

STATE OF TEXAS           §  
  §  
COUNTY OF HAYS         §

**AMENDMENT TO THE DEVELOPMENT AGREEMENT  
BETWEEN CITY OF KYLE, TEXAS AND CLAYTON PROPERTIES GROUP, INC.  
DBA BROHN HOMES**

This Amendment to the Development Agreement (“Amendment”) is by and between the City of Kyle, Texas, a home rule city situated in Hays County, Texas (the “City”) and Clayton Properties Group, Inc. d/b/a Brohn Homes (“Developer”). The term “Parties” or “Party” means the City and the Developer collectively or singularly.

**RECITALS**

WHEREAS, Developer and the City entered into that certain Amendment to the Development Agreement between the City of Kyle, Texas and Clayton Properties Group, Inc. DBA Brohn Homes dated effective August 11, 2019 (the “Original Agreement”);

WERHEAS, the Original Agreement addresses development of that certain 30 acre tract, more or less, which is further described in the Original Agreement; and

WHEREAS, the Developer and the City desire to enter into this Amendment to address the construction fencing along the boundary of the Property which abuts the Hays Consolidated Independent School District (“HCISD”) property;

**NOW, THEREFORE**, for and in consideration of the above stated recitals, which are made a part of this Agreement, the benefits described below, plus the mutual promises expressed herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby contract, covenant and agree as follows:

**ARTICLE 1  
AMENDMENT**

**1.01 Amendment to Fencing Requirements.** Section 2.08 of the Original Agreement is hereby amended in its entirety to read as follows:

**2.08 Fencing.** (a). Owner shall construct and the Owner, or a properly formed property owners association, will maintain, repair or replace at minimum a six foot (6’) tall decorative metal fence along parkland, open space and drainage facilities that are fenced. This does not include the portion of a back yard fence that may front one of these public improvements or places, but refers to any fencing put in place for benefit of parkland, open space or drainage facilities. In no case shall these fences be dedicated or conveyed to the City. Developer shall assign to a property and/or property owners association the obligation to maintain, repair or replace said fence as required by the Code.

(b) The Owner shall design and construct a 6’ masonry fence along the western boundary of the Property that abuts the HCISD property. The Owner or homeowner’s association

for the Project shall maintain the fence. The fence shall be shown on the construction plans for the Project and installed during construction of subdivision infrastructure for the Project and shall be subject to a maintenance easement or other authorization that allows the Owner or HOA access to maintain the fence.

## ARTICLE 2 MISCELLANEOUS

**2.01. Definitions.** Words and phrases used in this Amendment shall, if defined in the Agreement and not specifically modified by this Amendment, shall have the definition and meaning as provided in the Agreement. When used in this Amendment, the term “Agreement” shall mean the Original Agreement, as amended by this Amendment.


### **2.02. Miscellaneous.**

- (a) Entire Agreement. This Amendment, together with the Agreement, set forth the entire understanding of the parties and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.
- (b) Binding Effect. The terms and provisions hereof shall be binding upon the Developer and its successors and assigns.
- (c) Effect of Amendment. The Parties agree that, except as modified hereby, the Agreement remains valid, binding, and in full force and effect. If there is any conflict or inconsistency between this Amendment and the Agreement, this Amendment will control and modify the Agreement.
- (d) Counterparts. This Amendment may be executed in any number of counterparts, including, without limitation, facsimile counterparts, with the same effect as if the parties had signed the same document, and all counterparts will constitute one and the same agreement.
- (e) Anti-Boycott Provision. In accordance with Chapter 2270, Texas Government Code, the City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it: (a) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this contract on behalf of the company verifies that Developer does not boycott Israel and will not boycott Israel during the term of this Amendment.

SIGNED and executed this 4<sup>th</sup> day of April, 2021.

Clayton Properties Group Inc. (dba – Brohn Homes)

By:

  
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Adam Boenig, Vice President

CITY OF KYLE, TEXAS

By: *Travis Mitchell*  
Travis Mitchell, Mayor

ATTEST:

*Jennifer Holm*  
Jennifer Holm, City Secretary

THE STATE OF TEXAS   §  
  §  
COUNTY OF Travis   §

This instrument was acknowledged before me on April 6<sup>th</sup>, 2021, by Adam Boenig, Vice President of Clayton Properties Group Inc (dba Brohn Homes).

*Jennifer Stewart*  
Notary Public in and for the State of Texas

