

August 31, 2017

Mr. Brandon Wade
City Manager
City of Pflugerville
P.O. Box 589
Pflugerville, TX 78691-0589

RE: Professional Expense Reimbursement Agreement

Dear Brandon:

This letter is to memorialize an agreement between the City of Pflugerville, Texas, a municipal corporation ("City"), and The Commons at Heatherwilde & Pecan, LP, a Texas Limited Partnership ("Developer," and together with City, the "Parties"). This Agreement is in connection with joint efforts of the Parties to encourage economic development through improvements made to develop "The Pecan District" (the "Project").

Developer intends to fully develop the properties and requests economic incentives from the City in support of and in connection therewith. The Project development and associated improvements will increase employment, job opportunity, ad valorem real property values and associated tax revenue in an effort to promote economic development of the area and generally improve economic development not only in the community but also in the State of Texas. This Agreement shall be effective upon execution by the Parties and the transfer of funds by Developer to City for use to reimburse the City for professional expense incurred by the City in support of the development of the Project. A copy of this Agreement shall be enforceable as if it is an original.

The Parties agree that in exchange for the efforts to be put forth by City, their employees and representatives, to be performed in the future, Developer shall make an initial deposit of \$50,000.00 with the City Finance Department (the "Reimbursement Account"). The City Finance Department shall independently account for these funds, which shall be used only to reimburse City for the reasonable third-party professional fees and expenses incurred by City in relationship to the Parties' efforts to support, develop and validate, as applicable, mutually acceptable economic development agreement(s), plans, programs, land use design, infrastructure development and any fiscal or funding analysis or methods, or similar efforts expended in support of this Project. The scope of reimbursement shall include third-party professional services, such as legal, land use, financial, engineering, etc. City shall provide written notice to Developer of any professional service engaged, including their rates and their role(s) in the Project, prior to including that professional's expense as one covered by the Reimbursement Account and this Agreement.

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This Reimbursement Agreement shall be applied and related only to this Project and include payments to third-parties engaged by the City to perform work related to this Project. All invoices for services provided in support of the Project and proof of payment for the prior month and statement of account balance for the Reimbursement Account will be provided to Developer on or before the 5th day of each month. At any time that the Reimbursement Account balance reduces below \$5,000.00, Developer shall deposit sufficient funds to return the balance of the account to \$10,000.00 or to an amount agreed to by the parties, within 10 business days.

The Parties acknowledge and agree that the execution of this Agreement and the performance required by this agreement by any party or legal counsel does not establish an attorney-client relationship between legal counsel representing City and any City Affiliate and Developer or any representative thereof. The attorneys of Denton, Navarro, Rocha Bernal & Zech, P.C. serve as City Attorney. The firm does not represent any other parties in this transaction. The Developer acknowledges that it has its own legal counsel and that the Parties shall ultimately rely on their own legal counsel's advice in connection with any and all matters in connection with this Project.

The Parties further agree that any legal invoices (such as those from the City's outsourced City-Attorney's Office) will have redactions, as necessary and determined by the City Attorney's Office, to preserve the attorney-client communication and attorney work product privileges.

All time spent on this project by the City Attorney's Office shall be billed as follows: Name Partners of the Firm shall be charged at the rate of \$325 per hour. All other Partner and Senior Associates shall be charged at \$265 per hour. Associates shall be charged at \$215 per hour and all paralegal time spent on the project shall be billed at the rate of \$125 per hour. All expenses are charged at actual cost, any mileage at the then current IRS reimbursement rate. This Agreement excludes any other fees or expenses incurred by the City for any other legal work for the City. This Reimbursement Agreement only applies to the work performed in connection with the Project.

Any funds remaining in the Reimbursement Account after the Project is determined complete or if terminated, shall be refunded to Developer, without cost, within 30 days of written demand. However, in such an event, the City shall make a demand for final invoices from all third-parties and said 30 day refund date shall be contingent upon timely receipt of final invoices from all third-parties. Upon receipt, it shall first pay all invoices for services up to the date of termination or completion, and refund any remaining balance to Developer. Developer shall remain obligated to fund the Reimbursement Account to reimburse City for all costs incurred prior to completion or termination, regardless of cause for termination or balance of the account at the time of termination. This Agreement may be terminated at any time; however, all costs incurred prior to termination shall be reimbursed by Developer to City. The ability to enforce the

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full and complete reimbursement of all reasonable professional costs paid by the City from Developer shall survive any termination of this agreement.

The Parties agree that the intent of this Reimbursement Agreement is to minimize tax dollars expended in support of a private developer's project, properly placing the risk of loss in the project development on the developer; while at the same time, agreeing that best efforts will be expended by the Parties to incorporate such investment into calculations for incentives in order to provide the Developer the ability to recoup its investment from the development itself, including in the form of incentives used to accelerate and promote the project. Notwithstanding anything herein to the contrary, the Agreement does not guarantee that any development incentives will be granted as a result of this effort and Agreement and that approval of any incentives or future agreements will ultimately remain in the sole and subsequent discretion of the City Council.

Please execute this letter in the space provided below and indicate your representative capacity binding the Corporation. Upon execution, please return this letter with payment of the initial deposit amount to the attention of the City Manager. A copy of this Agreement shall be enforceable as if it is an original. This Agreement may be signed in multiple counterparts, each of which will be considered an original. Venue for any dispute, claim or action under this Agreement shall lie exclusively within Travis County, Texas and shall be construed in accordance with the laws of the State of Texas.

AGREED:

City of Pflugerville, Texas

By: Brandon Wade
City Manager

The Commons at Heatherwilde & Pecan, LP

By: The Commons Land Development Company, LLC,
A Texas limited liability company
Its General Partner

By: Presidium Pflugerville, LLC,
A Texas limited liability company
Its Manager

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By: 

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