



**THIRD AMENDMENT TO AGREEMENT
BY AND BETWEEN
CITY OF WESTON AND LAND ADVISORS, LTD.**

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

THIS THIRD AMENDMENT TO AGREEMENT BY AND BETWEEN CITY OF WESTON AND LAND ADVISORS, LTD. ("Third Amendment") is made by and between the CITY OF WESTON, TEXAS (the "City") and LAND ADVISORS, LTD. and WESTIN LAND, LTD. (collectively referred to as "Developer"), acting by and through their respective authorized representatives.

WITNESSETH:

WHEREAS, the City and Developer previously entered into that certain Agreement by and between City of Weston and Land Advisors, Ltd. (the "Original Agreement"), dated August, 22, 2004, involving the City's legal and technical consultant fees related to approximately 1,289 acres of land owned by Developer within and adjacent to the City that the Developer plans to develop for residential and other associated uses (the "Project") as more particularly shown on the site plan attached to the Original Agreement as Exhibit "A," and made a part thereof and hereof by reference for all purposes, and pursuant to the Development Agreement entered into between the City, Honey Creek Partners, L.P., and Westin Land Ltd., on or about December 13, 2005, including all past and future amendments to the Development Agreement (the "Development Agreement"), made a part hereof by reference for all purposes; and

WHEREAS, on July 12, 2005 the City and Developer entered into that certain First Amendment to Agreement by and between City of Weston and Land Advisors, Ltd. (the "First Amendment"); and

WHEREAS, on August 23, 2005, the City and Developer entered into that certain Second Amendment to Agreement by and between City of Weston and Land Advisors, Ltd. (the "Second Amendment") (the Original Agreement as amended by the First and Second Amendments are hereinafter referred to collectively as the "Agreement"); and

WHEREAS, On or about December 13, 2005, the City, Honey Creek Partners, L.P. and Westin Land Ltd. entered into a Development Agreement¹, which created obligations for both parties in order to facilitate development on Plaintiffs' property; and

WHEREAS, the City and Developer again mutually desire to amend certain terms and provisions of the Agreement as more particularly set forth herein;

¹ The Development Agreement was subsequently amended several times.

NOW, THEREFORE, for and in consideration of the foregoing premises, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged to each and paid by the other the City and Developer mutually agree as follows:

1. Except to the extent otherwise expressly set forth herein, all capitalized terms shall have the identical meanings as those set forth in the Agreement.

2. The City and Developer hereby acknowledge and agree that the Developer has, pursuant to the terms and provisions of Section 2 of the Agreement, previously paid to the City the aggregate sum of \$ 413,827.72 as of the effective date of this Third Amendment (the "Effective Date") attributable to certain City-incurred legal and technical consultant fees (hereinafter collectively referred to as the "City Fees"), including, but not limited to legal, engineering, permitting, surveying and other professional fees which represent a portion of the City Fees expended by the City as of the Effective Date that are directly associated with the Project.

3. Section 2 of the Agreement shall be and is hereby further amended to read in its entirety as follows:

"2. In consideration of the foregoing, the Developer hereby agrees to pay for any and all City-incurred legal and technical consulting fees (the "City Fees"), including, but not limited to, legal, engineering, permitting and surveying fees expended by the City that are directly associated with the Project and with the City's obligations pursuant to the Development Agreement, including all existing and future amendments to said Development Agreement. Developer hereby agrees to deposit Ten Thousand Dollars (\$10,000.00) with the City for payment of the City Fees outlined in this Section 2 (the "Developer Deposit"). The City shall establish and maintain a separate bank account for such funds. At such time as the balance of the Developer Deposit is less than Three Thousand Dollars (\$3,000.00), the City shall notify Developer thereof and Developer agrees to advance such additional amounts to the City within twenty (20) days of the date of the City's notice, in order to at all times maintain a minimum balance of Three Thousand Dollars (\$3,000.00).

The Developer and City will agree to amounts and/or percentages of participation on items, fees and expenditures that are indirectly associated with the Project by independent letter agreement or other means mutually acceptable to both parties on a case-by-case basis. Vendors representing the joint interests of the parties shall be mutually agreed to by the parties, with the consent of each party not to be unreasonably withheld.

Within ten (10) days of receiving a vendor invoice, the City shall forward said invoice to Developer for review. Within (10) days of receipt of said invoice, Developer shall notify City of Developer's approval of payment for the invoice or Developer's rejection of particular line items in the invoice. If Developer fails

to timely provide such approval or rejection, payment of the invoice shall be deemed approved. If Developer rejects any particular line item(s) in said invoice, Developer shall identify such line item(s) and enumerate Developer's reasons for rejection. The City shall then obtain from the vendor the information necessary to justify the line item expense and resubmit the invoice and the vendor's justification to Developer within ten (10) days of receipt of Developer's rejection. Developer shall then notify the City of its rejection or approval of the resubmitted invoice within ten (10) days receipt and if Developer fails to timely provide such approval or rejection, payment of the invoice shall be deemed approved. Developer agrees that approval for payment of invoices shall not be unreasonably withheld. The City agrees to provide notice to all affected vendors of this approval process prior to contracting with such vendors. This approval process shall not apply to legal counsel, unless otherwise approved in writing by City and Developer."

4. Section 3 of the Agreement shall be and is hereby amended to read in its entirety as follows:

"3. Developer shall have the right to engage consultants on behalf of the City, if said consultants have been mutually approved by the parties in writing. The costs of all mutually-approved consultants shall be paid directly to the said consultants by Developer. The City shall have sole discretion to select and employ additional legal and technical consultants as it deems necessary to review the work of any consultants engaged by Developer on behalf of the City with such costs paid by Developer. The parties shall act in good faith in their selections of consultants and shall not incur costs unnecessarily or arbitrarily."

5. All signatories to this Third Amendment represent and warrant to the other signatories hereof but each is duly authorized and empowered to execute this Third Amendment on behalf of the entity that is a party to this Third Amendment.

6. This Third Amendment may be executed in any number of counterparts, each of which shall constitute one and the same instrument, and either party hereto may execute this Third Amendment by signing any such counterparts. In addition, each and all the parties hereto agree that facsimile signatures shall be sufficient to validly bind and obligate the parties hereunder.

7. THE AGREEMENT, AS AMENDED HEREBY (EITHER EXPRESSLY OR BY NECESSARY IMPLICATION) CONSTITUTES 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.

(This space intentionally left blank)



EXECUTED on this 9th day of June, 2009.

CITY OF WESTON, TEXAS

By: [Signature]

J. Scott Morrissey, Mayor

APPROVED AS TO FORM:

By: [Signature]

City Attorney

ACKNOWLEDGEMENT

STATE OF TEXAS

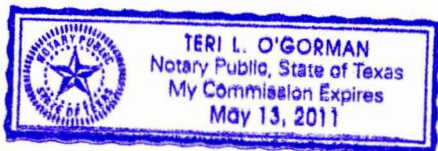
§

§

COUNTY OF COLLIN

§

This instrument was acknowledged before me on June 9, 2009, by J. Scott Morrissey, Mayor of the City of Weston, a Texas municipal corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, who acknowledged to me that he executed the same for the purposes and consideration and in the capacity therein expressed as the act and deed of said corporation.



[Signature]

Notary Public, State of Texas

EXECUTED the 17th day of June, 2009.

LAND ADVISORS, LTD.
a Texas limited partnership

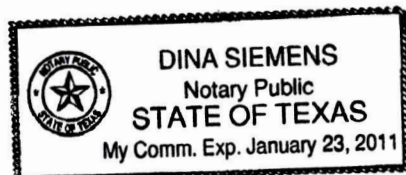
By: Land Advisors Management, L.L.C.,
a Texas Limited Liability Company,
Its General Partner

By: *Roger Lindsey*
~~Dan Tomlin, III, President~~
Roger Lindsey

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on June 17th, 2009 by *Roger Lindsey* ~~Dan Tomlin, III, Vice President~~ of Land Advisors Management, L.L.C., a Texas limited liability company, the General Partner of Land Advisors, Ltd., a Texas limited partnership, known to me to be the person and officer whose name is subscribed to the foregoing instrument, who acknowledged to me that he executed the same for the purposes and consideration and in the capacity therein expressed as the act and deed of said limited liability company and limited partnership.



D. Siemens
Notary Public, State of Texas

EXECUTED the 17th day of June, 2009.

WESTIN LAND LTD.
a Texas limited partnership

By: **Land Advisors, Ltd.**
a Texas limited partnership
Its General Partner

By: **Land Advisors Management, L.L.C.**
a Texas limited liability company
Its Sole General Partner

By: *Roger Lindsey*
D.O. Tomlin, III
V. President

ACKNOWLEDGEMENT

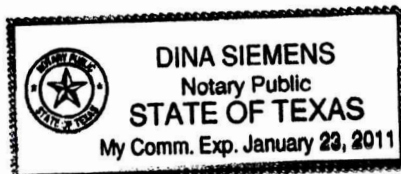
STATE OF TEXAS

§
§
§

COUNTY OF ~~COLLIN~~

DALLAS

This instrument was acknowledged before me on June 17th, 2009 by *Roger Lindsey* D.O. Tomlin, III, as President and Sole General Partner of Land Advisors Management, L.L.C., a Texas limited liability company, as General Partner of Land Advisors, Ltd., a Texas limited partnership, as General Partner of Westin land Ltd., a Texas limited partnership, on behalf of said partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.



Dina Siemens
Notary Public, State of Texas

Filed and Recorded
Official Public Records
Stacey Kemp, County Clerk
Collin County, TEXAS
08/13/2010 01:39:57 PM
\$46.00 NPRECILLA
20180813001011150



Stacey Kemp