

RESOLUTION NO. 17-1703

**RESOLUTION BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA,
TEXAS AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT FOR
PUBLIC PARK FACILITIES OPERATION AND MAINTENANCE SERVICES**

WHEREAS, pursuant to the terms of the August 16, 2012 Restated Development Agreement for Tessera on Lake Travis (“Development Agreement”), the Park Developer, Hines Lake Travis Land II Limited Partnership agreed to pay all costs for the operation and maintenance of public park facilities within Tessera on Lake Travis; and

WHEREAS, Park Developer has used \$1.7 million of proceeds for the bonds sold which were used to fund the construction of the public park facilities as described more fully in Exhibit A, The Agreement for Public Park Facilities Operation and Maintenance Services; and

WHEREAS, pursuant to the 2015 SAP, 2.146 million in bond proceeds have been spent on public park facilities; and

WHEREAS, Park Developer has or will expend more than \$585,000.00 to complete the construction of the public park facilities which are to be conveyed to the City in accordance with the terms of the Development Agreement; and

WHEREAS, the Tessera on Lake Travis Homeowner’s Association, Inc. (“HOA”) will be responsible for the operation and maintenance of the Public Park Facilities; and

WHEREAS, the terms of Exhibit A comport with the Bond Indentures for the PID Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, THAT:

SECTION 1. The above recitals are hereby found to be true and correct and incorporated herein for all purposes.

SECTION 2. The City Council of the City of Lago Vista, Texas does hereby authorize the Mayor to execute the Agreement for Public Park Facilities Operation and Maintenance Services, which is attached hereto as Exhibit A and incorporated herein for all purposes.

SECTION 3. This Resolution shall be in full force and effect from and after its passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, ON THE 15th DAY OF JUNE, 2017.



ATTEST

Sandra Barton

Sandra Barton, City Secretary

CITY OF LAGO VISTA

Dale Mitchell

Dale Mitchell, Mayor

**AGREEMENT FOR
PUBLIC PARK FACILITIES OPERATION AND MAINTENANCE SERVICES**

THIS AGREEMENT FOR OPERATON AND MAINTENANCE SERVICES FOR PUBLIC PARK FACILITIES (“Agreement”) is made and entered into to be effective this 15th day of June, 2017, by and among the **CITY OF LAGO VISTA**, a home rule municipal corporation situated in the State of Texas (hereinafter referred to as “City”), **HINES LAKE TRAVIS LAND II LIMITED PARTNERSHIP**, a Texas limited partnership (hereinafter referred to as the “Park Developer”) and **Tessera on LAKE TRAVIS HOMEOWNER’S ASSOCIATION, INC.**, a Texas non-profit corporation (“HOA”).

RECITALS

WHEREAS, pursuant to Section 4.05(b) of the August 16, 2012 Restated Development Agreement for Tessera on Lake Travis (“**Development Agreement**”), Park Developer agreed to enter into an agreement with City that would bind Park Developer to pay all costs for the operation and maintenance public park facilities within the Tessera on Lake Travis development (“**Tessera**”) until the HOA has sufficient revenues to fund such activities;

WHEREAS, pursuant to the October 4, 2012 Tessera on Lake Travis Public Improvement District Financing Agreement Between Hines Lake Travis Land Limited Partnership, Park Developer and the City (“**Financing Agreement**”), proceeds from bonds sold by the Tessera on Lake Travis Public Improvement District (“**PID Bonds**”) in the amount of \$1.7 million were used to fund the construction of the public park facilities described in the Service and Assessment Plan (“**SAP**”) adopted by the City Council in November 2012 (“**PID Park Facilities**”);

WHEREAS, the 2015 SAP states that \$2.146 million in bond proceeds have been spent on public park facilities;

WHEREAS, Park Developer has or will expend more than \$585,000.00 to complete the construction of the public park facilities described herein (“**Public Park Facilities**”);

WHEREAS, the Public Park Facilities have been constructed and Park Developer will convey the Public Park Facilities to the City in accordance with the terms of the Development Agreement;

WHEREAS, pursuant to Article 8 of the Development Agreement, the HOA is to be responsible for the operation and maintenance of the Public Park Facilities;

WHEREAS, the City has not expended any City funds to construct the Public Park Facilities and is not obligated to accept the Public Park Facilities unless Park Developer and the HOA enter into this Agreement; and

WHEREAS, the terms of this Agreement must comport with the Bond Indentures for the PID Bonds.

NOW, THEREFORE, for and in consideration of the above stated premises and the mutual promises and covenants set forth herein, the Parties agree as follows:

**SECTION 1
PUBLIC PARK FACILITIES**

1.01 The Public Park Facilities subject to this Agreement are:

- a. Approximately 6,840 linear feet of improved hike and bike trails situated on approximately 3.14 acres of public trail easements (“**Trail Facilities**”);
- b. An approximately 2.18 acre area containing the Public Park Facilities except for the Trail Facilities (“**Park Area**”);
- c. The concrete ADA ramp from the Park Area to Turnback Pointe;
- d. Parking lot containing 25 parking spaces located within the Park Area;
- e. Approximately 2,006 square foot pavilion with restrooms located on the Park Area outside of the Fenced Pool Area (“**Pavilion**”);
- f. Showers outside of the Fenced Pool Area; and
- g. Swimming pool and water recreation facilities located within an approximately 9,600 square foot fenced area (“**Fenced Pool Area**”) located within the Park Area.

1.02 Combined, the Public Park Facilities are located on approximately 5.323 acres of land (“**Public Park Area**”).

1.03 Except for the Fenced Pool Area and reserved use of the Pavilion, the Public Park Facilities, including the restroom facilities in the Pavilion and the showers, will be available for use by residents and non-residents of Tessera (the “**General Public**”) at all times that the Public Park Facilities are open for use, as specified in the applicable Park Rules defined in Section 2.01 below. The Pavilion will be available for use by the General Public at all times that the Trail Facilities are open for use except when the Pavilion has been properly reserved in advance for a specific event or function in accordance with the Pavilion Use Rules. The Fenced Pool Area will be available for use by the General Public during General Public Swimming Hours as set forth in the Pool Rules attached hereto as Exhibit “B”.

1.04 Landscaping, including trees planted by the Park Developer or the HOA on the Park Lot and public trail easements, have not been conveyed to the City and remain the property of the HOA.

SECTION 2 DUTIES AND RESPONSIBILITIES

2.01 The City hereby authorizes the HOA to maintain and operate the Public Park Facilities subject to the terms of this Agreement subject to budget attached hereto as Exhibit “D”. The Public Park Facilities shall be operated in accordance with the **“Trail Rules”** attached hereto as Exhibit “A”, the **“Pool Rules”** attached hereto as Exhibit “B”, and the **Pavilion Use Rules** attached hereto as Exhibit “C” (collectively **“Park Rules”**).

2.02 The HOA will operate and maintain the Park Facilities in accordance with this Agreement and its attachments and all applicable laws; provided, however, that the HOA may contract with a third party to provide all or some of the services described herein.

2.03 The HOA will, without cost to the City, provide the following services for the Public Park Facilities:

- a. Pay for all electric, water, wastewater and any other utility services.
- b. Collect and properly dispose of all trash, garbage, litter, and debris.
- c. Operate and maintain the swimming pool, related pool equipment, plumbing fixtures and showers.
- d. Operate and maintain the Pavilion, including the restrooms.
- e. Maintain the fencing around the swimming pool.
- f. Provide life guards during hours that the swimming pool is available to the General Public.

2.04 The City and the HOA anticipate that the Park Rules may need to be adjusted as use of the Park Facilities increases overtime. Modification of the Park Rules will be adopted in accordance to the provisions of this Section 2.04 and the agreement amendment requirements of Section 18.02 of this Agreement shall not apply. The HOA may modify the Park Rules and adopt additional rules regarding use of the Public Park Facilities, as it deems appropriate, for the safety of people and pets using the Public Park Facilities and for the protection of the Public Park Facilities. Except in emergency situations, the HOA will provide the City a copy of all proposed new rules and rule modifications no less than 30 days and no more than 60 days before the HOA proposes to implement such new and modified Park rules. If the City does not concur with the proposed new and modified Park Rules, the City shall so notify the HOA of the City’s non-concurrence within twenty (20) days of the City’s receipt of the proposed changes to the Park Rules. Within ten (10) days of the delivery of the City’s notice of non-concurrence, authorized representatives of the City and HOA will meet and will negotiate in good faith to resolve issues raised by the City. If the HOA believes that an impasse with City staff exists regarding a proposed park rule, the HOA may request a resolution of the impasse at the next scheduled City Council meeting, subject to compliance with the Texas Open Meetings Act. If the City does not deliver a notice of non-concurrence to the HOA within the above described twenty (20) day notice period, it will be deemed that the City concurs with the proposed changes to the Park

Rules and the HOA may implement the modified Park Rules on the effective date provided in the notice of proposed change to Park Rules.

2.05 The HOA may, at its sole discretion, temporarily modify the Park Rules to protect people and pets using the Public Park Facilities and for the protection of the Public Park Facilities. The procedures for modifying Park Rules, as set forth in Section 2.04 shall not apply during emergency or potential emergency conditions, including, flooding, increased risk of wildfire, and inclement weather.

2.06 The HOA shall have sole authority regarding the placement of signs setting forth the Park Rules on the lot where the Fenced Pool Area and pavilion are located. The HOA shall have sole responsibility for operating and maintaining electric security devices in and around the Fenced Pool Area and the Pavilion.

2.07 Neither the Park Developer nor the HOA shall have any obligation to fund private or public security patrols of the Public Park Facilities. Life guards on duty at the swimming pool are authorized to determine whether a person is complying with Pool Rules. Instructions from and decisions by a lifeguard, including, an instruction to leave the Fenced Pool Area and denial of entry into the Fenced Pool Area shall be final. The City will assist the HOA and the life guards in enforcing the Pool Rules if a person, after a request and a warning, refuses to follow the instructions of a life guard. A person who refuses to leave the Fenced Pool Area at the instruction of the HOA or a life guard may, at the discretion of the HOA or a life guard, be denied entry into the Fenced Pool Area for a period of the thirty (30) days. The City will not issue a pool pass to any person who has been instructed to leave the Fenced Pool Area after failure to obey instructions from a life guard if the HOA has notified the City of the person's identity.

2.08 The Park Developer shall, as required by the Development Agreement, provide funding to the HOA for all the costs of operating and maintaining the Public Park Facilities until such time that Park Developer assigns all of the financial obligation to fund operation and maintenance costs to the HOA. Other than providing funding, the Park Developer has no responsibility for the operation and maintenance of the Public Park Facilities or HOA owned property. Nothing in this Agreement shall be construed or interpreted as creating any agreements between Park Developer and the HOA.

2.09 In accordance with the "facility basis" methodology described in the November 1, 2011 Memorandum by McCall, Parkhurst & Horton L. L. P. ("**City Bond Counsel**") attached as Exhibit B to the Federal Tax Certificate signed in conjunction with the PID Bonds, the City has determined that the use of the Public Park Facilities as allowed and described in the Park Rules do not constitute a "private business use" as described in Section 141(b)(6) of the Internal Revenue Code.

2.10 The HOA understands that the City has financed the Public Park Facilities with proceeds of the PID Bonds, the interest of which is excludable from "gross income" for federal income tax purposes, and that, therefore, this Agreement has to comply with the management contract's safe-harbor guidelines of Rev. Proc. 2017-13, I.R.B. 2017-6, as amended and superseded

("Guidelines"). The HOA agrees that it is not entitled to and will not take any tax position that is inconsistent with being a service provider to the City with respect to the Project. In furtherance thereof, the HOA agrees not to claim any depreciation or amortization deduction, investment tax credit, or deduction that an owner would otherwise be allowed with respect to the Public Park Facilities. The HOA and the City agree to make a good-faith effort to amend this Agreement, to the extent necessary to ensure compliance with the Guidelines.

SECTION 3 TERM OF AGREEMENT

3.01 This Agreement has an initial term of three (3) years beginning on the Effective Date. The initial three-year term will automatically renew for a two-year term under the same conditions and terms of this Agreement unless one party notifies the other of its intent to not renew this Agreement. Notice of intent to terminate this Agreement must be in writing and delivered at least twelve months prior, but no earlier than eighteen months prior, to the expiration date of the initial three-year term, or the initial two-year renewal term. If this Agreement is not terminated as of the end of the initial two-year renewal term, this Agreement will automatically renew for a second three-year term under the same conditions and terms of this Agreement. The second three-year term will automatically renew for a second two-year term under the same conditions and terms of this Agreement unless one party notifies the other of its intent to not renew this Agreement. This Agreement will continue to be automatically renewed in accordance with the three-year/two-year cycle unless terminated in accordance with this section.

SECTION 4 ALTERATIONS AND ADDITIONS TO PUBLIC PARK AREA

4.01 The HOA shall not make or cause to be made any permanent additions, or improvements to the Public Park Facilities without the prior written consent of the City.

4.02 The HOA may install, modify, relocate, remove and replace landscaping, including trees planted by the Park Developer or the HOA within the Public Park Area without notice or approval from the City.

SECTION 5 RIGHT OF ACCESS

5.01 Subject to the rights of the HOA under the terms of this Agreement, the City retains through its City Manager, Police and Fire personnel, and other designated representatives, the right at any time to enter any portion of the Public Park Facilities (without causing or constituting a termination of the use or an interference of the use of the Public Park Facilities by the HOA or its members) for the purpose of inspecting and doing any and all activities necessary for the proper conduct and operation of public property; provided, such entry shall not authorize or empower the City to assume responsibility for operating or maintain the Public Park Facilities.

**SECTION 6
LIABILITY LIMITATION**

6.01 The Park Developer and the HOA covenant and agree that the City shall in no way or under any circumstances be responsible for any real or personal property belonging to the HOA, its members, employees, agents, contractors, subcontractors, invitees, licensees, or trespassers, which may be stolen, destroyed, or in any way damaged. If swimming pool or water feature equipment or furniture within the Fenced Pool Area is damaged during the hours the Fenced Pool Area is open for General Public use, the HOA and the City will each pay fifty percent (50%) of the cost of repairing or replacing the equipment and furniture.

**SECTION 7
INSURANCE**

7.01 The HOA shall not commence operation of the Public Park Facilities for the General Public until the HOA has obtained all the insurance required under this Agreement and the City has approved such insurance. The HOA shall be responsible for delivering to the City the HOA's certificate of insurance for approval. HOA shall indicate on the certificate of insurance whether or not its insurance covers contractors or subcontractors. The insurance coverage required herein shall include the coverage of all subcontractors, or such subcontractors shall provide to HOA documentation of insurance reasonably equivalent to that required of the HOA, according to the liability exposures related to the subcontractor's services and/or materials.

- a. Commercial General Liability Insurance: The HOA shall procure and maintain during the term of this Agreement and any extension period, a commercial general liability insurance policy in the amount not less than \$1,000,000.00 covering each occurrence.
- b. Worker's Compensation Insurance: If the HOA utilizes employees to perform the duties and responsibilities under this Agreement, then the HOA shall maintain, during the term of this Agreement, and any extension period, statutory Workers Compensation Insurance on all of its employees engaged in work under this Agreement, and for all subcontractors unless such subcontractors maintain their own Workers' Compensation Insurance.
- c. Automobile Insurance: If the HOA owns or operates motor vehicles, the HOA shall procure and maintain, during the term of this Agreement and any extension period, a comprehensive bodily injury and property damage automobile liability policy in the amount not less than \$500,000.00 for each accident. This policy shall cover any automobile used within the scope of this Agreement.

7.02 The insurance specified in 7.01. hereof shall comply with the following requirements:

- a. The City shall be named as an Additional Insured. Exception: The additional insured requirement does not apply to Workers' Compensation policies.
- b. Thirty (30) day notice of cancellation or non-renewal.
- c. Waiver of rights of recovery (subrogation) in favor of the City.

- d. The insurers for all policies must be licensed/approved to do business in the State of Texas. All insurers must have a minimum rating of A-: VII in the current A. M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of the City. If the rating is below that required, written approval of the City is required.
- e. If insurance policies are not written for specified coverage limits, an Umbrella or Excess Liability insurance for any differences is required. Excess Liability shall follow the form of the primary coverage.
- f. Unless otherwise stated, all required insurance shall be written on an "occurrence basis." If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of this Agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the duration of this Agreement. An annual certificate of insurance submitted to the City shall provide evidence of such insurance coverage.
- g. Self-insured retention (SIR) affecting required insurance coverage shall be acceptable to and approved in writing by the City. In lieu of traditional insurance, alternative coverage maintained through insurance pools or risk retention groups, must also approved by the City.

SECTION 8 RELATIONSHIP OF PARTIES

8.01 The HOA shall perform all duties and responsibilities as an independent contractor, and not as an agent, servant or employee of the City. The HOA shall have exclusive control of, and the exclusive right to control the details of the work performed hereunder, and all persons performing same, and shall be solely responsible for the acts and omissions of the HOA's officers, agents, employees and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and the HOA, its officers, agents, employees and subcontractors.

8.02 Nothing herein shall be construed as creating a partnership, joint venture or contractual obligations between the Park Developer and the HOA, its officers, agents, employees and subcontractors.

SECTION 9 LICENSES AND PERMITS

9.01 The HOA shall comply with all federal, state, and local laws, rules, and regulations, as well as with all regulations, restrictions, and requirements of the Police, Fire, and Code Compliance Departments now or hereafter in effect which are applicable to its operations. The HOA shall obtain and keep in effect at its own cost and expense all licenses and permits, and pay all taxes incurred or required in connection with this Agreement and its operations hereunder.

**SECTION 10
LIENS**

10.01 The HOA agrees not to take any action that results in the filing of any lien on the Public Park Facilities. In the event that a lien is filed, as a result of any action of the HOA, the HOA will take all necessary steps to bond around or remove the lien within fifteen (15) business days of its filing.

**SECTION 11
ASSIGNMENT OF PARK DEVELOPER'S OBLIGATIONS**

11.01 Prior to Park Developer assigning to the HOA the obligation to fund the operation and maintenance of the Public Park Facilities, the City must be provided evidence that the dues and assessments paid by lot owners within Tessera are sufficient to maintain and operate the Public Park Facilities. The HOA will, as necessary increase the amount of annual dues and assessment collected to provide for the same level of operation and maintenance of the Public Park Facilities at the time that the HOA assumes full funding obligations pursuant to this Section 11.01.

11.02 Any assignment of Park Developer's obligations under this Agreement and the Development Agreement to fund the operation and maintenance of the Public Park Facilities will not release Park Developer of said funding obligations unless the City has approved the written assignment; provided, however, the City shall not unreasonably deny, delay, or condition its approval of the assignment. The City's approval of Park Developer's assignment to the HOA of the obligation to fund the operation and maintenance of the Public Park Facilities shall be deemed an assignment and release of Park Developer's funding obligations under this Agreement and the Development Agreement.

**SECTION 12
TERMINATION AND DEFAULT**

12.01 In the event the HOA fails to comply with any of the material terms and conditions of this Agreement, after notice and opportunity to cure as provided in this Agreement, the City shall have the right, upon delivery of a Notice of Termination to the HOA, to declare this Agreement terminated and to enter and take full possession of the Public Park Facilities save and except such personal property and equipment as may be owned by the HOA. In the event of such termination of this Agreement by the City, all rights, privileges and obligations of the HOA hereunder shall cease and terminate. Material terms and conditions of this Agreement are limited to: a) the HOA failing or refusing to comply with the requirements of Section 2.03 of this Agreement; b) the Park Developer refusing or failing to meet its obligation to fund the operation and maintenance of the Park Facilities; and c) the HOA refusing or failing to meet its funding obligations under this Agreement.

12.02 The City must notify the HOA by written notice sent in accordance with Section 14 of the HOA's failure to comply with specific material terms of this Agreement. The HOA shall have 60 calendar days from the date of receipt of the notice to correct the deficiencies identified in the notice or to begin correcting the deficiency if it takes more than 60 days to correct a deficiency. If Park Developer has not fully assigned to the HOA the Park Developer's obligations to fund the operation and maintenance of the Public Park Facilities, then the City shall send to Park Developer a copy of all correspondence between the City and the HOA regarding the operation and maintenance of the Public Park Facilities, including any notice regarding the HOA's failure to comply with the terms of this Agreement.

12.03 Upon termination of this Agreement, the parties shall be released from all obligations contained in this Agreement.

SECTION 13 NON-DISCRIMINATION/DISABILITIES

13.01 HOA, in its maintenance, operation and use of the Public Park Facilities shall not discriminate against any person or persons because of race, age, gender, religion, color, national origin, sexual orientation or disability.

SECTION 14 NOTICES

14.01 Any notice required shall be sufficient if deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested, and addressed to the other party as follows:

Any notice mailed to the City shall be addressed:

City of Lago Vista
Attn: City Manager
P.O. Box 4727 (mail)
5803 Thunderbird (hand delivery)
Lago Vista, Texas 78645
Fax (512) 267-7070

With copy to:

The Knight Law Firm, LLP
223 W. Anderson Lane, Suite A105
Austin, Texas 78752
Telephone (512) 323-5778
Fax (512) 323-5773

Any notice mailed to the Park Developer shall be addressed:

Hines Interests Limited Partnership
Attention: Mark Cover
811 Main St, Suite 4100
Houston, Texas 77008
Telephone (713) 237-5660
Fax (713) 237-5657

with copies to:

Hines Interests Limited Partnership
Attention: Darlene Louk
515 Congress, Suite 1425
Austin, Texas 78701
Telephone (512) 652-0590
Fax (512) 652-0598

Hines Interests Limited Partnership
Attention: Rob Witte
2200 Ross, Suite 42W
Dallas, Texas 75201
Telephone (972) 716-2925
Fax (972) 934-1460

Sneed, Vine & Perry, P.C.
Attn: Robert Kleeman
900 Congress Avenue, Suite 300
Austin, Texas 78701
Telephone (512) 494-3135
Fax (512) 476-1825

Any notice mailed to the HOA shall be addressed:

Tessera on Lake Travis Homeowner's Association
c/o First Services Residential
Post Office Box 342585
Austin, 78734

14.02 Mailing of all notices pursuant to this Section shall be deemed sufficient if mailed postage prepaid, certified mail, return receipt requested, and addressed as specified above, unless either party has been notified in writing of any changes to such address(es) or addressee(s). All notices shall be considered delivered two business days after the day the notice is placed in the United States Postal Service for delivery in accordance with this Section 14.

**SECTION 15
VENUE AND JURISDICTION**

15.01 This Agreement shall be governed by the laws of the State of Texas. Venue for any action brought to interpret or enforce, or arising out of or incident to, the terms of this License Agreement shall be in Travis County, Texas.

**SECTION 16
ASSIGNING, MORTGAGING**

16.01 Except for contracts with third parties to maintain and operate the Public Park Facilities, the HOA agrees that it will not assign all or any part of its rights, privileges or duties hereunder without the prior written consent of the City, and any attempted assignment of same without such prior consent of the City, shall be void. Consent shall not be unreasonably withheld, delayed or conditioned.

16.02 Subject to the limitations contained herein, the covenants, conditions, and agreements made and entered into by the parties hereunder are declared to be for the benefit of and binding on their respective successors, representatives, and permitted assigns, if any.

**SECTION 17
WAIVER, SECTION HEADINGS, AND SEVERABILITY**

17.01 It is agreed that in the event any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall in no way affect any other covenant, condition, or provision herein contained, provided however, that the invalidity of any such covenant, condition, or provision does not materially prejudice either the HOA or the City in connection with the rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

17.02 The waiver by the City of any default or breach of a term, covenant, or condition of this Agreement shall not be deemed to be a waiver of any other breach of that term, covenant or condition or any other term, covenant, or condition of this Agreement, regardless of when the breach occurred.

17.03 The headings in this Agreement are inserted for reference only, and shall not define or limit the provisions hereof.

**SECTION 18
ENTIRE UNDERSTANDING; AMENDMENT**

18.01 This Agreement including all Exhibits attached hereto constitutes the final, entire, and complete agreement among the Park Developer, the HOA and the City and supersedes any prior and contemporaneous negotiations, understandings, representations, and/or agreements between the parties regarding the operation, maintenance and repair of Public Park Facilities. Any prior or contemporaneous oral or written agreement that purports to vary from the terms hereof shall be void.

18.02 Except as provided in Section 2.04, neither this Agreement nor any provision hereof may be modified except by an instrument in writing, signed by duly authorized representatives of the respective parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

CITY OF LAGO VISTA, TEXAS

Attest:

By: Sandra Barton
Name: Sandra Barton
Title: City Secretary
Date: 6-15-17



By: Dale Mitchell
Name: Dale Mitchell
Title: Mayor
Date: 6-15-17

**TESSERA ON LAKE TRAVIS HOMEOWNER'S ASSOCIATION, INC.,
a Texas non-profit corporation**

By: Darlene Louk
Darlene Louk, Director

EXECUTED on this the 15 day of June, 2017.

HINES LAKE TRAVIS LAND II LIMITED PARTNERSHIP,
a Texas limited partnership

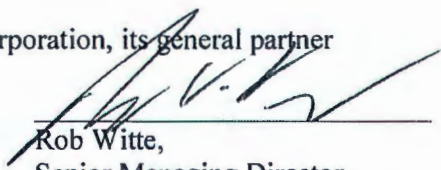
By: Hines Lake Travis GP, LLC, a Delaware limited liability company, its general partner

By: Hines Interests Limited Partnership, a Delaware limited partnership, its sole member

By: Hines Holdings, Inc., a Texas corporation, its general partner

DL

By:


Rob Witte,
Senior Managing Director

EXECUTED on this the 15th day of JUNE, 2017.

EXHIBIT A TRAIL RULES

- ❖ Open to the General Public from Sunrise to Sunset
- ❖ Trails are for walking, hiking, running and biking. Bikes yield to all other trail users.
- ❖ Children under 18 must be accompanied by an adult who is at least 18 years old at all times.
- ❖ Stay on trails at all times and proceed at your own risk in area of rugged terrain, especially along cove and lake edges.
- ❖ All motor vehicles, including ATVs and Golf Carts, are prohibited from all trails and parks.
- ❖ Alcoholic beverages are prohibited.
- ❖ Respect the wildlife. Hunting is strictly prohibited.
- ❖ Firearms are prohibited.
- ❖ No fires of any type, including ground fires, contained wood or charcoal fires, are allowed along the trail systems.
- ❖ No smoking.
- ❖ No Soliciting is allowed. No one may rent or sell any item or service on the trail system without approval from the HOA.
- ❖ Loud speakers, amplified sound and noise disturbances are prohibited.
- ❖ Carry it In, Carry It Out. Please respect all areas: Turnback Cove, Lake Travis, and Tessera's treasured open spaces, creek crossings and trails.
- ❖ Obey posted signs.

EXHIBIT B POOL RULES

OPERATING HOURS AND GENERAL PUBLIC ACCESS

POOL SEASON - The Fenced Pool Area may, at the discretion of the HOA, be opened to residents of Tessera for swimming (“**Resident Pool Season**”) during the months of April through October. The precise opening and closing dates for Resident Pool Season will be determined by the HOA. The Fenced Pool Area will be open to the General Public from Memorial Day Weekend through the weekend before the beginning day of the Lago Vista Independent School District school year in accordance with the hours and schedule set forth below (“**General Public Pool Season**”). The Fenced Pool Area capacity shall not exceed the capacity established by local regulations and shall be open on a first come, first served basis and shall be enforced through the on-duty life guards.

GENERAL PUBLIC SWIMMING- During the General Public Pool Season, the Fenced Pool Area will be available for use by the General Public Sunday through Thursday from 8:00 AM to 11:30 AM (“**General Public Swimming Hours**”). Four lifeguards must be on duty to meet State requirements for use by the General Public. All patrons must leave the Fenced Pool Area before and after General Public Swimming Hours due to opening and closing procedures. During General Public Swimming Hours, the registration desk will be attended. All General Public patrons must sign in at the registration desk, show a valid swim pass card issued by the City of Lago Vista and identification. Whenever feasible, HOA will use the same third-party life guard vendor used by the City. The HOA contract with a third-party life guard vendor will require the life guards to account for City pool admissions daily to the City. Residents of Tessera may swim during General Public Swimming Hours.

TESSERA RESIDENT SWIMMING- Daily 8:00 AM to 8:00 PM. No lifeguard supervision. State requirements limit use to residents of Tessera. Residents of Tessera and their guests must use the Resident Swim Pass Cards issued by the HOA.

RULES POSTED WITHIN THE FENCED POOL AREA

- ❖ Swim at your own risk.
- ❖ General public pool hours are 8:00 AM to 11:30 AM Sunday through Thursday between Memorial Day Weekend and the weekend prior to the beginning of LVISD classes in August. Season Pass issued by the City of Lago Vista and picture identification or payment of City's daily admission fee required for entry into the Fenced Pool Area.
- ❖ Resident pool hours are 8:00 AM to 8:00 PM., subject to adjustment by the HOA.
- ❖ Use pool area shower before entering pool or using water feature.
- ❖ No glass containers allowed within Fenced Pool Area.
- ❖ No food or beverage in the pool.
- ❖ No alcoholic beverages allowed within the Fenced Pool Area.
- ❖ No smoking or other tobacco use allowed within the Fenced Pool Area.
- ❖ No diving, jumping, running, or horseplay.
- ❖ Limit of 4 guests allowed per family present.
- ❖ Swim diapers and plastic pants are required on children who are not potty-trained.
- ❖ Children under 18 must be accompanied by an adult who is at least 18 years old at all times.
- ❖ Appropriate swim attire required.
- ❖ Animals prohibited within the Fenced Pool Area.
- ❖ Changing of diapers within 6 feet of pool or water feature is prohibited.
- ❖ Use of water feature if ill with a contagious disease is prohibited.
- ❖ Do not drink water from the water feature.
- ❖ Use of water feature when ill with diarrhea in the last seven (7) days is prohibited.
- ❖ In the event of a malfunction, unsanitary condition, or any other non-emergency problem requiring correction at the pool, contact First Services Residential at 512-266-6771.
- ❖ All emergencies dial 911.

EXHIBIT C

PAVILION RESERVATION RULES

- ❖ Pavilion is available to the General Public unless the Pavilion has been reserved.
- ❖ Reservations are made through the HOA.
- ❖ Reservations must be made at least 48 hours in advance.
- ❖ The hours that the Pavilion is available for reservation coincide with the hours that the Trails are open.
- ❖ Guests are to adhere to the Trail Rules and must coordinate with the HOA and if necessary, with the City, to have proper permits and security for the particular use of the Pavilion.
- ❖ HOA reserves the right to limit the number of people that may attend an event at the Pavilion.
- ❖ HOA reserves the right to limit the number of hours per reservation.
- ❖ Parties are responsible for the cleanup and removal of all trash associated with an event at the Pavilion.
- ❖ HOA may require a security deposit for the cost of removing trash and cleaning the Pavilion.
- ❖ Children under 18 must be accompanied by an adult who is at least 18 years old at all times.