

STATE OF TEXAS /  
 /  
COUNTY OF BASTROP /  
 /  
CITY OF BASTROP /

## NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement (“Agreement”) is entered into between the **City of Bastrop, Texas (City)** and **Capstick Development Group, Ltd (Capstick)**, the parties. The parties agree as follows:

- 1. Purpose.** The parties have expressed an interest in the possible conveyance of certain real property commonly referred to as Pine Forest Unit 6, located in Bastrop County, Texas. The parties have also stated a willingness to to engage in negotiations regarding the development of the real property, including annexation and the rules and regulations that would apply to platting, building construction, infrastructure, and utilities. In the course of discussing certain matters related to exploring this potential real estate acquisition and regulatory opportunity between the parties (the “Purpose”), the parties anticipate sharing with each other sensitive data vital to each party performing its due diligence. The purpose of this Agreement is to prevent the unintended or unauthorized public disclosure of that sensitive data because inadvertent release of the material could have the effect of thwarting the desired transaction.
- 2. Confidential Information.** Data related to a party’s ability or willingness to engage in a transaction involving real property that has been identified as confidential, privileged, internal, or would be understood to be confidential by a reasonable person under the circumstances (“Confidential Information”). Confidential Data can include proprietary data, internal business operations data, real estate data, financial data, contracts, etc. A party granting access to its Confidential Information is the the “Disclosing Party” and the party being provided access to that data is the “Recipient”.
- 3. Limitation.** The parties acknowledge the execution of this Agreement only applies to the Purpose and does not constitute a commitment, agreement, partnership, joint venture or contract for any other matter.
- 4. Use.** The Recipient may use Confidential Information only for the Purpose and not for any other reason.
- 5. Protection.** The Recipient agrees to protect and preserve the confidentiality of the Confidential Information in the same manner it protects the confidentiality of its own similar confidential information, but in no event using less than a reasonable standard of care. The Recipient will restrict access to the Confidential Information to its personnel (and personnel of its affiliates) engaged in a use permitted by this Agreement, provided that such personnel are bound by obligations of confidentiality substantially similar to the terms

of this Agreement. The Recipient will not remove or obliterate markings (if any) on Confidential Information indicating its proprietary or confidential nature.

- 6. Ownership.** Confidential Information disclosed under this Agreement will remain the property of the Disclosing Party. The Disclosing Party does not grant any express or implied license or right to use its Confidential Information beyond the Purpose stated in this Agreement.
- 7. Archival.** The Recipient may retain, subject to the terms of this Agreement, a copy of the Confidential Information as required for compliance with its internal recordkeeping requirements. The Recipient may retain copies of Confidential Information located on electronic back-up devices in accordance with the Recipient's normal procedures for backing-up data and such back-up devices are not accessible to employees or officers of the Recipient other than those employees and officers whose duties relate to information technology support for the Recipient.
- 8. Exceptions.** Nothing in this Agreement prohibits or limits Recipient's use of any material:
  - (a) previously known to the Recipient, before it was received from the Disclosing Party without an obligation not to disclose such information,
  - (b) independently developed by the Recipient without use of the Confidential Information,
  - (c) acquired by the Recipient from a third party which was not, to the Recipient's knowledge, under an obligation to the Disclosing Party not to disclose such information, or
  - (d) which is or becomes publicly available through no breach of this Agreement by the Recipient.
- 9. Compelled Disclosure.** If Recipient receives a subpoena, a request for information under the Texas Public Information Act, or any validly issued administrative or judicial process requesting Confidential Information, the Recipient will promptly notify the Disclosing Party. Unless the demand is timely limited, quashed, or extended, the Recipient will then be entitled to comply with such demand to the extent required by law. If requested by the Disclosing Party (or its representative), the Recipient will reasonably cooperate (at the expense of the Disclosing Party) in responding to such a demand.
- 10. Other Rights.** Nothing in this Agreement will prohibit or restrict either party's right to develop, use, or market products or services similar to or competitive with those of the other party disclosed in any Confidential Information as long as it does not breach this Agreement. Each party acknowledges that the other party may already have products or services similar to or competitive with those disclosed in the Disclosing Party's Confidential Information.
- 11. Publicity.** Neither party may use the name, trade name, trademark, logo, acronym, or other designation of the other party externally in connection with any press release, advertising, publicity materials or otherwise without the prior written consent of the other party. The

parties may agree on public statements, press releases, or comments to the media regarding the Purpose of this Agreement.

**12. Dispute Resolution.** The parties agree that any disputes under either state or federal law, in any way related to this Agreement will be submitted first to nonbinding mediation. Should mediation fail, the parties may thereafter avail themselves of any and all remedies provided under the laws of the State of Texas.

**13. Entire Agreement.** This Agreement sets forth the entire understanding between the parties with respect to its subject matter, and supersedes all prior agreements, conditions, warranties, representations, arrangements, and communications, whether oral or written, and whether by either party, any of their affiliates, or any of their employees, officers, directors, agents, or shareholders. This Agreement may be executed by facsimile and in any number of counterparts, each of which will be considered an original for all purposes, and all of which when taken together will constitute one agreement binding on the parties, notwithstanding that both parties are not signatories to the original or the same counterpart.

**14. Assignment & Waiver.** Neither party may assign its rights or delegate its duties or obligations under this Agreement without prior written consent of the other party. A waiver of any provision of this Agreement is not effective unless it is in writing and signed by the party against which the waiver is sought to be enforced. The delay or failure by either party to exercise or enforce any of its rights under this Agreement will not constitute or be deemed a waiver of that party's right to thereafter enforce those rights, nor will any single or partial exercise of any such right preclude any other or further exercise of these rights or any other right.

**15. Modification.** This Agreement can only be modified by the mutual written agreement of the parties. If a court of competent jurisdiction or arbitral panel finds any term or provision of this Agreement to be invalid, illegal, or otherwise unenforceable, such term or provision will be deemed modified to the extent necessary in the court's or panel's option to render such term or provision enforceable, while preserving to the fullest extent permissible, the intent and agreements of the parties as provided in this Agreement. If such term or provision is unable to be modified, the invalidity of that term or provision, in whole or part, of this Agreement will not affect the remainder of that provision or this Agreement. Nothing in this Agreement is intended to confer on any third party any benefit or any right to enforce any term of this Agreement.

**16. Term.** This Agreement shall remain in effect while all negotiations and the performance of due diligence remains ongoing. This Agreement shall automatically expire on February 1, 2024, if not mutually terminated or renewed earlier by the parties. Recipient's obligations with respect to any Confidential Information will survive for a period of one (1) year after any expiration or termination of this Agreement.

**17. Governing Law & Venue.** This Agreement will be governed by and construed in accordance with the laws of the *State of Texas*, without giving effect to conflict of law rules. Venue for any action arising out of this Agreement will lie in a court of competent

jurisdiction in *Bastrop County, Texas*.

**18. Effective Date.** This Agreement shall be effective on the date of the last signature below (“Effective Date”)

**CITY OF BASTROP:**

**CAPSTICK DEVELOPMENT GP, LLC:**

by: \_\_\_\_\_

by: \_\_\_\_\_

Name: Sylvia Carrillo

Name: Geoffrey S. Connor

Title: City Manager

Title: Manager

date: \_\_\_\_\_

date: \_\_\_\_\_

address:

1311 Chestnut Street

Bastrop, TX 78602

Phone: (512) 332-8800

address:

1404 Wilson Street

Bastrop, Texas 78602

Phone: (512) 426-9320