

STATE OF TEXAS

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COUNTY OF HAYS

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AMENDMENT #1

to the

**AGREEMENT CONCERNING CREATION AND OPERATION
OF HAYS COUNTY MUNICIPAL UTILITY DISTRICT NO. 4
AND LANDS WITHIN THE DISTRICT**

This Amendment is hereby approved and agreed upon thus modifying the AGREEMENT CONCERNING CREATION AND OPERATION OF HAYS COUNTY MUNICIPAL UTILITY DISTRICT NO. 4 AND LANDS WITHIN THE DISTRICT ("Agreement"), made and entered into by and between the City of Dripping Springs, Texas ("City"), Hays County Municipal Utility District Number 4 ("MUD No. 4"), and 194 Bush, Ltd., which was executed on July 25, 2002.

WHEREAS, pursuant to Texas Local Government Code Section 42.042 and Texas Water Code section 54.016, the City of Dripping Springs consented to the creation of MUD No. 4 through the enactment of Resolution 2002-9 on July 23, 2002; and

WHEREAS, pursuant to Texas Constitution Article XVI, Section 59, and Texas Water Code Chapters 49 and 54, the Texas Natural Resource Conservation Commission (now the "Texas Commission on Environmental Quality" or "TCEQ") granted the application for creation of MUD No. 4 through enactment of an Order enacted July 3, 2003; and

WHEREAS, market conditions and regulatory circumstances have evolved to the point that modifications to the Agreement are warranted.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth below and in this Amendment to the Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, Article II (PROJECT LAND USE AND DEVELOPMENT) of the Agreement is hereby amended as follows:

A. By inserting Section 10, which shall read as follows and be incorporated into the Agreement hereafter for all intents and purposes:

Section 10.

- (a) The Cumulative Total Impervious Cover on the entirety of the Property shall not exceed 50%.
- (b) The impervious cover on any single commercial, industrial, single-family, or multifamily residential lot or undivided tract located within the Property shall not exceed 80%.
- (c) The allotment of impervious cover among lots or undivided tracts is matter left solely to the discretion of 194 Bush, Ltd., and is not addressed herein. Any negotiations or contracts regarding the allotment of impervious cover among owners or tenants of lots or undivided tracts are deemed private property matters outside the scope of this Agreement.
- (d) The Cumulative Total Impervious Cover will be calculated as each parcel within the Property is platted. An Impervious Cover Chart will accompany each plat application verifying:
 - (1) the current Cumulative Total Impervious Cover as of the date of submission;
 - (2) the proposed allotment of impervious cover for the parcel(s) being platted or developed; and
- (e) An Environmental Assessment will be included with every site plan for the commercial phase submitted to the City documenting any and all critical environmental features (CEFs), environmental concerns, slopes or drainage concerns.
- (f) The pervious areas of the Project (i.e., the portions without impervious cover) must be vegetated (either natural or re-vegetated) immediately after development. The vegetation must be maintained in perpetuity.
- (g) The City Council is authorized under this Agreement to deny plat approval and/or deny site plan approval for a proposal's failure to comply with the terms stated above.
- (h) The City's Site Development Ordinance (52B) shall remain in full force and effect, and applicable to the Project, excepted as expressly provided for in this Agreement. The requirements of 52B notwithstanding, the Project is allowed six-foot (6') cuts (i.e., cut and fills) for work performed in accordance with a City-approved site plan. This section creates a limited modification that does not otherwise affect the remaining requirements of 52B.

- B. By inserting Section 11, which shall read as follows and be incorporated into the Agreement hereafter for all intents and purposes:

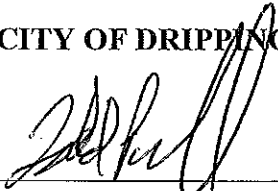
Section 11. The undersigned landowner has reviewed the Strategic Partnership Agreement (“SPA”) entered into between the City and the District, and does not object to the terms of that SPA, and agrees that the Sales and Use Tax to be levied under the SPA is an exception to the Agreement’s Paragraph 8 restriction on the City’s ability to levy taxes within the District.

- C. By inserting Section 12, which shall read as follows and be incorporated into the Agreement hereafter for all intents and purposes:

Section 12. The Project is subject to the updated national and international building codes (including but not limited to electrical, plumbing, mechanical or energy standards), referenced in the City’s Code of Ordinances, Volume 2, Article 15, Chapter 2, (as recodified) that are generally applicable in the City Limits. The Project shall not be subject to local municipal amendments to the standard national and international codes if such amendments have the effect substituting local specifications for construction that deviate from the uniform specifications generally published by the national and international code councils.

IN WITNESS HEREOF, each of the parties has caused this Amendment to the Agreement to be executed by its undersigned duly authorized representative, in multiple counterparts, each of which shall be deemed an original, as of the date(s) indicated below, it being understood that all parties need not sign the counterparts and all such counterparts shall together constitute one and the same instrument.

CITY OF DRIPPING SPRINGS:

by: 

Todd Purcell, Mayor

BEFORE ME, the undersigned authority, this day personally appeared **Todd Purcell**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged before me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of the City of Dripping Springs.

GIVEN UNDER MY HAND & SEAL of office this, the 14th day of September 2010.



Notary Public in & for the State of Texas



194 BUSH, LTD:

by: Michael L. Schoenfeld
Michael L. Schoenfeld, Vice President
DH Real Estate Investment Company
d/b/a DH Investment Company,
a Texas corporation, General Partner

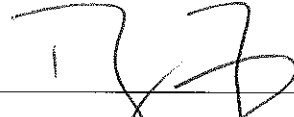
BEFORE ME, the undersigned authority, this day personally appeared **Michael L. Schoenfeld**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged before me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of 194 Bush, Ltd., by and through its General Partner, DH Real Estate Investment Company (d/b/a DH Investment Company).

GIVEN UNDER MY HAND & SEAL of office this, the 13th day of October 2010.



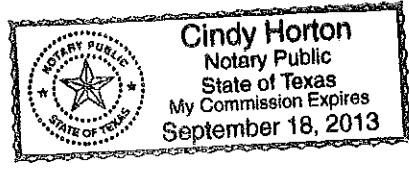
Cindy Horton
Notary Public in & for the State of Texas

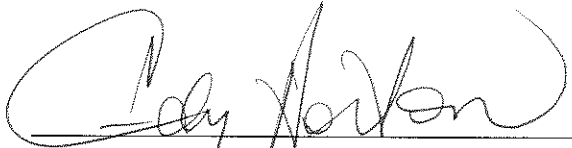
HAYS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 4:

by: 
VICE PRESIDENT

BEFORE ME, the undersigned authority, this day personally appeared Ryan Ziehe, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged before me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of the Hays County Municipal Utility District Number 4.

GIVEN UNDER MY HAND & SEAL of office this, the 13th day of October 2010.




Notary Public in & for the State of Texas