

DECLARATION OF WATER EASEMENT AGREEMENT

THIS DECLARATION OF WATER EASEMENT AGREEMENT (this "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by LAMY 1431, LTD., a Texas limited partnership ("Lamy").

ARTICLE I  
Basis For Agreement

The following facts form the basis of this Agreement:

1.1 Lamy is the owner of approximately 37 acres of land, such land being out of the Samuel Damon Survey, Abstract No. 170, City of Cedar Park, Williamson County, Texas and being comprised of (i) Lot 4, Tower Centre Section One, Replat of Lot 1 as recorded in Document No. 2011082770 of the Official Public Records of Williamson County, Texas as conveyed to Lamy's predecessor-in-interest, Lamy-Anderson Lane, L.P., by Special Warranty Deed recorded in Document No. 2014051435 of the Official Public Records of Williamson County, Texas, (ii) a 32.09 acre tract of land as conveyed to Lamy by Special Warranty Deed with vendors lien recorded in Document No. 2014051436 of the Official Public Records of Williamson County, Texas, and (iii) a 2.407 acre tract of land as conveyed to Lamy by Special Warranty Deed recorded in Document No. 2014048908 of the Official Public Records of Williamson County, Texas (the "Lamy Tract").

1.2 Lamy has now re-platted a portion of the Lamy Tract, known as Lots 1-6, Cross Creek Market, Section One, a subdivision in Williamson County, Texas, according to the map or plat thereof recorded in Document No. 2016003695, Official Public Records of Williamson County, Texas, as further depicted on Exhibit A attached hereto (each a "Lot" or collectively as the "Lots"). The term "Property" as used herein shall mean Lots 1,2,5 and 6. The remainder of the Lamy Tract that is not part of the platted Lots is referred to herein as "Tracts 7/8", as depicted on Exhibit A attached hereto.

1.3 The Property shall be developed by Lamy and the owners thereof (such owners sometimes referred to herein collectively as "Owners" and in the singular as an "Owner") and in connection therewith, Lamy desires to create a permanent, non-exclusive private water line easement for the benefit of the Property, which shall be subject to the terms hereinafter set forth.

1.4 Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in that certain Declaration of Restrictions and Easements, dated \_\_\_\_\_, 2016, executed by Lamy (the "Declaration")

NOW, THEREFORE, for and in consideration of the premises and the easements and covenants contained herein, the sufficiency of which is hereby acknowledged, Lamy hereby declares as follows:

ARTICLE II  
Grant of Private Water Line Easement

2.1 Grant of Private Water Line Easement. Lamy hereby grants and creates for the benefit of the Easement Beneficiaries (as defined in Section 2.2 below) for the limited purposes and use set forth herein, a permanent, non-exclusive easement (the “Private Water Line Easement”) for one or more private water lines over and across those areas of the Property described on Exhibit B attached hereto (the “Private Water Easement Area”), for the purposes of conveying water to and from the Property and/or Tracts 7/8.

2.2 Usage of Private Water Line Easement. The Private Water Line Easement shall be interpreted to permit usage of the Private Water Line Easement in common with others on a non-exclusive basis by (a) the Owners of the Property and Tracts 7/8, (b) the successors and assigns of the Owners of the Property and Tracts 7/8, (c) Lamy, (d) the successors and assigns of Lamy, and (e) the agents, employees, customers, guests, patrons, invitees and tenants (including, without limitation, employees, customers, agents and invitees of such tenants) of the Owners of the Property and Tracts 7/8 (the parties described in this Section 2.2, the “Easement Beneficiaries”). Notwithstanding the above, if a private domestic water line is constructed within the Private Water Line Easement, the “Easement Beneficiaries” for the private domestic water line shall be the Owners of Lot 2 only.

2.3 No Obstructions; Compliance with Laws. The Owners and Lamy shall not permit any structure to obstruct the conveyance of water provided by the Private Water Line Easement. In using the Private Water Line Easement, the Easement Beneficiaries shall comply with all applicable laws, codes, ordinances and governmental regulations.

ARTICLE III  
Construction, Maintenance and Repair

3.1 Construction of Private Water Lined. Lamy shall be responsible at its sole cost and expense for the design and construction of a private domestic water line and a shared private water fire line, both of which will be located within the Private Water Line Easement (collectively, the “Private Water Line”), subject to the reimbursement obligations of the Owners, as applicable, as more particularly described in the Declaration.

3.2 Maintenance of Private Water Line. The Private Water Line Easement and the facilities located within the Private Water Line Easement, including the Private Water Line, shall be maintained initially by Lamy pursuant to the Declaration, subject to the reimbursement obligations of the Owners as more particularly described in the Declaration.

3.3 Relocation of Private Water Line. Each Owner shall have the right to relocate the Private Water Line located on its respective property without the consent of any other Owner; provided that such relocation shall not change the point of service for an adjacent Owner. If the relocation will change the point of service for an adjacent Owner, then the Owner trying to relocate the Private Water Line obtain the written consent of the affected Owner(s).

3.4 Satisfaction of Restrictive Covenant Requirement. This Agreement shall satisfy Lamy's obligation to grant utility easements to allow extension of private water utilities pursuant to that certain Restrictive Covenant Regarding Unified Development dated \_\_\_\_\_, 2016 and recorded as Document No. \_\_\_\_\_ in the Official Public Records of Williamson County, Texas.

#### ARTICLE IV

##### Eminent Domain

4.1 Owner's Right to Award. Nothing herein shall be construed to give an Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting such other Owner's tract or giving the public or any government any rights in such other Owner's tract. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of an Owner's tract, the award attributable to the land and improvements of such portion of that Owner's tract shall be payable only to that Owner.

4.2 Collateral Claims. Any Owner may file collateral claims with the condemning authority for its losses with respect to any taking of the Private Water Line Easement on such Owner's tract, which claim is separate and apart from the value of the land area and improvements taken from another Owner.

#### ARTICLE V

##### Modification and Cancellation

Amendments, modifications, and corrections to this Agreement that only affect specific Lots within the Property and/or Tracts 7/8 may be executed by Lamy and the Owner of the affected Lot and/or Tracts 7/8 (as applicable), without the joinder of the Owners of other Lots within the Property or Tracts 7/8 that are not affected by such amendment, modification or correction. Except as provided in the previous sentence, this Agreement may otherwise only be modified or cancelled by written agreement signed by Lamy and all Owners, or their respective successors and assigns, as long as they have any interest as owner of any portion of the Property.

#### ARTICLE VI

##### General Provisions

6.1 No Dedication. No provision of this Agreement shall ever be construed to grant or create any rights whatsoever in or to any portion of the Property or Tracts 7/8 other than the Private Water Line Easement. Nothing in this Agreement shall ever constitute or be construed as a dedication of any interest herein described to the public or give any member of the public any right whatsoever.

6.2 Notice. All notices required or permitted to be given hereunder, or given in regard to this Agreement, shall be in writing and the same shall be given and be deemed to have been served, given and received upon receipt after (a) delivery by hand, when delivered in person at the address set forth hereinafter for the party to whom notice is given, or (b) being mailed, postage prepaid, by certified mail, return receipt requested, addressed to the party at the address hereinafter specified. Any party may change its address for notices by giving five (5) days' advance written notice to the other party hereto in the manner provided for herein. Until changed in the manner

provided herein, the address for notices hereunder is as follows:

To Lamy: Lamy 1431, Ltd.  
Attn: Pete Lamy  
1717 West 6<sup>th</sup> Street, Suite 400  
Austin, Texas 78703  
Telephone: (512) 478-1234  
Facsimile: (512) 684-3801

With a copy to: Cordova Real Estate Ventures  
Attn: Chris Whitworth  
100 Congress Ave., Suite 2000  
Austin, Texas 78701  
Telephone: (512) 956-5600  
Facsimile: (512) 956-5601

With a copy to: Metcalfe Wolff Stuart & Williams, LLP  
Attn: Talley J. Williams  
221 W. 6<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701  
Telephone: (512) 404-2234  
Facsimile: (512) 404-2245

7.3 Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of intent of this document nor in any way affect the terms and provisions hereof.

7.4 Rights of Successors. The benefits and obligations of the easement created hereunder shall constitute benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the Owners, their respective heirs, representatives, lessees, successors and assigns.

7.5 Easement Not Exclusive. The Private Water Line Easement is not exclusive and Lamy, while Lamy owns all the Property and/or Tracts 7/8, hereby reserves the right to grant such other easements, rights or privileges to such persons and for such purposes as Lamy may determine in its sole discretion, so long as such purposes do not unreasonably interfere with the Private Water Line Easement.

7.6 Enforcement. Any Owner shall have the right to enforce, by any proceeding at law or in equity, including specific performance, the easements and covenants imposed by this Agreement. Failure to enforce any easement or restriction created in this Agreement shall in no event be deemed a waiver of the right to do so thereafter.

7.7 Conformity with All Applicable Laws. Nothing in this Agreement shall be construed as requiring or permitting any person or entity to perform any act or omission in violation of any local, state or federal law, regulation or requirement in effect at the time the act or omission

would occur. Provisions in this Agreement which may require or permit such violation shall yield to the law, regulation or requirement.

7.8 Severability. If any part of this Agreement or the application of this Agreement or set of circumstances is for any reason held to be unconstitutional, invalid, or unenforceable, the validity of the remaining portions of this Agreement shall not be affected thereby. All provisions of this Agreement are, therefore, severable for the purpose of maintaining in full force and effect the remaining provisions of this Agreement.

7.9 No Merger. It is expressly understood and agreed that the parties hereto do not intend that there be, and there shall in no event be, a merger of the dominant and servient tenements in the Property by virtue of the present or future ownership of any portion of said tenements being vested in the same person(s) or entity, but instead intend that the easement servitudes shall not be extinguished thereby and that said dominant and servient tenements be kept separate.

EXECUTED to be effective as of the date first above written.

*(Signature Page Follows)*

*(Signature Page to Declaration of Private Water Line Easement Agreement)*

LAMY:

LAMY 1431, LTD.,  
a Texas limited partnership

By: LAMY GP CORP.,  
a Texas corporation  
its general partner

By: \_\_\_\_\_  
Peter A. Lamy, President

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF TRAVIS    §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2016, by Peter A. Lamy, President of LAMY GP CORP., a Texas corporation, general partner of LAMY 1431, LTD., a Texas limited partnership, on behalf of said limited partnership.

**CONSENT OF MORTGAGEE**

The undersigned financial institution, being the owner and holder of an existing mortgage lien upon and against the land and property described as the Lamy Tract in the foregoing Declaration of Water Easement Agreement, hereby consents to the Declaration of Water Easement Area and subordinates its lien to the terms and conditions of the Declaration of Water Easement Area.

This consent shall not be construed or operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof.

LIENHOLDER:

Texas Capital Bank

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

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

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

**\*\*\*\*\* NOTARY ACKNOWLEDGEMENTS \*\*\*\*\***

The foregoing instrument was executed before me by \_\_\_\_\_, \_\_\_\_\_ of Texas Capital Bank on this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

(Seal and Expiration)

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

**EXHIBIT A**

Description of Property



**EXHIBIT B**

Description of Private Water Easement Area