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COUNTY OF TRAVIS

CITY OF CITY OF ROUND ROCK,  
TEXAS

This Agreement is entered into under authority granted to Municipalities by Sections 43.056 and 43.142 of the Texas Local Government Code, by and between the City of Round Rock, Texas (the "City") and Auspro Enterprise, LP, the undersigned property owner (the "Owner"). The term "Owner" includes all owners of the Property.

**WHEREAS**, the Property was part of a 14.78 acre Annexation into the full purpose corporate limits of the City of Round Rock on January 24, 2013 by Ordinance No. A-13-01-10-G4; and

**WHEREAS**, a portion of said 14.78 acre annexation property was subsequently sold by Owner to Wittlesey Landscape Supplies. The Property described in Exhibit A is the remainder of the 14.78 acres which is currently owned by Owner; and

**WHEREAS**, the City has filed a lawsuit for damages for nonpayment by Owner of Municipal drainage utility charges in Cause No. C-1-CV-16-004038 and styled City of Round Rock, Texas, Plaintiff vs. Auspro Enterprises, LP, Defendant, in the County Court of Law Number 2, in and for Travis County, Texas (the “Lawsuit”); and

**WHEREAS**, the Owner has counter claimed against the City in the Lawsuit for taking of property owned by Owner for Greenlawn Boulevard without compensation in violation of Texas Constitution Article I, Section 17 and for breach of the City's Covenant of the Service Plan adopted in the Ordinance of Annexation A-13-01-10-G4; and

**WHEREAS**, pursuant to City of Round Rock Code of Ordinances Section 1.04, the City desires to disannex the Property because the Property is not presently suitable or necessary for City purposes; and

**WHEREAS**, this Agreement is entered into pursuant to authority granted to the City under Sections 43.056 and 43.142 of the Texas Local Government Code, in order to effect the disannexation of the Property and to compromise and settle all claims by each party against the other relating to the Property and as described in the aforementioned Lawsuit; and

**WHEREAS**, the Owner and the City acknowledge that this Agreement is binding upon the City and the Owner and their respective successors and assigns; and

**WHEREAS**, this Development Agreement is to be recorded in the Real Property Records of Travis County, Texas at the expense of the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

**Section 1. Disannexation from Corporate Limits and Continuance of Extraterritorial Jurisdiction Status.**

1.1 The City agrees to immediately disannex the Property described in Exhibit A, attached hereto and incorporated herein by reference (the Disannexation Property) and agrees not to reannex the Property involuntarily during the term of this Agreement.

1.2 The City shall be relieved of all obligations and covenants of the Annexation Service Plan with respect to the Disannexation Property effective immediately.

1.3 The City shall not be obligated to refund to Owner of the Disannexation Property money collected by the City from the Owner for taxes or for services to the Disannexation Property that were not provided.

1.4 Owner acknowledges that the disannexation of the Disannexation Property shall have no effect on the City's Extraterritorial Jurisdiction (ETJ) authority and that the Disannexation Property shall continue to be subject to the City's subdivision regulation authority and sign ordinance authority, and any other ordinances applicable within the City of Round Rock ETJ in accordance with State law.

1.5 Owner agrees that the permitted uses on the Disannexation Property shall be limited to those uses described in Section 46-142 of the Round Rock, Texas Code of Ordinances as follows:

Activity centers, children's; community services; daycare; funeral home; government facilities; gymnasiums/sports training facilities; kennel, indoor; office; overnight accommodations; park, community; park, linear/linkage; park, neighborhood; place of worship; school: business, trade and post-secondary educational facilities; small animal grooming facility; veterinary clinic, small animals; eating establishments; office, medical; upper-story residential; retail sales and services; school, primary/secondary, private.

1.6 Owner acknowledges and agrees that all building improvements henceforth shall be made in accordance with uniform building, fire, electrical, plumbing, and mechanical codes promulgated by recognized national code organizations and adopted by the City of Round Rock, and that all such construction work shall be inspected for compliance with such applicable codes by qualified third-party inspectors hired by Owner. All inspection reports related to the Property shall be made available for inspection by the City upon request. The City shall have no jurisdiction to require construction permits issued by the City, but may demand copies of inspection reports from Owner to verify compliance with the Code requirements described herein.

1.7 The owner agrees that all commercial development on the Disannexation Property shall be subject to the following general commercial building standards:

1. *Exterior wall finish.* The building materials of a project shall be durable, require low maintenance, and be of the same or higher quality as surrounding developments.

a. For all buildings, except for concrete tilt-wall construction:

1. At least 75 percent of the total exterior wall finish, except for doors, windows,

- and trim, shall be natural stone, simulated stone, brick, stone-face or split-face concrete masonry unit (CMU); and
2. No more than 25 percent may consist of stucco, fiber cement siding, architectural steel or metal, CMU other than split-face or stone-face, or glass with steel framing, except as modified by subsection f. below.
- b. For buildings utilizing concrete tilt-wall construction:
    1. At least 75 percent of the total exterior wall finish, except for doors, windows, and trim, shall be natural stone, simulated stone, brick, stone-face or split-face concrete masonry unit (CMU), or stucco; and
    2. No more than 25 percent may consist of fiber cement siding, architectural steel or metal, CMU other than split-face or stone-face, or glass with steel framing, except as modified by subsection f. below.
  - c. All CMU shall have an ashlar pattern.
  - d. Where stucco exceeds 75 percent of the total exterior wall finish, a minimum four-foot wainscot of stone, simulated stone, or brick shall be incorporated.
  - e. Glass with steel framing shall not exceed 25 percent of the total exterior wall finish for buildings less than three stories tall. Buildings that are three stories or taller may consist of a maximum 50 percent glass with steel framing.
2. *Exterior color.* Day-Glo, luminescent, neon, or similar types of color finishes are prohibited.
  3. *Glass.* Except for photovoltaic cells, mirrored glass with a reflectivity of 20 percent or more is not permitted on the exterior walls and roofs of all buildings and structures.
  4. *Orientation requirements.* Building elevations that directly face a public street shall have at least 15 percent of the wall facing the street consist of windows and/or pedestrian entrance areas.
  5. *Building elevation variation.* The following regulations shall apply to the primary façade and all building elevations facing a public street (right-of-way):
    - a. Changes in wall planes shall be provided with a minimum depth of 12 inches at intervals of not more than 80 feet. A depth of 24 inches is recommended.
    - b. Building elevations shall include a change in color, texture, and/or exterior wall finish material at horizontal intervals of not more than 80 feet.
    - c. Building elevations shall include vertical articulation by means of a minimum of one change in color, texture, and/or exterior wall finish material for any structure exceeding 20 feet in height.
  6. *Roofing materials.* Roofing materials for pitched roofs shall consist of 25-year architectural dimensional shingles, tile (clay, cement, natural or simulated stone), non-reflective prefinished metal, or reflective metal such as copper or other similar metals as approved by the zoning administrator.
- 1.8 Prior to beginning any improvements on the Property, Owner agrees to notify the City of the scope of work by delivering copies of all permits required by Travis County, or other regulatory agencies, for the construction of the improvements..
- 1.9 Owner shall correct any deficiencies found by the third-party code inspector within a reasonable amount of time or as provided by applicable codes, rules, regulations, and/or statutes.

## **Section 2. Term/ Miscellaneous**

2.1 The Term of this Agreement is 25 years from the effective date. Following the expiration of the Term, should the City elect to annex the Disannexation Property, the City shall first adopt a Municipal Annexation Plan pursuant to Section 43.052 Local Government Code.

2.2 All notices, requests or other communications required or permitted by this Agreement shall be writing and shall be sent by certified mail, postage prepaid, return receipt requested, and addressed to the parties at the following addresses:

City of Round Rock  
City Manager  
221 East Main Street  
Round Rock, Texas 78664  
Williamson County  
Phone: (512)218-5401

Auspro Enterprises, L.P.  
Michael Kleinman  
P.O. Box 13549  
Austin, TX 78711  
Travis County  
Phone:(512)-355-1616

2.3 This Agreement shall run with the Disannexation Property and be recorded in the Real Property Records of Travis County, Texas.

2.4 This Agreement may be enforced by any owner or the City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

2.5 No subsequent change in the law regarding annexation shall affect the enforceability of this Agreement

2.6 The venue for this Agreement shall be in Travis County, Texas.

2.7 This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and the same instrument.

## **Section 3. Lawsuit/Settlement**

3.1 In consideration for the acceptance of this Development Agreement and the payment by Owner to the City the sum of \$8,252.31 in drainage utility charges in full and complete satisfaction of all drainage utility charges related to any property described in Annexation Ordinance A-13-01-10-G4 that was at any time owned by Owner for the period prior to any disannexation thereof, the City agrees to dismiss with prejudice the Lawsuit claims it has filed against Owner and Owner agrees to dismiss with prejudice it's Amended Counterclaims in said Lawsuit against City including any claim for compensation for the taking of a portion of the Disannexation Property for Greenlawn Boulevard right-of way without compensation.

Notwithstanding any language to the contrary in Section 1.1 describing the Disannexation Property, Owner and City acknowledge and agree that Tract 4 of the Disannexation Property shall not include any portion of said described Tract that lies within the right-of-way of Greenlawn Boulevard.

Entered into and made effective on the date last signed by a party herein:

**OWNER:** Auspro Enterprises, LP, a Texas Limited Partnership

By: Midwave, LLC

Its: General Partner

By: \_\_\_\_\_

Michael Kleinman

Its: Manager

Date: \_\_\_\_\_

STATE OF TEXAS                    §  
COUNTY OF TRAVIS §

Before me, the undersigned notary, on this day personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, on behalf of said company and known to me through valid identification to be the person whose name is subscribed to the preceding instrument and acknowledged to me that the person executed the instrument for the purposes and consideration expressed in the instrument.

Given under my hand and seal of office on \_\_\_\_\_ 2017.

[Seal]

of Texas

\_\_\_\_\_  
Notary Public, State

THE CITY OF ROUND ROCK, TEXAS

\_\_\_\_\_  
Name:

Title: Mayor

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Name:

Title: City Secretary

Approved as to form:

\_\_\_\_\_  
Name:

Title: City Attorney

*(NOTARIES FOLLOW ON SEPARATE PAGES)*