

**Drainage Easement and Detention Pond Construction and Maintenance Agreement**

THE STATE OF TEXAS     §  
  §  
COUNTY OF BEXAR       §

KNOW ALL BY THESE PRESENTS:

This Drainage Easement and Detention Pond Construction and Maintenance Agreement (this ***“Agreement”***) is made and entered into this 25<sup>th</sup> day of April, 2022 by and among Bluff Phase 2 DevCo, LLC, a Texas limited liability company (***“Phase 2 DevCo”***), Piero Zarattini and Ana Lucia Villasenor Lopez (the ***“Lot 65 Owners”*** and together with Phase 2 DevCo are collectively referred to herein as the ***“Residential Owners”***), UGro-P3 Dominion, LLC, a Texas limited liability company (***“Declarant”***), and The Dominion Homeowners Association, Inc., a Texas non-profit corporation (the ***“Association”***).

**WHEREAS**, the Lot 65 Owners own that approximately 0.470 acre tract of land known as Lot 65, Block 30 situated within that certain subdivision known as Dominion Unit 13-B Planned Unit Development according to the plat of said subdivision recorded on January 28, 2022, in Volume 20002, Page 1525 of the Deed and Plat Records of Bexar County Texas (***“Lot 65”***).

**WHEREAS**, Phase 2 DevCo owns that approximately 18.228 acre tract of land known as Lots 66-77 and Lot 999, Block 30; Lots 1-32, Block 32 and Lots 1-4, Block 33 situated within that certain subdivision known as Dominion Unit 13-B Planned Unit Development according to the plats of said subdivision recorded on January 28, 2022 in Volume 20002, Page 1525 and Page 1526 of the Deed and Plat Records Bexar County, Texas (the ***“Phase 2 Tract”*** and collectively with Lot 65 is referred to herein as the ***“Residential Tract”***).

**WHEREAS**, on or about November 12, 2021, the Residential Tract was subjected to that certain Declaration of Protective Covenants (the ***“Residential Tract Declaration”***) recorded as Document No. 20210315986 in the Official Public Records of Bexar County, Texas (the ***“Records”***) which, among other terms and provisions, established procedures for conveying the common areas of the Residential Tract to the Association upon the achievement of Turnover Conditions (as defined in Residential Tract Declaration) for the Residential Tract (***“Residential Tract Turnover Conditions”***).

**WHEREAS**, Declarant owns that approximately 46.255 acre tract of land located in the City of San Antonio, Bexar County, Texas, adjacent to the Residential Tract, more particularly described in Exhibit A of a Special Warranty Deed recorded on April 28, 2022, recorded as Document No. 20220106792 in the Records (the ***“Multifamily Tract”***).

**WHEREAS**, the Residential Owners and Declarant desire to record this Agreement to evidence agreements regarding the construction and maintenance (and payment of expenses related thereto) of facilities for storm water collection, conveyance, detention, water quality treatment and release (***“Detention Pond”***) to be constructed upon and/or beneath a portion of the surface of that approximately 1.150 acre tract of land located on the Multifamily Tract and identified as Lot 900, Block 30, New City Block 16386 according to the plat recorded on June 2, 2023 in Volume 20003, Pages 456-457 of the Deed and Plat Records Bexar County, Texas (***“Detention Pond Area”***), to accommodate the drainage of stormwater within the Multifamily Tract and the Residential Tract.

**WHEREAS**, Declarant and the Association have agreed that, as soon as reasonably practicable after

the Residential Tract Turnover Conditions have been achieved, Declarant shall convey the Detention Pond Area and the Detention Pond to the Association in accordance with the terms and conditions of Section 3.5 of this Agreement.

**WHEREAS**, because the Residential Tract and the Multifamily Tract are both located within The Dominion Planned Unit Development (“*The Dominion PUD*”), they are subject to the provisions of that certain Declaration of Covenants, Conditions, Easements and Restrictions (the “*Umbrella Declaration*”), recorded in Volume 2956, Page 61 in the Records governing The Dominion PUD.

**WHEREAS**, the Association (i) is charged with providing for the maintenance, repair, preservation, upkeep, and protection of the common properties located within The Dominion PUD that are conveyed to the Association, and (ii) desires to join in this Agreement to evidence its consent to the terms hereof including but not limited to the terms and conditions of a conveyance to the Association of the Detention Pond Area and the Detention Pond in accordance with the terms and conditions of Section 3.5 of this Agreement.

**NOW, THEREFORE**, for and in consideration of Ten and No/100 Dollars (\$10.00), the premises hereinabove set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Residential Owners, Declarant, and the Association agree as follows:

#### **Article 1 Definitions**

As used in this Agreement, (i) all capitalized terms defined in other provisions of this Agreement shall have the meanings assigned to such terms in this Agreement, and (ii) the following terms shall have the following meanings unless the context requires otherwise:

1.1. “**Owner**” means the record owner, or owners, of title to any portion of the Multifamily Tract or the Residential Tract (as applicable), but shall not include those holding an interest merely as security for the performance of an obligation.

1.2. “**Person**” means individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

#### **Article 2 Construction of Detention Pond**

2.1. Construction of Detention Pond. Phase 2 DevCo shall design and construct the Detention Pond, which Detention Pond will be designed and constructed to provide all of the collection, detention and water quality treatment required to allow Declarant to develop the Multifamily Tract in accordance with Declarant’s current development plans and MF-33 zoning classification and the Residential Tract in accordance with the Residential Owners current development plans and zoning classification and any other requirements of all applicable authorities. Phase 2 DevCo shall be liable and responsible for all costs related to the design and construction of the Detention Pond and Declarant shall have no responsibility for such costs. Should Phase 2 DevCo fail to construct the Detention Pond within twelve (12) months following the date of this Agreement, then Declarant shall have the right to construct the Detention Pond and Phase 2 DevCo shall reimburse Declarant for all costs incurred by Declarant to construct the Detention Pond immediately upon

request.

### Article 3

#### Drainage Easement and Maintenance of Detention Pond and Detention Pond Area

3.1. Drainage Easement. Declarant hereby grants and conveys and by these presents does GRANT AND CONVEY unto the Owners, a non-exclusive perpetual easement in, on, over, under and across the Detention Pond Area for the purpose of accommodating the drainage of stormwater within the Multifamily Tract and the Residential Tract.

3.2. Maintenance of Detention Pond and Detention Pond Area Prior to Conveyance to the Association. Until such time as the Detention Pond Area and the Detention Pond have been conveyed to the Association in accordance with Section 3.5 below, Declarant shall maintain the Detention Pond and the Detention Pond Area in a safe, sightly and functional condition, including (i) the construction and repair of fences, (ii) the mowing of grass, (iii) the removal of trash and debris, (iv) the maintenance of landscaping, (v) the maintenance and repair and replacement (if necessary) of the Detention Pond and the Detention Pond Area, (vi) the performance of such other maintenance and repair as may be reasonably necessary from time-to-time in connection with the Detention Pond and the Detention Pond Area that a prudent landowner under similar circumstances would perform, and (vii) modifications and improvements to the Detention Pond and the Detention Pond Area, or any part thereof, as otherwise required by any applicable governmental authority or applicable law (collectively, the "*Maintenance Items*"). In addition, Declarant shall cause all ad valorem taxes against the Detention Pond Area to be paid each year prior to the date that such taxes would become delinquent. The cost of the Maintenance Items and the cost of the ad valorem taxes attributable to the Detention Pond Area shall collectively be referred to herein as the "*Detention Pond Costs*." Declarant may perform alterations or modifications of the Detention Pond after sending written notice to the Owners; provided that such alterations and modifications do not adversely affect the use or enjoyment of the Detention Pond by any Owner.

3.3. Allocation of Detention Pond Costs.

(a) Prior to Conveyance to the Association. Until such time as the Detention Pond Area and the Detention Pond have been conveyed to the Association in accordance with Section 3.5 below, Phase 2 DevCo and Declarant shall each be responsible for fifty percent (50%) of the Detention Pond Costs.

(b) After Conveyance to the Association. From and after such time as the Detention Pond Area and the Detention Pond have been conveyed to the Association in accordance with Section 3.5 below, the Association and Declarant (or if applicable, the Owners of the Multifamily Tract) shall each be responsible for fifty percent (50%) of the Detention Pond Costs.

(c) Invoicing and Payment. Annually, the party paying the Detention Pond Costs shall provide to the appropriate reimbursing party an invoice for such Detention Pond Costs, together with reasonable documentary supporting evidence, as well as a calculation of the amount of the appropriate reimbursing party's fifty percent (50%) share of such Detention Pond Costs. Such reimbursing party shall make the reimbursement payment within thirty (30) days from its receipt of the invoice.

3.4. Access Easement. Declarant hereby grants to the Association and Phase 2 DevCo a perpetual

non-exclusive access easement upon the paved roads of the Multifamily Tract plus those unpaved areas across the Multifamily Tract as may be reasonably required for ingress and egress to the Detention Pond for the purpose of inspecting the Detention Pond, exercising its rights, and performing its obligations under this Article 3.

3.5. Conveyance to the Association. As soon as reasonably practicable after the Residential Tract Turnover Conditions have been achieved, Declarant shall convey the Detention Pond Area and the Detention Pond to the Association and, following such conveyance, the Association shall assume all of Declarant's obligations set forth in Section 3.2 above.

3.6. Residential Tract Turnover Conditions. Phase 2 DevCo shall send written notice to Declarant and the Association when the Residential Tract Turnover Conditions have occurred. A representative of the Association will inspect the Detention Pond Area and the Detention Pond to determine their state of repair and maintenance within thirty (30) days of receiving notice from Declarant. The Association shall send a punch list of items to be repaired or replaced by Declarant, at Declarant's sole cost and expense, prior to the acceptance of maintenance responsibility by the Association. Declarant shall correct the items on the punch list, at Declarant's sole cost and expense, within thirty (30) days of receiving the punch list from the Association. After Declarant corrects the items on the punch list to the reasonable satisfaction of the Association, then the Association will issue a letter accepting maintenance responsibility for the Detention Pond Area and the Detention Pond and Declarant shall convey such Detention Pond Area and the Detention Pond to the Association. Until all Residential Tract Turnover Conditions have been met, the Association shall have absolutely no responsibility for the maintenance, upkeep, or repair of the Detention Pond Area and the Detention Pond. Thereafter, the Association shall be responsible for the maintenance, upkeep, and repair of the Detention Pond Area and the Detention Pond.

#### **Article 4 Amendment and Assignment**

4.1. Amendment. This Agreement may only be modified, amended or terminated upon the filing of a written modification, amendment or termination document in the Records, executed, acknowledged and approved by (a) the Association (acting through a majority of its Board of Directors) or its successor; (b) all of the Owners at the time of the modification, amendment, or termination; and (c) any mortgagees holding first lien security interests on any portion of the Residential Tract or the Multifamily Tract.

4.2. Assignment of Declarant's Rights and Obligations. Declarant shall have the right at any time, in its sole discretion, to assign all or any portion of its rights and obligations hereunder to (i) any other Owner of the Multifamily Tract; or (ii) a property owner's association created by Declarant to assume the right and obligations of Declarant, or any board of directors thereof, by filing for record in the Records, a written Assignment of Declarant's rights and obligations executed by Declarant and the assignee, stating (a) the name and contact information of the assignee, and (b) the scope of the rights and obligations being assigned to and assumed by such assignee.

4.3. Assignment of Phase 2 DevCo Rights and Obligations. Phase 2 DevCo shall have the right at any time, in its sole discretion, to assign all or any portion of its rights and obligations hereunder to (i) any other Owner of the Residential Tract; or (ii) a property owner's association created by Phase 2 DevCo to assume the right and obligations of Phase 2 DevCo, or any board of directors thereof, by filing for record in

the Records, a written Assignment of Phase 2 DevCo's rights and obligations executed by Phase 2 DevCo and the assignee, stating (a) the name and contact information of the assignee, and (b) the scope of the rights and obligations being assigned to and assumed by such assignee.

## **Article 5 Remedies**

5.1. Self Help and Other Remedies. If any Person defaults in the performance of its obligations hereunder and the default is not cured within thirty (30) days following delivery of written notice to such defaulting party (or such longer period reasonably required to cure such default, provided that such cure is pursued diligently and in good faith), then the Association or any Owner shall have the right, but not the obligation, to (i) perform such obligation on behalf of the defaulting party, in which event, if the defaulting party fails to reimburse such curing Person for the costs to cure said default within thirty (30) days after its receipt of an invoice therefor, interest shall accrue thereon at the rate of twelve percent (12%) per annum from the date the amounts are expended until the date repaid; and/or (ii) exercise any other rights or remedies available either at law or in equity.

5.2. Injunctive Relief. In the event of a breach by any Person of any obligation of such party under this Agreement, the Association or any Owner, after written notice to the defaulting Person and the expiration of the cure period in accordance with Section 5.1 above, shall be entitled to injunctive relief mandating compliance herewith, and shall be entitled to obtain a decree specifically enforcing the performance of the obligations created hereunder. The parties hereto hereby acknowledge and stipulate the inadequacy of legal remedies and irreparable harm which would be caused by the breach of this Agreement, and the Association or any Owner shall be entitled to relief by any and all other available legal and equitable remedies from the consequences of such breach. Any costs and expenses of any such proceeding, including reasonable attorney's fees, shall be paid by the defaulting Person.

5.3. Non-Waiver. No delay or omission of any party hereto in the exercise of any rights created hereunder shall impair such right, or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of an event of default hereunder. A waiver by any party hereto of a breach of, or default in, any of the terms and conditions of this Agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, no remedy provided in this Agreement shall be exclusive, but shall be cumulative with all other remedies provided for in this Agreement, and all other remedies which are available at law or in equity.

## **Article 6 General Provisions**

6.1. Insurance; Waiver Rights. Phase 2 DevCo shall obtain, pay for and maintain at least the following insurance during the construction of the Detention Pond, which insurance will name Declarant as an additional insured:

(a) Comprehensive General Liability Insurance covering each occurrence of bodily injury and property damage in an amount of not less than One Million Dollars (\$1,000,000), combined single limit.

- (b) Workers Compensation Insurance, if required.
- (c) Such other forms of insurance as mutually agreed upon by Phase 2 DevCo and Declarant.

The insurance specified above shall cover all the construction work to be provided by Phase 2 DevCo to construct the Detention Pond and any of its agents, employees, representatives, contractors and subcontractors.

6.2. Indemnification. During the construction of the Detention Pond and to the extent permitted by law, Phase 2 DevCo shall save, hold harmless, and defend Declarant and the Association, and their respective directors, officers, partners, shareholders, employees and successors and assigns (collectively "*Indemnitees*") from and against all liability, damage, loss, claims, demands, judgments, and actions of any nature whatsoever, which arise out of or are connected with, or are claimed to arise out of or be connected with, liens arising from the performance of the construction of the Detention Pond, or Phase 2 DevCo's willful misconduct or its sole, independent, concurrent, joint, active, primary, passive, or secondary negligence in the performance or non-performance of its obligations under this Agreement. Phase 2 DevCo's indemnity obligation extends to, without limiting the generality of the foregoing, all liability, loss, liens, claims, and judgments on account of property damage, bodily injury, death, personal injury, or infringement of rights incurred by any person or entity, or the failure of Phase 2 DevCo or its contractors or subcontractors to pay any sums allegedly due for labor or materials furnished for the construction of the Detention Pond.

6.3. Binding Effect; Covenant Running With the Land. The easements and covenants described herein are conveyed subject to any and all other restrictions, easements, or other matters affecting the Multifamily Tract, shall run with the land and shall be binding upon and inure to the benefit of all future Owners and be binding upon Declarant, the Residential Owners and the Association, and each of their respective successors and assigns and all Persons claiming under them. This Agreement shall be construed in accordance with the laws of the State of Texas and all obligations hereunder are performable in Bexar County, Texas.

6.4. Partial Invalidity. If any term, covenant, or condition of this Agreement or the application of it to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to Persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and shall be enforced to the extent permitted by law.

6.5. Captions. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein.

6.6. Gender. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

6.7. Relationship of the Parties. Nothing contained herein shall be construed to make the parties hereto partners or joint venturers, or render any of such parties liable for the debts or obligations of the other party hereto.

6.8. Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Residential Tract or the Multifamily Tract to the general public or for the general public or for any public purpose whatsoever, it being the intention that this Agreement shall be strictly limited to and for the purposes herein expressed. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any Person not specifically benefited by the terms and provisions hereof.

6.9. Counterparts. This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute but one agreement.

*[Remainder of Page Intentionally Left Blank; Signatures Follow]*

EXECUTED TO BE EFFECTIVE on the date first set forth above.

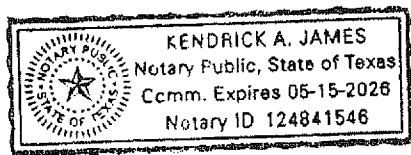
DECLARANT:

UGro-P3 Dominion, LLC,  
a Texas limited liability company

By: *Jon Bursey*  
Name: Jon Bursey  
Title: Managing Director

STATE OF TEXAS                   §  
   §  
COUNTY OF BEXAR               §

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO BEFORE ME this 18<sup>th</sup> day of NOVEMBER, 2022, by Jon Bursey, Managing Director of UGro-P3 Dominion, LLC, a Texas limited liability company, on behalf of said limited liability company.



*Kendrick A. James*  
Notary Public, State of Texas



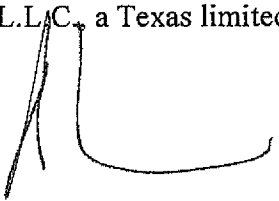
EXECUTED TO BE EFFECTIVE on the date first set forth above.

**PHASE 2 DEVCO:**

Bluff Phase 2 DevCo, LLC,  
a Texas limited liability company

By: Image Homes, Ltd., a Texas limited partnership and its Manager

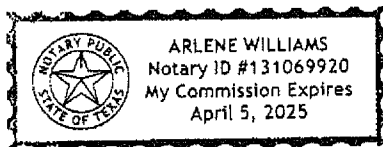
By: Six D's, L.L.C., a Texas limited liability company and its General Partner

By:   
\_\_\_\_\_  
Roberto Kenigstein, President


STATE OF TEXAS

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COUNTY OF BEXAR

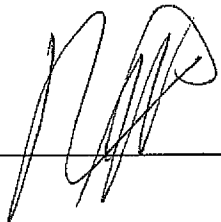


ACKNOWLEDGED, SUBSCRIBED AND SWORN TO BEFORE ME this 26 day of April, 2022, by Roberto Kenigstein, President of Six D's, L.L.C., a Texas limited liability company, General Partner of Image Homes, Ltd., a Texas limited partnership, Manager of Bluff Phase 2 DevCo, LLC, a Texas limited liability company, on behalf of said entities.

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

EXECUTED TO BE EFFECTIVE on the date first set forth above.

LOT 65 OWNERS:



\_\_\_\_\_  
Piero Zarattini



\_\_\_\_\_  
Ana Lucia Villasenor Lopez

STATE OF TEXAS

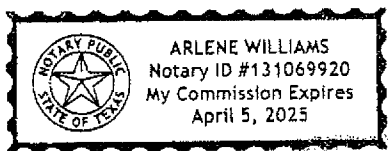
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COUNTY OF BEXAR

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ACKNOWLEDGED, SUBSCRIBED AND SWORN TO BEFORE ME this 25 day of April, 2022, by Piero Zarattini.



*Arlene Williams*  
Notary Public, State of Texas

STATE OF TEXAS

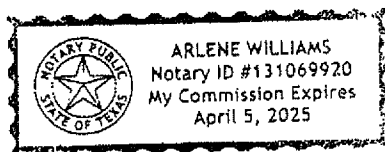
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COUNTY OF BEXAR

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ACKNOWLEDGED, SUBSCRIBED AND SWORN TO BEFORE ME this 25 day of April, 2022, by Ana Lucia Villasenor Lopez.



*Arlene Williams*  
Notary Public, State of Texas

EXECUTED TO BE EFFECTIVE on the date first set forth above.

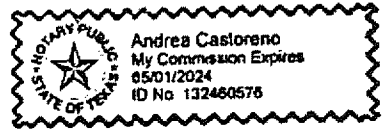
**ASSOCIATION:**

The Dominion Homeowners Association, Inc.,  
a Texas non-profit corporation

By: [Signature]  
Name: ROB McDONALD  
Title: GENERAL MANAGER

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO BEFORE ME this 21<sup>st</sup> day of October, 2022, by Rob McDonald, General Manager of The Dominion Homeowners Association, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.



[Signature]  
Notary Public, State of Texas

**File Information**

**eFILED IN THE OFFICIAL PUBLIC eRECORDS OF BEXAR COUNTY  
LUCY ADAME-CLARK, BEXAR COUNTY CLERK**

**Document Number:** 20230108706  
**Recorded Date:** June 16, 2023  
**Recorded Time:** 10:49 AM  
**Total Pages:** 12  
**Total Fees:** \$66.00

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Any provision herein which restricts the sale or use of the described real property because of race is invalid and unenforceable under Federal law

STATE OF TEXAS, COUNTY OF BEXAR

I hereby Certify that this instrument was eFILED in File Number Sequence on this date and at the time stamped hereon by me and was duly eRECORDED in the Official Public Record of Bexar County, Texas on: 6/16/2023 10:49 AM



*Lucy Adame-Clark*  
Lucy Adame-Clark  
Bexar County Clerk