicated to the Association (the “Dedicated Property”); and (d) maintenance and operation of the Parkland and Open Space and Public Amenities identified in Exhibit “D” in accordance with Section 4.6 above. The Association Regulations will require the periodic dues and assessments to be increased from time to time as necessary to provide the funds required for the maintenance of the Drainage, Dedicated Property, Parkland and Open Space, and Public Amenities, and to provide funds required for the management and operation of the Association.”

### III. GENERAL PROVISIONS

3.01. Capitalized Terms. Any capitalized term that is used in this First Amendment and is not otherwise defined herein shall have the meaning that is ascribed to it in the Development Agreement.

3.02. Amendment of Development Agreement. Except as specifically amended by this First Amendment, the terms and provisions stated in the Development Agreement shall continue to govern the rights and obligations of the Parties, and all provisions and covenants of the Development Agreement, as amended by this First Amendment, shall remain in full force and effect. The terms and provisions of the Development Agreement, as hereby amended by this First Amendment, are hereby ratified and confirmed. In the event of any inconsistency, the terms and provisions of this First Amendment shall control over and modify the terms and provisions of the Development Agreement.

3.03. Entire Agreement. This First Amendment, together with any exhibits attached hereto, and the Development Agreement, constitute the entire agreement between the Parties with respect to the subject matter stated therein, and may not be amended except by a writing signed by the Parties and dated subsequent to the date hereof.

3.04. Covenant Running with the Land. The Development Agreement, as amended by this First Amendment, shall continue to constitute a binding covenant and shall run with the land.

3.05. Binding Effect. The Owner and the City acknowledge and agree that this First Amendment shall be binding upon and inure to the benefit of the Parties hereto and

their respective successors, executors, heirs and permitted (pursuant to the terms of the Development Agreement) assigns.

3.06. Captions. The captions preceding the text of each section and paragraph hereof, if any, are included only for convenience of reference and shall be disregarded in the construction and interpretation of this First Amendment.

3.07. Authority. Each party hereto has the full legal authority to execute and deliver this First Amendment. In addition, the individual who executes this First Amendment on behalf of each party hereto is authorized to act for and on behalf of such party and to bind such party to the terms and provisions hereof.

3.08. Severability. If any provision of this First Amendment shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable, unless enforcement of this First Amendment as so invalidated would be unreasonable or grossly inequitable under the circumstances or would frustrate the purpose of this First Amendment.

3.09. Anti-Boycott Verification. To the extent this First Amendment constitutes a contract for goods or services within the meaning of Section 2271.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2271 of the Texas Government Code, and subject to applicable Federal law, Owner represents that neither Owner nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Owner (i) boycotts Israel or (ii) will boycott Israel through the term of this First Amendment. The terms "boycotts Israel" and "boycott Israel" as used in this paragraph have the meanings assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended.

3.10. Iran, Sudan and Foreign Terrorist Organizations. To the extent this First Amendment constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Owner represents that Owner nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

3.11. Anti-Boycott Verification – Energy Companies. The Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this First Amendment. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal

with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by the preceding statement in (A).

3.12. Anti-Discrimination Verification – Firearm Entities and Firearm Trade Associations. The Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this First Amendment. The foregoing verification is made solely to comply with Section 2214.002, Texas Government Code. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

3.13 Form 1295. Submitted herewith is a completed Form 1295 in connection with the Owner's participation in the execution of this First Amendment generated by the Texas Ethics Commission's (the “TEC”) electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the “Form 1295”). The City hereby confirms receipt of the Form 1295 from the Owner. The Owner and the City understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Owner; and, neither the City nor its consultants have verified such information.

3.14. Multiple Counterparts. Multiple copies of this First Amendment may be executed by the Parties hereto. Each such executed copy shall have the full force and effect of an original executed instrument.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed as of the date and year first above written.

**CITY:**

**CITY OF KYLE, TEXAS,**  
a home rule municipality

By: \_\_\_\_\_  
Travis Mitchell, Mayor

ATTEST:

\_\_\_\_\_  
Jennifer Holm, City Secretary

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**OWNER:**

**HILLSIDE TERRACE DEVELOPMENT, LLC,**  
a Texas limited liability company

By: MSCB Hillside, LLC  
a Texas limited liability company  
its Managing Member

By: \_\_\_\_\_  
Name: Garrett S. Martin  
Title: Manager

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**Exhibit “G”**

Maintenance Agreement

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