

**JAMES BURGESS**

Mayor

**RITA BISHOP**

Mayor Pro Tem/

Councilmember Place 1

**TONY BOVINICH**

Councilmember Place 2



**JESSICA KUYKENDALL**

Councilmember Place 3

**GERONIMO HERNANDEZ**

Councilmember Place 4

**DREW WILSON**

Councilmember Place 5

## **VENUS SPECIAL CALLED COUNCIL MEETING**

Venus Civic Center

210 S. Walnut Street

Venus, Texas 76084

Monday, March 20, 2023 @ 6:30 PM

Page

### **1. Call to Order, Roll Call, Invocation, Pledge of Allegiance:**

### **2. Announcements from Mayor:**

*Cell phones are to be turned off or placed on vibrate/silent only. No conversation or comment from the audience is permitted unless specifically called upon by the Mayor. Please remain respectfully quiet.*

### **3. Citizen Public Comment Period:**

*Citizens may sign up before the meeting begins and will be allowed up to 3 minutes to address the Mayor and Council. The Mayor, Council members and staff members may not respond or converse with speakers during this time. The comments from the speaker must be in the form of a statement. By State law, no questions may be asked or answered for items not appearing on the agenda.*

### **4. Discussion & Consideration Items:**

- 4.1. Discuss and consider entering into a Development Agreement with Buffalo Hills Development, LLC and Miskimom Management III, LLC for Brahman Ranch Municipal Utility District generally located on CR2258 between 157 and 213 and in the extraterritorial jurisdiction of the City of Venus.

4 - 33

[\(MISKIMON\) BRAHMAN RANCH MUD -- Consent and Development Agreement 4861-2042-4533 v.3.pdf](#)

I make a motion to approve/deny entering into a Development Agreement with Buffalo Hills Development, LLC and Miskimon Management III, LLC for Brahman Ranch

Municipal Utility District as presented.

- 4.2. Discuss and consider Resolution No. 09-2023-03 consenting to the creation of a Municipal Utility District to be known as Brahman Ranch Municipal Utility District. 34 - 35  
[09-2023-03- \(MISKIMON\) BRAHMAN RANCH MUD -- Resolution Consenting to MUD 4869-6789-8965 1.pdf](#)   
I make a motion to approve/deny Resolution No. 09-2023-03.
- 4.3. Discuss and consider entering into a Development Agreement with Buffalo Hills Development, LLC for Hawk Ridge Municipal Utility District generally located on the corner of CR213 and CR108 (Madison Wilson Road) in the City of Venus. 36 - 61  
[\(MISKIMON\) HAWK RIDGE MUD -- Consent and Development Agreement 4889-2393-5303 v.6.pdf](#)   
I make a motion to approve/deny entering into a Development Agreement Buffalo Hills Development, LLC for Hawk Ridge Municipal Utility District as presented.
- 4.4. Discuss and consider Resolution No. 10-2023-03 consenting to the creation of a Municipal Utility District to be known as Hawk Ridge Municipal Utility District. 62 - 63  
[10-2023-03- \(MISKIMON\) HAWK RIDGE MUD -- Resolution Consenting to MUD 4876-0313-9413 1.pdf](#)   
I make a motion to approve/deny Resolution No. 10-2023-03.
- 4.5. Discuss and consider entering into a Development Agreement with Buffalo Hills Development, LLC for Buffalo Hills Municipal Utility District of Johnson County generally located on CR213 between CR2258 and Madison Wilson Road in the extraterritorial jurisdiction of the City of Venus. 64 - 91  
[\(MISKIMON\) BUFFALO HILLS MUD -- Consent and Development Agreement 4891-3134-3444 v.3.pdf](#)   
I make a motion to approve/deny entering into a Development Agreement with Miskimon Management III, LLC for Buffalo Hills Municipal Utility District of Johnson County as presented.
- 4.6. Discuss and consider Resolution No. 11-2023-03 Consenting to the creation of a Municipal Utility District to be known as Buffalo Hills Municipal Utility District. 92 - 93

I make a motion to approve/deny Resolution No. 11-2023-03.

**5. Adjournment:**

*The City Council reserves the right to meet in Executive Session closed to the public at any time in the course of this meeting to discuss matters listed on the agenda, pursuant to authorization by the Texas Open Meetings Act TEXAS GOVERNMENT CODE, Chapter 551.071 (Private consultation with attorney for the city), 551.072 (deliberations about real property), 551.073 (deliberations about gifts and donations), 551.074 (personnel matters), 551.076 (deliberations about security devices), 551.087 (economic development), 418.183 (homeland security).*

**This is to certify that a copy of this Notice of Meeting was posted on the bulletin board at City Hall, 700 W. Hwy 67 Venus, Texas and at a place readily accessible to the general public at all times and to the City's website [www.cityofvenus.org](http://www.cityofvenus.org), 03/17/2023 by 5:00 pm..**

\_\_\_\_\_  
Callie Green,  
City Secretary

*For more information or a copy of the Open Meetings Act, please contact the Attorney General of Texas at 1-800-252-8011. This building is wheelchair accessible. Any requests for Interpretive Services must be made 48 hours in advance of the scheduled meeting. To make arrangements please call 972-366-3348.*

Removed:\_\_\_\_\_

Time:\_\_\_\_\_

**CONSENT AND DEVELOPMENT AGREEMENT**

**AMONG**

**CITY OF VENUS, TEXAS**

**AND**

**BUFFALO HILLS DEVELOPMENT, LLC**

**AND**

**MISKIMON MANAGEMENT III, LLC**

## CONSENT AND DEVELOPMENT AGREEMENT

This CONSENT AND DEVELOPMENT AGREEMENT (this “Agreement”) is entered into by and among the **City of Venus, Texas**, a type A general law municipality located in Ellis and Johnson Counties, Texas (the “City”), **Buffalo Hills Development, LLC**, a Texas limited liability company (“BHD”), and **Miskimon Management III, LLC**, a Texas limited liability company (“Miskimon III” and together with BHD, the “Developer”). The **Brahman Ranch Municipal Utility District of Ellis and Johnson Counties** (the “District”), a municipal utility district to be created by available statutory means pursuant to the laws of the state of Texas, will join this Agreement as set forth below and after such joinder shall become a party to this Agreement.

### RECITALS

WHEREAS, BHD is the owner of approximately 212.2 acres of land located within the extraterritorial jurisdiction (“ETJ”) of the City and Miskimon III is the owner of approximately 226.5 acres of land located within the ETJ of the City, as such 438.7 acres are more particularly described by metes and bounds on the attached **Exhibit A** and depicted on the attached **Exhibit B** (the “Property”); and

WHEREAS, the Developer intends to develop the Property, in one or more phases, as a residential community that will include open space and public facilities to serve the community as depicted on the conceptual development plan attached hereto as **Exhibit C** (the “Conceptual Development Plan”) and consistent with the development standards attached hereto as **Exhibit D** (the “Development Standards”); and

WHEREAS, the Developer and the City wish to enter into this Agreement, which is intended to encourage innovative and comprehensive master-planning of the Property, provide certainty of regulatory requirements throughout the term of this Agreement and result in a high-quality development for the benefit of the present and future residents of the City and the Property; and

WHEREAS, the Developer has presented the City with a form of resolution attached to this Agreement as **Exhibit E** to consent to the creation of the Brahman Ranch Municipal Utility District of Ellis and Johnson Counties (the “District”) and the inclusion of the Property in the District; and

WHEREAS, the purposes of the proposed District include designing, constructing, acquiring, installing, conveying to the City, and financing water, wastewater, streets, drainage, and other public improvements as authorized by the Texas Constitution, the Texas Water Code, and any enabling legislation to benefit the area within its boundaries (collectively, the “District Improvements”); and

WHEREAS, construction of the District Improvements will occur in one or more phases (as determined by the District and the Developer) in accordance with this Agreement, the applicable ordinances of the City, Chapters 49 and 54, Texas Water Code, as amended, and any

enabling legislation specific to the District, the rules and regulations of the TCEQ, as amended, and applicable state and federal regulations (collectively, the “Applicable Regulations”); and

WHEREAS, the City and Developer intend that the Reimbursable Costs (hereinafter defined) of the District Improvements will be paid from the net proceeds of Bonds issued by the District or other revenues of the District in accordance with this Agreement, the applicable rules and regulations of the TCEQ, as amended, and the applicable requirements of the Texas Attorney General’s Office, as amended; and

WHEREAS, the District is authorized to enter into this Agreement pursuant to the provisions of Texas law, including but not limited to, Chapters 49 and 54, Texas Water Code, as amended, Chapter 791, Texas Government Code, as amended, and Section 552.014, Texas Local Government Code, as amended; and

WHEREAS, the City is a type A general law municipality operating under the laws of the State of Texas and pursuant to which the City has the authority to enter into and perform its obligations under this Agreement including, but not limited to, the ownership and operation of the District Improvements;

WHEREAS, the Parties agree and intend that this Agreement is a development agreement as provided for by state law in Section 212.172 of the Texas Local Government Code and a permit as set forth in Chapter 245, Texas Local Government Code; and

WHEREAS, unless expressly set forth to the contrary in this Agreement, the Parties intend this Agreement to supersede City Regulations to the extent that City regulations directly conflict with the terms of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the Parties contract as follows.

## **ARTICLE I DEFINITIONS**

**Section 1.01. Definitions.** In addition to the terms defined elsewhere in this Agreement or in the City’s ordinances, the following terms and phrases used in this Agreement will have the meanings set out below:

Additional Property means any other land acquired by the Developer and made subject to this Agreement pursuant to Section 6.01 hereof.

Agreement means this Consent and Development Agreement among the Parties.

Bond means bonds, notes, or other obligations or indebtedness that are issued or incurred by the District under the District’s borrowing power.

Buffalo Hills WWTP means the wastewater treatment plant that is intended to serve the Property and other property owned by the Developer.

City means the City of Venus, Texas, a type A general law municipality located in Ellis and Johnson Counties, Texas.

City Administrator means the City Administrator of the City.

Commission or TCEQ means the Texas Commission on Environmental Quality or its successor agency.

Conceptual Development Plan means the concept plan for the Property attached as **Exhibit C**, as amended from time to time in accordance with this Agreement.

Counties means Ellis County, Texas and Johnson County, Texas.

Developer means collectively, Miskimon Management III, LLC, a Texas limited liability company and Buffalo Hills Development, LLC, a Texas limited liability company, or their successors and assigns under this Agreement.

Development Standards means the development standards for the Property attached hereto as **Exhibit D**.

District means Brahman Ranch Municipal Utility District of Ellis and Johnson Counties, a political subdivision of the State of Texas to be created over the Property, with the consent of the City, as provided in this Agreement.

District Improvements means water, wastewater, streets, drainage, and other public improvements benefitting the District, as authorized by the Texas Constitution, the Texas Water Code, and any enabling legislation to serve the area within the District boundaries.

Effective Date of this Agreement means March 13, 2023.

Mountain Peak SUD means the Mountain Peak Special Utility District.

Property means approximately 438.7 acres of land located within the ETJ of the City, as described by metes and bounds on **Exhibit A** and depicted on **Exhibit B**, and any Additional Property that may be included in accordance with Section 6.01 of this Agreement.

Reimbursable Costs means costs paid or incurred to construct District Improvements that are eligible for reimbursement from the net proceeds of Bonds issued in accordance with this Agreement or other funds and the rules and regulations of the TCEQ, as amended, including in addition to costs of construction, but not limited to, the following:

- (i) surveying costs;
- (ii) cost of soils and materials testing;
- (iii) engineering fees related to the District Improvements;
- (iv) advertising and other costs associated with public bidding and award of construction contracts;

- (v) costs of required easements and rights-of-way; and
- (vi) other costs or fees paid or incurred in connection with the creation and operation of the District.

Strategic Partnership Agreement (“SPA”) means a strategic partnership agreement as contemplated under Section 43.0751, Texas Local Government Code.

## **ARTICLE II**

### **CREATION OF DISTRICT AND EXECUTION OF AGREEMENTS**

**Section 2.01. Consent to Creation of District.** The City acknowledges receipt of Developer’s request, in accordance with Section 54.016, Texas Water Code and Section 42.042, Texas Local Government Code, for creation of the District, including powers from Article III, Section 52 of the Texas Constitution. On the Effective Date of this Agreement, the City has approved the resolution substantially similar to the form attached as **Exhibit E** (the “Consent Resolution”) consenting to the inclusion of the Property within the proposed District and the creation of the District in accordance with the Applicable Regulations. The City agrees to adopt such further resolutions or ordinances and execute such further documents as may reasonably be necessary by the Developer, the TCEQ, the Attorney General of the State of Texas, or the District to evidence the City's consents as set forth in this Agreement and in the Consent Resolution. Subject to and limited by the terms of this Agreement and the conditions set forth in the City approved Consent Resolution, the consents contained in this Article II and in the Consent Resolution (the “District Consents”) are given by the City: (a) in full and exclusive satisfaction of any applicable requirements for District consents contained in any statute or otherwise required by law, rule, regulation or policy, including, but not limited to, consents required by the Texas Water Code, as amended, the Texas Local Government Code, as amended, any rules, regulations or policies of the TCEQ, or any rules, regulations or policies of the Texas Attorney General (b) with the understanding that both City and the Developer have relied on the District Consents to their individual material detriment, but for the District Consents, the Developer would not have entered into this Agreement and but for the conditions and limitations on the District Consents, City would not have entered into this Agreement.

**Section 2.02. District Execution of Agreement.** The Developer and the City intend that this Agreement shall be binding upon the District from and after the date the District executes a joinder to this Agreement in substantially the same form as set forth in **Exhibit F**, attached hereto and made a part hereof. The District shall execute such joinder at the time of its organizational meeting.

**Section 2.03. District Bonds.** If the District fails to approve, execute, and deliver this Agreement to the City as required by Section 2.02, and if the City does not terminate this Agreement, such failure shall constitute a material breach of this Agreement by the Developer and shall operate to prohibit the District from taking any actions to issue Bonds until the failure has been cured. The City shall have the right to enjoin the issuance of Bonds during any period in which such a material breach exists.

**Section 2.04. Reimbursement Agreements.** If the District fails to approve, execute, and deliver this Agreement to the City as required by Section 2.02, and if the City has not



terminated this Agreement, such failure shall constitute a material breach of this Agreement by the Developer and shall operate to prohibit Developer or any developer of the Property from entering into any reimbursement agreements with the District until the failure has been cured. The City shall have the right to enjoin the execution of such reimbursement agreements during any period in which such a material breach exists.

**Section 2.05.**     **Intent of Parties Related to Allocation Agreement.** Under Section 54.016(f), Texas Water Code, the City, as a City providing written consent for inclusion of land in a district, may provide for a contract designated as an “allocation agreement”, to be entered into between the City and the District. The Parties acknowledge that the provision for an “allocation agreement” under Section 54.016(f) is at the City’s discretion. The City confirms that it is intentionally not providing for an allocation agreement. The Parties agree that this Agreement does not constitute and will not be deemed to constitute an allocation agreement within the meaning of Section 54.016(f).

### **ARTICLE III WASTEWATER SERVICE**

**Section 3.01.**     **Developer General Obligations.** The Developer is responsible for the design, installation, and construction of all wastewater facilities required to serve the Property.

**Section 3.02.**     **Ownership.** Developer shall convey all wastewater District Improvements to the District. The City agrees that, once the wastewater District Improvements are conveyed to the District, the District will own and maintain the wastewater District Improvements, unless the City and the District agree in writing to the contrary. The City shall become the owner of the wastewater District Improvements upon annexation of land within the District and dissolution of the District, in accordance with Section 43.075, Texas Local Government Code. Notwithstanding any change in state law concerning ownership of the District’s assets upon annexation, the City shall have the option, at the City’s election, to become the owner of the wastewater District Improvements on land within the District upon annexation of such land by the City. This section is subject to Section 3.03 below.

**Section 3.03**   **Buffalo Hills WWTP.**

(a)     The Buffalo Hills WWTP shall be initially owned by the District or another municipal utility district served by the Buffalo Hills WWTP and constructed in accordance with TCEQ standards. The discharge permit related to the Buffalo Hills WWTP will be held by the District until such time as ownership is transferred to the City as provided herein.

(b)     The City agrees to operate and maintain the Buffalo Hills WWTP, including routine repairs. The City agrees to bill customers at City standard billing rates for operational costs related to the Buffalo Hills WWTP. Notwithstanding the foregoing, the District shall repair or cause to be repaired the Buffalo Hills WWTP for major repairs as determined by the District.

(b)     The Buffalo Hills WWTP may be constructed or caused to be constructed with plans for expansion as needed for development of the Property. Expansion of the Buffalo Hills WWTP will be paid or caused to be paid by the District.

(c) Ownership of the Buffalo Hills WWTP shall be transferred to the City upon the Developer's completion of all development within the Property and its receipt of one hundred percent (100%) of all Reimbursable Costs from the District related to the Buffalo Hills WWTP, evidenced in writing by the Developer and/or District and confirmed by the District's financial advisor, due to Developer by the District. It shall be a condition precedent to the transfer of ownership to the City that the TCEQ has not issued a notice of violation for the Buffalo Hills WWTP during the two years prior to such transfer.

#### **ARTICLE IV WATER SERVICE**

**Section 4.01.** **Water Utility Provider.** The Property is located within the water certificate of convenience and necessity ("CCN") held by Mountain Peak SUD. Retail water service to the Property shall be provided by Mountain Peak SUD. The Developer will work with Mountain Peak SUD (and will recommend to the District that the District work with Mountain Peak SUD) concerning retail water service to the Property.

#### **ARTICLE V ROADWAY AND DRAINAGE IMPROVEMENTS**

**Section 5.01.** **Developer General Obligations.** The Developer is responsible for the design, installation, and construction of all roadway and drainage facilities required to serve the Property. The design of all roadway and drainage improvements shall be in accordance with City regulations.

**Section 5.02.** **Ownership.** Developer shall convey all roadway and drainage District Improvements to the District. The City agrees that, once the roadway and drainage District Improvements are conveyed to the District, the District will own and maintain the roadway and drainage District Improvements, unless the City and the District agree in writing to the contrary. The City shall become the owner of the roadway and drainage District Improvements upon annexation of land within the District and dissolution of the District, in accordance with Section 43.075, Texas Local Government Code. Notwithstanding any change in state law concerning ownership of the District's assets upon annexation, the City shall have the option, at the City's election, to become the owner of the roadway and drainage District Improvements on land within the District upon annexation of such land by the City.

#### **ARTICLE VI ADDITIONAL OBLIGATIONS**

**Section 6.01.** **Additional Property.** To the extent Developer, its successor or assign, or an affiliated entity of the Developer, acquires land contiguous to the District ("Additional Property") subsequent to this Agreement, Developer shall provide notice to the City of such acquisition, accompanied by a legal description, and such Additional Property shall (i) be considered a part of the Property and subject to this Agreement, without the necessity of amending this Agreement, and (ii) be subject to and developed in accordance with the specifications of this Agreement. Upon such acquisition, Developer may cause to be recorded in Ellis County or Johnson County records a memorandum of this Agreement, incorporating the description of the Additional Property affected.

**Section 6.02.**      **Annexation.**

(a) Except as set forth in Sections 6.02(b) and 6.02(c) of this Agreement, the Property shall remain in the extraterritorial jurisdiction of the City and shall be immune from annexation during the term of this Agreement. It is understood that all or a portion of the Property may be covered by one or more agreements with previous landowners of the Property titled “Chapter 43 Texas Local Government Code Development Agreement” each approved by the City Council on October 15, 2018 (an “Annexation Agreement”). The Parties agree and acknowledge that the inclusion of the Property in this Agreement is dependent upon the complete release of each Annexation Agreement related to the Property. The City agrees to fully cooperate in securing the complete release of each Annexation Agreement, including executing any document to that effect.

(b) Until such time as the Developer has completed all development within the Property and received from the District one hundred percent (100%) of all Reimbursable Costs from the District, evidenced in writing by the Developer and/or District and confirmed by the District’s financial advisor, due to Developer by the District, the Property shall remain immune from full purpose annexation. Thereafter, the City may seek annexation of the entire District, or of any entire sub-district created by the division of the District, via SPA or in accordance with applicable statute.

(c) Within six (6) months of the organizational meeting of the District, the Developer shall recommend to the board of directors of the District that the District enter into a SPA with the City, providing for full purpose annexation of the District upon terms acceptable to the Developer and the City. If the District does not enter into the SPA within six (6) months of the organizational meeting of the District, the Property may be annexed into the corporate limits of the City at a future date, but only after the Developer has received from the District one hundred percent (100%) of all Reimbursements, evidenced in writing by the Developer and District, due to Developer by the District.

**Section 6.03.**      **Zoning.**

(a) While the Parties expressly acknowledge that the Property may be annexed in accordance with Section 6.02 of this Agreement, the Parties agree that the Conceptual Development Plan attached hereto as Exhibit C, the Development Standards attached hereto as Exhibit D, and the applicable provisions of this Agreement memorialize the plan for development of the Property as provided for in Section 212.172 of the Texas Local Government Code and other applicable law. The City shall consider zoning the Property consistent with the Conceptual Development Plan, the Development Standards, and the applicable provisions of this Agreement contemporaneously with the annexation of the ETJ Property. Through this Agreement, the Developer expressly consent and agree to the zoning of the Property consistent with and as contemplated by this section.

(b) City acknowledges that the Conceptual Development Plan and the Development Standards attached to this Agreement constitute permits in the series of permits for the Property as contemplated by Chapter 245 of the Texas Local Government Code and authorized by Section 212.172(g) of the Texas Local Government Code.

**Section 6.04.**      **Capital Recovery Fees.**

(a) The Parties agree that the public infrastructure to be constructed will include all of the capital improvements and facility expansions necessitated by and attributable to the Property; **therefore, pursuant to Section 395.001(4) of the Texas Local Government Code, no impact fees levied by the City will apply to single-family residential lots within the Property.** Instead, the City and Developer agree to set capital recovery fees ("Capital Recovery Fees") at \$2,500.00 for each of the single-family residential lots. All Capital Recovery Fees will be due and payable by the homebuilder at the time building permits are issued for each of the single-family residential lots.

(b) The City agrees to collect the Capital Recovery Fees in a segregated account held by the City and not comingled with any other funds (the "Capital Recovery Fees Account").

(c) Simultaneously with the execution of this Agreement, the City has entered into that certain "Consent and Development Agreement" (the "Hawk Ridge Agreement") with BHD for the development of approximately 87.89 acres of land in the corporate limits of the City (the "Hawk Ridge Property").

(d) The City will expend six million five hundred thousand dollars (\$6,500,000) from the Capital Recovery Fees Account and other funds available to the City to construct the Fire Station (as defined in the Hawk Ridge Agreement) on the Hawk Ridge Property.

(d) If the Developer donates or causes to be donated the City Park (as defined in the Hawk Ridge Agreement), the City will expend four million dollars (\$4,00,000) from the Capital Recovery Fees Account and other funds available to the City to improve the City Park for parks and baseball fields on the Hawk Ridge Property.

**Section 6.05. Development Charges and Fees.** Development of the Property shall be subject to payment of the City's building inspection fees and building permit fees for residential and commercial development (collectively, the "Development Fees") according to the fee schedule adopted by the City Council of the City and universally in effect on the date of submittal of each set of plans and specifications. The City agrees to expend the Development Fees for development and construction of a water tower located within the City.

**Section 6.06. Homeowners Association.** The Developer will, in a manner acceptable to the City, create a homeowners' association ("HOA"), which shall be mandatory and shall levy and collect from homeowners annual fees in an amount calculated to maintain the HOA owned improvements within the Property. The HOA shall maintain and operate any open spaces, private amenities, common areas, landscaping, fencing, development signage, and any other common improvements or appurtenances within the Property that are not maintained or operated by the District or the City.

**Section 6.07. Fire and Safety Code.** The Developer agrees to construct or cause to be constructed all buildings in accordance with the applicable fire codes and safety codes approved by the City in effect at the time of platting.

**Section 6.08. Sole Provider of Services.** The Parties intend for the City to be the sole provider for the provision of garbage, animal control, code enforcement, police, fire, and emergency medical services to serve the Property. The District shall, on an annual basis, until such

time as the Developer has been reimbursed for one hundred percent (100%) of the Reimbursable Costs, calculate a metric tax millage rate against the assessed values of the Property and remit to the City an annual payment equal to \$0.15 per \$100 of assessed value for provision of City service to the District, including garbage, animal control, code enforcement, police, fire, and emergency medical services. The City shall provide the same level of services to the Property that it provides within the City's corporate limits.

## **ARTICLE VII DISTRICT AND DISTRICT BONDS**

**Section 7.01.**     **Authority to Issue Bonds.** The District may issue Bonds to reimburse the Developer for expenditures, including the District Improvements.

**Section 7.02.**     **Bond Limit Amount.** The total amount of Bonds issued by the District, excluding refunding Bonds, shall not exceed the amount approved by the voters within the District.

**Section 7.03.**     **Limit of City's Liability.** Unless the City abolishes the District and assumes the assets and liabilities of the District, the Bonds or any other obligations of the District shall never become an obligation of the City. The City's obligations under this Agreement shall not extend beyond its obligations to operate and maintain the District Improvements after conveyance to the City and to use the District Improvements to serve the Property. Nothing herein will prevent the City from using District Improvements to serve customers outside of the District provided that there is sufficient capacity to serve the residents and customers within the District.

## **ARTICLE VIII DISSOLUTION OF DISTRICT**

**Section 8.01.**     **Dissolution.** The City may dissolve the District at any time after the District has issued Bonds to finance Reimbursable Costs paid or incurred to construct the District Improvements that are required to serve full development of the Property. Upon dissolution of the District, the City shall assume the indebtedness and legal obligations of the District to the extent required by law. If the City does not dissolve the District, the Board shall dissolve the District within sixty (60) days after the maturity date of the last series of Bonds issued by the District.

## **ARTICLE IX CONCEPTUAL DEVELOPMENT PLAN**

**Section 9.01.**     **Phased Development.** Developer intends to develop the Property in one or more phases. Portions of the Property not under active development may remain in use as income-producing agricultural lands or as open space land. The Developer may submit a replat or amending plat for all or any portions of the Property in accordance with applicable law.

**Section 9.02.**     **Conceptual Development Plan; Exceptions.** The City hereby confirms (i) its approval of the Conceptual Development Plan, and (ii) that the Conceptual Development Plan complies with the City's General Plan, as amended. The City approves the land uses, densities, exceptions, roadway alignments and widths and other matters shown on the Conceptual Development Plan, and confirms that the Conceptual Development Plan has been approved by all required City departments, boards and commissions.

**Section 9.03.**     **Term of Approvals.** Except as provided below, the Conceptual Development Plan will be effective for the term of this Agreement. Any preliminary subdivision plat or final subdivision plat that is consistent with the Conceptual Development Plan, applicable City ordinances and State law will be effective for the term of this Agreement. The Conceptual Development Plan will be deemed to have expired if no final plat of the Property is recorded for a period of ten (10) years or ten (10) years expires after the recordation of the last final plat.

**Section 9.04.**     **Amendments.** Due to the fact that the Property comprises a significant land area and its development will occur in one or more phases over a number of years, modifications to the Conceptual Development Plan may become desirable due to changes in market conditions or other factors. Variations of a preliminary plat or final plat from the Conceptual Development Plan that do not increase the overall density of development of the Property, will not require an amendment to the Conceptual Development Plan. Minor changes to the items depicted in **Exhibit C**, including minor modifications of street alignments, minor changes in lot lines, the designation of land for public or governmental uses; changes in lot sizes that do not result in an increase in the overall density of development of the Property (including any increase in lot sizes resulting in a decrease in the total number of lots) or any change to a public use, including, but not limited to school use, will not require an amendment to the Conceptual Development Plan or City approval. Major changes to the Conceptual Development Plan must be consistent with the terms of this Agreement and will be subject to review and approval by the City, which will not be unreasonably withheld.

## **ARTICLE X AUTHORITY**

**Section 10.01.**     **Authority.** This Agreement is entered into, in part, under the statutory authority of Section 402.104, *Texas Local Government Code* and Section 212.172 of the *Texas Local Government Code*, which authorizes the City to make written contracts with the Developers of land establishing lawful terms and considerations that the parties agree to be reasonable, appropriate, and not unduly restrictive of business activities. The parties intend that this Agreement authorize certain land uses and development on the Property; provide for the uniform review and approval of plats and development plans for the Property; provide exceptions to certain ordinances; and provide other terms and consideration.

## **ARTICLE XI TERM, ASSIGNMENT AND REMEDIES**

**Section 11.01.**     **Term.** The term of this Agreement shall commence on the Effective Date of this Agreement and (unless terminated pursuant to ARTICLE II) shall continue until the District is dissolved in accordance with ARTICLE VIII.

**Section 11.02.**     **Termination and Amendment by Agreement.** This Agreement may be terminated or amended as to all of the Property at any time by mutual written consent of the City and Developer and, following creation of the District, the District, and may be terminated or amended only as to a portion of the Property by the mutual written consent of the City and the Developers of the portion of the Property affected by the amendment or termination and, following

creation of the District, the District containing such portion of the Property. In the event the District is not created, the City and Developer agree that this Agreement shall be *void ab initio* and shall have no force and effect.

#### **Section 11.03. Assignment.**

(a) This Agreement, and the rights of Developer hereunder, may be assigned by Developer, in whole or in part, without consent but with notice to the City to: (i) any subsidiary, parent company, or other affiliate of Developer, or (ii) a subsequent owner or developer of all or a portion of the Property. Any assignment will be in writing, specifically set forth the assigned rights and obligations and be executed by the proposed assignee. This Agreement may also be collaterally assigned without consent but with notice to the City to any lender providing financing for development of the Property.

(b) If Developer assigns its rights and obligations hereunder as to all or a portion of the Property, then the rights and obligations of any assignee and Developer will be severable, and Developer will not be liable for the nonperformance of the assignee and vice versa. In the case of nonperformance by one developer, the City may pursue all remedies against that nonperforming developer, but will not impede development activities of any performing developer as a result of that nonperformance.

#### **Section 11.04. Remedies.**

(a) If the City defaults under this Agreement, Developer may enforce this Agreement by seeking damages and/or a writ of mandamus from a Johnson County District Court, or may give notice setting forth the event of default ("Notice") to the City. If the City fails to cure any default that can be cured by the payment of Money ("Monetary Default") within 45 days from the date the City receives the Notice, or fails to commence the cure of any default specified in the Notice that is not a Monetary Default within 45 days of the date of the Notice, and thereafter to diligently pursue such cure to completion, Developer may terminate this Agreement as to all of the Property owned by Developer, or as to the portion of the Property affected by the default; however, any such remedy will not revoke the City's consent to the creation of the District.

(b) If Developer defaults under this Agreement, the City may enforce this Agreement by seeking specific performance from any court of appropriate jurisdiction, or the City may give Notice to Developer. If Developer fails to cure any Monetary Default within 45 days from the date it receives the Notice, or fails to commence the cure of any default specified in the Notice that is not a Monetary Default within 45 days of the date of the Notice, and thereafter to diligently pursue such cure to completion, the City may terminate this Agreement; however, any such remedy will not revoke the City's consent to the creation of the District.

(c) If either party defaults, the prevailing party in the dispute will be entitled to recover its reasonable attorney's fees, expenses and court costs from the non-prevailing party.

#### **Section 11.05. Cooperation.**

(a) The City and Developer each agree to execute such further documents or instruments as may be necessary to evidence their agreements hereunder.

(b) The City agrees to cooperate with Developer in connection with any waivers or approvals Developer may desire from Ellis County or Johnson County in order to avoid the duplication of facilities or services in connection with the development of the Property.

(c) In the event of any third-party lawsuit or other claim relating to the validity of this Agreement or any actions taken hereunder, Developer and the City agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution in their respective rights and obligations under this Agreement.

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

**Section 12.01.** **Notice.** Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another service guaranteeing “next day delivery”, addressed to the party to be notified and with all charges prepaid; (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement, or (iv) by confirmed facsimile with a confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or 3 days after the date of mailing. Notice given in any other manner will be effective only when received. For purposed of notice, the addresses of the parties will, until changed as provided below, be as follows:

City: City of Venus  
105 East US Highway 67  
Venus, Texas 76084  
Attn: City Administrator  
Email: troberts@cityofvenus.org

With a copy to: The Halla Law Firm, PLLC  
Attn: Michael B. Halla  
187 Rolling Court  
Lancaster, Texas 75146  
mhalla@hallalawfirm.com

Developer: Buffalo Hills Development, LLC;  
Miskimon Management III, LLC  
Attn: Rick Miskimon  
5940 S. West McGee Creek Road  
Lane, Oklahoma 74555  
Email: mrranch@aircanopy.net

With a copy to: Winstead PC  
Attn: Ross Martin  
2728 N. Harwood, Suite 500  
Dallas, Texas 75201  
Email: rmartin@winstead.com



The parties may change their respective addresses to any other address within the United States of America by giving at least five days' written notice to the other party. Developer may, by giving at least five days' written notice to the City, designate additional parties to receive copies of notices under this Agreement.

**Section 12.02. Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.

**Section 12.03. Waiver.** Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver thereof or of any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

**Section 12.04. Limited Waiver of Immunity.** The Parties are entering into this Agreement in reliance upon its enforceability. Consequently, the City unconditionally and irrevocably waives all claims of sovereign and governmental immunity they may have (including, but not limited to, immunity from suit) to the extent, but only to the extent, that a waiver is necessary to enforce specific performance of this Agreement (including all of the remedies provided under this Agreement) and to give full effect to the intent of the Parties under this Agreement. Notwithstanding the foregoing, the waiver contained herein shall not waive any immunities that the City may have with respect to claims of injury to persons or property, which claims shall be subject to all of their respective immunities and to the provisions of the Texas Tort Claims Act. Further, the waiver of immunity herein is not enforceable by any party not a Party to this Agreement or any party that may be construed to be a third party beneficiary to this Agreement.

**Section 12.05. Applicable Law and Venue.** The interpretation, performance, enforcement and validity of this Agreement is governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Johnson County, Texas.

**Section 12.06. Entire Agreement.** This Agreement contains the entire agreement of the parties. There are no other agreements or promises, oral or written, between the parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the parties. This Agreement supersedes all other agreements between the parties concerning the subject matter.

**Section 12.07. Exhibits, Headings, Construction and Counterparts.** All schedules and exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice-versa. The parties acknowledge that each of them has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits hereto. If there is any conflict or inconsistency between the provisions of this Agreement and otherwise applicable City ordinances, the terms of

this Agreement will control. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the parties.

**Section 12.08.** **Time.** Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.

**Section 12.09.** **Authority for Execution.** The City certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with its City Charter and City ordinances. Developer hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreement of each entity executing on behalf of Developer.

**Section 12.10.** **Force Majeure.** If, by reason of force majeure, either party is rendered unable, in whole or in part, to carry out its obligations under this Agreement, the party whose performance is so affected must give notice and the full particulars of such force majeure to the other party within a reasonable time after the occurrence of the event or cause relied upon, and the obligation of the party giving such notice, will, to the extent it is affected by such force majeure, be suspended during the continuance of the inability but for no longer period. The party claiming force majeure must endeavor to remove or overcome such inability with all reasonable dispatch.

The term “force majeure” means Acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas, or of any court or agency of competent jurisdiction or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, vandalism, explosions, breakage or accidents to machinery, pipelines or canals, or inability on the part of a party to perform due to any other causes not reasonably within the control of the party claiming such inability.

**Section 12.11.** **Amendment.** This Agreement may be amended only with the written consent of all Parties and with approval of the governing bodies of the City and the District.

**Section 12.12.** **Interpretation.** The Parties acknowledge that each Party and, if it so chooses, its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. As used in this Agreement, the term “including” means “including without limitation” and the term “days” means calendar days, not business days. Wherever required by the context, the singular shall include the plural, and the plural shall include the singular. Each defined term herein may be used in its singular or plural form whether or not so defined.

**Section 12.13. No Third-Party Beneficiary.** This Agreement is solely for the benefit of the Parties, and neither the City, the District nor the Developer intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the City, the District and Developer.

**Section 12.14. Binding Obligations; Estoppel Certificates.**

(a) **Binding Obligations.** This Agreement shall be recorded in the deed records of the Counties. This Agreement, when recorded, shall be binding upon the Parties and their successors and assigns permitted by this Agreement and upon the Property; provided, however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property except for land use and development regulations that apply to specific lots. For purposes of this Agreement, the Parties agree (i) that the term “End-Buyer” means any Developer, developer, tenant, user, or occupant, (ii) that the term “fully developed and improved lot” means any lot, regardless of proposed use, for which a final plat has been approved by the governmental authority having jurisdiction and for which all planned and approved improvements have been constructed and accepted to the extent that a building permit may be obtained for such lot, and (iii) that the term “land use and development regulations that apply to specific lots” means the Applicable Regulations.

(b) **Estoppel Certificates.** From time to time upon written request of Developer (or any other developer, tenant, user, or occupant of land within the Property which land is not a fully developed and improved lot owned by an End-Buyer within a fully developed and improved phase), the City will execute a written estoppel certificate to such person or entity (i) identifying the obligations of Developer under this Agreement that have been fully performed, (ii) identifying the obligations of Developer under this Agreement that remain to be performed, including the interim status of any obligations for which performance has begun, (iii) identifying any obligations of Developer under this Agreement that are in default or, with the giving of notice or passage of time, would be in default, and (iv) stating, to the extent true, that to the best knowledge and belief of the City, that Developer is in compliance with their respective duties and obligations under this Agreement.

**Section 12.15. Counterpart Originals.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

**Section 12.16. Exhibits.** The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

|           |                                              |
|-----------|----------------------------------------------|
| Exhibit A | Metes and Bounds Description of the Property |
| Exhibit B | Depiction of the Property                    |
| Exhibit C | Conceptual Development Plan                  |
| Exhibit D | Development Standards                        |
| Exhibit E | Form of Consent Resolution of the City       |
| Exhibit F | Form of District Joinder                     |

**Section 12.17. Anti-Boycott Verification.** Each Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not

boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel' means 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 specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

**Section 12.18. Iran, Sudan, and Foreign Terrorist Organizations.** Each Developer hereby represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Developer and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Developer understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

**Section 12.19. Energy Company Verification.** To the extent this Agreement constitutes a contract for goods or services for which a written verification statement is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislative Session), Texas Government Code, as amended, each Developer hereby verifies that it and its parent companies, 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 Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies" shall have the meaning assigned to the term "boycott energy company" in Section 809.001, Texas Government Code. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

**Section 12.20. Firearm Entity Verification.** To the extent this Agreement constitutes a contract for goods or services for which a written verification statement is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislative Session, "**SB 19**"), Texas Government Code, as amended, each Developer hereby verifies that it and its parent companies, wholly- or majority- owned subsidiaries, and other affiliates, if any,

(1) do not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and

(2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” shall have the meaning assigned to such term in Section 2274.001(3) (as added by SB 19), Texas Government Code. The Developer understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the dates indicated below.

(SIGNATURE PAGES FOLLOW)

**CITY OF VENUS, TEXAS:**

By: \_\_\_\_\_  
James L. Burgess, Mayor

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name: Callie Green  
Title: City Secretary

STATE OF TEXAS           §  
                                     §  
COUNTY OF JOHNSON   §

Before me on this day personally appeared James L. Burgess, Mayor of the City of Venus, Texas, 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, and in the capacity therein stated.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2023.

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

(SEAL)

**DEVELOPER:**

BUFFALO HILLS DEVELOPMENT, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Rick Miskimon, Managing Member

Date: \_\_\_\_\_

STATE OF OKLAHOMA     §  
                                     §  
COUNTY OF ATOKA       §

Before me on this day personally appeared Rick Miskimon, Managing Member of Buffalo Hills Development, LLC, a Texas limited liability company, 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, and in the capacity therein stated.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public, State of Oklahoma

(SEAL)

MISKIMON MANAGEMENT III, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Rick Miskimon, Managing Member

Date: \_\_\_\_\_

STATE OF OKLAHOMA     §  
                                     §  
COUNTY OF ATOKA     §

Before me on this day personally appeared Rick Miskimon, Managing Member of Miskimon Management III, LLC, a Texas limited liability company, 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, and in the capacity therein stated.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public, State of Oklahoma

(SEAL)



## EXHIBIT "A"

### DESCRIPTION OF PROPERTY

#### METES AND BOUND DESCRIPTION

Being a 438.7 acres (19,110,961 Square Feet) tract of land situated in the Leeman Kelsey Survey, Abstract No. 594, City of Venus, Ellis County, Texas, being that called 111.429 acres tract of land conveyed to Galilee Partners, L.P. recorded in Volume 2180, Page 261, Deed Records, Ellis County, Texas, (D.R.E.C.T.) and that called 115.194 acres tract of land conveyed to Galilee Partners, L.P. recorded in Volume 2107, Page 1812, D.R.E.C.T., situated in the Leeman Kelsey Survey, Abstract No. 1115, and that called 49.93 acres tract of land conveyed to EZ-L Cattle and Land LLC, recorded in Document number 1519890, Deed Records, Johnson County, Texas, D.R.J.C.T., situated in the Leeman Kelsey Survey, Abstract No. 1115, Johnson County, Texas, being a portion out of that called 653.25 Acres conveyed to Harper Cattle, L.L.C., of record in Volume 1541, Page 941, Deed Records, Johnson County, Texas, (D.R.J.C.T.) and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 1/2-inch iron rod found in the west right of way (R.O.W.) line of F.M. Highway 157 (R.O.W. varies) and marking the northeast corner of that tract conveyed to Galilee Partners, L.P., of record in Volume 2107, Page 1812, D.R.E.C.T., from which an 1/2-inch iron rod found bears North 30°18'12" West, 356.20 feet;

**THENCE**, South 30°24'33" East, 1,304.02 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set marking the southeast corner of this tract;

**THENCE**, South 59°06'36" West, 2,645.41 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set marking the northwest corner of that called 9.90 acres tract conveyed to Limpus Tambra, recorded in Volume 2244, Page 273, Official Public Records Ellis County, Texas (O.P.R.E.C.T.);

**THENCE**, South 30°25'37" East, 1,597.56 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set marking the southwest corner of that called 20.04 acres tract conveyed to Limpus Tambra, recorded in Volume 2244, Page 273, O.P.R.E.C.T.;

**THENCE**, South 60°12'31" West, 22.19 feet to a 1/2-inch iron rod found in the north R.O.W. line of F.M. Highway 2258;

**THENCE**, South 51°44'33" West, 101.84 feet to a 8-inch monument found in the north R.O.W. line of F.M. Highway 2258;

**THENCE**, South 60°01'48" West, 1,001.52 feet to a 1/2-inch iron rod found in the north R.O.W. line of F.M. Highway 2258;

**THENCE**, South 65°17'07" West, 49.16 feet to a 1/2-inch iron rod found in the north R.O.W. line of F.M. Highway 2258;

**THENCE**, North 02°21'54" West, 629.72 feet to a 1/2-inch iron rod found marking the northeast corner of that called 10.020 acres conveyed to Philip Brewer and Shelley Brewer recorded in Volume 1794, Page 51, D.R.E.C.T.;

**THENCE**, South 86°01'43" West, 733.04 feet to a 1/2-inch iron rod found for the northwest corner of that said called 10.020 acres;

**THENCE**, South 07°35'09" East, 322.90 feet to a 3/8-inch iron rod found for the northeast corner of that called 5.527 acres conveyed to Robert John Stottlemire recorded in Volume 1352, Page 21, D.R.E.C.T.;

**THENCE**, South 83°24'58" West, 481.35 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set at a corner;

**THENCE**, South 06°30'22" East, 597.81 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set at the northeast corner of called 1.161 acres tract conveyed to Wilburn G Roesler and Wife, Michaelyn Roesler recorded in Volume 873, Page 534 D.R.E.C.T.;

**THENCE**, South 56°45'48" West, 196.23 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set at the northwest corner of that said called 1.161 acres tract;

**THENCE**, South S23°36'12" East, 238.59 feet to a rebar found in the north R.O.W. line of F.M. Highway 2258;

**THENCE**, South 58°48'45" West, 48.28 feet to a 8-inch monument found in the north R.O.W. line of F.M. Highway 2258;

**THENCE**, South 59°46'12" West, 1,007.90 feet to a 8-inch monument found in the north R.O.W. line of F.M. Highway 2258;

---

**THENCE**, South 62°35'19" West, 99.18 feet to a 1/2-inch iron rod found in the north R.O.W. line of F.M. Highway 2258;

**THENCE**, North 30°20'10" West, 1,434.15 feet to a 1/2-inch iron rod found marking the northwest corner of that said called 49.93 acres tract;

**THENCE**, South 59°49'13" West, 788.92 feet to a 1/2-inch iron rod found marking the northwest corner of called 9.50 acres tract conveyed to Arturo Figuero recorded in Volume 2287, Page 1265, D.R.E.C.T.;

**THENCE**, North 00°36'23" East, 2,307.73 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set for corner;

**THENCE**, North 44°19'27" East, 79.16 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set for corner;

**THENCE**, North 30°16'46" West, 205.03 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set for corner;

**THENCE**, North 59°43'14" East, 42.42 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set for corner;

**THENCE**, North 30°16'46" West, 140.00 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set for corner;

**THENCE**, North 59°43'14" East, 750.00 feet with the south line of that said called 113.0 acres to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set marking the southeast corner of said 113.0 acres;

**THENCE**, North 30°40'45" West, 1,570.80 feet with the east line of that said called 113.0 acres tract to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set marking the northwest corner of this tract;

**THENCE**, North 59°50'42" East, 2,150.46 feet with the south line of that called 97.08 acres conveyed to Herbert Manor recorded in Volume 708, Page 44, D.R.J.C.T., and the south line of that called 90.24 acres conveyed to Aaron A. Gutierrez of record in Instrument No. 1727413, D.R.E.C.T. to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set in the west R.O.W. line of the Missouri Pacific Railroad (Quit Claim Deed called 7.26 acres tract as referenced in that called 302.23 acres Plat surveyed by Doug Connally, R.P.L.S. No. 3935, dated 1/18/1999);

**THENCE**, North 59°58'53" East, 76.72 feet with the north line of that said called 7.26 acres and the south line of said called 90.24 acres to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set marking the northwest corner of that called 35.90 acres conveyed to Dennis D. Mc Lemoire and wife Deborah Mc Lemoire of record in Volume 817, Page 178, D.R.E.C.T. and marking the easterly most northeast corner of the herein described;

**THENCE**, South 14°28'45" East, 1,041.89 feet with the east line of that said called 7.26 Acres to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set marking the beginning of a curve to the right;

**THENCE**, 816.86 feet with said curve to the right, having a radius of 5,729.65 feet, a central angle of 08°10'06" and a chord bearing South 10°18'02" East, 816.17 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set marking the end of said curve and a corner of west line of that called 24.09 Acres conveyed to Lee James of record in Volume 945, Page 669, D.R.E.C.T.;

**THENCE**, South 06°51'33" East, 722.56 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set marking the southwest corner of said called 24.09 acres and the northwest corner of that called 111.429 acres conveyed to Galilee Partners, L.P. of record in Volume 2180, Page 261, D.R.E.C.T.;

**THENCE**, North 84°35'29" East, 503.95 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set in the south boundary line of that said called 24.09 acres tract;

**THENCE**, North 79°30'53" East, 362.04 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set in the south boundary line of that said called 24.09 acres tract;

**THENCE**, North 79°25'23" East, 1,184.10 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set at the southeast corner of that said called 24.09 acres tract;

**THENCE**, North 28°29'01" West, 1,152.33 feet with the west line of said 111.429 to a 1/2-inch iron rod found marking the northeast corner of that said called 35.90 acres tract;

**THENCE**, North 61°38'36" East, 1,558.57 feet with the north boundary line of that said called 111.429 acres tract, to a 1/2-inch iron rod found at the northwest corner of that called 1.492 acres conveyed to Ernesto R. Chapa of record in Volume 515, Page 696, D.R.E.C.T.;

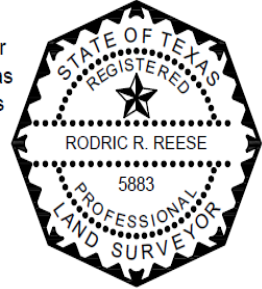
**THENCE**, South 29°10'51" East, 352.57 feet to a 1/2-inch iron rod found marking the southwest corner of said 1.492 acres tract;

**THENCE**, North 60°59'27" East, 271.88 feet with the south line of said called 1.492 acres tract to the **POINT OF BEGINNING** and **CONTAINING** 438.7 acres (19,110,961 Square Feet) of land.

To ...

I, Rodric R. Reese, Registered Professional Land Surveyor No. 5883, do hereby certify that the map shown hereon was prepared under my direct supervision and that such map is an accurate representation of the subject property.

Rodric R. Reese 11/08/2022  
Rodric R. Reese, R.P.L.S. No. 5883 Date



**BRAHMA RANCH 2**  
 BEING A PART OF  
 TRACT 10, LAND OF THE  
 CITY OF FORT WORTH, TEXAS,  
 IN THE COUNTY OF TARRANT, TEXAS.

**LEGEND**  
 BOUNDARY LINE  
 RIGHT OF WAY  
 EASEMENT  
 ROAD  
 RAIL  
 WATER  
 FENCE  
 POLE  
 MARK  
 MONUMENT  
 SURVEY

**Scale**  
 1" = 40'

**Surveyor's Seal**  
 J. M. [Name]  
 Surveyor  
 State of Texas

[illegible]

**EXHIBIT “D”  
DEVELOPMENT STANDARDS**

Approximately 1,091 single family residential lots as shown on Conceptual Development Plan

Typical lot width: 50’

Typical lot depth: 110’

**EXHIBIT “E”  
FORM OF CONSENT RESOLUTION OF THE CITY**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS,  
CONSENTING TO THE CREATION OF A MUNICIPAL UTILITY DISTRICT TO BE  
KNOWN AS BRAHMAN RANCH MUNICIPAL UTILITY DISTRICT OF ELLIS AND  
JOHNSON COUNTIES**

WHEREAS, Buffalo Hills Development, LLC, a Texas limited liability company and Miskimon Management III, LLC, a Texas limited liability company (collectively, the “Developer”) are the owners of approximately 438.7 acres of land (“Land”) located within the extraterritorial jurisdiction of the City of Venus (“City”) in Ellis and Johnson County, Texas;

WHEREAS, Brahman Ranch Municipal Utility District of Ellis and Johnson Counties (“District”) is a proposed municipal utility district to be created by special act of the Texas Legislature or the Texas Commission on Environmental Quality;

WHEREAS, the City wishes to evidence its consent to the creation of the District and the inclusion of the Land within the District; and

WHEREAS, the City and the Developer desire to enter into a Consent and Development Agreement regarding the development of the Land within the District, which will be joined by the District.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS:

SECTION 1. That the Mayor is hereby authorized and directed to execute on behalf of the City a Consent and Development Agreement, a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

SECTION 2. The City Council of the City of Venus, Texas hereby grants its consent to and permission for the creation of the District and the inclusion of the Land within the District, and the Mayor and City Secretary are hereby authorized to execute any documents necessary to effectuate this Resolution.

SECTION 3. The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

DULY RESOLVED by the City Council of the City of Venus, Texas, on the \_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_

City Secretary

\_\_\_\_\_  
Mayor

APPROVED:

\_\_\_\_\_

City Attorney



**EXHIBIT “F”  
FORM OF DISTRICT JOINDER**

**JOINDER AGREEMENT**

THIS JOINDER AGREEMENT (the “Joinder Agreement”), dated as of \_\_\_\_\_, 2023, is executed by BRAHMAN RANCH MUNICIPAL UTILITY DISTRICT OF ELLIS AND JOHNSON COUNTIES (“District”), in connection with that certain Consent and Development Agreement (the “Consent Agreement”) entered into by and between the CITY OF VENUS, TEXAS, a type A general law municipality located in Ellis and Johnson Counties, Texas (the “City”), MISKIMON MANAGEMENT III, LLC, a Texas limited liability company (“Miskimon III”), and BUFFALO HILLS DEVELOPMENT, LLC, a Texas limited liability company (“BHD” and together with Miskimon III, the “Developer”), dated effective as of \_\_\_\_\_, 2023. Capitalized terms used herein but not otherwise defined herein shall have the definitions provided in the Consent Agreement.

In accordance with Section 2.02 of the Consent Agreement, a copy of which is attached hereto as Exhibit “A” and incorporated herein for all purposes, the District executes this Joinder Agreement in order to become a Party to the Consent Agreement. Accordingly, the District hereby agrees as follows with City and the Developer:

1. The District acknowledges and confirms that it has received a copy of the Consent Agreement and the schedules and exhibits thereto.

2. The District hereby acknowledges, agrees, and confirms that, by its execution of this Joinder Agreement, the District shall automatically be deemed to be a Party to the Consent Agreement, and shall have all of the rights and obligations of the District with regard to property within the District thereunder as if it had originally executed the Consent Agreement. The District hereby ratifies, as of the date hereof, and agrees to be bound by all of the terms, provisions and conditions contained in the Consent Agreement applicable to it to the same effect as if it were an original Party thereto.

3. This Joinder Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas, and exclusive venue shall lie in Johnson County, Texas.

IN WITNESS WHEREOF, the District has caused this Joinder Agreement to be duly executed by its authorized officer as of the day and year first above written.

**BRAHMAN RANCH MUNICIPAL UTILITY  
DISTRICT OF ELLIS AND JOHNSON COUNTIES**

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**RESOLUTION NO. 09-2023-03**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS,  
CONSENTING TO THE CREATION OF A MUNICIPAL UTILITY DISTRICT TO BE  
KNOWN AS BRAHMAN RANCH MUNICIPAL UTILITY DISTRICT OF ELLIS AND  
JOHNSON COUNTIES**

WHEREAS, Buffalo Hills Development, LLC, a Texas limited liability company and Miskimon Management III, LLC, a Texas limited liability company (collectively, the “Developer”) are the owners of approximately 438.7 acres of land (“Land”) located within the extraterritorial jurisdiction of the City of Venus (“City”) in Ellis and Johnson County, Texas;

WHEREAS, Brahman Ranch Municipal Utility District of Ellis and Johnson Counties (“District”) is a proposed municipal utility district to be created by special act of the Texas Legislature or the Texas Commission on Environmental Quality;

WHEREAS, the City wishes to evidence its consent to the creation of the District and the inclusion of the Land within the District; and

WHEREAS, the City and the Developer desire to enter into a Consent and Development Agreement regarding the development of the Land within the District, which will be joined by the District.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS:

SECTION 1. That the Mayor is hereby authorized and directed to execute on behalf of the City a Consent and Development Agreement, a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

SECTION 2. The City Council of the City of Venus, Texas hereby grants its consent to and permission for the creation of the District and the inclusion of the Land within the District, and the Mayor and City Secretary are hereby authorized to execute any documents necessary to effectuate this Resolution.

SECTION 3. The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

DULY RESOLVED by the City Council of the City of Venus, Texas, on the 20th day of March, 2023.

ATTEST:

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City Secretary

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Mayor  
APPROVED:

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City Attorney

**CONSENT AND DEVELOPMENT AGREEMENT**

**AMONG**

**CITY OF VENUS, TEXAS**

**AND**

**BUFFALO HILLS DEVELOPMENT, LLC**

## CONSENT AND DEVELOPMENT AGREEMENT

This CONSENT AND DEVELOPMENT AGREEMENT (this “Agreement”) is entered into by and among the **City of Venus, Texas**, a type A general law municipality located in Ellis and Johnson Counties, Texas (the “City”) and **Buffalo Hills Development, LLC**, a Texas limited liability company (the “Developer”). The **Hawk Ridge Municipal Utility District of Johnson County** (the “District”), a municipal utility district to be created by available statutory means pursuant to the laws of the state of Texas, will join this Agreement as set forth below and after such joinder shall become a party to this Agreement.

### RECITALS

WHEREAS, the Developer is the owner of approximately 87.89 acres of land located within the corporate limits of the City in Johnson County, Texas, as more particularly described by metes and bounds on the attached Exhibit A and depicted on the attached Exhibit B (the “Property”); and

WHEREAS, the Developer intends to develop the Property, in one or more phases, as a residential community that will include open space and public facilities to serve the community as depicted on the conceptual development plan attached hereto as Exhibit C (the “Conceptual Development Plan”) and consistent with the development standards attached hereto as Exhibit D (the “Development Standards”); and

WHEREAS, the Developer and the City wish to enter into this Agreement, which is intended to encourage innovative and comprehensive master-planning of the Property, provide certainty of regulatory requirements throughout the term of this Agreement and result in a high-quality development for the benefit of the present and future residents of the City and the Property; and

WHEREAS, the Developer has presented the City with a form of resolution attached to this Agreement as Exhibit E to consent to the creation of the Hawk Ridge Municipal Utility District of Johnson County (the “District”) and the inclusion of the Property in the District; and

WHEREAS, the purposes of the proposed District include designing, constructing, acquiring, installing, conveying to the City, and financing water, wastewater, streets, drainage, and other public improvements as authorized by the Texas Constitution, the Texas Water Code, and any enabling legislation to benefit the area within its boundaries (collectively, the “District Improvements”); and

WHEREAS, construction of the District Improvements will occur in one or more phases (as determined by the District and the Developer) in accordance with this Agreement, the applicable ordinances of the City, Chapters 49 and 54, Texas Water Code, as amended, and any enabling legislation specific to the District, the rules and regulations of the TCEQ, as amended, and applicable state and federal regulations (collectively, the “Applicable Regulations”); and

WHEREAS, the City and Developer intend that the Reimbursable Costs (hereinafter defined) of the District Improvements will be paid from the net proceeds of Bonds issued by the District or other revenues of the District in accordance with this Agreement, the applicable rules

and regulations of the TCEQ, as amended, and the applicable requirements of the Texas Attorney General's Office, as amended; and

WHEREAS, the District is authorized to enter into this Agreement pursuant to the provisions of Texas law, including but not limited to, Chapters 49 and 54, Texas Water Code, as amended, Chapter 791, Texas Government Code, as amended, and Section 552.014, Texas Local Government Code, as amended; and

WHEREAS, the City is a type A general law municipality operating under the laws of the State of Texas and pursuant to which the City has the authority to enter into and perform its obligations under this Agreement including, but not limited to, the ownership and operation of the District Improvements;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the Parties contract as follows.

## **ARTICLE I DEFINITIONS**

**Section 1.01. Definitions.** In addition to the terms defined elsewhere in this Agreement or in the City's ordinances, the following terms and phrases used in this Agreement will have the meanings set out below:

Additional Property means any other land acquired by the Developer and made subject to this Agreement pursuant to Section 9.05 hereof.

Agreement means this Consent and Development Agreement among the Parties.

Bond means bonds, notes, or other obligations or indebtedness that are issued or incurred by the District under the District's borrowing power.

Buffalo Hills WWTP means the wastewater treatment plant that is intended to serve the Property and other property owned by the Developer.

City means the City of Venus, Texas, a type A general law municipality located in Ellis and Johnson Counties, Texas.

City Administrator means the City Administrator of the City.

Commission or TCEQ means the Texas Commission on Environmental Quality or its successor agency.

Conceptual Development Plan means the concept plan for the Property attached as **Exhibit C**, as amended from time to time in accordance with this Agreement.

County means Johnson County, Texas.

Developer means Buffalo Hills Development, LLC, a Texas limited liability company, or its successors and assigns under this Agreement.

Development Standards means the development standards for the Property attached hereto as **Exhibit D**, which shall be considered as planned development district zoning for the Property, as such zoning may be amended.

District means Hawk Ridge Municipal Utility District of Johnson County, a political subdivision of the State of Texas to be created over the Property, with the consent of the City, as provided in this Agreement.

District Improvements means water, wastewater, streets, drainage, and other public improvements benefitting the District, as authorized by the Texas Constitution, the Texas Water Code, and any enabling legislation to serve the area within the District boundaries.

Effective Date of this Agreement means March 13, 2023.

Mountain Peak SUD means the Mountain Peak Special Utility District.

Property means approximately 87.89 acres of land located within the City's corporate boundaries, as described by metes and bounds on **Exhibit A** and depicted on **Exhibit B**, and any Additional Property that may be included in accordance with Section 9.05 of this Agreement.

Reimbursable Costs means costs paid or incurred to construct District Improvements that are eligible for reimbursement from the net proceeds of Bonds issued in accordance with this Agreement or other funds and the rules and regulations of the TCEQ, as amended, including in addition to costs of construction, but not limited to, the following:

- (i) surveying costs;
- (ii) cost of soils and materials testing;
- (iii) engineering fees related to the District Improvements;
- (iv) advertising and other costs associated with public bidding and award of construction contracts;
- (v) costs of required easements and rights-of-way; and
- (vi) other costs or fees paid or incurred in connection with the creation and operation of the District.

## **ARTICLE II**

### **CREATION OF DISTRICT AND EXECUTION OF AGREEMENTS**

**Section 2.01.**     **Consent to Creation of District.** The City acknowledges receipt of Developer's request, in accordance with Section 54.016, Texas Water Code and Section 42.042, Texas Local Government Code, for creation of the District, including powers from Article III, Section 52 of the Texas Constitution. On the Effective Date of this Agreement, the City has

approved the resolution substantially similar to the form attached as **Exhibit E** (the “**Consent Resolution**”) consenting to the inclusion of the Property within the proposed District and the creation of the District in accordance with the Applicable Regulations. The City agrees to adopt such further resolutions or ordinances and execute such further documents as may reasonably be necessary by the Developer, the TCEQ, the Attorney General of the State of Texas, or the District to evidence the City's consents as set forth in this Agreement and in the Consent Resolution. Subject to and limited by the terms of this Agreement and the conditions set forth in the City approved Consent Resolution, the consents contained in this Article II and in the Consent Resolution (the “**District Consents**”) are given by the City: (a) in full and exclusive satisfaction of any applicable requirements for District consents contained in any statute or otherwise required by law, rule, regulation or policy, including, but not limited to, consents required by the Texas Water Code, as amended, the Texas Local Government Code, as amended, any rules, regulations or policies of the TCEQ, or any rules, regulations or policies of the Texas Attorney General (b) with the understanding that both City and the Developer have relied on the District Consents to their individual material detriment, but for the District Consents, the Developer would not have entered into this Agreement and but for the conditions and limitations on the District Consents, City would not have entered into this Agreement.

**Section 2.02. District Execution of Agreement.** The Developer and the City intend that this Agreement shall be binding upon the District from and after the date the District executes a joinder to this Agreement in substantially the same form as set forth in **Exhibit F**, attached hereto and made a part hereof. The District shall execute such joinder at the time of its organizational meeting.

**Section 2.03. District Bonds.** If the District fails to approve, execute, and deliver this Agreement to the City as required by Section 2.02, and if the City does not terminate this Agreement, such failure shall constitute a material breach of this Agreement by the Developer and shall operate to prohibit the District from taking any actions to issue Bonds until the failure has been cured. The City shall have the right to enjoin the issuance of Bonds during any period in which such a material breach exists.

**Section 2.04. Reimbursement Agreements.** If the District fails to approve, execute, and deliver this Agreement to the City as required by Section 2.02, and if the City has not terminated this Agreement, such failure shall constitute a material breach of this Agreement by the Developer and shall operate to prohibit Developer or any developer of the Property from entering into any reimbursement agreements with the District until the failure has been cured. The City shall have the right to enjoin the execution of such reimbursement agreements during any period in which such a material breach exists.

**Section 2.05. Intent of Parties Related to Allocation Agreement.** Under Section 54.016(f), Texas Water Code, the City, as a City providing written consent for inclusion of land in a district, may provide for a contract designated as an “allocation agreement”, to be entered into between the City and the District. The Parties acknowledge that the provision for an “allocation agreement” under Section 54.016(f) is at the City’s discretion. The City confirms that it is intentionally not providing for an allocation agreement. The Parties agree that this Agreement does not constitute and will not be deemed to constitute an allocation agreement within the meaning of Section 54.016(f).



### **ARTICLE III WASTEWATER SERVICE**

**Section 3.01.**     **City Wastewater Service.**     The Property is located within the wastewater service area of the City. Wastewater treatment will be provided by the City through a trunk line constructed or caused to be constructed by the Developer connecting the Property to the Buffalo Hills WWTP. As a retail service provider, the City shall operate, maintain, and repair the wastewater facilities located within the Property, subject to Section 3.02.

**Section 3.02.**     **Buffalo Hills WWTP.**

(a)     The Buffalo Hills WWTP shall be initially owned by the District or another municipal utility district served by the Buffalo Hills WWTP and constructed in accordance with TCEQ standards. The discharge permit related to the Buffalo Hills WWTP will be held by the District until such time as ownership is transferred to the City as provided herein.

(b)     The City agrees to operate and maintain the Buffalo Hills WWTP, including routine repairs. The City agrees to bill customers at City standard billing rates for operational costs related to the Buffalo Hills WWTP. Notwithstanding the foregoing, the District shall repair or cause to be repaired the Buffalo Hills WWTP for major repairs as determined by the District.

(b)     The Buffalo Hills WWTP may be constructed or caused to be constructed with plans for expansion as needed for development of the Property. Expansion of the Buffalo Hills WWTP will be paid or caused to be paid by the District.

(c)     Ownership of the Buffalo Hills WWTP shall be transferred to the City upon the Developer's completion of all development within the Property and its receipt of one hundred percent (100%) of all Reimbursable Costs from the District related to the Buffalo Hills WWTP, evidenced in writing by the Developer and/or District and confirmed by the District's financial advisor, due to Developer by the District. It shall be a condition precedent to the transfer of ownership to the City that the TCEQ has not issued a notice of violation for the Buffalo Hills WWTP during the two years prior to such transfer.

### **ARTICLE IV WATER SERVICE**

**Section 4.01.**     **Water Utility Provider.**     The Property is located within the water certificate of convenience and necessity ("CCN") held by Mountain Peak SUD. Retail water service to the Property shall be provided by Mountain Peak SUD. The Developer will work with Mountain Peak SUD (and will recommend to the District that the District work with Mountain Peak SUD) concerning retail water service to the Property.

### **ARTICLE V ROADWAY IMPROVEMENTS**

**Section 5.01.**     **Developer General Obligations.**     The Developer is responsible for the design, installation, and construction of all roadway and drainage facilities required to serve the Property. The design of all roadway and drainage improvements shall be in accordance with City regulations.

**Section 5.02.**      **Conveyance of Right-of-Way.** The Developer will convey right-of-way for the construction of a four-lane undivided extension of County Road 213 (“CR 213”) as shown on the Conceptual Development Plan, which will bisect the Property. The parties acknowledge that the final location of certain roadways, curb cuts, and turn lanes may be subject to minor changes based on the final right-of-way alignment.

**Section 5.03.**      **CR 213 Extension.** The Developer and the City agree on the design of the extension of CR 213 as shown on the Conceptual Development Plan, and the City agrees to take such action as may be required to amend its thoroughfare plan consistent with this Agreement. The extension of CR 213 through the Property shall be constructed solely at Developer’s cost and pursuant to the City’s regulations, subject to the final approved plans.

## **ARTICLE VI ADDITIONAL OBLIGATIONS**

### **Section 6.01.**      **Dedications and Reservations for Public Facilities.**

(a) The Developer agrees to donate and dedicate or cause to be donated and dedicated approximately 1.0 acre of land to the City, as shown on the Conceptual Development Plan, for use as a fire station (the “Fire Station”).

(b) The Developer in its sole discretion may donate or cause to be donated approximately fifteen (15) acres of land to the City, for use as a public park and baseball fields (the “City Park”).

(c) The Developer agrees to reserve or cause to be reserved, and not dedicated or donated to the City or Venus Independent School District (“VISD”), a minimum of 10.0 acres, as shown on the Conceptual Development Plan, for a future school site (the “VISD Reserved Parcel”). The VISD Reserved Parcel shall be reserved or caused to be reserved for VISD for a period of time not to exceed two (2) years following the Effective Date of this Agreement (the “VISD Reserve Period”). The City agrees to provide, or cause VISD to provide, written notice to the Developer of VISD’s intent to utilize and purchase the VISD Reserved Parcel prior to the expiration of the VISD Reserve Period. If the City or CISD do not provide written notice to the Developer of VISD’s intent to utilize and purchase the VISD Reserved Parcel prior to the expiration of the VISD Reserve Period, the City shall be deemed to have waived the right for VISD to utilize and purchase such VISD Reserved Parcel. The City may provide written notice to the Developer of VISD’s decision to forego utilizing and purchasing the VISD Reserved Parcel prior to the expiration of the VISD Reserve Period, and upon receipt of such notice by the Developer, the VISD Reserve Period shall be considered terminated, and the Developer may utilize the VISD Reserved Parcel in any other manner allowed by law. Notwithstanding the foregoing, the Developer shall retain the right to use and encumber the VISD Reserved Parcel during the VISD Reserve Period. Further, the Developer shall determine, in its sole discretion, how the VISD Reserved Parcel may be transferred to VISD, which may include a sale of the VISD Reserved Parcel to VISD.

**Section 6.02.**      **Zoning.** The Developer shall initiate a rezoning of the Property as a Planned Development District or similar zoning classification consistent with the Conceptual Development Plan attached hereto as **Exhibit C** and the Development Standards attached hereto

as **Exhibit D**. The City agrees to consider zoning for the Property consistent with the Conceptual Development Plan, the Development Standards, and the applicable provisions of this Agreement.

**Section 6.03. Additional Property.** To the extent Developer, its successor or assign, or an affiliated entity of the Developer, acquires land contiguous to the District ("**Additional Property**") subsequent to this Agreement, Developer shall provide notice to the City of such acquisition, accompanied by a legal description, and such Additional Property shall (i) be considered a part of the Property and subject to this Agreement, without the necessity of amending this Agreement, and (ii) be subject to and developed in accordance with the specifications of this Agreement. Upon such acquisition, Developer may cause to be recorded in Ellis County or Johnson County records a memorandum of this Agreement, incorporating the description of the Additional Property affected.

**Section 6.04. Capital Recovery Fees.**

(a) The Parties agree that the public infrastructure to be constructed will include all of the capital improvements and facility expansions necessitated by and attributable to the Property; **therefore, pursuant to Section 395.001(4) of the Texas Local Government Code, no impact fees levied by the City will apply to single-family residential lots within the Property.** Instead, the City and Developer agree to set capital recovery fees ("**Capital Recovery Fees**") at \$2,500.00 for each of the single-family residential lots. All Capital Recovery Fees will be due and payable by the homebuilder at the time building permits are issued for each of the single-family residential lots.

(b) The City agrees to collect the Capital Recovery Fees in a segregated account held by the City and not comingled with any other funds (the "**Capital Recovery Fees Account**").

(c) The City will expend six million five hundred thousand dollars (\$6,500,000) from the Capital Recovery Fees Account and other funds available to the City to construct the Fire Station.

(d) If the Developer donates or causes to be donated the City Park (as set forth in Section 6.01(b)), the City will expend four million dollars (\$4,00,000) from the Capital Recovery Fees Account and other funds available to the City to improve the City Park for parks and baseball fields.

**Section 6.05. Development Charges and Fees.** Development of the Property shall be subject to payment of the City's building inspection fees and building permit fees for residential and commercial development (collectively, the "**Development Fees**") according to the fee schedule adopted by the City Council of the City and universally in effect on the date of submittal of each set of plans and specifications. The City agrees to expend the Development Fees for development and construction of a water tower located within the City.

**Section 6.06. Homeowners Association.** The Developer will, in a manner acceptable to the City, create a homeowners' association ("**HOA**"), which shall be mandatory and shall levy and collect from homeowners annual fees in an amount calculated to maintain the HOA owned improvements within the Property. The HOA shall maintain and operate any open spaces, private amenities, common areas, landscaping, fencing, development signage, and any other common

improvements or appurtenances within the Property that are not maintained or operated by the District or the City.

**Section 6.07.**     **Fire and Safety Code.** The Developer agrees to construct or cause to be constructed all buildings in accordance with the applicable fire codes and safety codes approved by the City in effect at the time of platting.

**Section 6.08.**     **Sole Provider of Emergency Services.** The Parties intend for the City to be the sole provider for the provision of police, fire, and emergency medical services to serve the Property.

## ARTICLE VII DISTRICT AND DISTRICT BONDS

**Section 7.01.**     **Authority to Issue Bonds.** The District may issue Bonds to reimburse the Developer for expenditures, including the District Improvements.

**Section 7.02.**     **Bond Limit Amount.** The total amount of Bonds issued by the District, excluding refunding Bonds, shall not exceed the amount approved by the voters within the District.

**Section 7.03.**     **Tax Rate.** The maximum tax rate levied by the District shall not exceed \$0.45 per \$100 valuation, unless otherwise agreed to by the Parties.

**Section 7.04.**     **Limit of City's Liability.** Unless the City abolishes the District and assumes the assets and liabilities of the District, the Bonds or any other obligations of the District shall never become an obligation of the City. The City's obligations under this Agreement shall not extend beyond its obligations to operate and maintain the District Improvements after conveyance to the City and to use the District Improvements to serve the Property. Nothing herein will prevent the City from using District Improvements to serve customers outside of the District provided that there is sufficient capacity to serve the residents and customers within the District.

## ARTICLE VIII DISSOLUTION OF DISTRICT

**Section 8.01.**     **Dissolution.** The City may dissolve the District at any time after the District has issued Bonds to finance Reimbursable Costs paid or incurred to construct the District Improvements that are required to serve full development of the Property. Upon dissolution of the District, the City shall assume the indebtedness and legal obligations of the District to the extent required by law. If the City does not dissolve the District, the Board shall dissolve the District within sixty (60) days after the maturity date of the last series of Bonds issued by the District.

## ARTICLE IX CONCEPTUAL DEVELOPMENT PLAN

**Section 9.01.**     **Phased Development.** Developer intends to develop the Property in one or more phases. Portions of the Property not under active development may remain in use as

income-producing agricultural lands or as open space land. The Developer may submit a replat or amending plat for all or any portions of the Property in accordance with applicable law.

**Section 9.02. Conceptual Development Plan; Exceptions.** The City hereby confirms (i) its approval of the Conceptual Development Plan, and (ii) that the Conceptual Development Plan complies with the City's General Plan, as amended. The City approves the land uses, densities, exceptions, roadway alignments and widths and other matters shown on the Conceptual Development Plan, and confirms that the Conceptual Development Plan has been approved by all required City departments, boards and commissions.

**Section 9.03. Term of Approvals.** Except as provided below, the Conceptual Development Plan will be effective for the term of this Agreement. Any preliminary subdivision plat or final subdivision plat that is consistent with the Conceptual Development Plan, applicable City ordinances and State law will be effective for the term of this Agreement. The Conceptual Development Plan will be deemed to have expired if no final plat of the Property is recorded for a period of ten (10) years or ten (10) years expires after the recordation of the last final plat.

**Section 9.04. Amendments.** Due to the fact that the Property comprises a significant land area and its development will occur in one or more phases over a number of years, modifications to the Conceptual Development Plan may become desirable due to changes in market conditions or other factors. Variations of a preliminary plat or final plat from the Conceptual Development Plan that do not increase the overall density of development of the Property, will not require an amendment to the Conceptual Development Plan. Minor changes to the items depicted in Exhibit C, including minor modifications of street alignments, minor changes in lot lines, the designation of land for public or governmental uses; changes in lot sizes that do not result in an increase in the overall density of development of the Property (including any increase in lot sizes resulting in a decrease in the total number of lots) or any change to a public use, including, but not limited to school use, will not require an amendment to the Conceptual Development Plan or City approval. Major changes to the Conceptual Development Plan must be consistent with the terms of this Agreement and will be subject to review and approval by the City, which will not be unreasonably withheld.

## **ARTICLE X TERM**

**Section 10.01. Term.** The term of this Agreement shall commence on the Effective Date of this Agreement and (unless terminated pursuant to ARTICLE II) shall continue until the District is dissolved in accordance with ARTICLE VIII.

**Section 10.02. Termination and Amendment by Agreement.** This Agreement may be terminated or amended as to all of the Property at any time by mutual written consent of the City and Developer and, following creation of the District, the District, and may be terminated or amended only as to a portion of the Property by the mutual written consent of the City and the Developers of the portion of the Property affected by the amendment or termination and, following creation of the District, the District containing such portion of the Property. In the event the District is not created, the City and Developer agree that this Agreement shall be void ab initio and shall have no force and effect.

## **ARTICLE XI ASSIGNMENT AND REMEDIES**

### **Section 11.01. Assignment.**

(a) This Agreement, and the rights of Developer hereunder, may be assigned by Developer, in whole or in part, without consent but with notice to the City to: (i) any subsidiary, parent company, or other affiliate of Developer, or (ii) a subsequent owner or developer of all or a portion of the Property. Any assignment will be in writing, specifically set forth the assigned rights and obligations and be executed by the proposed assignee. This Agreement may also be collaterally assigned without consent but with notice to the City to any lender providing financing for development of the Property.

(b) If Developer assigns its rights and obligations hereunder as to all or a portion of the Property, then the rights and obligations of any assignee and Developer will be severable, and Developer will not be liable for the nonperformance of the assignee and vice versa. In the case of nonperformance by one developer, the City may pursue all remedies against that nonperforming developer, but will not impede development activities of any performing developer as a result of that nonperformance.

### **Section 11.02. Remedies.**

(a) If the City defaults under this Agreement, Developer may enforce this Agreement by seeking damages and/or a writ of mandamus from a Johnson County District Court, or may give notice setting forth the event of default ("Notice") to the City. If the City fails to cure any default that can be cured by the payment of Money ("Monetary Default") within 45 days from the date the City receives the Notice, or fails to commence the cure of any default specified in the Notice that is not a Monetary Default within 45 days of the date of the Notice, and thereafter to diligently pursue such cure to completion, Developer may terminate this Agreement as to all of the Property owned by Developer, or as to the portion of the Property affected by the default; however, any such remedy will not revoke the City's consent to the creation of the District.

(b) If Developer defaults under this Agreement, the City may enforce this Agreement by seeking specific performance from any court of appropriate jurisdiction, or the City may give Notice to Developer. If Developer fails to cure any Monetary Default within 45 days from the date it receives the Notice, or fails to commence the cure of any default specified in the Notice that is not a Monetary Default within 45 days of the date of the Notice, and thereafter to diligently pursue such cure to completion, the City may terminate this Agreement; however, any such remedy will not revoke the City's consent to the creation of the District.

(c) If either party defaults, the prevailing party in the dispute will be entitled to recover its reasonable attorney's fees, expenses and court costs from the non-prevailing party.

### **Section 11.03. Cooperation.**

(a) The City and Developer each agree to execute such further documents or instruments as may be necessary to evidence their agreements hereunder.

(b) The City agrees to cooperate with Developer in connection with any waivers or approvals Developer may desire from Ellis County or Johnson County in order to avoid the duplication of facilities or services in connection with the development of the Property.

(c) In the event of any third-party lawsuit or other claim relating to the validity of this Agreement or any actions taken hereunder, Developer and the City agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution in their respective rights and obligations under this Agreement.

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

**Section 12.01.** **Notice.** Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another service guaranteeing “next day delivery”, addressed to the party to be notified and with all charges prepaid; (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement, or (iv) by confirmed facsimile with a confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or 3 days after the date of mailing. Notice given in any other manner will be effective only when received. For purposed of notice, the addresses of the parties will, until changed as provided below, be as follows:

City: City of Venus  
105 East US Highway 67  
Venus, Texas 76084  
Attn: City Administrator  
Email: troberts@cityofvenus.org

With a copy to: The Halla Law Firm, PLLC  
Attn: Michael B. Halla  
187 Rolling Court  
Lancaster, Texas 75146  
mhalla@hallalawfirm.com

Developer: Buffalo Hills Development, LLC  
Attn: Rick Miskimon  
5940 S. West McGee Creek Road  
Lane, Oklahoma 74555  
Email: mrranch@aircanopy.net

With a copy to: Winstead PC  
Attn: Ross Martin  
2728 N. Harwood, Suite 500  
Dallas, Texas 75201  
Email: rmartin@winstead.com

The parties may change their respective addresses to any other address within the United States of America by giving at least five days' written notice to the other party. Developer may, by giving at least five days' written notice to the City, designate additional parties to receive copies of notices under this Agreement.

**Section 12.02. Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.

**Section 12.03. Waiver.** Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver thereof or of any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

**Section 12.04. Limited Waiver of Immunity.** The Parties are entering into this Agreement in reliance upon its enforceability. Consequently, the City unconditionally and irrevocably waives all claims of sovereign and governmental immunity they may have (including, but not limited to, immunity from suit) to the extent, but only to the extent, that a waiver is necessary to enforce specific performance of this Agreement (including all of the remedies provided under this Agreement) and to give full effect to the intent of the Parties under this Agreement. Notwithstanding the foregoing, the waiver contained herein shall not waive any immunities that the City may have with respect to claims of injury to persons or property, which claims shall be subject to all of their respective immunities and to the provisions of the Texas Tort Claims Act. Further, the waiver of immunity herein is not enforceable by any party not a Party to this Agreement or any party that may be construed to be a third party beneficiary to this Agreement.

**Section 12.05. Applicable Law and Venue.** The interpretation, performance, enforcement and validity of this Agreement is governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Johnson County, Texas.

**Section 12.06. Entire Agreement.** This Agreement contains the entire agreement of the parties. There are no other agreements or promises, oral or written, between the parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the parties. This Agreement supersedes all other agreements between the parties concerning the subject matter.

**Section 12.07. Exhibits, Headings, Construction and Counterparts.** All schedules and exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice-versa. The parties acknowledge that each of them has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits hereto. If there is any conflict or inconsistency between the provisions of this Agreement and otherwise applicable City ordinances, the terms of



this Agreement will control. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the parties.

**Section 12.08.** **Time.** Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.

**Section 12.09.** **Authority for Execution.** The City certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with its City Charter and City ordinances. Developer hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreement of each entity executing on behalf of Developer.

**Section 12.10.** **Force Majeure.** If, by reason of force majeure, either party is rendered unable, in whole or in part, to carry out its obligations under this Agreement, the party whose performance is so affected must give notice and the full particulars of such force majeure to the other party within a reasonable time after the occurrence of the event or cause relied upon, and the obligation of the party giving such notice, will, to the extent it is affected by such force majeure, be suspended during the continuance of the inability but for no longer period. The party claiming force majeure must endeavor to remove or overcome such inability with all reasonable dispatch.

The term “force majeure” means Acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas, or of any court or agency of competent jurisdiction or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, vandalism, explosions, breakage or accidents to machinery, pipelines or canals, or inability on the part of a party to perform due to any other causes not reasonably within the control of the party claiming such inability.

**Section 12.11.** **Amendment.** This Agreement may be amended only with the written consent of all Parties and with approval of the governing bodies of the City and the District.

**Section 12.12.** **Interpretation.** The Parties acknowledge that each Party and, if it so chooses, its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. As used in this Agreement, the term “including” means “including without limitation” and the term “days” means calendar days, not business days. Wherever required by the context, the singular shall include the plural, and the plural shall include the singular. Each defined term herein may be used in its singular or plural form whether or not so defined.

**Section 12.13. No Third-Party Beneficiary.** This Agreement is solely for the benefit of the Parties, and neither the City, the District nor the Developer intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the City, the District and Developer.

**Section 12.14. Binding Obligations; Estoppel Certificates.**

(a) **Binding Obligations.** This Agreement shall be recorded in the deed records of Johnson County. This Agreement, when recorded, shall be binding upon the Parties and their successors and assigns permitted by this Agreement and upon the Property; provided, however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property except for land use and development regulations that apply to specific lots. For purposes of this Agreement, the Parties agree (i) that the term “End-Buyer” means any Developer, developer, tenant, user, or occupant, (ii) that the term “fully developed and improved lot” means any lot, regardless of proposed use, for which a final plat has been approved by the governmental authority having jurisdiction and for which all planned and approved improvements have been constructed and accepted to the extent that a building permit may be obtained for such lot, and (iii) that the term “land use and development regulations that apply to specific lots” means the Applicable Regulations.

(b) **Estoppel Certificates.** From time to time upon written request of Developer (or any other developer, tenant, user, or occupant of land within the Property which land is not a fully developed and improved lot owned by an End-Buyer within a fully developed and improved phase), the City will execute a written estoppel certificate to such person or entity (i) identifying the obligations of Developer under this Agreement that have been fully performed, (ii) identifying the obligations of Developer under this Agreement that remain to be performed, including the interim status of any obligations for which performance has begun, (iii) identifying any obligations of Developer under this Agreement that are in default or, with the giving of notice or passage of time, would be in default, and (iv) stating, to the extent true, that to the best knowledge and belief of the City, that Developer is in compliance with their respective duties and obligations under this Agreement.

**Section 12.15. Counterpart Originals.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

**Section 12.16. Exhibits.** The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

|           |                                              |
|-----------|----------------------------------------------|
| Exhibit A | Metes and Bounds Description of the Property |
| Exhibit B | Depiction of the Property                    |
| Exhibit C | Conceptual Development Plan                  |
| Exhibit D | Development Standards                        |
| Exhibit E | Form of Consent Resolution of the City       |
| Exhibit F | Form of District Joinder                     |

**Section 12.17. Anti-Boycott Verification.** The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not

boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel' means 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 specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

**Section 12.18. Iran, Sudan, and Foreign Terrorist Organizations.** The Developer hereby represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Developer and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Developer understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

**Section 12.19. Energy Company Verification.** To the extent this Agreement constitutes a contract for goods or services for which a written verification statement is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislative Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent companies, 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 Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies" shall have the meaning assigned to the term "boycott energy company" in Section 809.001, Texas Government Code. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

**Section 12.20. Firearm Entity Verification.** To the extent this Agreement constitutes a contract for goods or services for which a written verification statement is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislative Session, "**SB 19**"), Texas Government Code, as amended, the Developer hereby verifies that it and its parent companies, wholly- or majority- owned subsidiaries, and other affiliates, if any,

(1) do not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and

(2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” shall have the meaning assigned to such term in Section 2274.001(3) (as added by SB 19), Texas Government Code. The Developer understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the dates indicated below.

(SIGNATURE PAGES FOLLOW)

**CITY OF VENUS, TEXAS:**

By: \_\_\_\_\_  
James L. Burgess, Mayor

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name: Callie Green  
Title: City Secretary

STATE OF TEXAS           §  
                                     §  
COUNTY OF JOHNSON   §

Before me on this day personally appeared James L. Burgess, Mayor of the City of Venus, Texas, 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, and in the capacity therein stated.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2023.

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

(SEAL)

**DEVELOPER:**

BUFFALO HILLS DEVELOPMENT, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Rick Miskimon, Managing Member

Date: \_\_\_\_\_

STATE OF OKLAHOMA    §  
                                     §  
COUNTY OF ATOKA     §

Before me on this day personally appeared Rick Miskimon, Managing Member of Buffalo Hills Development, LLC, a Texas limited liability company, 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, and in the capacity therein stated.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public, State of Oklahoma

(SEAL)

# EXHIBIT "A"

## DESCRIPTION OF PROPERTY

### METES AND BOUNDS DESCRIPTION

87.89 Acres (3,828,641 Square Feet)  
Moses Lapham Survey, Abstract Number 499  
Johnson County, Texas.

Being a 87.89 Acres (3,828,641 Sq. Ft.) tract of land situated in the Moses Lapham Survey, Abstract No. 499, Johnson County, Texas, being all of that called 88.55 Acres conveyed to Harper Cattle, L.L.C., of record in Volume 2305, Page 40, Deed Records, Johnson County, Texas (D.R.J.C.T.) and being more particularly described by metes and bounds as follows:

**COMMENCING** at a 1/2-Inch Iron pipe found in the centerline of County Road (C.R.) 108 (50 feet wide) marking the northeast corner of a called 50.0 Acres tract conveyed to B.E. Hunt of record in Volume 1040, Page 359 and in Volume 1040, Page 314, D.R.J.C.T.;

**THENCE**, South 59°57'43" West, 1,477.82 feet with the centerline of said C.R. 108 to a MAG Nail set marking the northwest corner of said 50.0 Acres and the northeast corner of a called 151.45 Acres conveyed to Harper Cattle, L.L.C., of record in Volume 2305, Page 40, D.R.J.C.T.;

**Thence**, South 59°35'28" West, 873.19 feet continuing with the centerline of said C.R. 108 to a MAG Nail set in the centerline intersection with C.R. 213 (50 feet wide) and marking the **POINT OF BEGINNING** and southeast corner of the herein described tract;

**Thence**, South 59°48'55" West, 596.80 feet continuing with the centerline of said C.R. 108 to a MAG Nail Found marking an interior corner;

**Thence**, South 59°36'31" West, 1,249.30 feet continuing with the centerline of C.R. 108 to a M.A.G. Nail set in the southeast corner of that called 198.63 Acres tract conveyed to W. Mabry of record in Volume 365, Page 395, D.R.J.C.T., and marking the southwest corner of the herein described tract;

**Thence**, North 28°56'52" West, 429.01 with the east line of said called 198.63 Acres tract to a 1/2-Inch iron rod found marking a corner of the herein described tract;

**Thence**, North 58°54'41" East, 223.77 feet continuing with the east line of said called 198.63 Acres tract to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set marking an interior corner of the herein described tract;

**Thence**, North 29°57'43" West, 1,876.05 feet to a 2-inch iron pipe in stone mound found in the south line of that tract conveyed to John F. Pass of record in Volume 2820, Page 771, D.R.J.C.T. and marking the northeast corner of said called 198.63 Acres tract and the northwest corner of the herein described tract;

**Thence**, North 60°14'54" East, 1,621.19 feet with the south line of said John F. Pass tract and the south line of that tract conveyed to Adan & Maria Del Socorro Herrera of record in Doc. No. 2084, D.R.J.C.T. to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set in the centerline of the aforementioned C.R. 213 common with the west line of that tract conveyed to Bankston Fourth Family LP of record in Doc. No. 29911, D.R.J.C.T. and marking the northeast corner of the herein described tract;

**Thence**, South 30°17'25" East, 1,126.40 feet with the centerline of said C.R. 213 and the west line of said Bankston tract to a Cotton Spindle found marking the northwest corner of that tract conveyed to Dale Terry Scott & Kyra Jean Neff of record in Doc. No. 34214, D.R.J.C.T.;

**Thence**, South 29°19'40" East, 1,165.45 feet continuing with the centerline of said C.R. 213 to the **POINT OF BEGINNING** and **CONTAINING** 87.89 Acres (3,828,641 Sq. Ft.).

A plat of same date accompanies this metes and bounds descriptions.

I, Rodric R. Reese, Registered Professional Land Surveyor No. 5883, do hereby certify that the map shown hereon was prepared under my direct supervision from a survey made on the ground, and that such map is an accurate representation of the subject property.

Rodric R. Reese 12/03/21  
Rodric R. Reese, R.P.L.S. No. 5883 Date



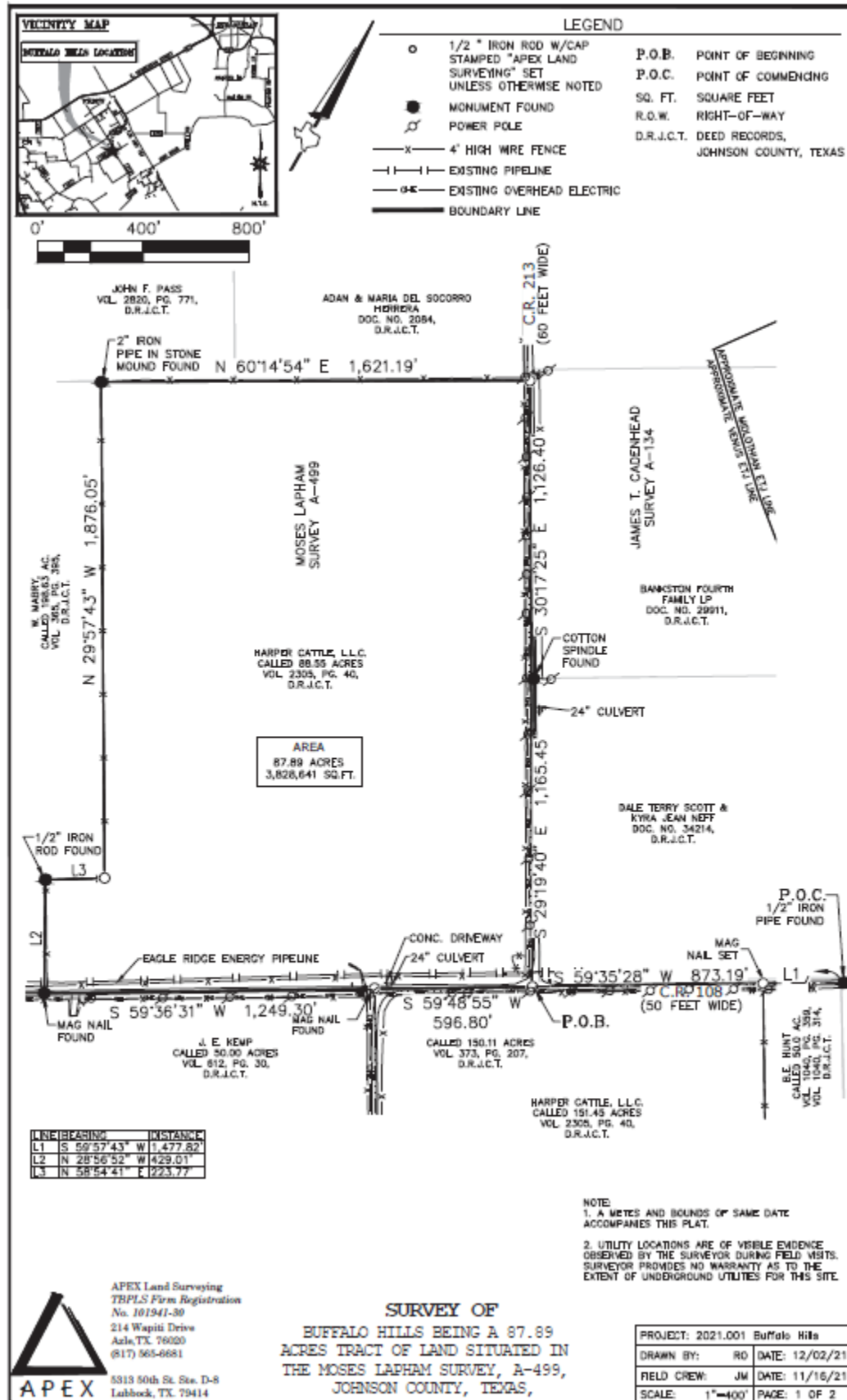
APEX Land Surveying  
TBPLS Firm Registration  
No. 101941-80  
214 Wapiti Drive  
Azle, TX. 76020  
(817) 565-6681

5313 50th St. Ste. D-5  
Lubbock, TX. 79414

**SURVEY OF**  
**BUFFALO HILLS**  
**BEING A 87.89 ACRES**  
**TRACT OF LAND SITUATED IN THE**  
**MOSES LAPHAM SURVEY, A-499,**  
**JOHNSON COUNTY, TEXAS,**

|                                 |     |       |          |
|---------------------------------|-----|-------|----------|
| PROJECT: 2021.001 Buffalo Hills |     |       |          |
| DRAWN BY:                       | RO  | DATE: | 12/02/21 |
| FIELD CREW:                     | JM  | DATE: | 11/16/21 |
| SCALE:                          | N/A | PAGE: | 2 OF 2   |

# **EXHIBIT "B"** **PROPERTY DEPICTION**





[illegible]

**EXHIBIT “D”  
DEVELOPMENT STANDARDS**

Approximately 330 single family residential lots as shown on Conceptual Development Plan

Typical lot width: 50’

Typical lot depth: 110’

**EXHIBIT “E”  
FORM OF CONSENT RESOLUTION OF THE CITY**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS,  
CONSENTING TO THE CREATION OF A MUNICIPAL UTILITY DISTRICT TO BE  
KNOWN AS HAWK RIDGE MUNICIPAL UTILITY DISTRICT OF JOHNSON  
COUNTY**

WHEREAS, Buffalo Hills Development, LLC, a Texas limited liability company (“Developer”) is the owner of approximately 87.89 acres of land (“Land”) located within the corporate boundaries of the City of Venus (“City”);

WHEREAS, Hawk Ridge Municipal Utility District of Johnson County (“District”) is a proposed municipal utility district to be created by special act of the Texas Legislature or the Texas Commission on Environmental Quality;

WHEREAS, the City wishes to evidence its consent to the creation of the District and the inclusion of the Land within the District; and

WHEREAS, the City and the Developer desire to enter into a Consent and Development Agreement regarding the development of the Land within the District, which will be joined by the District.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS:

SECTION 1. That the Mayor is hereby authorized and directed to execute on behalf of the City a Consent and Development Agreement, a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

SECTION 2. The City Council of the City of Venus, Texas hereby grants its consent to and permission for the creation of the District and the inclusion of the Land within the District, and the Mayor and City Secretary are hereby authorized to execute any documents necessary to effectuate this Resolution.

SECTION 3. The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

DULY RESOLVED by the City Council of the City of Venus, Texas, on the \_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor

APPROVED:

\_\_\_\_\_  
City Attorney

**EXHIBIT “F”  
FORM OF DISTRICT JOINDER**

**JOINDER AGREEMENT**

THIS JOINDER AGREEMENT (the “Joinder Agreement”), dated as of \_\_\_\_\_, 2023, is executed by HAWK RIDGE MUNICIPAL UTILITY DISTRICT OF JOHNSON COUNTY (“District”), in connection with that certain Consent and Development Agreement (the “Consent Agreement”) entered into by and between the CITY OF VENUS, TEXAS, a type A general law municipality located in Ellis and Johnson Counties, Texas (the “City”) and BUFFALO HILLS DEVELOPMENT, LLC, a Texas limited liability company (the “Developer”), dated effective as of \_\_\_\_\_, 2023. Capitalized terms used herein but not otherwise defined herein shall have the definitions provided in the Consent Agreement.

In accordance with Section 2.02 of the Consent Agreement, a copy of which is attached hereto as Exhibit “A” and incorporated herein for all purposes, the District executes this Joinder Agreement in order to become a Party to the Consent Agreement. Accordingly, the District hereby agrees as follows with City and the Developer:

1. The District acknowledges and confirms that it has received a copy of the Consent Agreement and the schedules and exhibits thereto.

2. The District hereby acknowledges, agrees, and confirms that, by its execution of this Joinder Agreement, the District shall automatically be deemed to be a Party to the Consent Agreement, and shall have all of the rights and obligations of the District with regard to property within the District thereunder as if it had originally executed the Consent Agreement. The District hereby ratifies, as of the date hereof, and agrees to be bound by all of the terms, provisions and conditions contained in the Consent Agreement applicable to it to the same effect as if it were an original Party thereto.

3. This Joinder Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas, and exclusive venue shall lie in Johnson County, Texas.

IN WITNESS WHEREOF, the District has caused this Joinder Agreement to be duly executed by its authorized officer as of the day and year first above written.

**HAWK RIDGE MUNICIPAL UTILITY  
DISTRICT OF JOHNSON COUNTY**

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**RESOLUTION NO. 10-2023-03**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS,  
CONSENTING TO THE CREATION OF A MUNICIPAL UTILITY DISTRICT TO BE  
KNOWN AS HAWK RIDGE MUNICIPAL UTILITY DISTRICT OF JOHNSON  
COUNTY**

WHEREAS, Buffalo Hills Development, LLC, a Texas limited liability company (“Developer”) is the owner of approximately 87.89 acres of land (“Land”) located within the corporate boundaries of the City of Venus (“City”);

WHEREAS, Hawk Ridge Municipal Utility District of Johnson County (“District”) is a proposed municipal utility district to be created by special act of the Texas Legislature or the Texas Commission on Environmental Quality;

WHEREAS, the City wishes to evidence its consent to the creation of the District and the inclusion of the Land within the District; and

WHEREAS, the City and the Developer desire to enter into a Consent and Development Agreement regarding the development of the Land within the District, which will be joined by the District.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS:

SECTION 1. That the Mayor is hereby authorized and directed to execute on behalf of the City a Consent and Development Agreement, a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

SECTION 2. The City Council of the City of Venus, Texas hereby grants its consent to and permission for the creation of the District and the inclusion of the Land within the District, and the Mayor and City Secretary are hereby authorized to execute any documents necessary to effectuate this Resolution.

SECTION 3. The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

DULY RESOLVED by the City Council of the City of Venus, Texas, on the 20th day of March, 2023.

ATTEST:

---

City Secretary

---

Mayor  
APPROVED:

---

City Attorney

**CONSENT AND DEVELOPMENT AGREEMENT**  
**AMONG**  
**CITY OF VENUS, TEXAS**  
**AND**  
**BUFFALO HILLS DEVELOPMENT, LLC**



## CONSENT AND DEVELOPMENT AGREEMENT

This CONSENT AND DEVELOPMENT AGREEMENT (this “Agreement”) is entered into by and among the **City of Venus, Texas**, a type A general law municipality located in Ellis and Johnson Counties, Texas (the “City”) and **Buffalo Hills Development, LLC**, a Texas limited liability company (the “Developer”). The **Buffalo Hills Municipal Utility District of Johnson County** (the “District”), a municipal utility district to be created by available statutory means pursuant to the laws of the state of Texas, will join this Agreement as set forth below and after such joinder shall become a party to this Agreement.

### RECITALS

WHEREAS, the Developer is the owner of approximately 589.1 acres of land located within the extraterritorial jurisdiction (“ETJ”) of the City in Johnson County, Texas, as more particularly described by metes and bounds on the attached **Exhibit A** and depicted on the attached **Exhibit B** (the “Property”); and

WHEREAS, the Developer intends to develop the Property, in one or more phases, as a residential community that will include open space and public facilities to serve the community as depicted on the conceptual development plan attached hereto as **Exhibit C** (the “Conceptual Development Plan”) and consistent with the development standards attached hereto as **Exhibit D** (the “Development Standards”); and

WHEREAS, the Developer and the City wish to enter into this Agreement, which is intended to encourage innovative and comprehensive master-planning of the Property, provide certainty of regulatory requirements throughout the term of this Agreement and result in a high-quality development for the benefit of the present and future residents of the City and the Property; and

WHEREAS, the Developer has presented the City with a form of resolution attached to this Agreement as **Exhibit E** to consent to the creation of the Buffalo Hills Municipal Utility District of Johnson County (the “District”) and the inclusion of the Property in the District; and

WHEREAS, the purposes of the proposed District include designing, constructing, acquiring, installing, conveying to the City, and financing water, wastewater, streets, drainage, and other public improvements as authorized by the Texas Constitution, the Texas Water Code, and any enabling legislation to benefit the area within its boundaries (collectively, the “District Improvements”); and

WHEREAS, construction of the District Improvements will occur in one or more phases (as determined by the District and the Developer) in accordance with this Agreement, the applicable ordinances of the City, Chapters 49 and 54, Texas Water Code, as amended, and any enabling legislation specific to the District, the rules and regulations of the TCEQ, as amended, and applicable state and federal regulations (collectively, the “Applicable Regulations”); and

WHEREAS, the City and Developer intend that the Reimbursable Costs (hereinafter defined) of the District Improvements will be paid from the net proceeds of Bonds issued by the District or other revenues of the District in accordance with this Agreement, the applicable rules

and regulations of the TCEQ, as amended, and the applicable requirements of the Texas Attorney General's Office, as amended; and

WHEREAS, the District is authorized to enter into this Agreement pursuant to the provisions of Texas law, including but not limited to, Chapters 49 and 54, Texas Water Code, as amended, Chapter 791, Texas Government Code, as amended, and Section 552.014, Texas Local Government Code, as amended; and

WHEREAS, the City is a type A general law municipality operating under the laws of the State of Texas and pursuant to which the City has the authority to enter into and perform its obligations under this Agreement including, but not limited to, the ownership and operation of the District Improvements;

WHEREAS, the Parties agree and intend that this Agreement is a development agreement as provided for by state law in Section 212.172 of the Texas Local Government Code and a permit as set forth in Chapter 245, Texas Local Government Code; and

WHEREAS, unless expressly set forth to the contrary in this Agreement, the Parties intend this Agreement to supersede City Regulations to the extent that City regulations directly conflict with the terms of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the Parties contract as follows.

## **ARTICLE I DEFINITIONS**

**Section 1.01. Definitions.** In addition to the terms defined elsewhere in this Agreement or in the City's ordinances, the following terms and phrases used in this Agreement will have the meanings set out below:

Additional Property means any other land acquired by the Developer and made subject to this Agreement pursuant to Section 6.01 hereof.

Agreement means this Consent and Development Agreement among the Parties.

Bond means bonds, notes, or other obligations or indebtedness that are issued or incurred by the District under the District's borrowing power.

Buffalo Hills WWTP means the wastewater treatment plant that is intended to serve the Property and other property owned by the Developer.

City means the City of Venus, Texas, a type A general law municipality located in Ellis and Johnson Counties, Texas.

City Administrator means the City Administrator of the City.

Commission or TCEQ means the Texas Commission on Environmental Quality or its successor agency.

Conceptual Development Plan means the concept plan for the Property attached as **Exhibit C**, as amended from time to time in accordance with this Agreement.

County means Johnson County, Texas.

Developer means Buffalo Hills Development, LLC, a Texas limited liability company, or its successors and assigns under this Agreement.

Development Standards means the development standards for the Property attached hereto as **Exhibit D**.

District means Buffalo Hills Municipal Utility District of Johnson County, a political subdivision of the State of Texas to be created over the Property, with the consent of the City, as provided in this Agreement.

District Improvements means water, wastewater, streets, drainage, and other public improvements benefitting the District, as authorized by the Texas Constitution, the Texas Water Code, and any enabling legislation to serve the area within the District boundaries.

Effective Date of this Agreement means March 13, 2023.

Mountain Peak SUD means the Mountain Peak Special Utility District.

Property means approximately 589.1 acres of land located within the ETJ of the City, as described by metes and bounds on **Exhibit A** and depicted on **Exhibit B**, and any Additional Property that may be included in accordance with Section 6.01 of this Agreement.

Reimbursable Costs means costs paid or incurred to construct District Improvements that are eligible for reimbursement from the net proceeds of Bonds issued in accordance with this Agreement or other funds and the rules and regulations of the TCEQ, as amended, including in addition to costs of construction, but not limited to, the following:

- (i) surveying costs;
- (ii) cost of soils and materials testing;
- (iii) engineering fees related to the District Improvements;
- (iv) advertising and other costs associated with public bidding and award of construction contracts;
- (v) costs of required easements and rights-of-way; and
- (vi) other costs or fees paid or incurred in connection with the creation and operation of the District.

Strategic Partnership Agreement (“SPA”) means a strategic partnership agreement as contemplated under Section 43.0751, Texas Local Government Code.

## **ARTICLE II**

### **CREATION OF DISTRICT AND EXECUTION OF AGREEMENTS**

**Section 2.01.**      **Consent to Creation of District.** The City acknowledges receipt of Developer’s request, in accordance with Section 54.016, Texas Water Code and Section 42.042, Texas Local Government Code, for creation of the District, including powers from Article III, Section 52 of the Texas Constitution. On the Effective Date of this Agreement, the City has approved the resolution substantially similar to the form attached as **Exhibit E** (the “**Consent Resolution**”) consenting to the inclusion of the Property within the proposed District and the creation of the District in accordance with the Applicable Regulations. The City agrees to adopt such further resolutions or ordinances and execute such further documents as may reasonably be necessary by the Developer, the TCEQ, the Attorney General of the State of Texas, or the District to evidence the City's consents as set forth in this Agreement and in the Consent Resolution. Subject to and limited by the terms of this Agreement and the conditions set forth in the City approved Consent Resolution, the consents contained in this Article II and in the Consent Resolution (the “**District Consents**”) are given by the City: (a) in full and exclusive satisfaction of any applicable requirements for District consents contained in any statute or otherwise required by law, rule, regulation or policy, including, but not limited to, consents required by the Texas Water Code, as amended, the Texas Local Government Code, as amended, any rules, regulations or policies of the TCEQ, or any rules, regulations or policies of the Texas Attorney General (b) with the understanding that both City and the Developer have relied on the District Consents to their individual material detriment, but for the District Consents, the Developer would not have entered into this Agreement and but for the conditions and limitations on the District Consents, City would not have entered into this Agreement.

**Section 2.02.**      **District Execution of Agreement.** The Developer and the City intend that this Agreement shall be binding upon the District from and after the date the District executes a joinder to this Agreement in substantially the same form as set forth in **Exhibit F**, attached hereto and made a part hereof. The District shall execute such joinder at the time of its organizational meeting.

**Section 2.03.**      **District Bonds.** If the District fails to approve, execute, and deliver this Agreement to the City as required by Section 2.02, and if the City does not terminate this Agreement, such failure shall constitute a material breach of this Agreement by the Developer and shall operate to prohibit the District from taking any actions to issue Bonds until the failure has been cured. The City shall have the right to enjoin the issuance of Bonds during any period in which such a material breach exists.

**Section 2.04.**      **Reimbursement Agreements.** If the District fails to approve, execute, and deliver this Agreement to the City as required by Section 2.02, and if the City has not terminated this Agreement, such failure shall constitute a material breach of this Agreement by the Developer and shall operate to prohibit Developer or any developer of the Property from entering into any reimbursement agreements with the District until the failure has been cured. The City shall have the right to enjoin the execution of such reimbursement agreements during any period in which such a material breach exists.

**Section 2.05.**     **Intent of Parties Related to Allocation Agreement.** Under Section 54.016(f), Texas Water Code, the City, as a City providing written consent for inclusion of land in a district, may provide for a contract designated as an “allocation agreement”, to be entered into between the City and the District. The Parties acknowledge that the provision for an “allocation agreement” under Section 54.016(f) is at the City’s discretion. The City confirms that it is intentionally not providing for an allocation agreement. The Parties agree that this Agreement does not constitute and will not be deemed to constitute an allocation agreement within the meaning of Section 54.016(f).

### **ARTICLE III WASTEWATER SERVICE**

**Section 3.01.**     **Developer General Obligations.** The Developer is responsible for the design, installation, and construction of all wastewater facilities required to serve the Property.

**Section 3.02.**     **Ownership.** Developer shall convey all wastewater District Improvements to the District. The City agrees that, once the wastewater District Improvements are conveyed to the District, the District will own and maintain the wastewater District Improvements, unless the City and the District agree in writing to the contrary. The City shall become the owner of the wastewater District Improvements upon annexation of land within the District and dissolution of the District, in accordance with Section 43.075, Texas Local Government Code. Notwithstanding any change in state law concerning ownership of the District’s assets upon annexation, the City shall have the option, at the City’s election, to become the owner of the wastewater District Improvements on land within the District upon annexation of such land by the City. This section is subject to Section 3.03 below.

**Section 3.03**   **Buffalo Hills WWTP.**

(a)     The Buffalo Hills WWTP shall be initially owned by the District or another municipal utility district served by the Buffalo Hills WWTP and constructed in accordance with TCEQ standards. The discharge permit related to the Buffalo Hills WWTP will be held by the District until such time as ownership is transferred to the City as provided herein.

(b)     The City agrees to operate and maintain the Buffalo Hills WWTP, including routine repairs. The City agrees to bill customers at City standard billing rates for operational costs related to the Buffalo Hills WWTP. Notwithstanding the foregoing, the District shall repair or cause to be repaired the Buffalo Hills WWTP for major repairs as determined by the District.

(b)     The Buffalo Hills WWTP may be constructed or caused to be constructed with plans for expansion as needed for development of the Property. Expansion of the Buffalo Hills WWTP will be paid or caused to be paid by the District.

(c)     Ownership of the Buffalo Hills WWTP shall be transferred to the City upon the Developer’s completion of all development within the Property and its receipt of one hundred percent (100%) of all Reimbursable Costs from the District related to the Buffalo Hills WWTP, evidenced in writing by the Developer and/or District and confirmed by the District’s financial advisor, due to Developer by the District. It shall be a condition precedent to the transfer of

ownership to the City that the TCEQ has not issued a notice of violation for the Buffalo Hills WWTP during the two years prior to such transfer.

#### **ARTICLE IV WATER SERVICE**

**Section 4.01. Water Utility Provider.** The Property is located within the water certificate of convenience and necessity ("CCN") held by Mountain Peak SUD. Retail water service to the Property shall be provided by Mountain Peak SUD. The Developer will work with Mountain Peak SUD (and will recommend to the District that the District work with Mountain Peak SUD) concerning retail water service to the Property.

#### **ARTICLE V ROADWAY AND DRAINAGE IMPROVEMENTS**

**Section 5.01. Developer General Obligations.** The Developer is responsible for the design, installation, and construction of all roadway and drainage facilities required to serve the Property. The design of all roadway and drainage improvements shall be in accordance with City regulations.

**Section 5.02. Ownership.** Developer shall convey all roadway and drainage District Improvements to the District. The City agrees that, once the roadway and drainage District Improvements are conveyed to the District, the District will own and maintain the roadway and drainage District Improvements, unless the City and the District agree in writing to the contrary. The City shall become the owner of the roadway and drainage District Improvements upon annexation of land within the District and dissolution of the District, in accordance with Section 43.075, Texas Local Government Code. Notwithstanding any change in state law concerning ownership of the District's assets upon annexation, the City shall have the option, at the City's election, to become the owner of the roadway and drainage District Improvements on land within the District upon annexation of such land by the City.

#### **ARTICLE VI ADDITIONAL OBLIGATIONS**

**Section 6.01. Additional Property.** To the extent Developer, its successor or assign, or an affiliated entity of the Developer, acquires land contiguous to the District ("Additional Property") subsequent to this Agreement, Developer shall provide notice to the City of such acquisition, accompanied by a legal description, and such Additional Property shall (i) be considered a part of the Property and subject to this Agreement, without the necessity of amending this Agreement, and (ii) be subject to and developed in accordance with the specifications of this Agreement. Upon such acquisition, Developer may cause to be recorded in Ellis County or Johnson County records a memorandum of this Agreement, incorporating the description of the Additional Property affected.

**Section 6.02. Annexation.**

(a) Except as set forth in Sections 6.02(b) and 6.02(c) of this Agreement, the Property shall remain in the extraterritorial jurisdiction of the City and shall be immune from annexation during the term of this Agreement. It is understood that all or a portion of the Property may be

covered by one or more agreements with previous landowners of the Property titled “Chapter 43 Texas Local Government Code Development Agreement” each approved by the City Council on October 15, 2018 (an “Annexation Agreement”). The Parties agree and acknowledge that the inclusion of the Property in this Agreement is dependent upon the complete release of each Annexation Agreement related to the Property. The City agrees to fully cooperate in securing the complete release of each Annexation Agreement, including executing any document to that effect.

(b) Until such time as the Developer has completed all development within the Property and received from the District one hundred percent (100%) of all Reimbursable Costs from the District, evidenced in writing by the Developer and/or District and confirmed by the District’s financial advisor, due to Developer by the District, the Property shall remain immune from full purpose annexation. Thereafter, the City may seek annexation of the entire District, or of any entire sub-district created by the division of the District, via SPA or in accordance with applicable statute.

(c) Within six (6) months of the organizational meeting of the District, the Developer shall recommend to the board of directors of the District that the District enter into a SPA with the City, providing for full purpose annexation of the District upon terms acceptable to the Developer and the City. If the District does not enter into the SPA within six (6) months of the organizational meeting of the District, the Property may be annexed into the corporate limits of the City at a future date, but only after the Developer has received from the District one hundred percent (100%) of all Reimbursements, evidenced in writing by the Developer and District, due to Developer by the District.

### **Section 6.03. Zoning.**

(a) While the Parties expressly acknowledge that the Property may be annexed in accordance with Section 6.02 of this Agreement, the Parties agree that the Conceptual Development Plan attached hereto as **Exhibit C**, the Development Standards attached hereto as **Exhibit D**, and the applicable provisions of this Agreement memorialize the plan for development of the Property as provided for in Section 212.172 of the Texas Local Government Code and other applicable law. The City shall consider zoning the Property consistent with the Conceptual Development Plan, the Development Standards, and the applicable provisions of this Agreement contemporaneously with the annexation of the ETJ Property. Through this Agreement, the Developer expressly consent and agree to the zoning of the Property consistent with and as contemplated by this section.

(b) City acknowledges that the Conceptual Development Plan and the Development Standards attached to this Agreement constitute permits in the series of permits for the Property as contemplated by Chapter 245 of the Texas Local Government Code and authorized by Section 212.172(g) of the Texas Local Government Code.

### **Section 6.04. Capital Recovery Fees.**

(a) The Parties agree that the public infrastructure to be constructed will include all of the capital improvements and facility expansions necessitated by and attributable to the Property; **therefore, pursuant to Section 395.001(4) of the Texas Local Government Code, no impact fees levied by the City will apply to single-family residential lots within the Property.** Instead,

the City and Developer agree to set capital recovery fees ("Capital Recovery Fees") at \$2,500.00 for each of the single-family residential lots. All Capital Recovery Fees will be due and payable by the homebuilder at the time building permits are issued for each of the single-family residential lots.

(b) The City agrees to collect the Capital Recovery Fees in a segregated account held by the City and not comingled with any other funds (the "Capital Recovery Fees Account").

(c) Simultaneously with the execution of this Agreement, the City has entered into that certain "Consent and Development Agreement" (the "Hawk Ridge Agreement") with the Developer for the development of approximately 87.89 acres of land in the corporate limits of the City (the "Hawk Ridge Property").

(d) The City will expend six million five hundred thousand dollars (\$6,500,000) from the Capital Recovery Fees Account and other funds available to the City to construct the Fire Station (as defined in the Hawk Ridge Agreement) on the Hawk Ridge Property.

(d) If the Developer donates or causes to be donated the City Park (as defined in the Hawk Ridge Agreement), the City will expend four million dollars (\$4,00,000) from the Capital Recovery Fees Account and other funds available to the City to improve the City Park for parks and baseball fields on the Hawk Ridge Property.

**Section 6.05. Development Charges and Fees.** Development of the Property shall be subject to payment of the City's building inspection fees and building permit fees for residential and commercial development (collectively, the "Development Fees") according to the fee schedule adopted by the City Council of the City and universally in effect on the date of submittal of each set of plans and specifications. The City agrees to expend the Development Fees for development and construction of a water tower located within the City.

**Section 6.06. Homeowners Association.** The Developer will, in a manner acceptable to the City, create a homeowners' association ("HOA"), which shall be mandatory and shall levy and collect from homeowners annual fees in an amount calculated to maintain the HOA owned improvements within the Property. The HOA shall maintain and operate any open spaces, private amenities, common areas, landscaping, fencing, development signage, and any other common improvements or appurtenances within the Property that are not maintained or operated by the District or the City.

**Section 6.07. Fire and Safety Code.** The Developer agrees to construct or cause to be constructed all buildings in accordance with the applicable fire codes and safety codes approved by the City in effect at the time of platting.

**Section 6.08. Sole Provider of Services.** The Parties intend for the City to be the sole provider for the provision of garbage, animal control, code enforcement, police, fire, and emergency medical services to serve the Property. The District shall, on an annual basis, until such time as the Developer has been reimbursed for one hundred percent (100%) of the Reimbursable Costs, calculate a metric tax millage rate against the assessed values of the Property and remit to the City an annual payment equal to \$0.15 per \$100 of assessed value for provision of City service to the District, including garbage, animal control, code enforcement, police, fire, and emergency



medical services. The City shall provide the same level of services to the Property that it provides within the City's corporate limits.

## **ARTICLE VII DISTRICT AND DISTRICT BONDS**

**Section 7.01.**     **Authority to Issue Bonds.** The District may issue Bonds to reimburse the Developer for expenditures, including the District Improvements.

**Section 7.02.**     **Bond Limit Amount.** The total amount of Bonds issued by the District, excluding refunding Bonds, shall not exceed the amount approved by the voters within the District.

**Section 7.03.**     **Limit of City's Liability.** Unless the City abolishes the District and assumes the assets and liabilities of the District, the Bonds or any other obligations of the District shall never become an obligation of the City. The City's obligations under this Agreement shall not extend beyond its obligations to operate and maintain the District Improvements after conveyance to the City and to use the District Improvements to serve the Property. Nothing herein will prevent the City from using District Improvements to serve customers outside of the District provided that there is sufficient capacity to serve the residents and customers within the District.

## **ARTICLE VIII DISSOLUTION OF DISTRICT**

**Section 8.01.**     **Dissolution.** The City may dissolve the District at any time after the District has issued Bonds to finance Reimbursable Costs paid or incurred to construct the District Improvements that are required to serve full development of the Property. Upon dissolution of the District, the City shall assume the indebtedness and legal obligations of the District to the extent required by law. If the City does not dissolve the District, the Board shall dissolve the District within sixty (60) days after the maturity date of the last series of Bonds issued by the District.

## **ARTICLE IX CONCEPTUAL DEVELOPMENT PLAN**

**Section 9.01.**     **Phased Development.** Developer intends to develop the Property in one or more phases. Portions of the Property not under active development may remain in use as income-producing agricultural lands or as open space land. The Developer may submit a replat or amending plat for all or any portions of the Property in accordance with applicable law.

**Section 9.02.**     **Conceptual Development Plan; Exceptions.** The City hereby confirms (i) its approval of the Conceptual Development Plan, and (ii) that the Conceptual Development Plan complies with the City's General Plan, as amended. The City approves the land uses, densities, exceptions, roadway alignments and widths and other matters shown on the Conceptual Development Plan, and confirms that the Conceptual Development Plan has been approved by all required City departments, boards and commissions.

**Section 9.03.**     **Term of Approvals.** Except as provided below, the Conceptual Development Plan will be effective for the term of this Agreement. Any preliminary subdivision plat or final subdivision plat that is consistent with the Conceptual Development Plan, applicable City ordinances and State law will be effective for the term of this Agreement. The Conceptual

Development Plan will be deemed to have expired if no final plat of the Property is recorded for a period of ten (10) years or ten (10) years expires after the recordation of the last final plat.

**Section 9.04.** **Amendments.** Due to the fact that the Property comprises a significant land area and its development will occur in one or more phases over a number of years, modifications to the Conceptual Development Plan may become desirable due to changes in market conditions or other factors. Variations of a preliminary plat or final plat from the Conceptual Development Plan that do not increase the overall density of development of the Property, will not require an amendment to the Conceptual Development Plan. Minor changes to the items depicted in **Exhibit C**, including minor modifications of street alignments, minor changes in lot lines, the designation of land for public or governmental uses; changes in lot sizes that do not result in an increase in the overall density of development of the Property (including any increase in lot sizes resulting in a decrease in the total number of lots) or any change to a public use, including, but not limited to school use, will not require an amendment to the Conceptual Development Plan or City approval. Major changes to the Conceptual Development Plan must be consistent with the terms of this Agreement and will be subject to review and approval by the City, which will not be unreasonably withheld.

## **ARTICLE X AUTHORITY**

**Section 10.01.** **Authority.** This Agreement is entered into, in part, under the statutory authority of Section 402.104, *Texas Local Government Code* and Section 212.172 of the *Texas Local Government Code*, which authorizes the City to make written contracts with the Developers of land establishing lawful terms and considerations that the parties agree to be reasonable, appropriate, and not unduly restrictive of business activities. The parties intend that this Agreement authorize certain land uses and development on the Property; provide for the uniform review and approval of plats and development plans for the Property; provide exceptions to certain ordinances; and provide other terms and consideration.

## **ARTICLE XI TERM, ASSIGNMENT AND REMEDIES**

**Section 11.01.** **Term.** The term of this Agreement shall commence on the Effective Date of this Agreement and (unless terminated pursuant to ARTICLE II) shall continue until the District is dissolved in accordance with ARTICLE VIII.

**Section 11.02.** **Termination and Amendment by Agreement.** This Agreement may be terminated or amended as to all of the Property at any time by mutual written consent of the City and Developer and, following creation of the District, the District, and may be terminated or amended only as to a portion of the Property by the mutual written consent of the City and the Developers of the portion of the Property affected by the amendment or termination and, following creation of the District, the District containing such portion of the Property. In the event the District is not created, the City and Developer agree that this Agreement shall be *void ab initio* and shall have no force and effect.

**Section 11.03. Assignment.**

(a) This Agreement, and the rights of Developer hereunder, may be assigned by Developer, in whole or in part, without consent but with notice to the City to: (i) any subsidiary, parent company, or other affiliate of Developer, or (ii) a subsequent owner or developer of all or a portion of the Property. Any assignment will be in writing, specifically set forth the assigned rights and obligations and be executed by the proposed assignee. This Agreement may also be collaterally assigned without consent but with notice to the City to any lender providing financing for development of the Property.

(b) If Developer assigns its rights and obligations hereunder as to all or a portion of the Property, then the rights and obligations of any assignee and Developer will be severable, and Developer will not be liable for the nonperformance of the assignee and vice versa. In the case of nonperformance by one developer, the City may pursue all remedies against that nonperforming developer, but will not impede development activities of any performing developer as a result of that nonperformance.

**Section 11.04. Remedies.**

(a) If the City defaults under this Agreement, Developer may enforce this Agreement by seeking damages and/or a writ of mandamus from a Johnson County District Court, or may give notice setting forth the event of default ("Notice") to the City. If the City fails to cure any default that can be cured by the payment of Money ("Monetary Default") within 45 days from the date the City receives the Notice, or fails to commence the cure of any default specified in the Notice that is not a Monetary Default within 45 days of the date of the Notice, and thereafter to diligently pursue such cure to completion, Developer may terminate this Agreement as to all of the Property owned by Developer, or as to the portion of the Property affected by the default; however, any such remedy will not revoke the City's consent to the creation of the District.

(b) If Developer defaults under this Agreement, the City may enforce this Agreement by seeking specific performance from any court of appropriate jurisdiction, or the City may give Notice to Developer. If Developer fails to cure any Monetary Default within 45 days from the date it receives the Notice, or fails to commence the cure of any default specified in the Notice that is not a Monetary Default within 45 days of the date of the Notice, and thereafter to diligently pursue such cure to completion, the City may terminate this Agreement; however, any such remedy will not revoke the City's consent to the creation of the District.

(c) If either party defaults, the prevailing party in the dispute will be entitled to recover its reasonable attorney's fees, expenses and court costs from the non-prevailing party.

**Section 11.05. Cooperation.**

(a) The City and Developer each agree to execute such further documents or instruments as may be necessary to evidence their agreements hereunder.

(b) The City agrees to cooperate with Developer in connection with any waivers or approvals Developer may desire from Ellis County or Johnson County in order to avoid the duplication of facilities or services in connection with the development of the Property.

(c) In the event of any third-party lawsuit or other claim relating to the validity of this Agreement or any actions taken hereunder, Developer and the City agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution in their respective rights and obligations under this Agreement.

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

**Section 12.01.** **Notice.** Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another service guaranteeing “next day delivery”, addressed to the party to be notified and with all charges prepaid; (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement, or (iv) by confirmed facsimile with a confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or 3 days after the date of mailing. Notice given in any other manner will be effective only when received. For purposed of notice, the addresses of the parties will, until changed as provided below, be as follows:

City: City of Venus  
105 East US Highway 67  
Venus, Texas 76084  
Attn: City Administrator  
Email: troberts@cityofvenus.org

With a copy to: The Halla Law Firm, PLLC  
Attn: Michael B. Halla  
187 Rolling Court  
Lancaster, Texas 75146  
mhalla@hallalawfirm.com

Developer: Buffalo Hills Development, LLC  
Attn: Rick Miskimon  
5940 S. West McGee Creek Road  
Lane, Oklahoma 74555  
Email: mrranch@aircanopy.net

With a copy to: Winstead PC  
Attn: Ross Martin  
2728 N. Harwood, Suite 500  
Dallas, Texas 75201  
Email: rmartin@winstead.com

The parties may change their respective addresses to any other address within the United States of America by giving at least five days’ written notice to the other party. Developer may, by giving at least five days’ written notice to the City, designate additional parties to receive copies of notices under this Agreement.

**Section 12.02. Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.

**Section 12.03. Waiver.** Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver thereof or of any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

**Section 12.04. Limited Waiver of Immunity.** The Parties are entering into this Agreement in reliance upon its enforceability. Consequently, the City unconditionally and irrevocably waives all claims of sovereign and governmental immunity they may have (including, but not limited to, immunity from suit) to the extent, but only to the extent, that a waiver is necessary to enforce specific performance of this Agreement (including all of the remedies provided under this Agreement) and to give full effect to the intent of the Parties under this Agreement. Notwithstanding the foregoing, the waiver contained herein shall not waive any immunities that the City may have with respect to claims of injury to persons or property, which claims shall be subject to all of their respective immunities and to the provisions of the Texas Tort Claims Act. Further, the waiver of immunity herein is not enforceable by any party not a Party to this Agreement or any party that may be construed to be a third party beneficiary to this Agreement.

**Section 12.05. Applicable Law and Venue.** The interpretation, performance, enforcement and validity of this Agreement is governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Johnson County, Texas.

**Section 12.06. Entire Agreement.** This Agreement contains the entire agreement of the parties. There are no other agreements or promises, oral or written, between the parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the parties. This Agreement supersedes all other agreements between the parties concerning the subject matter.

**Section 12.07. Exhibits, Headings, Construction and Counterparts.** All schedules and exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice-versa. The parties acknowledge that each of them has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits hereto. If there is any conflict or inconsistency between the provisions of this Agreement and otherwise applicable City ordinances, the terms of this Agreement will control. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the parties.

**Section 12.08.** **Time.** Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.

**Section 12.09.** **Authority for Execution.** The City certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with its City Charter and City ordinances. Developer hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreement of each entity executing on behalf of Developer.

**Section 12.10.** **Force Majeure.** If, by reason of force majeure, either party is rendered unable, in whole or in part, to carry out its obligations under this Agreement, the party whose performance is so affected must give notice and the full particulars of such force majeure to the other party within a reasonable time after the occurrence of the event or cause relied upon, and the obligation of the party giving such notice, will, to the extent it is affected by such force majeure, be suspended during the continuance of the inability but for no longer period. The party claiming force majeure must endeavor to remove or overcome such inability with all reasonable dispatch.

The term “force majeure” means Acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas, or of any court or agency of competent jurisdiction or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, vandalism, explosions, breakage or accidents to machinery, pipelines or canals, or inability on the part of a party to perform due to any other causes not reasonably within the control of the party claiming such inability.

**Section 12.11.** **Amendment.** This Agreement may be amended only with the written consent of all Parties and with approval of the governing bodies of the City and the District.

**Section 12.12.** **Interpretation.** The Parties acknowledge that each Party and, if it so chooses, its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. As used in this Agreement, the term “including” means “including without limitation” and the term “days” means calendar days, not business days. Wherever required by the context, the singular shall include the plural, and the plural shall include the singular. Each defined term herein may be used in its singular or plural form whether or not so defined.

**Section 12.13.** **No Third-Party Beneficiary.** This Agreement is solely for the benefit of the Parties, and neither the City, the District nor the Developer intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the City, the District and Developer.

**Section 12.14. Binding Obligations; Estoppel Certificates.**

(a) **Binding Obligations.** This Agreement shall be recorded in the deed records of Johnson County. This Agreement, when recorded, shall be binding upon the Parties and their successors and assigns permitted by this Agreement and upon the Property; provided, however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property except for land use and development regulations that apply to specific lots. For purposes of this Agreement, the Parties agree (i) that the term “End-Buyer” means any Developer, developer, tenant, user, or occupant, (ii) that the term “fully developed and improved lot” means any lot, regardless of proposed use, for which a final plat has been approved by the governmental authority having jurisdiction and for which all planned and approved improvements have been constructed and accepted to the extent that a building permit may be obtained for such lot, and (iii) that the term “land use and development regulations that apply to specific lots” means the Applicable Regulations.

(b) **Estoppel Certificates.** From time to time upon written request of Developer (or any other developer, tenant, user, or occupant of land within the Property which land is not a fully developed and improved lot owned by an End-Buyer within a fully developed and improved phase), the City will execute a written estoppel certificate to such person or entity (i) identifying the obligations of Developer under this Agreement that have been fully performed, (ii) identifying the obligations of Developer under this Agreement that remain to be performed, including the interim status of any obligations for which performance has begun, (iii) identifying any obligations of Developer under this Agreement that are in default or, with the giving of notice or passage of time, would be in default, and (iv) stating, to the extent true, that to the best knowledge and belief of the City, that Developer is in compliance with their respective duties and obligations under this Agreement.

**Section 12.15. Counterpart Originals.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

**Section 12.16. Exhibits.** The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

|           |                                              |
|-----------|----------------------------------------------|
| Exhibit A | Metes and Bounds Description of the Property |
| Exhibit B | Depiction of the Property                    |
| Exhibit C | Conceptual Development Plan                  |
| Exhibit D | Development Standards                        |
| Exhibit E | Form of Consent Resolution of the City       |
| Exhibit F | Form of District Joinder                     |

**Section 12.17. Anti-Boycott Verification.** The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, ‘boycott Israel’ means 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 specifically with Israel, or with

a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

**Section 12.18. Iran, Sudan, and Foreign Terrorist Organizations.** The Developer hereby represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Developer and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Developer understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

**Section 12.19. Energy Company Verification.** To the extent this Agreement constitutes a contract for goods or services for which a written verification statement is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislative Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent companies, 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 Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies" shall have the meaning assigned to the term "boycott energy company" in Section 809.001, Texas Government Code. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

**Section 12.20. Firearm Entity Verification.** To the extent this Agreement constitutes a contract for goods or services for which a written verification statement is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislative Session, "SB 19"), Texas Government Code, as amended, the Developer hereby verifies that it and its parent companies, wholly- or majority- owned subsidiaries, and other affiliates, if any,

(1) do not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and

(2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene



applicable Texas or federal law. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” shall have the meaning assigned to such term in Section 2274.001(3) (as added by SB 19), Texas Government Code. The Developer understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the dates indicated below.

(SIGNATURE PAGES FOLLOW)

**CITY OF VENUS, TEXAS:**

By: \_\_\_\_\_  
James L. Burgess, Mayor

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name: Callie Green  
Title: City Secretary

STATE OF TEXAS           §  
                                     §  
COUNTY OF JOHNSON   §

Before me on this day personally appeared James L. Burgess, Mayor of the City of Venus, Texas, 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, and in the capacity therein stated.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2023.

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

(SEAL)

**DEVELOPER:**

BUFFALO HILLS DEVELOPMENT, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Rick Miskimon, Managing Member

Date: \_\_\_\_\_

STATE OF OKLAHOMA    §  
                                     §  
COUNTY OF ATOKA     §

Before me on this day personally appeared Rick Miskimon, Managing Member of Buffalo Hills Development, LLC, a Texas limited liability company, 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, and in the capacity therein stated.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public, State of Oklahoma

(SEAL)

## EXHIBIT "A"

### DESCRIPTION OF PROPERTY

#### METES AND BOUNDS DESCRIPTION

**BEING** a 589.1 Acres (25,662,207 Sq. Ft.) tract of land situated in the Leeman Kelsey Survey, Abstract No. 1115, the John C. Pillow Survey, Abstract No. 683, the Richard Rhodes Survey, Abstract No. 715, the Moses Lapham Survey, Abstract No. 499, Johnson County, Texas, and the Leeman Kelsey Survey, Abstract No. 594, Ellis County, Texas, being out of that called 653.25 acres conveyed to Harper Cattle, L.L.C., of record in Volume 1541, Page 941, Deed Records, Johnson County, Texas, (D.R.J.C.T.) and being more particularly described by metes and bounds as follows:

**COMMENCING** at a 1-inch iron pipe found in the centerline of County Road (C.R.) 108 (50 feet wide) marking the northeast corner of a called 50.0 acres conveyed to B.E. Hunt of record in Volume 1040, Page 359, and in Volume 1040, Page 314, D.R.J.C.T.;

**THENCE**, South 59°57'43" West, 1,477.82 feet with the centerline of said C.R. 108 to a MAG. Nail set marking the northwest corner of said 50.0 acres and the northeast corner of the Tract Four 151.45 acres conveyed to Harper Cattle, L.L.C., of record in Volume 2305, Page 40, D.R.J.C.T. and marking the **POINT OF BEGINNING** and northeast corner of the herein described tract;

**THENCE**, South 30°20'17" East, 1,476.39 feet with the west line of said 50.0 acres to a 5/8-inch iron rod found marking the southwest corner of said 50.0 acres tract and an interior corner of said Tract Four 151.45 acres;

**THENCE**, North 59°35'12" East, 1,125.13 feet with the south line of said 50.0 acres to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set in the Midlothian and Venus ETJ line;

**THENCE**, South 53°59'34" East, 440.28 feet with the ETJ line;

**THENCE**, South 48°30'18" East, 90.29 feet with the ETJ line;

**THENCE**, South 50°37'30" East, 431.02 feet with the ETJ line;

**THENCE**, South 30°35'39" East, 603.42 feet with the west line of that called 97.08 acres conveyed to Herbert Manor of record in Volume 708, Page 44, D.R.J.C.T. to a 3/8-inch iron pipe found marking the northeast corner of that called 113.0 acres conveyed to M. M. Vandiver and wife, Grace Vandiver of record in Volume 202, Page 576, D.R.J.C.T.;

**THENCE**, South 59°47'13" West, 2,966.31 feet with the north line of said 113.0 acres to a 5/8-inch iron rod found in the centerline of C.R. 213 (50 feet wide) and the east line of the aforementioned 653.25 Acres and marking the northwest corner of said 113.0 acres;

**THENCE**, with the boundary line of said 653.25 acres the following 22 courses:

1. South 30°05'32" East, 1,165.05 feet with the centerline of said C.R. 213 to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set marking the southeast corner of Tract Two and the northeast corner of Tract Three of said 653.25 acres;
2. South 30°04'38" East, 531.75 feet continuing with the centerline of said C.R. 213, and the east line of said Tract Three to a 1/2" iron pipe found marking the southwest corner of said 113.0 acres and the northwest corner of Tract One of said 653.25 acres;
3. North 59°43'14" East, 2,235.08 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set for corner;
4. South 30°16'46" East, 140.00 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set for corner;
5. South 59°43'14" West, 42.42 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set for corner;
6. South 30°16'46" East, 205.03 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set for corner;
7. South 44°19'27" West, 79.16 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set for corner;
8. South 00°36'23" East, 2,307.10 feet to a 2-inch iron pipe found at the south boundary line of said 653.25 Acres from which a 1/2-inch iron rod marking the northeast corner of called 10.05 acres conveyed to Daniel Jackson recorded in Volume 1838, Page 789 Deed Records Ellis County, Texas (D.R.E.C.T.) bears South 59°51'45" West, at 788.55 feet;
9. South 59°51'37" West, 983.04 feet to a 1/2" iron rod found in the centerline of the aforementioned C.R. 213 marking the southerly most southwest corner of the herein described tract;
10. North 30°03'57" West, 576.28 feet with the centerline of said C.R. 213 to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set marking the southeast corner of the aforementioned Tract Three 172.92 Acres;
11. South 59°46'37" West, 1,883.56 feet passing a 1/2-inch iron pipe found marking the northwest corner of that called 13.00 Acres conveyed to Steven M. Brown of record in Document No. 28756, D.R.J.C.T., for a total distance of 2,618.40 feet to a 1/2-inch iron pipe found marking the northeast corner of the Roger Steve Mullins tract of record in Document No. 41208, D.R.J.C.T.;
12. South 59°38'55" West, 779.62 feet to a 5/8-inch iron rod found marking the southeast corner of that called 46.75 Acres conveyed to B.L. & C.H. Deaver of record in Volume 985, Page 75, D.R.J.C.T. and being the southwest corner of the aforementioned Tract Three 172.92 Acres and the southwest corner of the herein described tract;
13. North 29°18'23" West, 2,109.42 feet with said 46.75 Acres to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set marking the northwest corner of said Tract Three 172.92 Acres and a northwest corner of the herein described tract;

14. North 59°43'55" East, 1,460.94 feet to a 5/8-inch iron rod found marking the southeast corner of that called 55.60 Acres conveyed to W.H. Jackson deed records Volume 372, Page 544, D.R.J.C.T. and being an interior corner of the herein described tract;

15. North 29°19'43" West, 208.37 feet to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set marking the southwest corner of the aforementioned Tract Two 178.10 Acres and the northwest corner of said 653.25 Acres;

16. North 30°06'20" West, 1,759.58 feet with the east line of said 55.60 Acres to a 5/8-inch iron pipe found marking a corner of the herein described tract;

17. North 59°39'41" East, 45.56 feet continuing with said east line of said 55.60 Acres to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set marking a corner of the herein described tract;

18. North 29°59'06" West, 1,186.71 feet continuing with said east line of said 55.60 Acres to a 1/2-inch iron rod with cap stamped "APEX LAND SURVEYING" set marking a corner of the herein described tract;

19. North 29°59'06" West, 1,186.77 feet continuing with said east line of said 55.60 Acres to a MAG. Nail set in the centerline of C.R. 108 marking a northwest corner of said Tract Two 178.10 Acres and in the south line of that called 198.63 Acres conveyed to W. Mabry of record in Volume 365, Page 395, D.R.J.C.T. and a northwest corner of the herein described tract;

20. North 59°42'15" East, 608.98 feet with the centerline of C.R. 108 and the south line of said 198.63 Acres to a MAG. Nail found marking the southwest corner of Tract Three 88.55 Acres and Tract Four 151.45 Acres conveyed to Harper Cattle, L.L.C., of record in Volume 2305, Page 40, D.R.J.C.T. ;

21. North 59°36'31" East, 1,249.30 feet with the centerline of C.R. 108 to a MAG. Nail found;

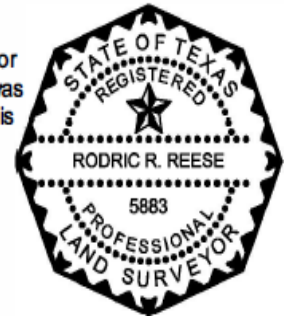
22. North 59°48'55" East, 596.80 feet with the centerline of C.R. 108 to a MAG. Nail set for the southeast corner of said 88.55 Acres.

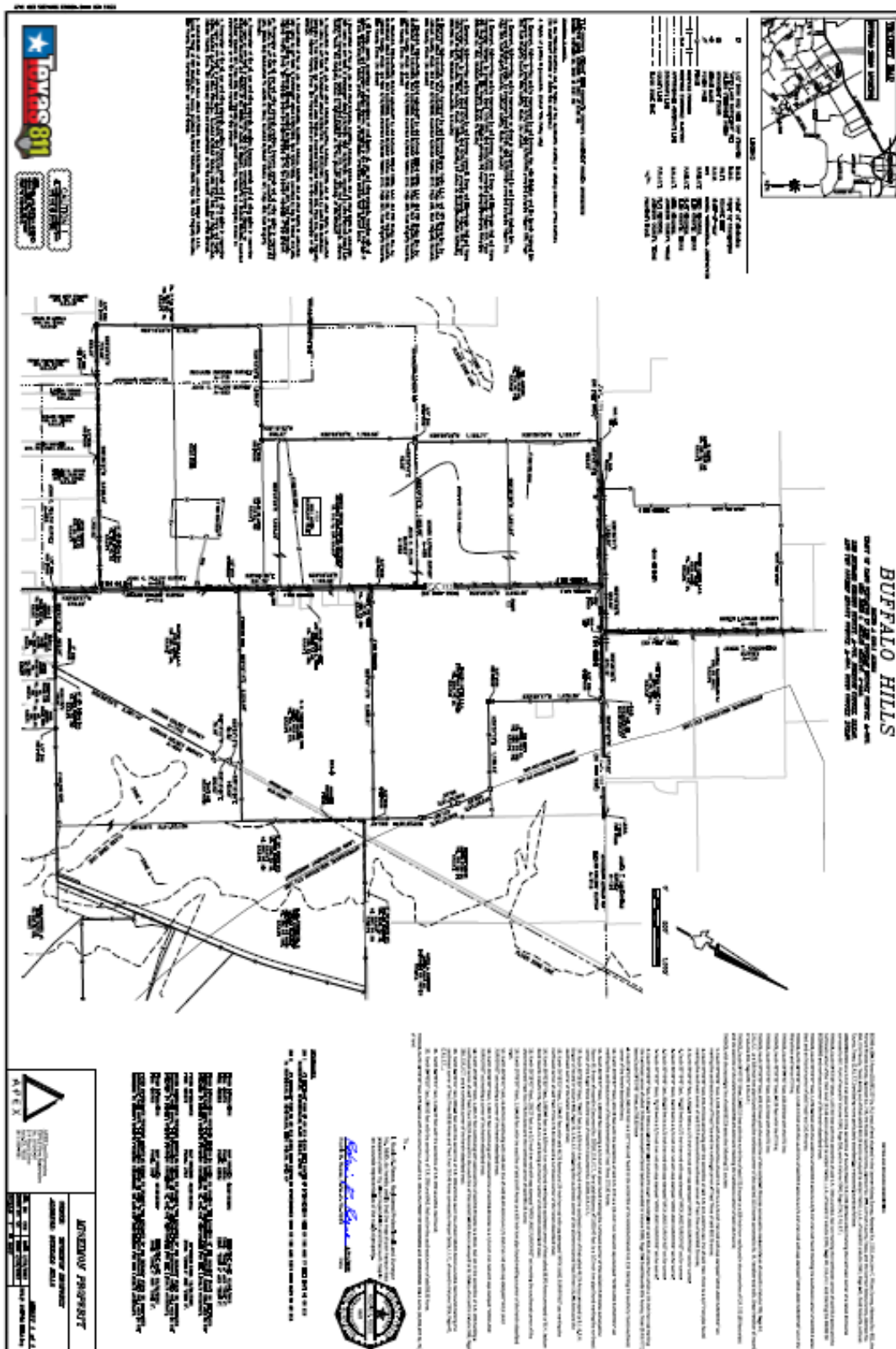
**THENCE**, North 59°35'28" East, 873.19 feet with the centerline of said C.R. 108 to the **POINT OF BEGINNING** and **CONTAINING** 589.1 Acres (25,662,207 Sq. Ft.) of land.

To ..,

I, Rodric R. Reese, Registered Professional Land Surveyor No. 5883, do hereby certify that the map shown hereon was prepared under my direct supervision and that such map is an accurate representation of the subject property.

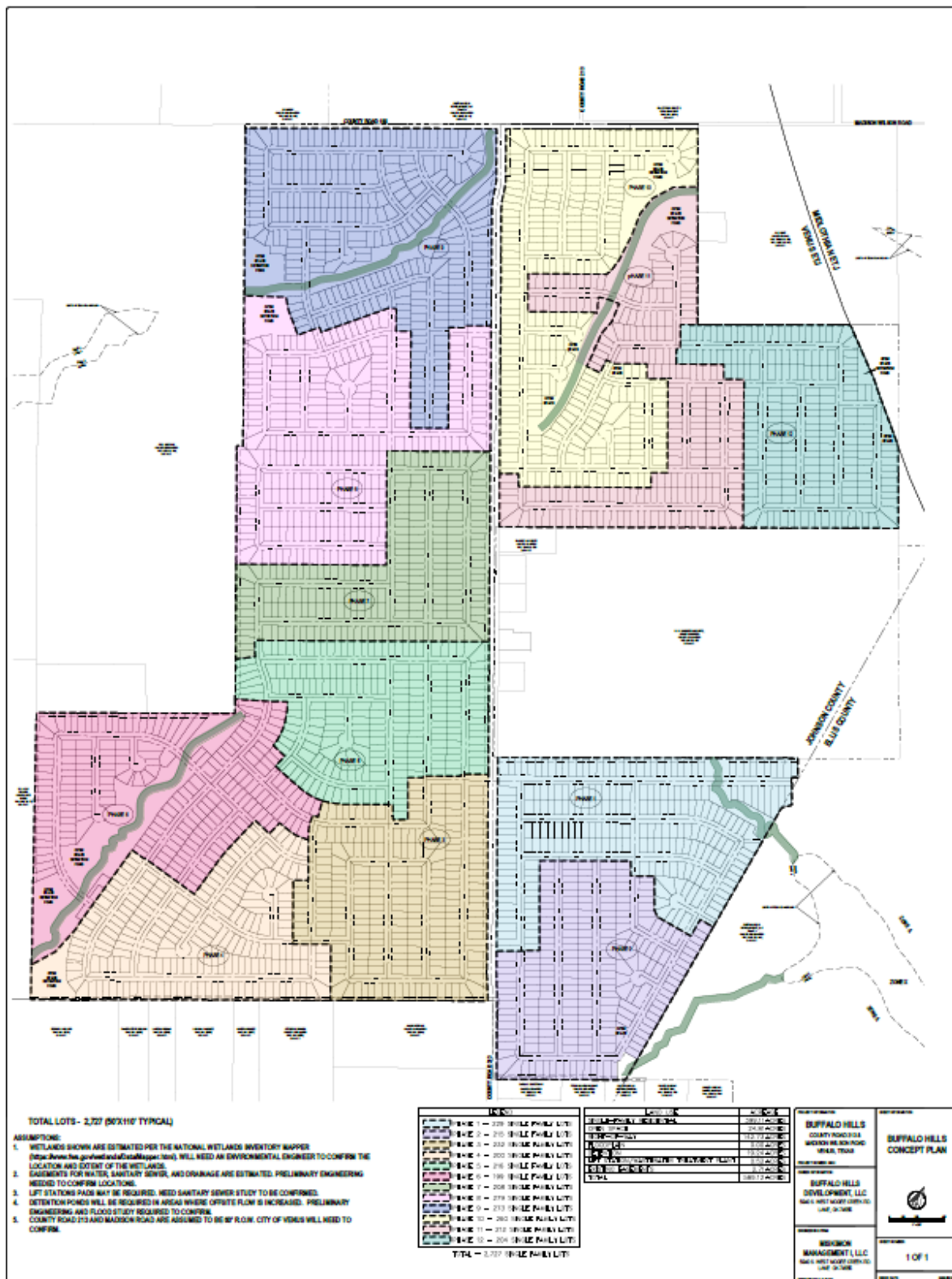
Rodric R. Reese 4/11/2022  
Rodric R. Reese, R.P.L.S. No. 5883 Date







# EXHIBIT "C" CONCEPTUAL DEVELOPMENT PLAN



**EXHIBIT “D”  
DEVELOPMENT STANDARDS**

Approximately 2,727 single family residential lots as shown on Conceptual Development Plan

Typical lot width: 50’

Typical lot depth: 110’



**EXHIBIT “E”  
FORM OF CONSENT RESOLUTION OF THE CITY**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS,  
CONSENTING TO THE CREATION OF A MUNICIPAL UTILITY DISTRICT TO BE  
KNOWN AS BUFFALO HILLS MUNICIPAL UTILITY DISTRICT OF JOHNSON  
COUNTY**

WHEREAS, Buffalo Hills Development, LLC, a Texas limited liability company (“Developer”) is the owner of approximately 589.1 acres of land (“Land”) located within the extraterritorial jurisdiction of the City of Venus (“City”) in Johnson County, Texas;

WHEREAS, Buffalo Hills Municipal Utility District of Johnson County (“District”) is a proposed municipal utility district to be created by special act of the Texas Legislature or the Texas Commission on Environmental Quality;

WHEREAS, the City wishes to evidence its consent to the creation of the District and the inclusion of the Land within the District; and

WHEREAS, the City and the Developer desire to enter into a Consent and Development Agreement regarding the development of the Land within the District, which will be joined by the District.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS:

SECTION 1. That the Mayor is hereby authorized and directed to execute on behalf of the City a Consent and Development Agreement, a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

SECTION 2. The City Council of the City of Venus, Texas hereby grants its consent to and permission for the creation of the District and the inclusion of the Land within the District, and the Mayor and City Secretary are hereby authorized to execute any documents necessary to effectuate this Resolution.

SECTION 3. The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

DULY RESOLVED by the City Council of the City of Venus, Texas, on the \_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor  
APPROVED:

\_\_\_\_\_  
City Attorney

**EXHIBIT “F”  
FORM OF DISTRICT JOINDER**

**JOINDER AGREEMENT**

THIS JOINDER AGREEMENT (the “Joinder Agreement”), dated as of \_\_\_\_\_, 2023, is executed by BUFFALO HILLS MUNICIPAL UTILITY DISTRICT OF JOHNSON COUNTY (“District”), in connection with that certain Consent and Development Agreement (the “Consent Agreement”) entered into by and between the CITY OF VENUS, TEXAS, a type A general law municipality located in Ellis and Johnson Counties, Texas (the “City”) and BUFFALO HILLS DEVELOPMENT, LLC, a Texas limited liability company (the “Developer”), dated effective as of \_\_\_\_\_, 2023. Capitalized terms used herein but not otherwise defined herein shall have the definitions provided in the Consent Agreement.

In accordance with Section 2.02 of the Consent Agreement, a copy of which is attached hereto as Exhibit “A” and incorporated herein for all purposes, the District executes this Joinder Agreement in order to become a Party to the Consent Agreement. Accordingly, the District hereby agrees as follows with City and the Developer:

1. The District acknowledges and confirms that it has received a copy of the Consent Agreement and the schedules and exhibits thereto.

2. The District hereby acknowledges, agrees, and confirms that, by its execution of this Joinder Agreement, the District shall automatically be deemed to be a Party to the Consent Agreement, and shall have all of the rights and obligations of the District with regard to property within the District thereunder as if it had originally executed the Consent Agreement. The District hereby ratifies, as of the date hereof, and agrees to be bound by all of the terms, provisions and conditions contained in the Consent Agreement applicable to it to the same effect as if it were an original Party thereto.

3. This Joinder Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas, and exclusive venue shall lie in Johnson County, Texas.

IN WITNESS WHEREOF, the District has caused this Joinder Agreement to be duly executed by its authorized officer as of the day and year first above written.

**BUFFALO HILLS MUNICIPAL UTILITY  
DISTRICT OF JOHNSON COUNTY**

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

## **RESOLUTION NO. 11-2023-03**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS, CONSENTING TO THE CREATION OF A MUNICIPAL UTILITY DISTRICT TO BE KNOWN AS BUFFALO HILLS MUNICIPAL UTILITY DISTRICT OF JOHNSON COUNTY**

WHEREAS, Buffalo Hills Development, LLC, a Texas limited liability company (“Developer”) is the owner of approximately 589.1 acres of land (“Land”) located within the extraterritorial jurisdiction of the City of Venus (“City”) in Johnson County, Texas;

WHEREAS, Buffalo Hills Municipal Utility District of Johnson County (“District”) is a proposed municipal utility district to be created by special act of the Texas Legislature or the Texas Commission on Environmental Quality;

WHEREAS, the City wishes to evidence its consent to the creation of the District and the inclusion of the Land within the District; and

WHEREAS, the City and the Developer desire to enter into a Consent and Development Agreement regarding the development of the Land within the District, which will be joined by the District.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS:

SECTION 1. That the Mayor is hereby authorized and directed to execute on behalf of the City a Consent and Development Agreement, a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

SECTION 2. The City Council of the City of Venus, Texas hereby grants its consent to and permission for the creation of the District and the inclusion of the Land within the District, and the Mayor and City Secretary are hereby authorized to execute any documents necessary to effectuate this Resolution.

SECTION 3. The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

DULY RESOLVED by the City Council of the City of Venus, Texas, on the 20th day of March, 2023.

ATTEST:

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City Secretary

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Mayor  
APPROVED:

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City Attorney