

DEVELOPMENT AGREEMENT BETWEEN
CITY OF NEW BRAUNFELS AND
WORD-BORCHERS RANCH JOINT VENTURE
FOR PROPOSED MIXED USE DEVELOPMENT

Full Execution Date:
February 25, 2013

STATE OF TEXAS	§	DEVELOPMENT AGREEMENT
	§	BETWEEN
	§	CITY OF NEW BRAUNFELS
COUNTY OF COMAL	§	AND WORD-BORCHERS
	§	RANCH JOINT VENTURE
	§	FOR PROPOSED MIXED USE
CITY OF NEW BRAUNFELS	§	DEVELOPMENT

THIS DEVELOPMENT AGREEMENT, (this "Agreement") effective as of the Effective Date, is entered into by and between The City of New Braunfels, a Texas Home Rule Municipal Corporation (the "City"), and Word-Borchers Ranch Joint Venture, a Texas general partnership (the "Owner"), pursuant to the authority granted to the City by its powers as a home rule municipal corporation and the general laws of the State of Texas including § 212.172 of the Texas Local Government Code.

RECITALS

- A. Capitalized terms in these recitals have the meaning set forth in Section 2 of this Agreement.
- B. The Owner is a party to certain agreements that give the Owner options to purchase the Property, which is located in the ETJ and wholly within the boundaries of the District;
- C. By Consent Resolution entitled "Resolution of City of New Braunfels, Texas Consenting to the Creation of Comal County Water Improvement District No. 1, which is in the Extraterritorial Jurisdiction of the City," dated February 25, 2013, the City consented to the creation of the District and the inclusion of the Property within the District;
- D. The Owner's exercise of its purchase options is contingent upon the Owner's receipt of approvals and commitments necessary for the Owner to develop the Property as the Project;
- E. Pursuant to Chapters 212 and 232 of the Texas Local Government Code, the City and Comal County, Texas are parties to that certain Interlocal Cooperation Agreement Between Comal County and City of New Braunfels For Subdivision Regulation Within the Extraterritorial Jurisdiction of the City of New Braunfels, dated January 18, 2008, whereby the County assigned and delegated to the City the County's authority to approve subdivision plats and issue related permits for property within the ETJ pursuant to the terms and conditions therein;
- F. The City has established the Comprehensive Plan to guide the City in future growth and development, and the City and the Owner have determined that it is in the best interest of the City and the Owner for the Property to be developed in accordance with this Agreement;
- G. This Agreement is entered into pursuant to Chapter 380 of the Texas Local Government Code to promote state or local economic development and to stimulate business and commercial activity in accordance with § 380.001, and this Agreement is further authorized by § 212.172 of the Texas Local Government Code and § 118-4 of the Code of Ordinances, which allow the City to enter agreements affecting land in the ETJ;

H. The City and Owner desire to enter into this Agreement establishing a structure for development of the Property, as well as the regulations that will govern such development;

I. The Landowner has executed this Agreement to evidence its consent to have the Property developed in accordance with this Agreement;

J. The City has agreed to disannex the Disannexed Property in accordance with the procedures set forth in Section 3.6;

K. Pursuant to Section 9038.110 of the Creation Statute, upon the Full Execution Date, the ETJ of the City shall be extended in accordance with Section 42.021(2) of the Texas Local Government Code; and

L. The City Council approved this Agreement on February 25, 2013.

NOW, THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the City and the Owner hereby agree as follows:

1. **FINDINGS AND RECITALS**. The facts and recitations contained in the preamble of this Agreement are hereby found and declared to be true and correct, and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim. The City Council hereby finds that this Agreement is consistent with the policies and objectives of the City's Comprehensive Plan.
2. **DEFINITIONS**. For the purposes of this Agreement, all capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed in this Section 2. All terms used herein, whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.
 - 2.1. **Activity Node** – has the meaning defined in the Development Standards.
 - 2.2. **Additional SH Loop 337 ROW** – The portion of the SH Loop 337 ROW identified as “Additional SH Loop 337 ROW” on **Exhibit Y**.
 - 2.3. **Advanced TIFs** – For any External Traffic Improvement, the difference between the required External Traffic Improvement Deposit for such External Traffic Improvement and any applicable External Traffic Improvement Deposit Credit.
 - 2.4. **Agreement** – This Development Agreement, including any and all exhibits attached to this Agreement, which are incorporated by reference and expressly made part of this Agreement as if copied verbatim.
 - 2.5. **Alternative Development Standard** – A standard above the Minimum Development Standard that is based upon design principles or objectives that cannot be fully measured until an Application is submitted. An Applicant may elect to submit an Application using Alternative Development Standards,

provided that if the Planning Director does not recommend approval of any Alternative Development Standard or the City Council does not approve the Alternative Development Standard, the Applicant may revert to the Minimum Development Standard and the Application will then be measured solely on the grounds of whether it satisfies the applicable Minimum Development Standard.

- 2.6. **Alternate Stormwater Management Improvement** – A stormwater management improvement, of Net Equivalent Benefit to the German Creek Diversion Channel, located within the Bleiders Creek watershed but not on any portion of the Property without the consent of the Owner pursuant to Section 5.16.7, as determined by the City Engineer.
- 2.7. **Applicable New Ordinances** – During the Initial Term, the term “Applicable New Ordinances” means only those new ordinances passed by the City after the Full Execution Date that are effective City-wide or to all similarly situated land in the City, as of the Determining Date, that (a) are Exempt Ordinances, (b) are Selected Ordinances, (c) are permitted to apply to the Project under Section 3.7 or Section 5.5.2 of this Agreement, or (d) any Permitted Change to Chapter 118 of the Code of Ordinances. During the Renewal Term, the term “Applicable New Ordinances” means those City ordinances that qualify as “Applicable New Ordinances” under the definition above (without regard to whether the new ordinance was passed during the Initial Term or the Renewal Term), plus any new ordinances passed by the City after the Full Execution Date that (i) are effective City-wide or to all similarly situated land in the City, as of the Determining Date, (ii) do not expressly conflict with this Agreement, (iii) do not affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage, building size, impervious cover, setbacks or that purport to reduce the total developable area of the Property and (iv) do not affect or alter the stormwater drainage or stormwater management requirements set forth in this Agreement, except as permitted in Section 5.5.2 of this Agreement.
- 2.8. **Applicant** – An individual or entity that (a) applies for approval of a Major or Minor Amendment to the Master Framework Plan, Sector Plan, Preliminary Plat, Final Plat, Site Plan, Building Permit or any other City approval or permit applicable to the Project or (b) is the Owner, as applicable.
- 2.9. **Application** – an application for a Major or Minor Amendment to the Master Framework Plan, Sector Plan, Preliminary Plat, Final Plat, Building Permit, Site Plan and/or any other City application applicable to the Project.
- 2.10. **Approval** – an Approved Sector Plan, an Approved Preliminary Plat, an Approved Final Plat, an Approved Building Permit, an Approved Site Plan and/or any other City approval or permit applicable to the Project.

- 2.11. Approved Building Permit – A Building Permit within the Project, or required by the City in connection with the Project, that has been approved by the Planning Director or the City Council.
- 2.12. Approved Development Standards for Specialized Areas – The development standards, if any, for any of the Specialized Areas (a) contained within the Original Development Standards approved by the City Council during the Second Approval Period pursuant to the terms of Section 3.2.1 or (b) approved by the City Council during the Third Approval Period pursuant to Section 3.2.3 and attached as the First Addendum to Exhibit E.
- 2.13. Approved Final Plat – A Final Plat within the Project that has been approved by the Planning Commission or the City Council.
- 2.14. Approved Preliminary Plat – A Preliminary Plat within the Project that has been approved by the Planning Commission or the City Council.
- 2.15. Approved Sector Plan – A Sector Plan within the Project that has been approved by the City Council.
- 2.16. Approved Site Plan – A Site Plan within the Project that has been approved by the Planning Director or the City Council.
- 2.17. BMP – a Best Management Practice: a schedule of activities, prohibitions, practices, maintenance procedures, and other management practices to prevent or reduce the pollution of water in the state or other BMPs that may be allowed from time to time by the TCEQ or in amendments to Texas Administrative Code Volume 30, TCEQ Chapter 213 or the TCEQ technical guidance. BMPs are those measures that are reasonable and necessary to protect groundwater and surface water quality, as provided in technical guidance prepared by the executive director of the TCEQ or other BMPs described or allowed in the Development Standards.
- 2.18. Build-Out – The permanent completion of all sales and development activities relating to the Project by the Owner.
- 2.19. Building Code – the codes currently referenced in Chapter 14 of the Code of Ordinances, as such codes may change from time to time.
- 2.20. Building Permit – A Building Permit application submitted in accordance with Exhibit E.
- 2.21. Building Permit Applicant – Any End User that applies for a commercial or residential Building Permit that would be subject to a traffic Impact Fee pursuant to the Code of Ordinances.
- 2.22. CC&Rs - Covenants, Conditions and Restrictions or other deed restrictions imposed on any portion of the Property and recorded in the real property

records of Comal County by the Owner and establishing one or more Homeowners Associations.

- 2.23. Charter – The City Charter of the City.
- 2.24. City – The City of New Braunfels, a Texas Home Rule Municipal Corporation, located in Comal and Guadalupe Counties, Texas.
- 2.25. City Council – The elective body of the City, as such term is defined in Section 1.02 of the Charter.
- 2.26. City Council Sector Plan Determinations – Determinations made by the City Council (a) whether the Sector Plan conforms to the Master Framework Plan, (b) (i) whether the Sector Plan covers all or a portion of a Specialized Area, (ii) if so, whether the Sector Plan requires any development standards for a Specialized Area beyond the Approved Development Standards for Specialized Areas (i.e., whether any of the Continued Outstanding Development Standards for a Specialized Area relate to a Specialized Area contained in the Sector Plan), and (iii) if the Sector Plan requires any development standards for a Specialized Area beyond the Approved Development Standards for Specialized Areas, whether such required additional development standards for the Specialized Area(s) proposed in the Sector Plan fully address the applicable Continued Outstanding Development Standards for Specialized Areas in a manner satisfactory to the City Council, (c) whether any proposed Alternative Development Standards are acceptable to the City Council, (d) whether the Sector Plan incorporates any Listed Minimum Development Standards, and if so, whether the Sector Plan satisfies the appropriate standard in the Listed Minimum Development Standards and (e) whether the Sector Plan is consistent with all terms of the Agreement.
- 2.27. City Engineer – The designated City Engineer for the City.
- 2.28. Code of Ordinances – The City of New Braunfels Code of Ordinances, in the form existing on the Full Execution Date hereof (together with any uncodified ordinances existing as of that date), as it may be amended from time to time, but only to the extent that such amendments are considered Applicable New Ordinances. Such Code of Ordinances existing on the Full Execution Date, together with any uncodified ordinances existing on the Full Execution Date, are attached hereto as **Exhibit D**.
- 2.29. Community Parks – has the meaning set forth in the Development Standards.
- 2.30. Comprehensive Plan – The Comprehensive Plan adopted by the City Council, as amended from time to time.
- 2.31. Consent Resolution – The Consent Resolution attached as **Exhibit A**.

2.32. Continued Outstanding Development Standards for Specialized Areas – The required development standards, if any, for any of the Specialized Areas that remain outstanding upon the expiration of the Third Approval Period (i.e., that have not been included in the Original Development Standards approved by the City Council before the expiration of the Second Approval Period pursuant to the terms of Section 3.2.1 or that were not included in the First Addendum to Exhibit E approved by the City Council and attached to this Agreement pursuant to the terms of Section 3.2.3) and that are to be listed in the Planning Director’s notice to the Owner as required by Section 3.2.4.

2.33. County – Comal County, Texas.

2.34. Creation Statute – Chapter 9038 of the Texas Special Districts and Local Laws.

2.35. Cure Period – A period of thirty (30) days after written notice to a party from the other party of the failure to perform or otherwise act in accordance with any term or provision of this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have an additional period of time up to one hundred twenty (120) days so long as such party commences performance or compliance within said 30-day period and diligently proceeds to complete such performance or fulfill such obligation within the additional one hundred twenty (120) day period.

2.36. Determining Date – The date on which the Owner submits a Sector Plan that is determined by the Planning Director to be complete pursuant to Section 4.1.2 of this Agreement.

2.37. Developed Land – Platted lots containing Impervious Cover that is included in the calculation of the Project’s overall Impervious Cover Percentage, together with any roadways within the Project or other unplatte areas within the Project that contain Impervious Cover that is included in the calculation of the Project’s overall Impervious Cover Percentage; provided, however, in no event shall Developed Land include any portion of the Property that has not been included in a Sector Plan as of the date of such calculation.

2.38. Development Standards – The development standards applicable to the Property as originally set forth in the Original Development Standards which may be approved by the City Council pursuant to the terms of Section 3.2.1 and thereafter attached to this Agreement as **Exhibit E** pursuant to the amendment process described in Section 3.2.1, and any amendments or addendum to such **Exhibit E** that may be approved by the City Council pursuant to the terms of Section 3.2, provided that for purposes of any Approvals under an Approved Sector Plan, the term “Development Standards” shall be deemed to include (a), for any Sector Plan containing a Specialized Area, any Approved Development Standards for Specialized Areas relating to such Specialized Area, as supplemented by the approval of any Continued

Outstanding Development Standards for Specialized Areas relating to such Specialized Area approved by the City Council as part of an Approved Sector Plan, and (b) any Alternative Development Standards approved by the City Council as part of an Approved Sector Plan.

2.39. Disannexed Property – The approximately thirty-four (34) acres in Comal County, Texas described in **Exhibit C**.

2.40. District -- The Comal County Water Improvement District No. 1, a water control and improvement district created under Section 59, Article XVI of the Texas Constitution and authorized and operating pursuant to the Creation Statute and with the powers and duties provided by the general law of the State of Texas, including Chapters 49 and 51 of the Texas Water Code, applicable to water control and improvement districts created under Section 59, Article XVI, Texas Constitution, including powers relating to sanitary sewer, and each district created by the dividing thereof consistent with the terms of the Creation Statute and hereof.

2.41. District Obligations – The obligations the District assumes under this Agreement as described in Section 22.

2.42. Dwelling Unit – has the meaning set forth in the Development Standards.

2.43. EARIP/EAHCP – The Edwards Aquifer Recovery Implementation Plan/Habitat Conservation Plan adopted February 29, 2012, as amended from time to time.

2.44. Effective Date – The date on which this Agreement is recorded in the real property records of Comal County, Texas pursuant to the terms of Section 23.15.

2.45. End Users – An entity or individual that purchases a subdivided lot reflected on an Approved Final Plat.

2.46. ETJ –The extraterritorial jurisdiction of the City, as determined by Chapter 42 of the Texas Local Government Code.

2.47. Event of Default – The failure of either party to comply with the terms of this Agreement after the expiration of the Cure Period.

2.48. Exempt Ordinances – Any of the following:

2.48.1. either (a) uniform building, fire, electrical, plumbing or mechanical codes adopted by a recognized national code organization, or, conversely, (b) the Building Code, as applicable in the City;

- 2.48.2. local amendments to the uniform codes described above enacted solely to address imminent threats of destruction of property or injury to persons;
- 2.48.3. regulations for sexually oriented businesses;
- 2.48.4. construction standards for public works located on public lands or easements;
- 2.48.5. regulations for utility connections;
- 2.48.6. regulations to prevent imminent destruction of property or injury to persons from flooding that are effective only within a flood plain established by a federal flood control program and enacted to prevent flooding of buildings intended for public occupancy; and
- 2.48.7. changes to the Code of Ordinances enacted after the Full Execution Date that modify the fees paid by applicants for a master plan, a Preliminary Plat, a Final Plat, a Site Plan and Building Permit, or any other permit required as part of the development approval process under the Code of Ordinances; provided, however, (a) this Section 2.48.7 shall not (i) encompass any Impact Fees provided for in the Code of Ordinances or in any way be construed to require Owner or any Applicant to pay Impact Fees and (ii) nothing in this Section 2.48.7 shall in any way modify any terms of Section 6 regarding required construction or funding for Internal Traffic Improvements and External Traffic Improvements or payment of TIFs and (b) with respect to changes to the Code of Ordinances that modify the fees paid by applicants for a master plan, such changes shall only be applicable to Applicants pursuant to the terms of Section 2.54.

- 2.49. External Access Point – A ROW connection at the boundary of the Project intended to facilitate vehicular access to the thoroughfare network external to the Project.
- 2.50. External FM 1863 Connection ROW – A portion of the ROW outside of the Project as depicted on **Exhibit Z**.
- 2.51. External Traffic Improvements – Traffic mitigation improvements external or adjacent to the Project identified in the TIA and listed on **Exhibit T**, as amended from time to time as contemplated by Section 6.11.
- 2.52. External Traffic Improvement Deposit – Cash or such cash equivalent (including a letter of credit or surety bond) as shall be acceptable to the City Engineer to be posted by the Owner for the cost of an External Traffic Improvement pursuant to the terms of Section 6.6 hereof, with the amount of such External Traffic Improvement Deposit to be determined in accordance with **Exhibit T**, and reduced by the amount of any applicable External Traffic

Improvement Deposit Credit. In the event the City Engineer accepts the External Traffic Improvement Deposit in the form of a cash equivalent (including a letter of credit or surety bond), the amount of the External Traffic Improvement Credit shall be recalculated at the time any such cash equivalent is renewed.

- 2.53. External Traffic Improvement Deposit Credit – With respect to any required External Traffic Improvement Deposit, the sum of any unspent or unreimbursed TIFs then held by the City for application to External Traffic Improvements pursuant to Section 6.14 hereof. It is understood that if the External Traffic Improvement Deposit Credit needs to be recalculated as a result of the renewal of a letter of credit, surety bond or other cash equivalent acceptable to the City Engineer, the Traffic Improvement Deposit Credit may be increased if, and to the extent of, any increase in the amount of unspent and unreimbursed TIFs held by the City at the time of recalculation as compared to the time of original calculation.
- 2.54. Fees – The list of fees contemplated in Section 15.2 and as shown in **Exhibit EE**, as they may be adjusted by the City from time to time in accordance with the terms of Section 2.7 (Applicable New Ordinances); provided, however, that any increases in Sector Plan application fees reflected on **Exhibit EE** can only be increased in an amount proportionate to increases in master plan application fees charged by the City to master plan applicants
- 2.55. Final Plat – A Final Plat application submitted in accordance with **Exhibit E**.
- 2.56. Final Plat Completeness Notice – The notice from the Planning Director required by Section 4.1.4 as to the Planning Director's decision as to completeness of a Final Plat.
- 2.57. Final Plat/TIA Threshold Worksheet – The TIA Threshold Worksheet to be submitted by the Applicant with each Final Plat detailing the total peak hour trips and daily trips to be generated by the land uses reflected on the Final Plat, and showing the cumulative peak hour trips and daily trips generated to date by all Approved Final Plats from the same Sector Plan and all other Final Plats from the same Sector Plan that have been submitted but have not been finally approved or disapproved by the Planning Director or the City Council.
- 2.58. First Addendum to Exhibit E – The addendum to **Exhibit E** to be executed by the Owner and the City pursuant to the terms of Section 3.2.3.
- 2.59. FM 1863 Option Agreement – An agreement between the City and the Owner providing the City the irrevocable right to obtain the Internal FM 1863 Connection ROW within five (5) years of the date of the FM 1863 Option Agreement for no additional consideration. The FM 1863 Option Agreement must be accompanied by evidence reasonably satisfactory to the City demonstrating that there are no liens, deeds of trust or similar financial

encumbrances encumbering the Internal FM 1863 Connection ROW at the time the FM 1863 Option Agreement is recorded in the real property records.

- 2.60. Full Execution Date – The date that all Parties have executed this Agreement and submitted the fully signed version to the Planning Director to hold in trust pending the decision by the Owner pursuant to Section 23.15.
- 2.61. German Creek Diversion Channel – The diversion channel contemplated in Section 5.16 and more fully described in **Exhibit Q**.
- 2.62. Homeowners Association – An incorporated or unincorporated association, whether one or more, owned by or whose members consist primarily of the owners of the residential or commercial property covered by the dedicatory instrument and through which the owners, or the board of directors or similar governing body, manage or regulate the residential or commercial subdivision or similar planned development.
- 2.63. Impact Fees – A capital recovery cost fee, levied on designated applicants or users in the planning jurisdiction of the City, as permitted by Chapter 395 of the Texas Local Government Code, and paid to the City.
- 2.64. Impervious Cover – The covering of the land surface by material that prevents penetration or percolation by water, including, but not limited to, all parking areas, buildings, patios, sheds, sidewalks, access ways and driveways within the land, tract, parcel or lot and any other impermeable construction covering the natural land surface, but excluding the (a) Regional Stormwater Facility and (b) any other specific area determined by the City Engineer to be subject to an exclusion or partial reduction, including any other area that under the Code of Ordinances, any City criteria manual interpreting same, or the then current policies of the City Engineer is entitled to a full or partial exclusion.
- 2.65. Impervious Cover Percentage – The total acres of Impervious Cover (a) on the Property divided by the total number of acres of the Property, or (b) on any portion of the Property contained in a Sector Plan divided by the total number of acres included in the portion of the Property contained in such Sector Plan, but excluding River Road.
- 2.66. Initial Term – The period beginning on the Effective Date and continuing until the fifteenth (15th) annual anniversary of the Effective Date.
- 2.67. Internal FM 1863 Connection ROW – A portion of the ROW within the Project, as generally depicted on the Master Framework Plan, as the principal east-west arterial roadway.
- 2.68. Internal Traffic Improvements – Traffic mitigation improvements internal to the Project identified in the TIA and listed on **Exhibit S**.

2.69. Issuing District – The District whose Board of Directors approves the issuance or sale of bonds by such District.

2.70. ITE Manual – the trip generation manual issued by the Institute of Transportation Engineers, as it changes from time to time.

2.71. Land Use – The type of activity occurring on a platted lot, or within a building situated upon a platted lot.

2.72. Landowner – Word-Borchers Ranch Real Estate Limited Partnership, a Texas limited partnership.

2.73. Linear Open Space Parks – has the meaning set forth in the Development Standards.

2.74. Listed Minimum Development Standards -- Those Minimum Development Standards to be listed on **Exhibit F** that are based upon design principles or objectives that cannot be fully measured until an Application is submitted. The list of Listed Minimum Development Standards will be determined in accordance with the process described in Sections 3.2.2, 3.2.4 and 3.2.6.

2.75. LUE – A Living Unit Equivalent, being the standardized unit of measure for water and wastewater services as defined in Section 130-336 of Code of Ordinances.

2.76. Main Plaza – The intersection of San Antonio Street & Seguin Avenue in the City, the associated “traffic circle” and all area contained within the ROW for such streets as of the Effective Date, all as shown on **Exhibit U**.

2.77. Major Amendment to an Approved Sector Plan – A proposed change to an Approved Sector Plan that is not a Minor Amendment to an Approved Sector Plan.

2.78. Major Amendment to the Master Framework Plan – A proposed change to the Master Framework Plan that is not a Minor Amendment to the Master Framework Plan.

2.79. Major Roadway – has the meaning set forth in the Development Standards.

2.80. Master Framework Plan – The Master Framework Plan attached as **Exhibit H**, as amended from time to time in accordance with the terms of Section 4.2.

2.81. Minimum Development Standards – The minimum standards an Application is required to achieve in order to be approved by the City, as set forth in the Development Standards. The City agrees that, except for the Listed Minimum Development Standards, the Minimum Development Standards set forth in the Development Standards as of the Full Execution Date are discrete, measurable requirements.

2.82. Minor Amendment to an Approved Final Plat – A minor revision to an approved final plat under Section 118-35 of the Code of Ordinances, as such Section 118-35 may be revised from time to time (and considered as a Permitted Change to Chapter 118 of the Code of Ordinances).

2.83. Minor Amendment to an Approved Sector Plan – A proposed change to an Approved Sector Plan that meets all of the following criteria, as determined by the Planning Director:

2.83.1. Master Framework Plan. The change does not require a Major Amendment to the Master Framework Plan and is consistent with this Agreement;

2.83.2. Land Area. The land area of the Approved Sector Plan does not change by more than ten percent (10%), excluding the amount of Sector Plan acreage that is added as a Park that is open to the public;

2.83.3. Planning Area Pods. The acreage of any of the Planning Area Pods depicted on the Approved Sector Plan does not increase or decrease by more than ten percent (10%), except as a result of:

- (A) ROW dedication (public or private streets);
- (B) dedication of land for Parks that are open to the public;
- (C) land within a Neighborhood (Mixed Density) Residential Planning Area that cannot be developed due to environmental constraints, including, without limitation, the unforeseen presence of karst features that require setbacks or buffer areas pursuant to TCEQ requirements;
- (D) a Minor Amendment to the Master Framework Plan; or
- (E) a change resulting from (i) a Minor Change to the Master Framework Plan or (ii) modification to the Minor Roadways shown on the Approved Sector Plan that qualifies under Section 2.83.6.

2.83.4. Residential Density. Density within the Approved Sector Plan does not increase or decrease by more than ten percent (10%), except if a change of more than ten percent (10%) is a result of:

- (A) ROW dedication (public or private streets);
- (B) dedication of land for Parks that are open to the public; or
- (C) a Minor Amendment to the Master Framework Plan;

- 2.83.5. Non-Residential Density. Intensity of non-residential land uses in the Approved Sector Plan does not change by more than ten percent (10%);
- 2.83.6. Realignment of Minor Roadways. The change does not require modifications to the Minor Roadways shown on the Approved Sector Plan in a manner that moves any such street by more than one hundred fifty feet (150') or in a manner that causes the density of any block to increase or decrease by more than ten percent (10%);
- 2.83.7. Traffic. The change does not result in an increase in total peak hour trips or daily traffic trips generated from the uses described in the Approved Sector Plan by more than ten percent (10%) as compared to the total peak hour trips and daily trips specified in Sector Plan/TIA Threshold Worksheet filed in connection with the original Approved Sector Plan, using the methodologies recommended by the then current ITE Manual as utilized in the TIA;
- 2.83.8. Realignment of Trunk Infrastructure. The change does not move trunk sewer, water, gas, communications or electrical transmission lines and facilities shown on the Approved Sector Plan by more than the greater of (a) the width of the depicted easement, or (b) one hundred fifty feet (150') unless a greater amount is approved by the Planning Director; and
- 2.83.9. No Other Substantial Changes. The change does not propose any change to any criteria in the Approved Sector Plan not specifically covered by the terms of Sections 2.83.1-2.83.8 above that the Planning Director determines to be substantial or material.

2.84. Minor Amendment to the Master Framework Plan – A proposed change to the Master Framework Plan that meets all of the following criteria, as determined by the Planning Director:

- 2.84.1. Planning Area Pods. The proposed change results in less than a ten percent (10%) change in acreage of any of the Planning Area Pods as shown on the Master Framework Plan;
 - (A) Notwithstanding the foregoing, this Planning Area criterion is met (and the proposed amendment is not a Major Amendment) if a change in acreage of ten percent (10%) or greater is a result of:
 - (1) ROW dedication (public or private streets);
 - (2) dedication of land for Parks that are open to the public; or
 - (3) land identified as a Neighborhood Center Area;

- (4) land within a Neighborhood (Mixed Density) Residential Planning Area that cannot be developed due to environmental constraints, including, without limitation, the unforeseen presence of karst features that require setbacks or buffer areas pursuant to TCEQ requirements; or
- (5) a change resulting from any of the matters contemplated by Section 2.84.3, Section 2.83.4, Section 2.84.5, Section 2.84.6, or Section 2.84.9.

2.84.2. Residential Density. The proposed change results in a total of 6,000 or fewer single-family dwelling units and 1,500 or fewer multi-family dwelling units within the Project.

2.84.3. Activity Nodes. If the proposed change involves relocating an Activity Node, it does so within the applicable one thousand foot (1,000') buffer zone shown on the Master Framework Plan;

2.84.4. External Access Points. If the proposed change requires moving External Access Points, it does so in a manner that meets State and City access management plans (as reflected in Chapters 114 and 118 of the Code of Ordinances and TxDOT's access management policy, as each may be amended from time to time) and does not cause an amendment to the Regional Transportation Plan (as reflected in the Comprehensive Plan). In no event shall any External Access Point align with California Street;

2.84.5. External Road Connection. If the proposed change moves the boundary of the District or the Project, it does so to include land acquired to facilitate the External FM 1863 Connection ROW or a connection to Hueco Springs Loop Road in accordance with this Agreement;

2.84.6. Realignment of Major Roadways. If the proposed change realigns the general location and configuration of any roadway designated on the Master Framework Plan, it does so within the allowable five hundred foot (500') buffer for such as depicted on the Master Framework Plan;

2.84.7. Traffic. The proposed change does not result in an increase of more than ten percent (10%) in the total number of peak hour trips or daily trips attributed to the Project under the TIA, using the same methodology for calculating peak hour trips and daily trips as recommended by the then current ITE Manual and utilized in the TIA;

2.84.8. Total Park Acreage. The proposed change does not result in a reduction of the combined total acreage of all Regional Parks, Community Parks, Linear Open Space Parks and Other Parks that are open to the public to below four hundred eighty (480) acres;

2.84.9. Regional Parks. If the proposed change moves the boundaries of either RP1 or RP2, as depicted on the Master Framework Plan and more particularly described in Exhibit AA, it does so by (a) less than five hundred (500) feet, (b) changing the total area of RP1 to no less than forty and one-half (40.5) acres, and (c) changing the total area of RP2 to no less than forty-nine and one-half (49.5) acres; provided, however, that the combined acreage for both RP1 and RP2 shall not be less than one hundred (100) acres; and

2.84.10. No Other Substantial Change. The change does not propose any change to any criteria in the Master Framework Plan not specifically covered by the terms of Sections 2.84.1-2.84.9 above that the Planning Director determines to be substantial or material.

2.85. Minor Roadway – has the meaning stated in the Development Standards.

2.86. NBU – The New Braunfels Utilities.

2.87. Net Equivalent Benefit – An Alternate Stormwater Management Improvement that removes at least 1,294 cubic feet per second of water during a 100-year storm at the same measurement point utilized to determine the downstream benefit of the German Creek Diversion Channel, as determined by the City Engineer.

2.88. Original Development Standards – The development standards for development of the Property that may be approved by the City Council pursuant to the terms of Section 3.2.1 and thereafter attached to this Agreement as **Exhibit E** pursuant to the amendment process described in Section 3.2.1.

2.89. Other Parks – One or more Parks in the Project other than the Regional Parks, Community Parks and Linear Open Space Parks.

2.90. Outstanding Development Standards for Specialized Areas – The required development standards, if any, for any of the Specialized Areas that remain outstanding upon the expiration of the Second Approval Period (i.e., that have not been included in the Original Development Standards approved by the City Council before the expiration of the Second Approval Period as contemplated by Section 3.2.1) and that are to be listed in the Planning Director's notice to the Owner as required by Section 3.2.2.

2.91. Owner – Word-Borchers Ranch Joint Venture, a Texas general partnership, its successors or assigns.

2.92. Owner SH Loop 337 Improvements – The portion of the SH Loop 337 Improvements identified on **Exhibit X** (such SH Loop 337 Improvements being more fully described on **Exhibit T**) that are the responsibility of the Owner to fund and construct.

2.93. Owner Submittal Period – The period of time between the Full Execution Date and the earlier to occur of (a) the date that the Owner submits to the Planning Director any proposed development standards that address any of the Outstanding Development Standards for Specialized Areas pursuant to the terms of Section 3.2.3 and (b) the date that is six (6) months after the Full Execution Date.

2.94. Parks – has the meaning stated in the Development Standards.

2.95. Parks Director – The Parks Director of the City.

2.96. Parks Option Agreement – An agreement between the City and the Owner providing the City the irrevocable right to obtain land for public parks in sufficient acreage to eliminate the deficiency described in Section 7.7.2 within five (5) years of the date of the Parks Option Agreement for no additional consideration. Such Parks Option Agreement must be accompanied by evidence reasonably satisfactory to the City demonstrating there are no liens, deeds of trust or similar financial encumbrances encumbering the land subject to the Parks Option Agreement at the time the Parks Option Agreement is recorded in the real property records.

2.97. Partial SH Loop 337 ROW Value – The value of the Valued SH Loop 337 ROW determined in accordance with Section 6.17.2.

2.98. Parties – Collectively, the City and the Owner, but not including NBU, the District or the Landowner, unless otherwise specifically stated.

2.99. Permitted Change to Chapter 118 of the Code of Ordinances – Any changes to Chapter 118 of the Code of Ordinances after the Full Execution Date, except for changes to Section 118-20 (Preliminary Conference), Section 118-21 (General Procedures), Section 118-23 (Preliminary Plat), Section 118-26 (Processing of Preliminary Plan; Approval), Section 118-27 (Final Plat), Section 118-28 (Filing and Fees), Section 118-29 (Form and Contents) and Section 118-32 (Processing of Final Plat), as long as any changes to Chapter 118 of the Code of Ordinances (a) are effective City-wide or to all similarly situated land in the City, as of the Determining Date, (b) do not expressly conflict with this Agreement, (c) do not affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage, building size, impervious cover, setbacks or that purport to reduce the total developable area of the Property and (d) do not affect or alter the stormwater drainage or stormwater management requirements set forth in this Agreement, except as permitted in Section 5.5.2 of this Agreement. Notwithstanding anything to the contrary in the foregoing, any changes to Section 118-28 (Filing and Fees) shall be utilized under this Agreement pursuant to the terms of Section 2.48.7.

2.100. Permitted Land Uses – Any and all permitted land uses identified in **Exhibit E**.

2.101. Planning Area – Any of the following as defined in the Development Standards: the Town Center Planning Area, Mixed Commercial and Business Planning Area, Large Format Retail Planning Subarea, Mixed Use Employment Planning Subarea, Neighborhood Center Planning Area, Resort Planning Area, High Density Residential Planning Area, Neighborhood (Mixed Density) Residential Planning Area and/or Park Planning Area.

2.102. Planning Area Pod – The delineated land area of a portion of a Planning Area as reflected on the Master Framework Plan.

2.103. Planning Commission – The Planning Commission of the City, as provided for in Section 10.01 of the Charter, or such other replacement body appointed by the City Council pursuant to the terms of Section 4.8 hereof.

2.104. Planning Commission Final Plat Determinations – Determinations made by the Planning Commission whether a Final Plat (a) conforms to the Master Framework Plan, (b) conforms to an Approved Sector Plan and (c) is consistent with the terms of this Agreement.

2.105. Planning Director – The Planning Director for the City, or the designee of the Planning Director.

2.106. Preliminary Plat – A Preliminary Plat application submitted in accordance with **Exhibit E**.

2.107. Project – The master-planned, mixed-use development with commercial and residential uses to be developed by the Owner on the Property as contemplated by this Agreement.

2.108. Project Engineer - A civil engineer appointed by the Owner.

2.109. Property – Approximately 2,400 acres of real property in Comal County, Texas, more particularly described in **Exhibit B**, which is located in the ETJ (except for the Disannexed Area), and all of which can be included within the District as contemplated herein.

2.110. Regional Park – has the meaning stated in the Development Standards.

2.111. Regional Stormwater Facility – The facility described in the Stormwater Management Report to be constructed in the location depicted on **Exhibit J**; provided, however, the location for the Regional Stormwater Facility may be adjusted slightly from the location depicted on **Exhibit J** to accommodate final civil engineering of the Regional Stormwater Facility if such adjustment is approved by the City Engineer.

2.112. Regional Transportation Plan – The Regional Transportation Plan as adopted by the City on March 12, 2012, and as amended from time to time.

- 2.113. Renewal Term – The period beginning upon the expiration of the Initial Term and continuing for so long as this Agreement remains in effect under Section 18.
- 2.114. ROW – The right-of-way for roadways, as determined by the City Engineer.
- 2.115. RP1 – Regional Park 1, as depicted on **Exhibit AA**.
- 2.116. RP2 – Regional Park 2, as depicted on **Exhibit AA**, and for the purpose of Section 7.1.2, including a direct, uninterrupted Linear Open Space Park connection between RP1 and RP2 that complies with the Development Standards.
- 2.117. RP2 Option Agreement – An agreement between the City and the Owner, in form reasonably satisfactory to the City, providing the City the irrevocable right to obtain the land for RP2 within five (5) years of the date of the RP2 Option Agreement for no additional consideration. The RP2 Option Agreement must be accompanied by evidence reasonably satisfactory to the City demonstrating there are no liens, deeds of trust or similar financial encumbrances encumbering the land of RP2 at the time the RP2 Option Agreement is recorded in the real property records of the County.
- 2.118. RSF Easement – The regional stormwater facility easement in favor of the City contemplated in Section 5.3 and in the form attached as **Exhibit K**.
- 2.119. RSF Easement Property – The property subject to the RSF Easement on which the regional stormwater facility will be located as described in **Exhibit L**.
- 2.120. RSF Escrow Agreement – The Regional Stormwater Facility Easement Escrow Agreement contemplated in Section 5.3 in the form attached as **Exhibit M**.
- 2.121. Second Approval Period – The period of time between the Full Execution Date and April 26, 2013.
- 2.122. Section – A numbered or lettered section of this Agreement, as well as all subsections of said Section.
- 2.123. Sector – The land area subject to a Sector Plan.
- 2.124. Sector Plan – A Sector Plan application submitted in accordance with **Exhibit E**.
- 2.125. Sector Plan Completeness Notice – The notice from the Planning Director required by Section 4.1.2 as to the Planning Director's decision as to completeness of the Sector Plan.

2.126. Sector Plan Submittal Cover Sheet – The cover sheet to be submitted by the Applicant with each Sector Plan in accordance with the Development Standards.

2.127. Sector Plan/TIA Threshold Worksheet – The TIA Threshold Worksheet to be submitted as part of the Sector Plan Submittal Cover Sheet, as required by the Development Standards, detailing the total peak hour trips and daily trips to be generated by the land uses reflected on the Sector Plan, and showing the cumulative peak hour trips and daily trips generated to date by all Approved Sector Plans or other Sector Plans that have been submitted but have not yet been finally approved or disapproved by the City Council.

2.128. Sediment Study Report – The Sedimentation Yield Analysis dated May 2012, prepared by Pape-Dawson Engineers, Inc. attached as **Exhibit N**.

2.129. Selected Ordinances – Any City ordinance passed after the Effective Date but before the Determining Date that (a) modifies any City ordinance that would otherwise be applicable to the Property, (b) enhances or protects the Project, including changes that lengthen the effective life of a permit, and (c) the Owner specifies as being applicable to the Project in a written notice delivered to the Planning Director as part of the submittal package for a Sector Plan.

2.130. SH Loop 337 – The State Highway Loop No. 337 from IH 35 southwest of New Braunfels, northward to SH 46, and then concurrent with SH 46 eastward and southward to IH 35 east of New Braunfels, a distance of approximately 8.3 miles.

2.131. SH Loop 337 Improvements – Certain improvements to SH Loop 337 as listed on **Exhibit V** and generally depicted on **Exhibit W**.

2.132. SH Loop 337 ROW – The total ROW adjacent to SH Loop 337 shown on **Exhibit Y** that includes both the Additional SH Loop 337 ROW and the Valued SH Loop 337 ROW.

2.133. SH Loop 337 Threshold – The date on which an Application for a Final Plat is filed that, if approved, would trigger the requirement to construct the next segment of SH Loop 337 Improvements as set forth on **Exhibit V**.

2.134. Site Plan – A Site Plan application submitted in accordance with **Exhibit E**.

2.135. Site Plan and Building Permit Completeness Notice – The notice from the Planning Director required by Section 4.1.5 as to the Planning Director's decision as to completeness of the Site Plan and Building Permit.

2.136. Specialized Areas – Any of the following Planning Areas: The Town Center Planning Area, the Large Format Retail Planning Subarea, the Neighborhood Center Planning Area, the Resort Planning Area and Park Planning Area.

2.137. Stormwater Management – The system, or combination of systems, that controls or manages the path, storage or rate of release of stormwater runoff.

2.138. Stormwater Management Report – The Stormwater Management & Flood Control Analysis dated May 2012, prepared by Pape-Dawson Engineers, Inc. attached as **Exhibit I**.

2.139. Stormwater Mitigation Project – The German Creek Diversion Channel or Alternate Stormwater Management Improvement, as applicable.

2.140. Stormwater Mitigation Project Commencement Notice – Notice contemplated in Section 5.16.2 to be provided by the City to the Owner and the District that (a) final engineering and design work for the Stormwater Mitigation Project has commenced, (b) the City has incurred no less than One Hundred Thousand Dollars (\$100,000) in design and engineering costs for the Stormwater Mitigation Project, and (c) the City reasonably anticipates commencing on-the-ground construction of the Stormwater Mitigation Project within twelve (12) months from the date of such Stormwater Mitigation Project Commencement Notice.

2.141. Stormwater Mitigation Project Fee – An amount paid by the Owner to the City that is equal to the lesser of (a) fifty percent (50%) of the actual cost to construct the Stormwater Mitigation Project or (b) Five Million Dollars (\$5,000,000).

2.142. Strategic Partnership Agreement – The Strategic Partnership Agreement entered into by and between the City and the District attached as **Exhibit DD**, as amended from time to time.

2.143. TCEQ – The Texas Commission on Environmental Quality, or any successor agency.

2.144. Temporary Regional Stormwater Facility – Phase 1 of the Regional Stormwater Facility, which may be constructed at the location depicted on **Exhibit J**, as described in the Stormwater Management Report; provided, however, the location for the Temporary Regional Stormwater Facility may be adjusted slightly from the location depicted on **Exhibit J** to accommodate final civil engineering of the Temporary Regional Stormwater Facility if such adjustment is approved by the City Engineer.

2.145. Term – The period including the Initial Term and the Renewal Term, if any.

2.146. Third Approval Period – The period of time between (a) the expiration of the Owner Submittal Period and (b) the date that is five (5) months after the expiration of the Owner Submittal Period.

2.147. Third Party SH Loop 337 Improvements – The portion of the SH Loop 337 Improvements identified on **Exhibit X** (such Third Party SH Loop 337

Improvements being more fully described on **Exhibit V**) that are the responsibility of TxDOT or other third parties (but not the Owner, the District or the City) to fund and construct.

2.148. **TIA** – The Project Transportation Plan dated August 2012, prepared by Pape-Dawson Engineers, Inc. attached as **Exhibit R**, as amended from time to time as contemplated by Section 6.8 and Section 6.9.

2.149. **TIF** – Transportation Improvement Fee: a capital cost recovery fee levied on Building Permit Applicants as contemplated by Section 6.3 and paid to the City.

2.150. **TSS** – Total Suspended Solids: a water quality measurement, commonly expressed as a concentration in terms of milligrams per liter.

2.151. **TxDOT** – The Texas Department of Transportation, or any successor organization.

2.152. **Utility Agreement** – The Utility Construction Cost Sharing Agreement For the Veramendi Development entered into by and between NBU, the Owner, the Landowner (limited joinder), the District, and the City (limited joinder) attached as **Exhibit CC**, as amended from time to time.

2.153. **Valued SH Loop 337 ROW** – The portion of the SH Loop 337 ROW as shown on **Exhibit Y** that is being dedicated by Owner as a condition to the City's approval of this Agreement, but which Owner would not otherwise be required to dedicate and for which Owner retains the right to be reimbursed as set forth in Section 6 of this Agreement. The Valued SH Loop 337 ROW shall equal the SH Loop 337 ROW, but excluding the Additional SH Loop 337 ROW.

3. **THE PROJECT.** The Owner plans to develop the Project, and in conjunction therewith is proposing to obtain Approvals of Applications for the Project in accordance with this Agreement.

3.1. **Land Uses.** The designated land uses within the Property may include any or all Permitted Land Uses, provided that any land use requiring a special use permit under the Development Standards must obtain such a permit before establishing such a use.

3.2. **Development Standards.** The City and the Owner agree as follows:

3.2.1. **Approval of Original Development Standards During Second Approval Period.** The Owner and the City acknowledge and agree that (a) this Agreement does not contain **Exhibit E** (the Development Standards), (b) before the expiration of the Second Approval Period, the Owner and the City shall either (i) amend this Agreement to add **Exhibit E** (the Development Standards) or (ii) this Agreement shall terminate effective as of the Second Approval Period and the parties

shall have no further obligations or rights hereunder, except for the Owner's obligations pursuant to Section 15.3, which shall survive such termination, (c), prior to the amendment of this Agreement to add **Exhibit E** (the Development Standards) as contemplated in subpart (b) above, the Owner shall not have the right to (i) file this Agreement of record as contemplated by Section 23.15 or (ii) file any Application with the City, (d), prior to amendment of this Agreement to add **Exhibit E** (the Development Standards) as contemplated in subpart (b) above, the proposed version of **Exhibit E** (the Development Standards) must be submitted to the City Council for its approval or disapproval, and (e) the decision by the City Council regarding approval or disapproval of such proposed **Exhibit E** (the Development Standards) is a discretionary decision for the City Council.

3.2.2. List of Outstanding Development Standards for Specialized Areas and Listed Minimum Development Standards at End of Second Approval Period. In the event that prior to the expiration of the Second Approval Period the City Council approves a proposed **Exhibit E** as contemplated in Section 3.2.1, concurrently with such action the City Council shall identify (a) the Outstanding Development Standards for Specialized Areas, if any, and (b) the Listed Minimum Development Standards that are included in the Development Standards approved as **Exhibit E**.

3.2.3. Possible Approval of Outstanding Development Standards for Specialized Areas During Third Approval Period. The Owner and the City further acknowledge and agree that (a) if there are Outstanding Development Standards for Specialized Areas as of the expiration of the Second Approval Period, then on or before the expiration of the Owner Submittal Period, the Owner shall have the right to submit to the Planning Director proposed development standards that address the Outstanding Development Standards for the Specialized Areas; provided, however, the Owner shall have the right to submit (i) proposed development standards for some of the Outstanding Development Standards for Specialized Areas, but that do not address all of the Specialized Areas, or (ii) proposed development standards that address some, but not all, of the matters required by **Exhibit G** for any Outstanding Development Standards for Specialized Areas, (b), if before the expiration of the Owner Submittal Period the Owner elects to submit proposed development standards to address any of the Outstanding Development Standards for Specialized Areas pursuant to subpart (a) above, following negotiation of such proposed development standards by the Owner and the City administrative staff, such proposed development standards shall be submitted to the City Council for its approval or disapproval, (c) the decision by the City Council regarding approval or disapproval of such proposed development standards for any Specialized Areas

pursuant to this Section 3.2.3 is a discretionary decision for the City Council, and (d) the action of the City Council regarding approval or disapproval of any proposed development standards for the Specialized Areas pursuant to this Section 3.2.3 must occur before the expiration of the Third Approval Period, or, for all purposes hereunder, it shall be assumed that no agreement was reached with regard to any of the Outstanding Development Standards for Specialized during the Third Approval Period. In the event that any development standards are approved by the City Council pursuant to the terms of this Section 3.2.3 that address any of the Outstanding Development Standards for Specialized Areas, such approved development standards shall be reflected in the First Addendum to Exhibit E to be executed by the Owner and an authorized representative of the City within thirty (30) days following the expiration of the Third Approval Period.

- 3.2.4. **List of Continued Outstanding Development Standards for Specialized Areas and Supplement to Listed Minimum Development Standards at End of Third Approval Period.** In the event that prior to the expiration of the Third Approval Period the City Council approves a proposed First Addendum to Exhibit E as contemplated in Section 3.2.3, concurrently with such action the City Council shall (a) identify the Continued Outstanding Development Standards for Specialized Areas, if any, and (b) supplement the list of Listed Minimum Development Standards to include any Listed Minimum Development Standards contained in the First Addendum to Exhibit E.
- 3.2.5. **Future Requirement for Approval of Continued Outstanding Development Standards for Specialized Areas.** In the event that following the Third Approval Period there are Continued Outstanding Development Standards for Specialized Areas, the Owner acknowledges and agrees that (a) the City Council shall retain a discretionary decision with respect to approval of any of the Continued Outstanding Development Standards for Specialized Areas (but only to the extent of the Continued Outstanding Development Standards for Specialized Areas and not with respect to the Approved Development Standards for Specialized Areas), and (b) in accordance with Section 3.2.4, the Owner must supply the proposed Continued Outstanding Development Standards for Specialized Areas for the approval of the City Council at the time that the Owner files a Sector Plan containing a Specialized Area for which there are applicable Continued Outstanding Development Standards for Specialized Areas, as determined by the Planning Director.
- 3.2.6. **Listed Minimum Development Standards.** For purposes of the review of any Application pursuant to the terms of Section 4, Listed

Minimum Development Standards shall be the Listed Minimum Development Standards identified by the City Council pursuant to the terms of Section 3.2.2, as supplemented by the City Council pursuant to the terms of Section 3.2.4. As so supplemented, the Listed Minimum Development Standards shall be added as **Exhibit F** to this Agreement following the expiration of the Third Approval Period.

- 3.2.7. **Only Applicable Standards.** The City and the Owner agree that the only standards applicable to the Property and governing the approval of Applications for the Property under this Agreement are the Development Standards, the Code of Ordinances and the Applicable New Ordinances. In the event of a conflict between the Code of Ordinances and the Development Standards, the Development Standards shall control.
- 3.3. **Impervious Cover.** The maximum cumulative Impervious Cover Percentage for the Property as a whole and for each Sector Plan shall not exceed sixty-five percent (65%).
- 3.4. **Calculation of Impervious Cover.** The calculation of Impervious Cover, and the application of the maximum amount thereof, shall be determined and calculated per Sector. The Owner shall designate the maximum allowable Impervious Cover for lots, blocks or groups of lots and blocks within each Sector Plan based on the Owner's projected uses of the lots, blocks or groups of lots and blocks. Any individual lots, blocks or groups of lots and blocks may be designated by the Owner and subsequently developed by the Owner to allow Impervious Cover higher or lower than sixty-five percent (65%) so long as the average Impervious Cover for the entire Sector does not exceed sixty-five percent (65%). Any portion of the Property may, subject to compliance with applicable procedure, notice and other requirements, be replatted to change the use or designation of that previously platted portion so long as the entire platted portion of the Property meets the Impervious Cover Percentage designated for such Sector Plan and any other requirements herein. Such re-platting shall be deemed controlled by this Agreement as if the same were an original platting of such replatted portions.
- 3.5. **Vesting of Rights.** The City and the Owner acknowledge that the Owner has vested authority to develop the Project only in accordance with this Agreement. For purposes of determining such vested authority, the City and the Owner agree that (a) the terms of this Section 3.5 and the other terms of this Agreement shall fully govern and determine all aspects of the Owner's vested rights and (b) without limiting the generality of the foregoing, the Owner (i) hereby waives any and all right pursuant to Section 212.172(g) and Section 245.002(b) of the Texas Local Government Code that are not consistent with the terms of this Section 3.5 and (ii) acknowledges and agrees that such waiver and the terms of this Section 3.5 are material to the City in entering into this Agreement.

3.5.1. **Maximum Number of Dwelling Units and Acreage.** Subject to the Owner's complete compliance with this Agreement, the City approves the maximum number of single family and multi-family dwelling units (together, 6,000 dwelling units) and the maximum acreage of Planning Area Pods depicted on the Master Framework Plan.

3.5.2. **Major Amendments.** In the event that the City approves a Major Amendment to the Master Framework Plan or a Major Amendment to an Approved Sector Plan, such event, by itself, shall in no way modify the terms of this Section 3.5 or Section 2.7.

3.5.3. **Moratorium.** The City further agrees that no moratorium on development, or any limit on the granting of Approvals, shall be applicable to the Project unless such moratorium is required directly or indirectly by federal or state law.

3.6. **Disannexation of the Approximately 34 Acres Along Loop 337.** For purposes of this Section, the submission of a Sector Plan that includes all or a portion of the Disannexed Property shall represent a formal request for disannexation of that certain property in accordance with the requirements of the Charter and the Texas Local Government Code. If such Sector Plan is thereafter approved by the City Council pursuant to the process described in Section 4.1.2, the City will initiate and thereafter complete within one hundred and eighty (180) days procedures as required by the Charter and the Texas Local Government Code to disannex the Disannexed Property.

3.7. **Enforcement Jurisdiction of the City.** Notwithstanding any language in this Agreement to the contrary, pursuant to Section 9038.106(b)(2) of the Creation Statute, the Owner and the City agree as further provided under Texas Local Government Code Section 212.172, that the City is authorized to enforce, as it may desire, Chapter 14 (Building Regulations) and Article I (Building Standards Commission) of Chapter 50 (Environment), Division I (Substandard Structures) of Article II (Nuisance Abatement) of Chapter 50, and Division 3 (Abandoned Property) of Article II, Chapter 50 of the Code of Ordinances in their entirety, and as may be amended from time to time, as long as any changes to Chapters 14 and 50 of the Code of Ordinances (a) are effective City-wide or to all similarly situated land in the City, as of the Determining Date, (b) do not expressly conflict with this Agreement, (c) do not affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage, building size, impervious cover, setbacks or that purport to reduce the total developable area of the Property and (d) do not affect or alter the stormwater drainage or stormwater management requirements set forth in this Agreement, except as permitted in Section 5.5.2 of this Agreement. This list of specific ordinances in this Section 3.7 may be amended in the future upon mutual agreement of the Parties reflected in a written amendment to this Agreement.

4. **DEVELOPMENT APPROVAL PROCESS.**

4.1. **General Framework for Development Approval Process.** All development in the Project must comply with the following multi-step approval process:

4.1.1. **Master Framework Plan.** The first step in the approval process is approval of the Master Framework Plan by the City Council as Exhibit H to this Agreement.

4.1.2. **Sector Plan.** The second step in the approval process is approval of a Sector Plan. Each Sector Plan must conform to the Master Framework Plan and this Agreement. In the event that (i) any Sector Plan encompasses or contains all or a part of a Specialized Area and (ii) any of the Continued Outstanding Development Standards for Specialized Areas relate to the Specialized Area contained in the Sector Plan, such Sector Plan must contain proposed development standards for the Specialized Area that adequately address the applicable Continued Outstanding Development Standards for Specialized Areas, as determined by the Planning Director. Upon receipt of a Sector Plan, the Planning Director shall determine within thirty (30) days if the application is complete and will notify the Applicant in writing of its decision with regard to completeness of the Sector Plan. The Sector Plan shall be deemed complete if the Planning Director fails to notify the Applicant of its decision within such 30-day period.

(A) Sector Plan That Conforms to the Master Framework Plan, Requires No Additional Development Standards For A Specialized Area, Does Not Contain Alternative Development Standards, Does Not Contain Any Listed Development Standards Or Such Listed Development Standards Are Satisfied And Is Consistent With This Agreement:

(1) Within thirty (30) days after issuance of the Sector Plan Completeness Notice, the Planning Director shall determine if the Sector Plan (i) conforms to the Master Framework Plan, (ii) requires any development standards for a Specialized Area beyond the Approved Development Standards for Specialized Areas (i.e., whether any of the Continued Outstanding Development Standards for a Specialized Area relate to a Specialized Area contained in the Sector Plan), (iii) contains any Alternative Development Standards, (iv) contains any Listed Minimum Development Standards and (v) is consistent with all terms of Agreement. If the Planning Director determines that the Sector Plan does not conform to the Master Framework Plan, requires additional development standards for a Specialized Area beyond the Approved

Development Standards for Specialized Areas, contains any Alternative Development Standards or is inconsistent with this Agreement in any way, the Planning Director will proceed in accordance with Section 4.1.2(B) below.

- (2) If the Planning Director has determined that a Sector Plan conforms to the Master Framework Plan, does not require additional development standards for a Specialized Area beyond the Approved Development Standards for Specialized Areas, does not contain any Alternative Development Standards, does not contain any Listed Minimum Development Standards or the Planning Director believes that the Sector Plan satisfies the terms of any applicable Listed Minimum Development Standards and is consistent with the terms of this Agreement, the Sector Plan shall be scheduled for review and consideration by the Planning Commission, and thereafter the City Council. The Planning Director shall make a recommendation to the Planning Commission and the City Council regarding the determinations described above. The City Council shall make the City Council Sector Plan Determinations. If the City Council determines that the Sector Plan conforms to the Master Framework Plan, does not require any additional development standards for a Specialized Area beyond the Approved Development Standards for Specialized Areas, does not contain any Alternative Development Standards, does not contain any Listed Minimum Development Standards or, in the alternative, the Sector Plan contains any Listed Minimum Development Standards and the Sector Plan satisfies those Listed Minimum Development Standards, and is otherwise completely consistent with the terms of this Agreement, it must be approved by the City Council. If the City Council does not approve a Sector Plan considered under this Section 4.1.2(A), then the City Council shall so indicate and shall provide reasonably specific indications of why the Sector Plan (i) does not conform to the Master Framework Plan, (ii) requires additional development standards for a Specialized Area beyond the Approved Development Standards for Specialized Areas, (iii) contains an Alternative Development Standard, (iv) contains any Listed Minimum Development Standards that the City Council determines the Sector Plan does not satisfy, and (v) is inconsistent with some term of this Agreement.
- (3) A Sector Plan that the Planning Director determines should be processed in accordance with this Section 4.1.2(A) must be scheduled for Planning Commission review within two (2)

regular meeting agenda cycles or forty-five (45) days, whichever is earlier, after the Sector Plan is deemed complete and after the Planning Director has completed the review specified in Section 4.1.2(A)(2) above.

(B) Sector Plan That Does Not Conform To The Master Framework Plan, Requires Additional Development Standards For A Specialized Area, Incorporates Alternative Development Standards, Contains Unsatisfied Listed Minimum Development Standards Or Is Inconsistent With This Agreement:

- (1) If the Planning Director determines that the Sector Plan does not conform to the Master Framework Plan, requires additional development standards for a Specialized Area beyond the Approved Development Standards for Specialized Areas (i.e., any of the Continued Outstanding Development Standards for a Specialized Area relate to a Specialized Area contained in the Sector Plan), contains an Alternative Development Standard, contains any Listed Minimum Development Standards that the Planning Director believes are not met or is inconsistent with this Agreement in any respect, then the Sector Plan shall be processed in accordance with this Section 4.1.2(B).
- (2) Within thirty (30) days after issuance of the Sector Plan Completeness Notice, the Planning Director shall deliver written notice to the Applicant specifying each item that does not conform to the Master Framework Plan, requires additional development standards for a Specialized Area beyond the Approved Development Standards for Specialized Areas, contains an unmet Listed Minimum Development Standard or is inconsistent with any terms of this Agreement. If the Applicant wishes to proceed with the Sector Plan despite the finding that the Sector Plan does not conform to the Master Framework Plan, requires additional development standards for a Specialized Area beyond the Approved Development Standards for Specialized Areas, contains a Listed Minimum Development Standard that the Planning Director believes is unmet or in a manner that would require an amendment to this Agreement, then the Applicant shall so notify the Planning Director in writing within sixty (60) days of the notice sent by the Planning Director to the Applicant specified above.
- (3) If the Applicant timely notifies the Planning Director of its desire to proceed with the Sector Plan as contemplated in Section 4.1.2(B)(2) above, the Sector Plan shall not be further

reviewed by the Planning Director or be considered by the Planning Commission or the City Council unless and until (i) a Minor Amendment to the Master Framework Plan or a Major Amendment to the Master Framework Plan, as applicable, is submitted pursuant to Section 4.2 below, (ii) additional development standards for a Specialized Area beyond the Approved Development Standards for Specialized Areas are submitted (i.e., additional development standards adequately addressing any applicable Continued Outstanding Development Standards for Specialized Areas are submitted), or (iii) a proposed amendment to this Agreement is submitted, in such a manner that all such issues raised by the Planning Director are addressed to the satisfaction of the Planning Director. In no event shall a Sector Plan be considered and approved by the City Council unless such Sector Plan conforms to the Master Framework Plan, contains additional development standards adequately addressing any applicable Continued Outstanding Development Standards for Specialized Areas, and is consistent with all terms of this Agreement. If all such issues raised by the Planning Director are not resolved to the satisfaction of the Planning Director within sixty (60) days of the Applicant's notice to the Planning Director contemplated in Section 4.1.2(B)(2), the Sector Plan shall be considered null and void and a new Sector Plan shall be required.

- (4) If the Applicant satisfies all of the matters described in the Planning Director's notice described in Section 4.1.2(B)(2) above, thereafter the Planning Director will make a recommendation to the Planning Commission and the City Council regarding (i) whether the Sector Plan conforms to the Master Framework Plan, (ii) whether the Sector Plan requires additional development standards for a Specialized Area beyond the Approved Development Standards for Specialized Areas and, if so, whether any proposed additional development standards for such Specialized Area are acceptable, (iii) whether any proposed Alternative Development Standards are acceptable, (iv) whether any Listed Minimum Development Standards are met, and (v) whether the Sector Plan is consistent with all terms of the Agreement.
- (5) Following receipt of the Planning Director's recommendations regarding a Sector Plan considered under this Section 4.1.2(B), the Planning Commission shall consider the same matters as considered by the Planning Director pursuant to the terms of Section 4.1.2(B)(4) above,

and shall make a recommendation to the City Council regarding such matters.

(6) Following the Planning Commission's consideration of the matters described in Section 4.1.2(B)(5), the City Council shall consider the Sector Plan and shall make the City Council Sector Plan Determinations.

(C) Failure to Provide Timely Notice. If the Planning Director does not deliver such written notice specifying that the Sector Plan does not conform to the Master Framework Plan, requires additional development standards for a Specialized Area beyond the Approved Development Standards for Specialized Areas, incorporates Alternative Development Standards, contains any Listed Minimum Development Standards that the Planning Director believes are unmet, or is inconsistent with any terms of this Agreement within the thirty (30) day period described in Section 4.1.2(A)(1) and Section 4.1.2(B)(2) above, then the Applicant must notify the Planning Director in writing of its failure to do so and the Planning Director shall have an additional fifteen (15) days in order to respond in the manner described above. If the Planning Director does not respond within the additional 15-day period, then it shall be deemed that the Planning Director has determined that the Sector Plan conforms to the Master Framework Plan, does not require additional development standards for a Specialized Area beyond the Approved Development Standards for Specialized Areas, does not incorporate Alternative Development Standards, does not contain any Listed Minimum Development Standards that the Planning Director believes are unmet, and is consistent with the terms of this Agreement; provided, however, nothing herein shall be deemed to modify in any way the right of the City Council to make the City Council Sector Plan Determinations.

(D) Sector Plans Requiring Additional Development Standards For Any Specialized Area. As provided in Section 3.2.2, if the Sector Plan requires any additional development standards for a Specialized Area beyond the Approved Development Standards for Specialized Areas (i.e., if any of the Continued Outstanding Development Standards for Specialized Areas relate to the Specialized Area in the Sector Plan), the acceptability of such additional development standards for a Specialized Area as proposed by the Applicant in the Sector Plan encompassing all or a part of such Specialized Area shall be a discretionary decision for the City Council (but only to the extent of the applicable Continued Outstanding Development Standards for Specialized Areas). As provided in Section 2.38, if the City Council approves

any additional development standards for a Specialized Area as part of an Approved Sector Plan, for all purposes hereunder those approved additional development standards for a Specialized Area shall be considered to be Development Standards for all further Approvals under such Approved Sector Plan.

- (E) **Sector Plans Incorporating Alternative Development Standards.** If the Sector Plan incorporates any Alternative Development Standards, the acceptability of such Alternative Development Standards as proposed by the Applicant shall be a discretionary decision for the City Council. If the City Council approves any Alternative Development Standards as part of an Approved Sector Plan, for all purposes hereunder, those approved Alternative Development Standards shall be considered to be Development Standards for all further Approvals under such Approved Sector Plan.
- (F) **Sector Plans Incorporating Listed Minimum Development Standards.** If the Sector Plan incorporates any Listed Minimum Development Standards, the acceptability of such Listed Minimum Development Standards as proposed by the Applicant shall be a discretionary decision for the City Council. If the City Council approves any Listed Minimum Development Standards as part of an Approved Sector Plan, for all purposes hereunder, those approved Listed Minimum Development Standards shall be considered to be Development Standards for all further Approvals under such Approved Sector Plan.
- (G) **Rejected Sector Plans.** The Applicant shall have the right to submit a new Sector Plan covering all or part of the Property covered by a rejected Sector Plan, and such new Sector Plan shall be processed in accordance with the terms of this Section 4; provided, however, no Sector Plan shall be submitted in the same form as the rejected Sector Plan, as determined by the Planning Director, within twelve (12) months of such rejection.
- (H) **Expired Approved Sector Plans.** An Approved Sector Plan shall expire and be of no further effect if the Owner or any Applicant does not file a Final Plat within five (5) years of the date of City Council approval of the Approved Sector Plan.
- (I) **Sector Plans Reviewed And Considered Independently.** Any approval by the City Council of any additional development standards for a Specialized Area, Alternative Development Standards or Listed Minimum Development Standards in connection with an Approved Sector Plan shall be applicable to

that Sector Plan only, and shall not be applicable to any other Sector Plan unless specifically so indicated by the City Council.

4.1.3. **Preliminary Plat.** An Applicant may, following an approval of a Sector Plan by the City Council, and before submitting a Final Plat, also file a Preliminary Plat. The process for submittal and approval of a Preliminary Plat shall be the same as the process for submittal and approval of a Final Plat as described in Section 4.1.4. The submittal of a Preliminary Plat is at the election of the Applicant, and there is no obligation to submit a Preliminary Plat.

4.1.4. **Final Plat.** Unless the Applicant elects to file a Preliminary Plat, the third step in the approval process is approval of a Final Plat. Each Final Plat must conform to the Master Framework Plan, the applicable Sector Plan containing the portion of the Property covered by the Final Plat, and all other terms of this Agreement. Upon receipt of a Final Plat, the Planning Director shall determine within thirty (30) days if the Final Plat is complete and will notify the Applicant in writing of its decision with regard to completeness of the Final Plat. The Final Plat shall be deemed complete if the Planning Director fails to notify the Applicant of its decision within such 30-day period.

(A) Final Plat That Conforms To The Master Framework Plan, Conforms To An Approved Sector Plan And Is Consistent With This Agreement.

(1) Within thirty (30) days after issuance of the Final Plat Completeness Notice, the Planning Director shall determine if (i) the Final Plat conforms to the Master Framework Plan, (ii) conforms to an Approved Sector Plan, and (iii) is consistent with all terms of this Agreement. If the Planning Director determines that the Final Plat does not conform to the Master Framework Plan, does not conform to an Approved Sector Plan, or is inconsistent with any terms of this Agreement, the Planning Director will proceed in accordance with Section 4.1.4(B).

(2) If the Planning Director has determined that a Final Plat conforms to the Master Framework Plan, conforms to an Approved Sector Plan, and is consistent with the terms of this Agreement, the Final Plat shall be scheduled for review and consideration by the Planning Commission. The Planning Director shall make a recommendation to the Planning Commission regarding the determinations described above. The Planning Commission shall make the Planning Commission Final Plat Considerations. If the Planning Commission determines that the Final Plat conforms to the

Master Framework Plan, conforms to an Approved Sector Plan, and is otherwise consistent with the terms of this Agreement, it must be approved by the Planning Commission. If the Planning Commission does not approve a Final Plat considered under this Section 4.1.4(A), then the Planning Commission shall so indicate and shall provide reasonably specific indications of why the Final Plat (i) does not conform to the Master Framework Plan, (ii) does not conform to an Approved Sector Plan, or (iii) is inconsistent with some term of this Agreement, as applicable.

- (3) A Final Plat that the Planning Director determines should be reviewed and processed in accordance with this Section 4.1.4(A) must be scheduled for Planning Commission review within two (2) regular meeting agenda cycles or forty-five (45) days, whichever is earlier, after the Final Plat is deemed complete.

(B) Final Plat That Does Not Conform To The Master Framework Plan, Does Not Conform To An Approved Sector Plan, Or Is Inconsistent With This Agreement.

- (1) If the Planning Director determines that the Final Plat does not conform to the Master Framework Plan, does not conform to an Approved Sector Plan, or is inconsistent with this Agreement in any respect, then the Final Plat shall be processed in accordance with this Section 4.1.4(B).
- (2) The Planning Director shall deliver written notice to the Applicant specifying each item that does not conform to the Master Framework Plan, does not conform to an Approved Sector Plan, or is inconsistent with any terms of this Agreement. If the Applicant wishes to proceed with the Final Plat despite the finding that the Final Plat does not conform to the Master Framework Plan, does not conform to an Approved Sector Plan or in a manner that would require an amendment to this Agreement, then the Applicant shall so notify the Planning Director in writing within thirty (30) days of the notice sent by the Planning Director to the Applicant specified above.
- (3) If the Applicant timely notifies the Planning Director of its desire to proceed with the Final Plat as contemplated in Section 4.1.4(B)(2) above, the Final Plat shall not be further reviewed by the Planning Director or be considered by the Planning Commission unless and until (i) a Minor Amendment to the Master Framework Plan or a Major

Amendment to the Master Framework Plan, as applicable, is submitted pursuant to Section 4.2 below, (ii) modifications are submitted to the Final Plat so that it conforms to an Approved Sector Plan, or (iii) a proposed amendment to this Agreement is submitted, in such a manner that all issues raised by the Planning Director are addressed to the satisfaction of the Planning Director. In no event shall a Final Plat be considered and approved by the Planning Commission unless such Final Plat conforms to the Master Framework Plan, conforms to an Approved Sector Plan and is consistent with all terms of this Agreement. If all issues raised by the Planning Director are not resolved to the satisfaction of the Planning Director within forty-five (45) days of the Applicant's notice to the Planning Director contemplated in Section 4.1.4(B)(2), the Final Plat shall be considered null and void and a new application shall be required.

(4) If the Applicant satisfies all of the matters described in the Planning Director's notice described in Section 4.1.4(B)(2) above, thereafter the Planning Director will make a recommendation to the Planning Commission regarding (i) whether the Final Plat conforms to the Master Framework Plan, (ii) whether the Final Plat conforms to an Approved Sector Plan, and (iii) whether the Final Plat is consistent with all terms of the Agreement.

(5) Following receipt of the Planning Director's recommendations regarding a Final Plat considered under this Section 4.1.4(B), the Planning Commission shall make the Planning Commission Final Plat Determinations.

(C) Failure to Provide Timely Notice. If the Planning Director does not deliver the written notice required by Sections 4.1.4(A)(1) and 4.1.4(B)(2) above within the 30-day period, then the Applicant must notify the Planning Director in writing of its failure to do so and the Planning Director shall have an additional fifteen (15) days in order to respond in the manner described above. If the Planning Director does not respond within the additional 15-day period, then it shall be deemed that the Planning Director determined that the Final Plat conforms to the Master Framework Plan, conforms to an Approved Sector Plan, and is consistent with the terms of this Agreement; provided, however, nothing herein shall be deemed to modify in any way the right of the Planning Commission to make the Planning Commission Final Plat Determinations.

(D) Rejected Final Plat. The Applicant shall have the right to appeal any Final Plat that is rejected by the Planning Commission to the City Council, but only to the extent of the decision of the Planning Director that the Final Plat does not conform to the Master Framework Plan, does not conform to an Approved Sector Plan or is inconsistent with this Agreement in any respect. In such event, the City Council shall consider whether the Final Plat conforms to the master Framework Plan, does not conform to an Approved Sector Plan and is consistent with this Agreement in all respects; provided, however, the decision of the Planning Commission shall be final with respect to whether the Final Plat conforms to the Code of Ordinances. Additionally, the Applicant shall have the right to submit a new Final Plat covering all or part of the Property covered by a rejected Final Plat, and such new Final Plat shall be processed in accordance with the terms of this Section 4; provided, however, no Final Plat shall be submitted in the same form as the rejected Final Plat, as determined by the Planning Director, within twenty-four (24) months of such rejection.

4.1.5. Site Plans And Building Permits For Non-Residential And Multifamily Uses. The fourth step in the approval for non-residential and multifamily uses is approval of a Site Plan and Building Permit. Each Site Plan and Building Permit must conform to an Approved Sector Plan, an Approved Final Plat and all other terms of this Agreement, including, without limitation, the terms of the Building Code. Upon receipt of a Site Plan and Building Permit for non-residential and multifamily uses, the Planning Director shall determine within thirty (30) days if the Site Plan and Building Permit is complete and will notify the Applicant in writing of its decision with regard to completeness of the application. The Site Plan and Building Permit shall be deemed complete if the Planning Director fails to notify the Applicant of its decision within such 30-day period.

(A) Site Plan And Building Permit For Non-Residential Uses That Conform To An Approved Sector Plan, Conform To An Approved Final Plat And Are Consistent With This Agreement.

(1) Within thirty (30) days after issuance of the Site Plan and Building Permit Completeness Notice, the Planning Director shall determine if (i) the Site Plan and Building Permit conform to an Approved Sector Plan, (ii) conform to an Approved Final Plat, and (iii) are consistent with all terms of this Agreement, including, without limitation, the Building Code. If the Planning Director determines that the Site Plan and Building Permit do not conform to an Approved Sector Plan, do not conform to an Approved Final Plat, or are

inconsistent with the terms of this Agreement, the Planning Director will proceed in accordance with Section 4.1.5(B).

- (2) If the Planning Director determines that a Site Plan and Building Permit for non-residential or multifamily uses conform to an Approved Sector Plan, conform to an Approved Final Plat, and are consistent with the terms of this Agreement, including, without limitation, the Building Code, it must be approved by the Planning Director.

(B) Site Plan And Building Permit That Do Not Conform To An Approved Sector Plan, Do Not Conform With An Approved Final Plat Or Are Inconsistent With This Agreement.

- (1) If the Planning Director determines that the Site Plan and Building Permit for non-residential uses and multifamily uses do not conform to an Approved Sector Plan, do not conform to an Approved Final Plat, or are inconsistent with this Agreement in any respect, including, without limitation, the Building Code, then the Final Plat shall be processed in accordance with this Section 4.1.5(B).
- (2) The Planning Director shall deliver written notice to the Applicant specifying each item that does not conform to an Approved Sector Plan, does not conform to an Approved Final Plat, or is inconsistent with any terms of this Agreement. If the Applicant wishes to proceed with the Site Plan and Building Permit despite the finding that the Site Plan and Building Permit do not conform to an Approved Sector Plan, do not conform to an Approved Final Plat or in a manner that would require an amendment to this Agreement, then the Applicant shall so notify the Planning Director in writing within thirty (30) days of the notice sent by the Planning Director to the Applicant specified above.
- (3) If the Applicant timely notifies the Planning Director of its desire to proceed with the Site Plan and Building Permit as contemplated in Section 4.1.5(B)(2) above, the Site Plan and Building Permit shall not be further reviewed by the Planning Director or be considered by the City Council unless and until (i) modifications are submitted to the Site Plan and Building Permit so that it conforms to an Approved Sector Plan, (ii) modifications are submitted to the Site Plan and Building Permit so that it conforms to an Approved Final Plat or (iii) a proposed amendment to this Agreement is submitted, in such a manner that all issues raised by the Planning Director are addressed to the satisfaction of the

Planning Director. In no event shall a Site Plan and Building Permit for non-residential uses and multifamily uses be considered and approved by the Planning Director or the City Council unless such Site Plan and Building Permit conform to an Approved Sector Plan, conform to an Approved Final Plat and are consistent with all terms of this Agreement, including, without limitation, the Building Code. If all issues raised by the Planning Director are not resolved to the satisfaction of the Planning Director within forty-five (45) days of the Applicant's notice to the Planning Director contemplated in Section 4.1.5(B)(2), the Site Plan and Building Permit shall be considered null and void and a new Site Plan and Building Permit shall be required.

(4) In the event that the Applicant resolves all issues raised by the Planning Director with respect to the Site Plan and Building Permit as contemplated by Section 4.1.5(B)(3) above, the Planning Director shall further consider the Site Plan and Building Permit only if no amendment to this Agreement is required or if it is required, such amendment has become effective in accordance with the terms of Section 23.7 below; provided, however, no amendment to this Agreement shall be considered by the City Council that attempts to modify the Building Code. If, following the resolution of all issues raised by the Planning Director with respect to the Site Plan and Building Permit as contemplated in Section 4.1.5(B)(3), the Site Plan and Building Permit conform to an Approved Sector Plan, conform to an Approved Final Plat, and are consistent with the terms of this Agreement, including, without limitation, the Building Code, it must be approved by the Planning Director.

(C) Failure to Provide Timely Notice. If the Planning Director does not deliver the written notice required by Sections 4.1.5(A)(A)(1) and 4.1.5(B)(2) above, within the 30-day period, then the Applicant must notify the Planning Director in writing of its failure to do so and the Planning Director shall have an additional fifteen (15) days in order to respond in the manner described above. If the Planning Director does not respond within the additional 15-day period, then it shall be deemed that the Planning Director determined that the Site Plan and Building Permit conform to an Approved Sector Plan, conform to an Approved Final Plat, and is consistent with the terms of this Agreement.

(D) Rejected Site Plan And Building Permit. The Applicant shall have the right to appeal any Site Plan and Building Permit that is rejected by the Planning Director to the City Council, but only to

the extent of the decision of the Planning Director that the Site Plan and Building Permit for non-residential uses and multifamily uses do not conform to an Approved Sector Plan, do not conform to an Approved Final Plat, or are inconsistent with this Agreement in any respect. In such event, the City Council shall consider whether the Site Plan and Building Permit for non-residential uses and multifamily uses conform to an Approved Sector Plan, conform to an Approved Final Plat, and is inconsistent with this Agreement in any respects; provided, however, the decision of the Planning Director shall be final with respect to whether the Site Plan and Building Permit for non-residential uses and multifamily uses conform to the Code of Ordinances. Additionally, the Applicant shall have the right to submit a new Site Plan and Building Permit covering all or part of the Property covered by a rejected Site Plan and Building Permit, and such new Site Plan and Building Permit shall be processed in accordance with the terms of this Section 4; provided, however, no Site Plan and Building Permit shall be submitted in the same form as the rejected Site Plan and Building Permit, as determined by the Planning Director, within twelve (12) months of such rejection.

- 4.1.6. **Building Permits for Residential Uses (Excluding Multifamily Uses).** The final step in the approval process for residential uses is approval of a Building Permit. The process for approval of a Building Permit by the City for residential uses shall be consistent with the process for approval of Building Permits for residential uses within the corporate jurisdiction of the City, as that process may change from time to time, but subject to the terms of Section 3.5.
- 4.2. **Amendments to Master Framework Plan.** Proposed amendments to the Master Framework Plan shall be submitted to the City Council for approval unless the change meets the criteria for a Minor Amendment to the Master Framework Plan. Any Minor Amendment to the Master Framework Plan must be reflected in an updated Master Framework Plan, containing all of the information set forth in the original Master Framework Plan. A Minor Amendment to the Master Framework Plan shall be approved by the Planning Director.
- 4.3. **Amendments to Approved Sector Plans.** Proposed amendments to an Approved Sector Plan shall be submitted to the City Council for approval unless the change meets the criteria for a Minor Amendment to an Approved Sector Plan. Any Minor Amendment to an Approved Sector Plan must be reflected in an updated Sector Plan, containing all the information set forth in the original Sector Plan. A Minor Amendment to an Approved Sector Plan shall be considered and approved by the Planning Director.

4.3.1. **Major Amendment to an Approved Sector Plan.** Without limiting the generality of Section 4.3, any change to a specific condition placed on the development within a Sector Plan by the City Council at the time of approval of such Sector Plan shall not be considered a Minor Amendment to such Approved Sector Plan, unless otherwise determined by the Planning Director.

4.4. **Amendments to Approved Final Plats.** Amendments to a Final Plat shall be submitted to the Planning Commission for approval unless the changes meets the criteria for a Minor Amendment to an Approved Final Plat, in which case the change shall be considered and approved by the Planning Director.

4.5. **Amendments to Approved Site Plans and Building Permits.** In all instances, the process for approval or rejection of a proposed amendment to an Approved Site Plan or Building Permit shall be consistent with the process for consideration of amendments to site plans and building permits in the planning jurisdiction of the City at the time of the proposed amendment, subject to Section 2.7 (Applicable New Ordinances) and Section 3.5.

4.6. **Planning Director, City Engineer or Designees.** To the extent that notice is required in Section 4 to come from the Planning Director or the City Engineer, such notice shall be effective if it comes from the Planning Director, the City Engineer, or their specified designee(s).

4.7. **Determination of Minor or Major Amendment.** Whenever in this Agreement there is a reference to a percentage change or other type of change that is determinative as to whether a proposed amendment to a document is a major or minor amendment, the comparison shall be to the most recently approved version of the document, provided that if an amendment is proposed that, if considered cumulatively with prior minor amendments previously approved, would have constituted a major amendment as compared to the first approved version of the document, then the Planning Director may, in its reasonable discretion, determine that the proposed amendment constitutes a major amendment. For purpose of clarity, it is agreed that if the Planning Director determines that a series of minor amendments was prepared for the purpose of avoiding major amendment review and that cumulatively the series of minor amendments cause a change to the original version of the applicable document that would have constituted a major amendment, then the Planning Director may declare that the proposed minor amendment is, in fact, a major amendment. However, if the Planning Director determines that the minor amendments were not coordinated and each represents a unique minor amendment consistent with the spirit of this Agreement, then the Planning Director may conclude each is a minor amendment.

4.8. **Replacement for Planning Commission.** The parties acknowledge and agree that (a) at any time during the Term the City Council shall have the right to appoint and utilize a replacement body for the Planning Commission, and to

charge that replacement body with carrying out (i) the duties of the Planning Commission outlined above in this Section 4, and (ii) if elected by the City Council, any amendments to the Sector Plan proposed by End Users, (b) such replacement body may only consider the activities described herein with respect to properties subject to this Agreement, and not with respect to properties elsewhere within the planning jurisdiction of the City, and (c) the Owner shall not have the right to approve or consent to the City Council's use of the right described in this Section 4.8 or to the appointments made by the City Council pursuant to this right, either initially or as to replacements for the initial appointees. If the City Council chooses to exercise its rights under this Section 4.8, from and after the appointment of such replacement body and for all purposes hereunder, all references to the Planning Commission herein shall be deemed to mean such replacement body; provided, however, that (1) after the appointment of a replacement body for the Planning Commission pursuant to this Section 4.8, the City Council shall also have the right to terminate the duties of the replacement body and have all such duties of the replacement body revert to the Planning Commission and (2) after such election by the City Council to have all duties of the replacement body resumed by the Planning Commission, all references to the Planning Commission shall again mean the Planning Commission.

- 4.9. **Incorporation of Exhibits.** Without in any way limiting or modifying the application of Section 23.6, the Parties agree that wherever in this Section 4 there is any reference to compliance with this Agreement, such reference shall mean all terms of this Agreement, including, without limitation, all exhibits attached hereto, the Development Standards and the applicable portion of the Code of Ordinances.
- 4.10. **Alternative Development Standards.** The Applicant retains full and sole discretion as to whether to include Alternative Development Standards in its Applications and the City may not condition its approval of any Application on a requirement that the Applicant meet an Alternative Development Standard. If the City and the Owner cannot agree on an Alternative Development Standard, the Applicant retains the right to submit an Application based solely on the Minimum Development Standards. In the event that the Applicant elects to propose an Alternative Development Standard, approval of such Alternative Development Standard shall be wholly discretionary by the City Council or such alternative City decision-making authority specified in this Section 4.
- 4.11. **Recording Fees.** The Owner or any Applicant shall be responsible for paying any and all recording fees for any Approved Sector Plan, any Approved Preliminary Plat, any Approved Final Plat, and any amendment to any of the foregoing, and any easements, option agreements or other documents contemplated herein or reasonably requested by the City in connection with this Agreement.

5. **STORMWATER MANAGEMENT.** Notwithstanding anything to the contrary in the Code of Ordinances or Development Standards, the Owner's sole responsibility with respect to stormwater management and water quality in connection with the development of the Project, and the only requirements applicable to Applications for the Project relating to stormwater management and water quality, shall be as set forth in this Section 5 and the Development Standards.

5.1. **Requirement of Regional Stormwater Facility.** The size, specifications and capacity of the Regional Stormwater Facility set forth in the Stormwater Management Report represent the minimum approvable design size of the City for a stormwater facility for the Project, and the City's consent to the creation of the District and Agreement to enter into this Agreement is contingent upon the Owner's or the District's commitment to timely construct the Regional Stormwater Facility meeting the specifications set forth in the Stormwater Management Report. The City acknowledges that the elimination of City-required on-site detention requirements for the Project represents a significant benefit to the District and the Owner that will eliminate the costly and less efficient methods of on-site detention for each tract of land within the District, which would otherwise be required by the City if the Regional Stormwater Facility were not built.

5.1.1. **Application of Federal or State Law.** Notwithstanding anything in this Agreement to the contrary, the Owner acknowledges and agrees the Owner must at all times comply with all applicable Federal or State laws regarding the Property, or development thereon, including without limitation any Federal or State laws regarding flood plains, stormwater drainage, management detention, or water quality, and nothing herein shall be interpreted as either (i) removing or minimizing such obligation on behalf of the Owner or (ii) requiring the City to determine what the Owner's obligations are in that regard. There shall be no Event of Default arising from a breach of this Section 5.1.1 or in relation to an alleged breach of State or Federal laws until and unless the relevant governmental authority enforcing such State or Federal Laws notifies Owner that Owner is in violation of such law and Owner fails to cure such violation within the cure period allowed by such governmental authority or, if none is specified, within thirty (30) days of Owner's receipt of such notice of violation; provided, however, the limitation in this sentence shall not be applicable if the action or inaction causing the failure to comply with Federal or State laws otherwise causes an Event of Default under the terms this Agreement.

5.2. **Deadline for Construction of Regional Stormwater Facility.** The District or the Owner shall substantially complete construction of the Regional Stormwater Facility, as reasonably determined by the City Engineer, no later than ninety (90) months (seven years and six months) after the Effective Date. The District or the Owner shall substantially complete construction of the

Temporary Regional Stormwater Facility, as reasonably determined by the City Engineer, no later than sixty (60) months (five years) after the Effective Date. The District or the Owner may elect not to construct the Temporary Regional Stormwater Facility, but in that event the deadline for substantially complete construction of the Regional Stormwater Facility specified in the first sentence of this Section shall not apply and the District or the Owner must substantially complete construction of the Regional Stormwater Facility, as reasonably determined by the City Engineer, no later than sixty (60) months (five years) after the Effective Date.

5.2.1. Deadlines for Design of Regional Stormwater Facility. In addition to the deadlines reflected in Section 5.2 above, the Owner must comply with the following deadlines relative to the Regional Stormwater Facility:

- (A) On or before the expiration of thirty-six (36) months from the Effective Date, the Owner must submit to the City a written notice specifying the Owner's election pursuant to Section 5.2 above regarding whether the Temporary Regional Stormwater Facility or the Regional Stormwater Facility shall be substantially completed within sixty (60) months of the Effective Date; and
- (B) On or before the date that is twelve (12) months before the date that the Regional Stormwater Facility is required to be completed pursuant to the terms of Section 5.2 and Section 5.2.1(A) above (in other words, (i) if the Owner elects to construct the Temporary Regional Stormwater Facility, the applicable deadline under this subpart (B) shall be seventy-eight (78) months after the Effective Date, but (ii) if the Owner elects to not utilize the Temporary Regional Stormwater Facility, thereby making the deadline for substantial completion of the Regional Stormwater Facility 60 months from the Effective Date pursuant to the terms of Section 5.2, the deadline under this subpart (B) shall be forty-eight (48) months after the Effective Date), the Owner must submit to the TCEQ, with a copy to the City Engineer, full design documents reflecting complete design of the Regional Stormwater Facility.

5.3. RSF Easement and RSF Escrow Agreement; Ownership of Land on which the Regional Stormwater Facility will be Constructed.

5.3.1. RSF Easement. Before the Effective Date of this Agreement, and the recording of same pursuant to the terms of Section 23.15 hereof, (a) the Owner, the Landowner and the City shall execute the RSF Escrow Agreement and deliver same to the escrow holder designated in the RSF Escrow Agreement, and (b) the Owner and the Landowner shall execute the RSF Easement and deliver the same to the escrow holder designated in the RSF Escrow Agreement. The RSF Easement shall be

held in escrow and released in accordance with the terms of the RSF Escrow Agreement.

- 5.3.2. **Recording; Notice to Third Parties.** By recording this Agreement pursuant to Section 23.15, the Owner and the City hereby place all third parties on notice that the RSF Easement Property (but no other land in the Project) is subject to the RSF Easement.
- 5.3.3. **Conveyance of Land.** The portion of the Property on which the Regional Stormwater Facility will be constructed shall be conveyed by the Owner to the District as part of the conveyance of the land of RP1 pursuant to Section 7.1.1. The deed from the Owner to the District shall be subject to the RSF Easement. Prior to delivery of the deed to the District by the Owner, the City shall have the right to review and approve the deed with respect to satisfaction of the foregoing sentence, such approval not to be unreasonably withheld or delayed.
- 5.3.4. **Failure to Deliver RSF Easement, RSF Escrow Agreement or Deed Subject to RSF Easement.** Without in any way limiting the terms of Section 19 or Section 23.15.1, the failure by the Owner to (a) timely execute and deliver the fully executed RSF Easement in accordance with Section 5.3.1, (b) timely execute and deliver the RSF Escrow Agreement in accordance with Section 5.3.1, or (c) convey the land to the District pursuant to a deed subject to the RSF Easement in the form approved by the City in accordance with Section 5.3.3 shall, following the Cure Period, constitute an Event of Default.

- 5.4. **Maintenance of the Regional Stormwater Facility.** The District shall be responsible for maintaining the Regional Stormwater Facility in accordance with the terms of Section 5.4.1 until the earlier to occur of (a) the date that the City has annexed seventy-five (75%) of the Property; or (b) the expiration of this Agreement, at which time the City shall assume the ownership and maintenance of the Regional Stormwater Facility, unless the City and the District agree otherwise.
 - 5.4.1. **Maintenance Standards.** The District shall maintain the Regional Stormwater Facility in a good and workmanlike manner, utilizing BMPs as reflected in the TCEQ guidelines for maintenance of regional detention facilities, as they may be revised from time to time.
 - 5.4.2. **Inspections.** The City shall have the right to inspect the Regional Stormwater Facility on an annual basis, subject to the terms of this Section 5.4.2. In the event that the City would like to exercise its annual right to inspect the Regional Stormwater Facility, the City Engineer shall provide at least fourteen (14) days written notice to the Owner and the District and, at the Owner's and District's respective option, the Owner and the District shall have the right to have a

representative accompany the City Engineer on such inspection. Additionally, the City shall have the right to inspect the Regional Stormwater Facility on an emergency basis if the City Engineer determines, in its reasonable discretion, that (a) the Regional Stormwater Facility is not being properly maintained in accordance with the standard in Section 5.4.1, and (b) an event has occurred that may have caused the integrity of the Regional Stormwater Facility to be compromised to a material degree. In such event, the City shall provide to the Owner or the District, as applicable, such notice as is reasonable under the circumstances.

5.4.3. Remedial Actions. In the event that the City Engineer determines that the District is not meeting the maintenance standards for the Regional Stormwater Facility described in Section 5.4.1 and that such failure is material, the City Engineer shall so notify the District in writing, and the District shall have a period of ninety (90) days following receipt of such notice to cure any such failure to properly maintain the Regional Stormwater Facility; provided, however, (a) that if the failure is such that more than ninety (90) days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have an additional period of time up to two hundred seventy (270) days so long as such party commences performance or compliance within said 90-day period and diligently proceeds to complete such performance or fulfill such obligation within the additional two hundred seventy (270) day period, and (b) if the District disagrees with the conclusion of the City Engineer that the maintenance of the Regional Stormwater Facility has not been met in accordance with the terms of Section 5.4.1, the District shall so notify the City within fifteen (15) days of receipt of the City Engineer's written notice, and the City and the District agree to cooperate in appointing an independent engineer to resolve the difference, such independent engineer to be appointed within twenty (20) days after the City's receipt of the District's notice of disagreement. The City and the District shall submit their proposed findings to the independent engineer who shall make a determination within ten (10) days from its receipt of the written submissions by the City and the District. The decision of the independent engineer shall be final, the costs associated with the independent engineer shall be shared equally between the City and the District and, if the independent engineer shall determine that the Regional Stormwater Facility has not been maintained in accordance with the standard set forth in Section 5.4.1, the applicable Cure Period shall not begin until the independent engineer renders its decision.

5.5. Stormwater Management Requirements for Development in the Project Prior to Completion of the Regional Stormwater Facility. Development of

the Project that occurs prior to the completion of the Regional Stormwater Facility shall comply with the following requirements:

- 5.5.1. Chapter 143 of the Code of Ordinances, or any successor provisions of the Code of Ordinances.
- 5.5.2. In the event Chapter 143 of the Code of Ordinances is amended by the City prior to completion of the Regional Stormwater Facility, then for development pursuant to Sector Plans approved after the date the amended Chapter 143 of the Code of Ordinances becomes effective, the development shall comply with those portions of the amended Chapter 143 of the Code of Ordinances that relate to on-site detention for varying size rain events (such as 2, 25 and 100 year storm events) that are in effect on the Determining Date of the Sector Plan. No other provisions of the amended Chapter 143 of the Code of Ordinances will be applicable to the Project. In the event the City amends Chapter 143 of the Code of Ordinances, the City and the Owner may amend the Development Standards to include the specific provisions of the amended Chapter 143 of the Code of Ordinances that are applicable to the Project under this Section, without altering any other provision of this Agreement.
- 5.5.3. Notwithstanding the foregoing, (a) it is agreed that any onsite detention requirements under the foregoing provisions may be satisfied by the construction and maintenance of the Temporary Regional Stormwater Facility and (b) in no event will amendments to Chapter 143 of the Code of Ordinances be used to calculate or re-calculate the capacity of the Regional Stormwater Facility or alter the requirements applicable to the Regional Stormwater Facility under this Agreement.
- 5.5.4. The City shall have the right to inspect the Temporary Regional Stormwater Facility or any other on-site detention facilities in accordance with standard City policies and procedures.

5.6. **No Other Stormwater Management Requirements for Development in the Project.** In consideration for the Owner's or the District's agreement to construct the Regional Stormwater Facility and the Owner's agreement to contribute to the Stormwater Mitigation Project, the City agrees that no other stormwater management requirements shall be imposed by the City on any land within the District or in connection with the development of the Project, except as expressly set forth in this Agreement. Nothing in the foregoing shall be deemed to limit the terms of Section 5.11.2.

5.7. **Stormwater Management Requirements After Completion of the Regional Stormwater Facility.** If a Sector Plan is approved prior to completion of the Regional Stormwater Facility, but actual development pursuant to the

Approved Sector Plan occurs after completion of the Regional Stormwater Facility, then any on-site detention requirements reflected in the Approved Sector Plan will no longer be required. On-site detention facilities constructed prior to completion of the Regional Stormwater Facility, including the Temporary Regional Stormwater Facility, may be removed or converted to other land uses following completion of the Regional Stormwater Facility; provided, however, any development of the land on which such temporary detention facilities were located shall be in accordance with the Approved Sector Plan containing the portion of the Project containing the Temporary Regional Stormwater Facility, the terms of this Agreement, and any other applicable regulatory requirements of other governmental entities.

- 5.8. **Stormwater Management Requirements for Development in the Project on Land not Draining into the Regional Stormwater Facility.** There shall be no stormwater management requirements for those portions of the Property that do not drain into the Regional Stormwater Facility, except (a) as provided in Section 5.5 for development occurring prior to completion of the Regional Stormwater Facility; and (b) any other applicable requirements of other governmental entities.
- 5.9. **Use of Regional Stormwater Facility for Development Outside Project.** To the extent that the City wishes to permit development outside the Property to utilize the Regional Stormwater Facility in lieu of constructing its own stormwater management facility prior to the completion of the Project, then the City shall (a) deliver to the Owner and the District notice of such authorization with the City's calculations demonstrating that such flows do not exceed the portion of the Regional Stormwater Facility's capacity designed to capture external flows and (b) the City will, to the extent it has the authority to do so, assess its customary stormwater fees pursuant to Section 143-20, et seq of the Code of Ordinances, as amended from time to time, which fees shall be paid first, to the Owner to the extent permitted by law and to the extent the Owner has not been fully reimbursed for the Regional Stormwater Facility by the District, and second, to the District after collection by the City until the District has received fees equal to the lesser of (i) seventy percent (70%) of the total construction cost of the Regional Stormwater Facility, as determined by the City and (ii) the unreimbursed amount of the total construction cost of the Regional Stormwater Facility following any reimbursement of the Owner from the State of Texas or any governmental branch thereof, including, without limitation, the TCEQ. In the event the City receives additional fees after the District has received the above specified percentage of the total construction cost of the Regional Stormwater Facility, the City may retain such excess fees.
- 5.10. **Stormwater Report.** The City approves the Stormwater Management Report and agrees that such Stormwater Management Report shall be used to assess all Applications relating to Stormwater Management.
- 5.11. **Stormwater Connection Fees and Stormwater Management Fees.**

5.11.1. **Waiver of Stormwater Connection Fees.** Because the Owner or the District will be constructing at its cost the Regional Stormwater Facility, (a) the City will waive stormwater connection fees that would otherwise be due in relation to development on the Property pursuant to Section 143-20 et seq of the Code of Ordinances and (b) no stormwater connection fees assessed pursuant Section 143-20 et seq of the Code of Ordinances shall be assessed in relation to any development on the Property, whether such stormwater connection fees are in existence under the existing Code of Ordinances or made effective in the future; provided, however, the foregoing shall not in any way limit the terms of Section 5.11.2 below. No requirements relating to stormwater drainage, detention, management or water quality shall be imposed in relation to the development of the Property other than those expressly described in this Section 5.

5.11.2. **Stormwater Management Fees.** Notwithstanding anything in Section 5.11.1 or any other provision in this Agreement to the contrary, the City shall have the right to collect from End Users any hereafter-enacted stormwater drainage or management fees that are applicable to the remainder of the Blieders Creek watershed outside the Property.

5.12. **Miscellaneous Provisions Relating to Regional Stormwater Facility.** The City shall cooperate and reasonably assist the Owner in (a) securing approval from the TCEQ to obtain one hundred percent (100%) reimbursement of the cost to construct the Regional Stormwater Facility and (b) securing all governmental approvals necessary in relation to the construction of the Regional Stormwater Facility. The City will not require that the land on which the Regional Stormwater Facility is constructed be platted until such time as the Owner's development activities have advanced so that such land has access to a publicly dedicated roadway, provided that the Owner shall be responsible for obtaining, recording and maintaining an access easement, in form satisfactory to the City, benefitting such land during the period prior to such access by a publicly dedicated roadway. The access easement need not be paved but shall allow for all weather access to the Regional Stormwater Facility by City inspectors and personnel. In the event the TCEQ imposes a moratorium on permitting for all similar regional stormwater facilities prior to the approval of either the Temporary Regional Stormwater Facility or Regional Stormwater Facility and the Owner submitted a Stormwater Facility or Regional Stormwater Facility, as applicable at least twenty four (24) months before the date such facility is required to be completed under this Agreement, then the deadline for substantial completion of the Temporary Regional Stormwater Facility and Regional Stormwater Facility described in Section 5.2 shall be extended by the number of days that such permitting moratorium is in effect but for no longer than two (2) years.

5.13. **TCEQ Requirements and Sediment Study Report.** The Owner shall comply with (a) all TCEQ requirements for water quality protection within the

Edwards Aquifer Recharge Zone as required by the TCEQ, and (b) the Development Standards related to water quality in effect at the time of approval of any applicable Sector Plan as long as such standards are incorporated in one or more of the Applicable New Ordinances. The City approves the Sediment Study Report and agrees that such Sediment Study Report shall be used to assess all applications for the Property relating to water quality controls and that no further tests or analysis related to sedimentation associated with the Project are required except for any information hereafter required in the Applicable New Ordinances.

5.14. Total Suspended Solids.

5.14.1. Additional BMPs. The City recognizes that under current TCEQ regulations, eighty percent (80%) removal of TSS after development of each unit is required without prescribing the number of BMPs that are necessary in order to satisfy the TCEQ regulations. The City desires to exceed the minimum TCEQ requirements and target additional BMP requirements to decrease any net increase in sediment load from the Property. Accordingly, the Owner agrees to comply with the following additional conditions related to water quality: (a) on ninety-five percent (95%) of the Developed Land within the Project, at least one BMP measure for the removal of TSS is required for stormwater flows leaving the Developed Land; and (b) on seventy five percent (75%) of the Developed Land within the Project, a second BMP measure is required for stormwater flows leaving such Developed Land. For the approximately one hundred twenty-six (126) acres of the Project which drains into the existing Comal County Flood Control Dam as depicted in **Exhibit O** or the approximately five hundred sixty-two (562) acres to be served by the Regional Stormwater Facility as depicted in **Exhibit P**, the existing flood control dam or the Regional Stormwater Facility, *even prior to completion of its construction*, shall qualify as the second BMP measure required under provision (b) above so long as applicable TCEQ requirements are otherwise satisfied:

5.14.2. Removal Rate. The Owner further agrees that an aggregate eighty percent (80%) TSS removal rate based on the Sediment Study Report must be achieved for the totality of all Developed Land of the site (excluding parks and associated recreational facilities).

5.15. No Net Increase in Total Sediment Weight. The Owner shall develop the Property such that, on an aggregate basis, there is no net increase in total weight of sediment at Build-Out over and above predevelopment conditions as determined by the Sediment Study Report. Mitigation of sediment load increase due to development will be through construction of the Regional Stormwater Facility, onsite stormwater management, and water quality measures.

5.16. **Financial Contribution To Stormwater Mitigation Project.** To alleviate health and safety issues arising from stormwater runoff, the City is considering constructing the Stormwater Mitigation Project within the Blieders Creek watershed. The Parties acknowledge and agree that (a) the Alternate Stormwater Management Improvement may be constructed in phases, and (b) may utilize a collective approach (multiple, separate improvements) rather than a single project approach. The City requires that the Owner or the District contribute towards the cost of constructing the Stormwater Mitigation Project as a condition to the City's agreement to create the District and enter into this Agreement. **Exhibit Q** specifies the minimum approved design size of the German Creek Diversion Channel.

5.16.1. **Stormwater Mitigation Project Fee.** In consideration of the foregoing, the District or the Owner shall pay to the City the Stormwater Mitigation Project Fee. The agreement by the Owner or the District to pay the Stormwater Mitigation Project Fee is a condition to the City's agreement to create the District and enter into this Agreement.

5.16.2. **Timing of Payment of Stormwater Mitigation Project Fee and Possible "True Up" Based on Actual Costs.** The Stormwater Mitigation Project Fee shall be due on the later of (a) ten (10) years from the Effective Date or (b) one hundred twenty (120) days after the Stormwater Mitigation Project Commencement Notice. The Stormwater Mitigation Project Commencement Notice shall include the City Engineer's sealed estimate of the cost to complete the Stormwater Mitigation Project, which shall be used to calculate the Stormwater Mitigation Project Fee payable by the City or the District, provided that upon completion of the construction of the Stormwater Mitigation Project, the Stormwater Mitigation Project Fee shall be recalculated based on actual construction costs and any over or under payment shall be reimbursed or paid, as applicable, within one hundred twenty (120) days after the City Engineer delivers to the District and the Owner a sealed notice of the City's actual costs to construct with Stormwater Mitigation Project, with appropriate back-up documents. The City agrees to deliver its calculation of the final costs to construct the Stormwater Mitigation Project, with appropriate back-up documents, no later than one hundred twenty (120) days following completion of construction.

5.16.3. **Deadline for City to Deliver Stormwater Mitigation Project Commencement Notice.** In the event the City fails to deliver the Stormwater Mitigation Project Commencement Notice within fifteen (15) years following the Effective Date, the obligations of the Owner and the District under this Section 5.16 shall automatically expire, and the City and the District shall have no obligation to contribute towards the construction of the Stormwater Mitigation Project.

5.16.4. **Deadline for City to Complete Construction of the Stormwater Mitigation Project and Reimbursement of Fee if Deadline Not Met.** In the event the City timely delivers the Stormwater Mitigation Project Commencement Notice and the Owner or the District pays the Stormwater Mitigation Project Fee, the City may use the Stormwater Mitigation Project Fee only for the construction of the Stormwater Mitigation Project meeting at least the specifications set forth herein. The City shall hold the Stormwater Mitigation Project Fee in trust, in an interest bearing account, until applied to its actual expenses towards the construction of the Stormwater Mitigation Project or reimbursed pursuant to the immediately succeeding sentence. If the City has not completed construction of the Stormwater Mitigation Project within five (5) years after the date the Stormwater Mitigation Project Fee is paid, the City shall reimburse the Stormwater Mitigation Project Fee, plus accrued interest, to the District or the Owner (whichever paid the fee, as applicable) within thirty (30) days of written demand.

5.16.5. **Failure to Pay Stormwater Mitigation Project Fee.** The obligation to pay the Stormwater Mitigation Project Fee is not an obligation running with the land. In the event the District or the Owner fails to pay the Stormwater Mitigation Project Fee, the only remedy the City may exercise is to declare an Event of Default.

5.16.6. **No Other Obligations.** The District and the Owner shall have no obligations relating to the Stormwater Mitigation Project except the payment of the Stormwater Mitigation Project Fee in the manner described above.

5.16.7. **Possible Offset Against Stormwater Mitigation Project Fee.** In the event a Project improvement is constructed which results in flow reduction that achieves the Net Equivalent Benefit, then the costs of such Project improvements will be credited against the amount owed by Owner for the Stormwater Mitigation Project; provided, however, the terms of this Section 5.16.7 shall only be applicable if such Project improvement is constructed before the City delivers written notice to the Owner that the City has begun design of the Stormwater Mitigation Project.

5.17. **No Stormwater or Drainage Impact Fees.** No Impact Fees relating to stormwater or drainage from the Project shall be assessed on the Owner or any Applicant, provided, however, nothing herein shall in any way modify the other provisions of this Section 5, including without limitation, (a) any provisions relating to the Owner's obligations to construct the Regional Stormwater Facility or the Temporary Regional Stormwater Facility, (b) any provisions relating to the Owner's obligation to pay the Stormwater Mitigation Fee or (c) any provisions relating to payment of stormwater management fees.

6. **TRAFFIC AND ROADWAY IMPACTS.** Notwithstanding anything to the contrary in the Code of Ordinances, the Owner's sole responsibility with respect to traffic improvements and mitigation, and the only requirements applicable to Applications for the Project with respect to traffic improvements and mitigation, shall be as set forth in this Section 6 and the Development Standards.

- 6.1. **Approval of TIA.** The City and the Owner approve the TIA.
- 6.2. **Onsite Mitigation Projects.** The Owner or the District shall construct the Internal Traffic Improvements at such times as are indicated on **Exhibit S**. Fiscal surety for such Internal Traffic Improvements shall be required at the Final Plat stage of the Approvals consistent with the Code of Ordinances.
- 6.3. **Offsite Mitigation Projects.** In order to fund the construction of the External Traffic Improvements, a Building Permit Applicant shall pay to the City a TIF. Such TIF shall be charged in lieu of any Impact Fees relating to traffic or roadway improvements that the City could charge to any Applicants or End Users pursuant to Chapter 395 of the Local Government Code. The Owner acknowledges and agrees that (a), pursuant to the TIA, the necessary offsite mitigation improvements are the External Traffic Improvements and (b) the City requires that the Owner (or the Building Permit Applicants via the TIFs) pay for the External Traffic Improvements as a condition to the City's approval of this Agreement.
- 6.4. **Sector Plan/TIA Threshold Worksheet.** With each Sector Plan, the Owner shall submit a Sector Plan/TIA Threshold Worksheet in the form specified in the Development Standards. The Sector Plan/TIA Threshold Worksheet shall (a) calculate the amount of peak hour trips and daily trips attributable to each land use designated on the Sector Plan, using the methodology recommended by the then current ITE Manual as utilized in the TIA, (b) show the cumulative peak hour trips and daily trips generated to date by all Approved Sector Plans and all other Sector Plans that have been submitted but have not been finally approved or disapproved by the City Council and (c) specify which External Traffic Improvements are required in connection with the Sector Plan and the amount of projected TIFs to be collected from development in the area covered by the Sector Plan. The total of the peak hour trips and daily trips attributable to the Sector Plan as set forth in the approved Sector Plan/TIA Threshold Worksheet shall be used to determine which External Traffic Improvements shall be constructed prior to completion of development of the Sector Plan.
- 6.5. **Final Plat/TIA Threshold Worksheet.** Following Sector Plan Approval, with each Final Plat submitted for any portion of that Sector, the Owner shall submit a Final Plat/TIA Threshold Worksheet in the form specified in the Development Standards. The Final Plat/TIA Threshold Worksheet shall (a) calculate the amount of peak hour trips and daily trips attributable to each land use designated on the Final Plat, using the methodology recommended by the then current ITE Manual as utilized in the TIA, (b) show the cumulative peak

hour trips and daily trips generated to date by all Approved Final Plats from the same Sector Plan and all other Final Plats from the same Sector Plan that have been submitted but have not been finally approved or disapproved by the Planning Director or the City Council and (c) specify which External Traffic Improvements are triggered by the peak hour trips and daily trips attributable to the land uses designated on such Final Plat.

6.6. Owner's Decision Regarding Construction of External Traffic Improvements. Upon filing of any Final Plat/TIA Threshold Worksheet that shows peak hour trips or daily trips that, taken together with other peak hour trips and daily trips from all other Approved Final Plats from the same Sector Plan and from other Final Plats from the same Sector Plan that have been submitted but have not been finally approved or disapproved by the Planning Director or the City Council, trigger a threshold for an External Traffic Improvement shown on **Exhibit T**, the Owner must indicate to the City in writing whether the Owner (a) intends to design and construct such External Traffic Improvement in accordance with Section 6.12.2, or (b) elects to have the City construct the External Traffic Improvement in accordance with Section 6.13. Nothing herein shall require the City to design, construct or fund any of the SH Loop 337 Improvements.

6.7. Main Plaza. Notwithstanding anything to the contrary in the TIA, with respect to the traffic circle at the Main Plaza, the City and the Owner acknowledge and agree that (a) physical mitigation works would detrimentally affect the integrity of Main Plaza without adequate benefit, (b) in no event will the Owner be required to perform any traffic mitigation or other works on or near the traffic circle at the Main Plaza, (c) the Owner will be required to pay the cash mitigation sum identified in the TIA for traffic impact on the Main Plaza, and (d) the City shall use such cash mitigation funds either for traffic improvements described in this Agreement that are the responsibility of the City (such as those related to FM 1863) or for improvements in the City's Downtown Area as identified in the 2010 Downtown Implementation Plan that would contribute toward vehicular, bicycle or pedestrian connectivity or safety.

6.8. Process for Future Revisions to TIA Due to Increased Traffic. Any revisions to the TIA to reflect additional peak hour trips or daily trips attributable to the Project above the total reflected in the original TIA, but that do not result in a cumulative increase in the total peak hour trips or daily trips attributable to the Project of more than ten percent (10%) of the maximum peak hour trips or daily trips approved in the original TIA, may be approved by the City Engineer. Any proposed revision that by itself, or considered together with previous revisions to the original TIA, causes an increase greater than ten percent (10%) in the total peak hour trips or daily trips attributable to the Project shall require the approval of the City Council. In connection with such approval, the City Council may require such traffic mitigation measures or payments as the City Council finds attributable to such additional traffic.

6.9. **Process for Future Revisions to TIA Due to Decreased Traffic.** In the event that the Owner determines that (a) development of the Project is materially different from that assumed by the TIA and (b) the result of such difference in the development of the Project is a material reduction in the maximum peak hour trips or daily trips that have been estimated to be generated from the Project pursuant to the TIA, then upon request by the Owner and upon approval of the City in accordance with the terms of this Section 6.9, the TIA, TIF, Internal Traffic Improvements and External Traffic Improvements may be revised in accordance with this Section 6.9 from time to time without amending or affecting the remainder of this Agreement. If the Owner desires to amend the TIA pursuant to this Section 6.9, the Owner shall submit the proposed revised TIA to the City Engineer for the City Engineer's review. If the proposed revised TIA would require a Major Amendment to the Master Framework Plan, then approval of the proposed revised TIA, and, if applicable, TIF, Internal Traffic Improvements and External Traffic Improvements, shall be a condition precedent to the City Council's consideration and possible approval of the Major Amendment to the Master Framework Plan. If the proposed revised TIA would not require a Major Amendment to the Master Framework Plan, then the City Engineer may approve the proposed revised TIA, and, if applicable, TIF, Internal Traffic Improvements and External Traffic Improvements, without other action by the City Council; provided, however, nothing shall be inferred herein that would limit the discretion of the City Engineer in considering the proposed revised TIA, or if applicable, TIF, Internal Traffic Improvements and External Traffic Improvements. Any revision to the TIA, TIF, Internal Traffic Improvements and External Traffic Improvements under this Section 6.9 shall not affect any other portion of this Agreement.

6.10. **Possible Bi-Annual Adjustments to TIFs.** The City acknowledges that, based on current estimates, the payment of the TIFs by the Building Permit Applicants will pay for the aggregate costs of the External Traffic Improvements. The original amount of the TIF multiplier used to calculate the TIF for each End User is set forth on **Exhibit T**. The Owner and the City shall meet every two (2) years to determine how the actual construction costs have varied from the original estimated costs of the External Traffic Improvements, and shall (a) amend **Exhibit T** to reflect the updated amount for External Traffic Improvement Deposits for each External Traffic Improvement, if necessary, and (b) adjust the TIFs upwards or downwards as necessary to ensure that the total TIF payments to be paid by all Building Permit Applicants shall equal the actual costs to complete all of the External Traffic Improvements and (c) remove from the External Traffic Improvements (and the calculation of the TIF) any External Traffic Improvements previously included in the External Traffic Improvements and constructed by the District, the Owner or other parties in connection with the construction of the SH Loop 337 Improvements described in Sections 6.19.1-6.19.3 or which are no longer needed in the event an amended TIA reflects a decrease in peak hour trips or daily trips or mitigation improvements attributable to the Project.

6.11. **External Traffic Improvements Constructed By Others.** In the event an External Traffic Improvement is fully funded or constructed by a third party, including another developer or governmental entity, prior to the time that any Approved Final Plat shall trigger the construction of such External Traffic Improvement pursuant to **Exhibit T**, then at the next bi-annual adjustment of the TIFs pursuant to Section 6.10 above, (a) the obligation of the Owner to pay for the construction of such External Traffic Improvement shall be adjusted pursuant to the terms of Section 6.10 above and Section 6.11.1 below and (b) the TIFs shall be calculated by reducing the cost for such External Traffic Improvements constructed by others by fifty percent (50%). In the event a portion of an External Traffic Improvement is funded or constructed by a third party, including another developer or governmental entity, then at the next adjustment of the TIFs, the TIFs shall be calculated by reducing the cost of any External Traffic Improvement by fifty percent (50%) of the amount funded or constructed by another developer or governmental entity.

6.11.1. **Election of the Owner With Respect to External Traffic Improvements Constructed By Others.** In the event an External Traffic Improvement is fully funded or constructed by a third party, including another developer or governmental entity, prior to the time that any Approved Final Plat shall trigger the construction of such External Traffic Improvement pursuant to **Exhibit T**, then in connection with subsequent Approved Final Plat that would otherwise trigger the External Traffic Improvement that was fully funded by a third party, the Owner, at its election, may (a) fund to the City an amount equal to fifty percent (50%) of the cost of the External Traffic Improvement as shown on **Exhibit T**, and the City may use such funds for any roadway purposes related to the improvement of SH Loop 337, or access thereto, as determined by the City Engineer, or (b) elect to fund or design and construct the External Traffic Improvement shown on **Exhibit T** that would be the next succeeding External Traffic Improvement triggered by development from the Project. In the event that the Owner elects option (b) above, (i) the Owner must fund or design and construct such next succeeding External Traffic Improvement in the same manner as if such next succeeding External Traffic Improvement had been triggered by the Approved Final Plat in question, (ii) all succeeding External Traffic Improvements shown on **Exhibit T** shall be accelerated by one stage (i.e., such External Traffic Improvements shall be deemed required when the trigger for the immediately prior External Traffic Improvement is reached) and (iii) when the last External Traffic Improvement has been funded or designed and constructed by the Owner, the Owner shall be required to elect option (a) above when the final trigger point is reached under **Exhibit T**.

6.12. **Design and Construction Costs for External Traffic Improvements; External Traffic Improvement Deposit.** At the election of the Owner, any

External Traffic Improvements can be designed and constructed by the Owner, the District or the City, or the City's designee; provided, however, the City shall have no responsibility for designing, constructing or funding any portion of the SH Loop 337 Improvements.

6.12.1. Design. The City agrees to cooperate with the Owner in reaching mutual agreement in advance of design and construction on the most cost effective method to design and construct any External Traffic Improvements and to meet periodically to review options for upcoming projects. Prior to any design and construction of External Traffic Improvements, the City and the Owner must mutually approve the drawings and the maximum cost of the project. In the event the City and the Owner disagree on the most cost effective method to design or construct traffic improvements or an applicable drawing and such disagreement involves at least ten percent (10%) of the estimated cost of the External Traffic Improvements, the City and the Owner agree to cooperate in appointing an independent engineer to resolve the difference. Each of the City and the Owner shall submit their proposed designs, methods and costs to the independent engineer who shall make a determination within ten (10) days from its receipt of the written submissions by the City and the Owner. The independent engineer shall consider the totality of the facts and circumstances relating to the External Traffic Improvement being designed and shall assess whether it is commercially reasonable to either increase or decrease the original construction cost in light of the type of improvement, its expected useful life and the balance between the initial cost and associated future maintenance costs. The decision of the independent engineer shall be final, and the costs associated with the independent engineer shall be shared equally between the City and the Owner.

6.12.2. Design and Construction by the Owner. Where External Traffic Improvements are undertaken by the Owner, all such External Traffic Improvements must be built in accordance with plans approved by the City Engineer, consistent with the process described in Section 6.12.1 above, and, if applicable, TxDOT. Prior to recording of the Approved Final Plat that triggered the need for an External Traffic Improvement, the Owner shall cause one of the following to occur: (a) the Owner shall complete construction of the External Traffic Improvement to the satisfaction of the City Engineer in accordance with then current City policies; or (b) the Owner shall post the External Traffic Improvement Deposit for the External Traffic Improvement, and the City Engineer and the Project Engineer shall agree in writing on a timetable for commencement and completion of the design of the External Traffic Improvement and for commencement and completion of construction of the External Traffic Improvement. With respect to option (b) above, if the City Engineer and the Project Engineer are unable to agree upon

the timetables described above, the City and the Owner agree to cooperate in appointing an independent engineer to resolve the difference. Each of the City and the Owner shall submit their proposed timetables to the independent engineer who shall make a determination within thirty (30) days from its receipt of the written submissions by the City and the Owner. The decision of the independent engineer as to such timetables shall be final, and the costs associated with the independent engineer shall be shared equally between the City and the Owner. If option (b) above is selected, design and construction of such External Traffic Improvement must be commenced and completed in accordance with such timetable, or the City may call or otherwise realize upon the External Traffic Improvement Deposit following written notice to the Owner and expiration of the Cure Period.

- 6.13. **Completion of Construction of External Traffic Improvements by the City.** Conditioned upon the Owner's compliance with the terms of this Agreement, the City agrees to complete, or cause to be completed, construction of any External Traffic Improvements that the Owner elects not to design and construct in accordance with Section 6.12 above (provided nothing herein shall be deemed to obligate the City in any way to design, construct or fund any of the SH Loop 337 Improvements) in accordance with standard City policies for use of fiscal surety for off-site traffic improvements at such time; provided, however, all External Traffic Improvement Deposits must be used by the City for construction of the applicable External Traffic Improvement within five (5) years of deposit with the City or the balance must be returned to the Owner, and thereafter the Owner shall have no further obligation with respect to such External Traffic Improvement.
- 6.14. **Use of TIFs; Reimbursement of Advanced TIFs to Owner.** Whenever the Owner funds Advanced TIFs in connection with External Traffic Improvements, the City shall transfer to the Owner future TIF payments received by the City until such time as the Owner has been reimbursed in full for any Advanced TIFs. Such transfer and reimbursement by the City to the Owner shall take place on a quarterly basis. The City agrees to hold TIFs and Advanced TIFs in trust and (b) apply them solely towards the External Traffic Improvements. The City agrees to reasonably assist the Owner in securing reimbursement from the District for any TIFs paid by the Owner.
- 6.15. **Possible Reallocation of TIFs.** In the event the City receives TIFs which exceed the amount needed to fund the full, cumulative cost of the External Traffic Improvements, the City shall allocate such excess TIFs to the Third Party SH Loop 337 Improvements, whether that be directly funding such Third SH Loop 337 Improvements or reimbursing the Owner for Third Party SH Loop 337 Improvements undertaken in accordance with Section 6.19.3.
- 6.16. **Allocation of SH Loop 337 Improvements.** The TIA contemplates the SH

Loop 337 Improvements. **Exhibit X** attached hereto reflects the Owner SH Loop 337 Improvements and the Third Party SH Loop 337 Improvements. **Exhibit V** further details occurrences that trigger the anticipated need for the Owner SH Loop 337 Improvements.

6.17. No Payment for Additional SH Loop 337 ROW. The Owner acknowledges and agrees to dedicate the full amount of the Additional SH Loop 337 ROW for no compensation of any kind, except for inclusion of the Partial SH Loop 337 ROW Value in the cost of the Third Party SH Loop 337 Improvements for purposes of potential reimbursement of same as hereinafter provided. Such dedication shall occur in accordance with the time requirements set forth in Section 6.17.1. Notwithstanding anything herein to the contrary, the Owner shall have the right to seek reimbursement for the Partial SH Loop 337 ROW Value to the same degree and in accordance with the same process described in Section 6.19 below, and for such purposes, the Partial SH Loop 337 Value shall be considered an additional cost for the Third Party SH Loop 337 Improvements.

6.17.1. Timing for Dedication of SH Loop 337 ROW. The Additional SH Loop 337 ROW and Valued SH Loop 337 ROW shall be dedicated to the City as follows: (a) on the date that a Final Plat is recorded for any portion of the Property that is adjacent to SH Loop 337 the Owner shall dedicate on the Final Plat the portion of the Additional SH Loop 337 ROW and Valued SH Loop 337 ROW reflected on the Final Plat and (b) on the date of recording the Final Plat that triggers "Segment A" of the External Traffic Improvements as shown on **Exhibit W**, the Owner shall dedicate or convey by metes and bounds all of the Additional SH Loop 337 ROW and Valued SH Loop 337 ROW that has not yet been dedicated by Final Plat. The City and Owner agree that in no event will Owner have any obligation to convey ROW for SH Loop 337 in excess of the Additional SH Loop 337 ROW and Valued SH Loop 337 ROW and if, based upon final engineering plans approved by the City, the amount of ROW actually required by the City is reduced, then Owner shall be required to dedicate only the reduced amount of ROW.

6.17.2. Determination of Partial SH Loop 337 ROW Value. The Partial SH Loop 337 ROW Value shall be determined in accordance with this Section 6.17.2. Within ninety (90) days of the Full Execution Date, the City shall send to the Owner a list of four (4) independent appraisers that are experienced in the New Braunfels area and that are acceptable to the City. Within fifteen (15) days of the Owner's receipt of such list of appraisers, the Owner shall submit to the City the name of the appraiser from the City's list that the Owner selects to conduct the appraisal contemplated by this Section 6.17.2. Within forty-five (45) days of such selection, the selected appraiser shall determine the Partial SH Loop 337 ROW Value. In doing so, the selected appraiser

shall make such determination based upon the value of the SH Loop 337 ROW as raw land of such date, and without taking into account in any regard the terms or effects of this Agreement or the Utility Agreement. The decision of the selected appraiser shall be final, and the costs associated with the selected appraiser shall be shared equally between the City and the Owner. However, in the event that the Owner subsequently exercises its right under Section 23.15 not to file the Agreement of record in the real property records of Comal County within one (1) year following approval of this Agreement by the City Council, and this Agreement terminates as a result thereof pursuant to the terms of Section 23.15, within thirty (30) days following such termination the Owner shall reimburse the City for its share of the costs of the selected appraiser. The reimbursement obligation of the Owner pursuant to this Section 6.17.2 shall survive the termination of this Agreement pursuant to Section 23.15.

6.18. **Owner SH Loop 337 Improvements.** For each Approved Final Plat that reflects development that triggers the need for one or more Owner SH Loop 337 Improvements (determined in accordance with the Final Plat/TIA Threshold Worksheet for such Final Plat that reflects peak hour or daily trips that trigger one or more Owner SH Loop 337 Improvements pursuant to **Exhibit V**), then the Owner shall be responsible for constructing any Owner SH Loop 337 Improvements. All such Owner SH Loop 337 Improvements must be built in accordance with plans approved by the City Engineer and TxDOT.

6.18.1. **Design of Owner SH Loop 337 Improvements.** Design of each of the Owner SH Loop 337 Improvements must be (a) commenced upon approval of the Sector Plan that, pursuant to the Sector Plan/TIA Threshold Worksheet for such Sector Plan and the terms of Section 6.4 above, contains land uses that will generate peak hour trips or daily trips that trigger such External Traffic Improvement and (b) processed expeditiously until completion, as determined by the City Engineer.

6.19. **Third Party SH Loop 337 Improvements.** The City and the Owner acknowledge that funding for the Third Party SH Loop 337 Improvements is the responsibility of TxDOT, and the City and the Owner shall at all times cooperate in securing such funding from TxDOT. The City and the Owner agree to pursue funding for the Third Party SH Loop 337 Improvements according to the following order of priority:

- 6.19.1. First, City and the Owner will cooperate to request, submit applications for and coordinate efforts to facilitate all necessary funding from TxDOT.
- 6.19.2. Second, if TxDOT funds are not available, the City will work with and provide reasonable assistance to the Owner to request and obtain

funds from alternative sources including, but not limited to, economic partnerships with the County, tax increment financing or tax increment zones, the New Braunfels Industrial Development Corporation or other governmental or quasi-governmental entities not controlled by the City, and other eligible state or federally funded programs, such as the TxDOT Pass Through Finance Program; provided, however, notwithstanding the foregoing, it is expressly understood that (a) the City has no authority over the decisions of other governmental or quasi-governmental entities and the City cannot commit other governmental or quasi-governmental entities with respect to the matters described above, including, without limitation, the New Braunfels Industrial Development Corporation, and (b) reimbursement through ad valorem based revenue may be required to include participation from the District.

6.19.3. Third, if the actions in Sections 6.19.1 and 6.19.2 above fail to provide sufficient funding for the Third Party SH Loop 337 Improvements, then the Owner may elect, at its discretion, that in order to develop the Project beyond the SH Loop 337 Threshold, the Owner shall agree to fund the portion of the Third Party SH Loop 337 Improvements needed to facilitate the development of each Sector Plan submitted by the Owner after the projected traffic to be generated from the Project passes the SH Loop 337 Threshold. The City agrees that if the Owner decides to fund any portion of the Third Party SH Loop 337 Improvements, the Owner may develop and fund temporary or alternative improvements to the Third Party SH Loop 337 Improvements so long as such temporary or alternative improvements (a) are contemplated on **Exhibit T**, (b) provide sufficient traffic improvements to allow the additional development anticipated in any Sector Plan or Final Plat submitted by the Owner after the SH Loop 337 Threshold is reached, as determined by the City Engineer, and (c) do not materially interfere with the ability to construct the full Third Party SH Loop 337 Improvements in the future, as determined by the City Engineer.

(A) If the Owner pays for all or any portion of the Third Party SH Loop 337 Improvements, the City agrees to take all reasonable steps to assist the Owner in seeking reimbursement for the Owner's funding of any Third Party SH Loop 337 Improvements from any of the alternative sources mentioned in Section 6.19.2 above by accurately reflecting the terms of this Agreement to any third parties reasonably requesting such information.

(B) If the Owner decides to fund any portion of the Third Party SH 337 Improvements, then the Owner may elect to fund and construct only that portion of the Third Party SH 337 Improvements necessary to mitigate the traffic associated with a

proposed Sector Plan or Final Plat, as determined by the City Engineer, and the City may not refuse a proposed Sector Plan or Final Plat on the grounds that the Owner must commit to construct additional Third Party SH 337 Improvements that will only be needed in connection with future Sector Plans or Final Plats in connection with other traffic not attributable to the proposed Sector Plan or Final Plat, as applicable.

- (C) If the Owner proposes to fund any portion of the Third Party SH 337 Improvements and the City requires the Owner to instead fund other Third Party SH 337 Improvements that the Project Engineer and the City Engineer agree will provide less mitigation benefit than the improvements proposed by the Owner, then the City may not refuse a future Sector Plan or Final Plat on the grounds that those Third Party SH 337 Improvements required by the City do not provide sufficient capacity for traffic associated with the Sector Plan or Final Plat, as applicable.
- (D) If the City elects to allocate TIFs that would otherwise have been spent on External Traffic Improvements to the construction of Third Party SH 337 Improvements, then Owner shall have no responsibility or obligation with respect to any such External Traffic Improvements that are delayed or not constructed as a result, and no Approvals shall be conditioned, delayed or withheld on the grounds that such External Traffic Improvements have been delayed or not constructed.
- (E) If the Owner decides to fund any portion of the Third Party SH 337 Improvements and there is reimbursement later available from sources identified in Section 6.19.2 above (or otherwise), then to the extent the City is in a position to establish the order of priority of reimbursement from such source, the City shall require Owner's costs for such Third Party SH 337 Improvements to be reimbursed first before any other costs for Third Party SH 337 Improvements are paid, and if the City is not in a position to establish the order of priority of payment, the City shall cooperate with the Owner in seeking to implement such order of priority by the source of reimbursement.

6.19.4. In the event that the Owner does not decide to fund the construction of all or some portion of the Third Party SH Loop 337 Improvements, the sole remedy of the City shall be to not approve Sector Plans or Final Plats submitted by the Owner after the Project reaches the applicable trigger point for the unfunded Third Party SH Loop 337 Improvements.

6.20. **ROW for FM 1863 Connection.** If requested by the City, the Owner agrees to

assist in the City's acquisition of External FM 1863 Connection ROW by negotiating with the applicable landowners on the purchase price for the City to acquire such ROW. In the event a purchase price for the External FM 1863 Connection ROW that is acceptable to the City and the landowners is not reached within five (5) years of the Effective Date, the City shall resume leadership of any such negotiations with respect to possible acquisition of the External 1863 Connection ROW. The Owner agrees to dedicate to the City, at no cost, the portion of the ROW needed for the Internal FM 1863 Connection ROW at the later to occur of (a) the date the City acquires all of the External FM 1863 Connection ROW or (b) the date the Owner files a Final Plat covering adjacent to the Internal FM 1863 Connection ROW. Notwithstanding the foregoing, if the City has acquired the External FM 1863 Connection ROW and the Owner has not dedicated the Internal FM 1863 Connection ROW to the City prior to the date the Owner seeks to extend this Agreement for an additional fifteen (15) years under Section 18, then the Owner, as a condition to obtaining such extension, must either convey such Internal FM 1863 ROW to the City or deliver to the City and record in the real property records of the County the FM 1863 Option Agreement. At such time, the City shall have the right, but not the obligation, to consent to including the External FM 1863 Connection ROW into the District, if at such time such inclusion would be legally permissible. The Owner or the District shall complete construction of or post fiscal security for two (2) lanes of the roadway improvements upon the External FM 1863 Connection ROW prior to recording the Final Plat that triggers the need for such improvements as reflected on **Exhibit S**. If the City wishes to construct an additional two (2) lanes of the roadway for a four (4) lane roadway, such construction shall be at the City's expense.

- 6.21. **Regional Transportation Plan.** The City agrees to amend the Regional Transportation Plan so that it is consistent with the Master Framework Plan and, to the extent that the City agrees to any amendments to the Master Framework Plan pursuant to the processes established herein, then the City shall thereafter amend the Regional Transportation Plan so that it is consistent with such approved amendments to the Master Framework Plan.
- 6.22. **ROWS.** The ROW for all streets and roads shall be in accordance with the Regional Transportation Plan and the Development Standards, provided that for Major Roadways in the Project (other than Loop 337 and River Road) the City may require additional ROW to the extent such additional ROW is reflected on the City's Regional Transportation Plan in effect on the Determining Date for the Sector Plan containing such streets or roads. The necessary ROW for Loop 337 is covered in its entirety by Section 6.17 above, and in the event of any conflict between Section 6.17 and this Section 6.22, the terms of Section 6.17 shall control.
- 6.23. **No Traffic Impact Fees.** No Impact Fees relating to traffic generated from the Project shall be assessed by the City on the Owner or any Applicant; provided, however, nothing herein shall in any way modify the other provisions of this

Section 6, including without limitation, (a) any provisions relating to the Owner's obligations to fund or construct Internal Traffic Improvements or External Traffic Improvements or (b) the payment of TIFs.

7. **PARKS AND COMMUNITY FACILITIES.** Notwithstanding anything to the contrary in the Code of Ordinances, the Owner's sole responsibility with respect to parks, open space, trails and recreation areas and the only requirements applicable to Applications for the Project relating to parks, open space, trails and recreation areas shall be to comply with the requirements in this Section 7 and the Development Standards.

7.1. **Regional Parks.** The Owner shall develop and convey to the District two regional parks, being RP1 (being approximately 45 acres), subject to modifications and adjustments as permitted in Section 4.3 and RP2 (being approximately 55 acres) subject to modifications and adjustments as permitted in Section 4.3, as follows:

7.1.1. **RP1.** RP1 shall be deeded to the District as a Regional Park within five (5) years after the Effective Date and shall be open to the public with the improvements to the Regional Park substantially completed within two (2) years after completion of the construction of the Regional Stormwater Facility. The deed from the Owner to the District shall contain no restrictions or conditions that are inconsistent with the full and perpetual use of such land for public park purposes, provided that the foregoing shall not prohibit the use of any portion of RP1 for Stormwater Management consistent with the terms of this Agreement. The improvements in RP1 shall meet the specifications set forth in the Development Standards.

7.1.2. **RP2.** Within fifteen (15) years from the Effective Date, the Owner shall have either (a) deeded RP2 to the District subject to deed restrictions requiring the land to be used for public purposes or (2) delivered to the City the RP2 Option Agreement. The sole remedy of the City in the event the Owner fails to meet this requirement is that the Owner will not be permitted to extend this Agreement for any additional period of time under Section 18. The deed from the Owner to the District shall contain no restrictions or conditions that are inconsistent with the full and perpetual use of such land for public park purposes, provided that the foregoing shall not prohibit the use of RP2 for Stormwater Management as shall be approved by the City. RP2 shall be open to the public with the improvements to the Regional Park substantially completed within three (3) years from the date it is deeded to the District. The improvements in RP2 shall meet the specifications set forth in the Development Standards, as well as the requirements of the City Council specified during the approval of the Sector Plan containing RP2. The RP2 Option Agreement shall contain customary terms and conditions in relation to a ninety (90) day period

for the City to enter onto the land that will be RP2 to conduct inspections and due diligence prior to acquiring title to the land.

7.1.3. **Combined Acreage.** The combined total acreage of RP1 and RP2 shall be one hundred (100) acres or greater.

7.2. **Ownership and Maintenance of Regional Parks.** Unless the District and the Owner agree otherwise, the Owner shall convey to the District the real property on which RP1 will be located prior to commencement of any development work associated with RP1, provided that after conveyance, the Owner shall develop RP1. Unless the District and the Owner agree otherwise, the Owner shall convey to the District the real property on which RP2 will be located prior to commencement of any development work associated with RP2, provided that after conveyance, the Owner shall develop RP2. The District shall maintain RP1 and RP2 open to the public until the land on which the parks are located is annexed for full purposes by the City under this Agreement, at which time the City shall assume the ownership of, and obligation to maintain, RP1 and RP2, unless the City and the District mutually agree otherwise.

7.3. **Community Parks and Linear Open Space Parks.** When the real property containing or directly adjacent to such areas receive Final Plat approval, the Owner shall designate and plat the Community Parks and the Linear Open Space Parks as generally depicted on an Approved Sector Plan and subject to modifications and adjustments as permitted in Section 4.3, with plat notes requiring the Community Parks and the Linear Open Space Parks to be open to the public upon completion of the development of such parks. Unless the District and the Owner agree otherwise, the Owner shall convey to the District the real property on which the Community Parks and Linear Open Space Parks will be located prior to commencement of any development work associated with such Parks, provided that after conveyance, the Owner shall develop the Parks. The deed from the Owner to the District shall contain no restrictions or conditions that are inconsistent with the full and perpetual use of such real property for public park purposes, provided that the foregoing shall not prohibit the use of such real property for Stormwater Management as shall be approved by the City. The District shall maintain the Community Parks and Linear Open Space Parks open to the public until the land on which such parks are located is annexed for full purposes by the City under this Agreement, at which time the City shall assume the ownership of, and obligation to maintain, the Community Parks and Linear Open Space Parks, unless the City and the District mutually agree otherwise.

7.4. **Ownership and Maintenance of Other Parks.** Upon completion of the Other Parks, the Owner may convey all or part of the Other Parks to the District or a Homeowners Association, as elected by the Owner. Unless the District and the City agree otherwise, upon the City's annexation of such Other Parks owned by the District, the City shall assume the ownership and maintenance of such parks if (a) such Other Parks shall be open to the public and (b) each of the

Other Parks is five (5) acres or greater in size. Other Parks owned by a Homeowners' Association may be private parks open only to members of the Homeowners' Association.

7.5. **Park Maintenance.** For any Park that is owned by the City within the Project, the Parties agree that they may negotiate a maintenance agreement that allows the District or Homeowners' Association to maintain all or a portion of the park if the Parties agree that such maintenance agreement is in the best interests of the Parties. In such event, the City shall pay to the District or Homeowners Association the costs saved by the City, as determined by the City in its sole discretion, by having such maintenance activities performed by the District or Homeowners Association.

7.6. **Total Acreage of Community Parks, Linear Open Space Parks and Other Parks.** The Master Framework Plan notates the total acreage of the Community Parks, Linear Open Space Parks and Other Parks that are to be open to the public as being approximately three hundred eighty (380) acres, subject to the following adjustment. If the acreage allocated to the Regional Parks is increased over one hundred (100) acres, then the total acreage requirement of the Community Park, Linear Open Space Parks and Other Parks shall be reduced by every acre that the Regional Parks are in excess of one hundred (100) acres; provided, however, in no event shall the minimum acreage of Community Parks be reduced below seventy-three (73) acres.

7.7. **Phasing of Parks.** In order to ensure that Parks open to the public are developed in phases corresponding to the level of other development within the Project, the Owner agrees that for each Sector Plan containing the 600th, 1200th and 1800th acre within the Project made subject to a Sector Plan, that Sector Plan must:

- 7.7.1. Calculate the total acreage of all Parks that are open to the public designated under all prior approvals plus the applicable Sector Plan for which approval is sought;
- 7.7.2. Demonstrate that twenty-five percent (25%), fifty percent (50%) or seventy-five percent (75%), as applicable, of the total acreage of all Parks that are open to the public, being 480 acres, has been designated on Approved Sector Plans plus the applicable Sector Plan for which approval is then sought or, if there is a deficiency in acreage, be accompanied by the Parks Option Agreement.

7.8. **Donation of Land for Certain City Facilities**

- 7.8.1. **Fire Station.** The Owner shall donate and convey to the City up to three (3) acres of land within the Project for the construction of a fire station. The Owner and the City shall mutually agree upon the site for the donated land and location of the fire station based on various

factors including but not limited to the firefighting industry standards related to response time and the availability of land in the proposed areas of the Project. The location of the site to be donated for the fire station shall be designated on the Sector Plan containing the site. The Owner shall convey the land to the City within ninety (90) days after the City delivers written notice to the Owner that the City has funds available to construct the fire station and expects to commence construction of the fire station within ninety (90) days after receipt of the deed for the land and thereafter complete construction and commence operating the fire station within an additional twenty-four (24) months. The deed to the City shall contain a reverter in favor of Owner providing that if the land ceases to be used for a fire station for twelve (12) consecutive months or does not commence to be used as a fire station within twenty four (24) months after first conveyed to the City, fee simple ownership of the land shall automatically revert to Owner; provided, however, such reverter shall specify that in calculating the 12-month and 24-month time periods specified above, any time spent for maintenance or repair work, or for reconstruction following a casualty, or any other delays due to events of force majeure, shall be excluded, and such reverter shall expire upon annexation of the site containing the fire station.

7.8.2. **Natatorium or Recreation Center.** The Owner shall donate and convey to the City up to five (5) acres of land within the Project for the construction of a natatorium or recreation center. The Owner and the City shall determine the location of the natatorium or recreation center; provided however, that the City and the Owner acknowledge that the preferred site for the natatorium or recreation center is within or adjacent to the Regional Parks, the Community Parks or the Linear Open Space Parks established in the Project or Neighborhood Center. The location of the site to be donated for the natatorium or recreation center shall be designated on the Sector Plan containing the site. The Owner shall convey the land to the City within ninety (90) days after the City delivers written notice to the Owner that the City has funds available to construct the natatorium or recreation center and expects to commence construction of the natatorium or recreation center within ninety (90) days after receipt of the deed for the land and thereafter complete construction and commence operating the natatorium or recreation center within an additional twenty-four (24) months. The deed to the City shall contain a reverter in favor of the Owner providing that if the land ceases to be used for a natatorium or recreation center for twelve (12) consecutive months or does not commence to be used as a natatorium or recreation center within twenty-four (24) months after first conveyed to the City, fee simple ownership of the land shall automatically revert to Owner; provided, however, such reverter shall specify that in calculating the 12-month and 24-month time periods specified above, any time spent for

maintenance or repair work, or for reconstruction following a casualty, or any other delays due to events of force majeure, shall be excluded, and such reverter shall expire upon annexation of the site containing the natatorium or recreation center.

7.8.3. **Credit.** The land donated to the City for the fire station and natatorium or recreation center shall be credited against the approximate four hundred eighty (480) acres the City requires for the development of public Parks, but not the acreage requirements for the individual Regional Parks specified in Section 7.1 or a cumulative requirement of less than seventy-three (73) acres of Community Parks. Unless otherwise agreed by the Owner and the City, the City will assume all other costs related to the development of the respective donated sites for the fire station and natatorium or recreation center.

7.9. **No Park Impact Fees.** No Impact Fees relating to Parks shall be assessed on the Owner or any Applicant; provided, however, nothing herein shall in any way modify the other provisions of this Section 7, including, without limitation, (a) any provisions relating to the Owner's obligations to dedicate, construct or manage the Regional Parks, or (b) any provisions relating to the Owner's obligations to set aside, construct or manage any of the Other Parks.

8. THE DISTRICT AND INDEBTEDNESS.

8.1. **Authority of the District to Issue Bonds.** The District and each District created by division of a District shall have the authority to issue, sell, and deliver bonds from time to time, as deemed necessary and appropriate by its Board of Directors, for the purposes, in such forms and manner, and as permitted or provided by federal law, the general laws of the State of Texas and this Resolution. Unless otherwise agreed by the City:

8.1.1. The aggregate amount of bonds, excluding refunding bonds, the Districts collectively may issue shall not exceed a total of Six Hundred Twenty Million Dollars (\$620,000,000.00) in principal amount;

8.1.2. No District shall sell bonds unless its financial advisor determines that the bonds and any other indebtedness of such District payable from ad valorem taxes can be amortized with a projected ad valorem tax rate (including debt service on the bonds and all other ad valorem taxes being levied by such District) of \$1.50 per \$100 of assessed valuation or less; and

8.1.3. Unless approved by resolution of the City in its reasonable discretion, no District shall issue bonds or enter into any contractual obligation with any other District, the State of Texas or any agency or political subdivision thereof, covenanting to make payments in support of bonds later than the earlier of (y) thirty-five years after the Effective

Date of the Development Agreement, or (z) twenty-five (25) years after the date such District issued its first series of bonds.

8.1.4. No less than thirty (30) days prior to selling a series of bonds, an Issuing District (defined below) shall provide the City with a certified copy of the Texas Commission on Environmental Quality Order approving the bond issue (if applicable), a copy of the Preliminary Official Statement for the bonds, and a draft of the District's Order authorizing issuance of the bonds.

8.2. **Bond Provisions.** To ensure compliance by a District with each applicable condition or restriction imposed in connection with this Agreement, the Consent Resolution, or other applicable agreement, resolution or ordinance, the City Council of the City is entitled to approve the issuance or sale of bonds by a District before such District issues a bid invitation for such bonds. If an Issuing District is in compliance with each applicable condition set forth below, the City shall consent to such issuance or sale within thirty (30) days of written request so long as either (a) during the ninety (90) days preceding the commencement of such 30-day period, the Issuing District made a presentation to the City Council with a summary of the proposed issuance of bonds, or (b) at least ninety (90) days preceding the commencement of the 30-day period, the Issuing District informed the City Manager in writing that the Issuing District was available to make such a presentation to the City Council and such presentation was not placed on an agenda of the City Council during the 90-day period. Unless otherwise agreed by the City, an Issuing District shall not sell, issue or deliver any bonds unless:

8.2.1. The terms of such bonds expressly provide that the Issuing District has the right to redeem the bonds no later than on any interest payment date subsequent to the 10th anniversary of the date of issuance, without premium;

8.2.2. The bonds, other than refunding bonds, are sold after the taking of public bids therefor;

8.2.3. None of such bonds, other than refunding bonds, are sold for less than 95% of par;

8.2.4. The net effective interest rate on bonds so sold, taking into account any discount or premium as well as the interest rate borne by such bonds, does not exceed two percent above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the one-month period next preceding the date notice of the sale of such bonds is given and bids for the bonds will be received not more than forty-five (45) days after notice of sale of the bonds is given;

- 8.2.5. Such bonds shall not have a final maturity date more than twenty-five (25) years from the date of issuance;
- 8.2.6. The bonds and the Issuing District's other outstanding bonded indebtedness have a combined level debt service schedule, meaning that the highest year's debt service does not exceed the average year's debt service by more than five percent (5%);
- 8.2.7. Any refunding bonds of a District must provide for a minimum of three percent (3%) net present value savings, and, if such refunding occurs after the last date a District is permitted to issue bonds, the refunding bonds must not mature later than the original, final maturation date of the bonds to be refunded; and
- 8.2.8. No Event of Default has occurred that relates to (a) the improvements or other matters that are the subject of such proposed bonds, (b) the obligations of the District and the Owner pursuant to Section 5.2, Section 5.3 or Section 5.16, or (c) the obligations of the District and the Owner pursuant to Section 7.1.

8.3. **Distribution of Bond Proceeds.** The proceeds of bonds issued by a District shall be used and may be invested or reinvested, from time to time, as provided in the order or orders of the District authorizing the issuance, sale, and delivery of such bonds and in accordance with the federal, state, and local laws and regulations governing the proceeds of the District's sale of its bonds.

8.4. **Division of District.** The current plan for dividing the District into new Districts is attached hereto as **Exhibit BB**. The District may, from time to time, without any further City consent, be divided into two or more Districts in accordance with the provisions of Section 9038.108 of the Creation Statute so long as (i) the division complies with applicable laws and each District created by a division of the original District encompasses a minimum of 200 acres and a maximum of 600 acres, provided that (y) a single District designated by the District as a "master district" may have fewer than 200 acres, and (z) the remainder of the original District may contain more than 600 acres after a new District is created; (ii) the division does not cause the area within a Final Plat (as defined in the Development Agreement) to be located within more than one District; and (iii) the District shall give the City no less than sixty (60) days advance written notice of the intent to divide and create a new District with such notice including a metes and bounds description of the new District. Owner agrees that the City shall not be required to grant a certificate of occupancy for a structure located within a District unless the District encompassing such structure complies with the preceding limitations. In no event shall the division of the District and creation of one or more new Districts be construed to permit any land use inconsistent with the Master Framework Plan as amended from time to time. The creation of any new

District not complying with the above limitations shall require the prior consent of the City.

8.5. Annexation or Exclusion of Land. The District shall give the City no less than sixty (60) days advance written notice of its intent to realign the boundaries of an existing District through the method of adding land to or excluding land from a District. Unless approved by resolution of the City in its reasonable discretion or consented to by the City in the Development Agreement, no District shall add land to such District that is located outside of the Property initially comprising the District as set forth in the Creation Statute.

8.6. References. All references to the District in this Section 8 apply equally to each District and any new District created by division, and the terms of this Agreement regarding development on any portion of the Property shall apply to any new Districts.

9. ANNEXATION. The City may annex any District at such time as the City deems annexation is appropriate, subject to applicable State law and the terms of this Agreement. Except for limited purpose annexation, as provided for in the Strategic Partnership Agreement, the City may not annex any District unless it annexes the entirety of such District. The City agrees not to annex any District until (a) the City Council by ordinance has assumed, or will assume, all obligations, and performed, or will perform, all actions required by Sections 43.0715 and 43.075 of the Texas Local Government Code, or any other then applicable law, and (b) any one of the following has occurred:

9.1. The earlier of (i) the fifteenth (15th) annual anniversary of the confirmation election date of the District to be annexed, such confirmation election being the first election held for the District created pursuant to Section 8.4, but excluding the original confirmation election of the original District, and (ii) the thirtieth (30th) annual anniversary of the Effective Date, provided that, in the event that the Owner validly extends the Term beyond the thirtieth (30th) annual anniversary date pursuant to the terms of Section 18, such thirtieth (30th) annual anniversary date shall be extended to be equal to the then current Term, not to exceed the forty-fifth (45th) annual anniversary date of the Effective Date.

9.2. At least ninety percent (90%) of the improvements within the District that are eligible for reimbursement in accordance with the rules of the TCEQ have been constructed, provided that, for purposes of the foregoing calculation, (i), except as described in subpart (ii) below, the applicable percentage of the improvements (i.e., 90%) shall be based upon the total value of the eligible improvements, as reasonably estimated by the Owner at the time that the Sector Plan containing such improvements is filed with the City, (ii) the City shall have the right to approve the Owner's estimate of the value of the improvements that are eligible for reimbursement in accordance with the rules of the TCEQ, such approval not to be unreasonably withheld, and (iii) the list

of improvements that are eligible for reimbursement in accordance with the rules of the TCEQ, and the value thereof, designated by the Owner and approved as to value by the City in accordance with subpart (ii) above, shall control for all purposes under this Section 9.2, regardless of the actual cost of such improvements or the value placed upon same by any other private entity or public authority, and provided further that the City and the Owner acknowledge that the Owner's estimated value at the time of Sector Plan (A) may not be based upon design engineering and (B) shall in no way limit, restrict or inhibit the Owner's right to seek reimbursement from the District for the actual costs of construction of such improvements; or

9.3. The expiration or termination of this Agreement, as provided herein.

10. **DEED RESTRICTIONS.** Prior to conveying any portion of the Property to an End User, Owner shall encumber the applicable portion of the Property with CC&Rs containing at least the following restrictions or, to the extent approved by the Planning Director, alternative restrictions:

10.1. **Construction and Other Codes.** All buildings or dwellings constructed on the Property must comply with Chapter 14 of the Code of Ordinances (Buildings and Building Regulations), as it may be amended from time to time in accordance with this Agreement, to the same extent as if such buildings or dwellings were located in the corporate limits of the City. City building officials and inspectors may enter into the Property that is subject to the CC&Rs to perform inspections and take other actions under Chapter 14 of the Code of Ordinances to the same extent as if such property were located in the corporate limits of the City. The Homeowners Association may not enforce Article X of Chapter 14 of the Code of Ordinances (Violations, Penalties, Fee Refund Policy, Board of Appeals and Administrative), or any successor ordinance; provided however that a violation of this Section may be enforced by the Homeowners Association in the same manner as any other violation of the CC&Rs.

10.2. **Unsafe Buildings and Nuisances.** The Property made subject to the CC&Rs must comply with the sections of Chapter 50 of the Code of Ordinances listed in Sections 10.2.1-10.2.5, as they may be amended from time to time, to the same extent as if the Property was located in the corporate limits of the City. A violation of this Section may be enforced by the Homeowners Association in the same manner as any other violation of the CC&Rs.

10.2.1. Section 50-26 (unsafe buildings);

10.2.2. Section 50-27 (unoccupied buildings);

10.2.3. Section 50-56 (Definitions);

10.2.4. Section 50-57 (Prohibited accumulations; litter, weeds, graffiti, duty of property owner, occupant); and

10.2.5. Chapter 6 (Animals).

10.3. **Maintenance of BMPs in Easements.** Prior to conveying any portion of the Property to the District or a Homeowners Association, the Owner shall encumber the applicable portion of the Property with CC&Rs requiring that the District or the Homeowners Association, as applicable, shall be responsible for maintenance of BMPs located in easements.

11. **WATER AND WASTEWATER.**

11.1. **NBU Agreement.** The Utility Agreement shall govern the provision of water and wastewater services to the Property, and the City hereby agrees to the terms of the Utility Agreement and acknowledges that all requirements of § 9308.004(a)(2) of the Creation Statute requiring an Agreement with the retail public utility owned by the municipality have been met. The Utility Agreement may be amended from time to time, and the City hereby consents to such amendments and agrees no additional notice or agreement by the City is required to amend the Utility Agreement so long as the amendment does not create a conflict with this Agreement. Amendments to the Utility Agreement shall not be considered to alter, modify or expand the Project or alter the vested rights established by this Agreement.

11.2. **Prohibition Against Other Retail Public Utilities.** Other than NBU, no retail public utility, as defined by Section 13.002 of the Texas Water Code, may provide retail water or wastewater service to the Property. Notwithstanding the foregoing, the Owner and the District shall at all times retain the right to develop, transmit, sell and otherwise use for its own benefit or the benefit of others non-potable water in, on or under the Property.

12. **CONSTRUCTION STAGING; PREDEVELOPMENT USES; NO OTHER GRANDFATHERED USES.**

12.1. **Construction Staging.** No approvals will be required in connection with the location of customary construction staging areas, storage yards and temporary construction offices so long as they are not located within two hundred fifty feet (250') of a residential home.

12.2. **Predevelopment Use of the Property.** Owner or Landowner, as applicable, may use the Property after the Effective Date for customary and reasonable purposes and activities relating to agriculture, ranching or wildlife management, including, but not limited to, erecting or removing structures relating thereto and removal of trees consistent with agricultural and ranching practices customary in Central Texas; provided that (a) the Owner and the Landowner, or any successors, assigns, tenants or invitees of the Owner or the Landowner, may not engage in activities designed to prepare the land for development of the Property until the appropriate Application approving such pre-development activities has been approved by the City and (b) in

compliance with the foregoing, the Owner and the Landowner, and any successors, assigns, tenants or invitees may not remove any "high value tree" (as defined in the Development Standards) with a diameter equal to or greater than twenty-four (24) inches measured at fifty-four (54) inches from ground level without the written permission of the Planning Director, such permission not to be unreasonably withheld.

12.3. **No Other Grandfathered Uses.** The City acknowledges and agrees that, in the event of annexation of all or a portion of the Property, the Owner or the Landowner may claim a right to continue agriculture, ranching or wildlife management activities with respect to any portion of the property not then subject to an Approved Sector Plan. The Owner and the Landowner hereby waive any right to claim a pre-existing use solely as a result of the execution of this Agreement.

13. **ECONOMIC INCENTIVES.**

13.1. **Strategic Partnership Agreement.** Concurrently with this Agreement, the City and the District have entered into the Strategic Partnership Agreement.

13.2. **Future Additional City Incentives.** The City agrees to consider in good faith applications for economic incentives in the future in connection with the proposed development within the Project that will provide jobs, attract tourism or otherwise stimulate economic activity in the City if the City determines that such requests are consistent with this Agreement and the general policies of the City at such time.

13.3. **Other Incentives.** The City agrees not to oppose and to provide reasonable support for the Owner or the District to enter into economic incentive agreements with other governmental entities, including but not limited to the County, so long as the proposed economic incentive agreement is consistent with this Agreement and the general policies of the City at such time; provided, however, notwithstanding the foregoing, it is expressly understood that (a) the City has no authority over the decisions of other governmental or quasi-governmental entities and the City cannot commit other governmental or quasi-governmental entities with respect to any economic incentive agreements.

14. **ECONOMIC PHASING INFORMATION AND ESTIMATES.** Owner agrees to provide to the City copies of any economic phasing information or estimates submitted by Owner to NBU under the Utility Agreement. All economic phasing information and estimates submitted by the Owner in connection with this Agreement or the Utility Agreement is an informational estimate only and subject to revision based on market conditions and actual development activities. The Owner agrees to update its economic phasing information and estimates on a yearly basis in a manner and at a time as may be agreed between the Owner and the Planning Director. The Owner reserves the right at all times to make adjustments or modifications to economic phasing information and estimates previously supplied by the Owner to reflect changing market or other conditions and

any such adjustment or modification shall not be construed as an amendment to this Agreement and shall be effective upon delivery to the City.

15. FEES AND CREDITS.

15.1. No Impact Fees. No Impact Fees shall be assessed by the City on the Owner or any Applicant; provided, however, nothing herein shall in any way modify the other provisions of this Agreement that specifically require the payment of fees or the funding of costs, including, without limitation, (a) any provisions relating to the Owner's obligations to fund or construct Internal Traffic Improvements or External Traffic Improvements, (b) the payment of TIFs, (c) any provisions relating to the Owner's obligations to construct the Regional Stormwater Facility or the Temporary Regional Stormwater Facility, (d) any provisions relating to the Owner's obligation to pay the Stormwater Mitigation Fee, (e) any provisions relating to payment of stormwater management fees, (f) any provisions relating to the Owner's obligations to dedicate, construct or manage the Regional Parks, and (g) any provisions relating to the Owner's obligations to set aside, construct or manage any of the Other Parks.

15.2. Other Development Fees. The only other development fees imposed in relation to the Project shall be the Fees.

15.3. Consultant Reimbursement. Unless the Parties agree otherwise, the Owner shall have no obligation to reimburse the City for its consultant fees incurred following the Full Execution Date; provided, however, the Owner shall be responsible for reimbursing the City for its consultant fees related to the consideration of Development Standards, including the Original Development Standards and any additional development standards for the Specialized Areas, whether such consideration occurs during the Second Approval Period, the Third Approval Period or at the time of a Sector Plan that encompasses all or part of a Specialized Area as long as there is a prior agreement between the City and the Owner with respect to the scope and fees for consultant work.

16. ADDITIONAL LANDS. The Owner may subject lands contiguous to the Project to this Agreement only upon approval by the City Council of an amended Master Framework Plan reflecting such additional lands, and such other requirements as shall be imposed by the Planning Director or the City Council, provided that the City shall not unreasonably withhold its approval to the annexation to the Project and the District of roadways or other lands immediately adjacent to the Project containing (or planned to contain) infrastructure intended to be owned and operated by the District, so long as such annexation (a) does not increase the LUEs allocated to the Project under the Utility Agreement, (b) does not otherwise cause a Major Amendment to the Master Framework Plan and (c) is legally allowed at such time pursuant to applicable provisions of the Texas Local Government Code.

17. COORDINATION OF CITY REVIEWS OF FUTURE SUBDIVISION APPROVALS AND INSPECTIONS. City agrees to use good faith in accepting and reviewing all Applications

relating to the Project and to provide adequate human and other resources to the Application review processes applicable to the Project, including any applicable inspections and document reviews, such that all Project Applications are accepted and reviewed by the City in a timely manner and in the same manner and timeliness as other applications in the City.

18. **TERM OF AGREEMENT.** This Agreement shall be in effect during the Term. If the Build-Out of the Project has not occurred within the Initial Term, the Owner may (a) upon written notice to the City prior to expiration of the then-current Term, and (b) compliance with all other applicable provisions of this Agreement that must be satisfied in order for the Owner to extend the Initial Term, elect to extend the Initial Term for up to two (2) additional fifteen (15) year terms; provided, however, in no event shall (i) the Initial Term be extended, nor shall any Term be extended beyond thirty (30) years if the Owner is in default under the terms of this Agreement at the time of such extension, and (ii) the Term of this Agreement be extended under any circumstances beyond the forty-fifth (45th) annual anniversary of the Effective Date.

19. **EVENT OF DEFAULT BY THE OWNER.** In the event of an Event of Default by Owner or the District with respect to the District Obligations, the City shall have the following rights and the right to pursue the remedies set forth in this Section 19.

19.1. **Rights of City.**

19.1.1. **Entry.** To enter upon the Property, or any portion thereof, by and through the City's authorized employees or enforcement agents, at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Agreement; provided that, except in cases where the City reasonably determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Agreement causing immediate and irreparable harm, such entry shall be upon prior reasonable notice to the owner of the portion of the Property upon which the City is to enter, and the City will not in any case unreasonably interfere with such owner's use and quiet enjoyment of such portion of the Property. No entry onto an occupied platted single family residential or duplex residential lot will be authorized by this Section 19.1.1 which is not otherwise authorized by law; and

19.1.2. **Prevent Activity.** To prevent any activity on, or use of, any portion of the Property that is inconsistent with the terms of this Agreement and to require the restoration of such areas or features of such portions of the surface of the Property that may be damaged by any activity or use which is inconsistent with the terms of this Agreement, pursuant to the remedies set forth in Section 19.2 of this Agreement.

19.1.3. **Reimbursement.** The Owner shall reimburse the City all reasonable costs or expenses incurred by the City in exercising its rights set forth in Section 19.1, if any.

19.2. **City's Remedies.** Following an Event of Default by Owner, or the District with respect to the District Obligations, the City's remedies shall include, without limitation, any one or more of the following remedies:

- 19.2.1. bring an action at law or in equity to enforce the terms of this Agreement, as applicable, including seeking a temporary restraining order, temporary injunction and/or permanent injunction to enjoin the non-compliance;
- 19.2.2. bring an action to require the restoration of the surface of the affected Property to its previous condition;
- 19.2.3. bring an action for specific enforcement of this Agreement;
- 19.2.4. recover any damages arising from the non-compliance;
- 19.2.5. terminate this Agreement in full without thereby incurring any liability to the Owner whatsoever (but without waiving the City's rights under the RSF Easement or RSF Escrow Agreement, if any);
- 19.2.6. refuse to accept, process, continue to process, or approve any Application for any portion of the Property;
- 19.2.7. annex any portion or all portions of the Property, notwithstanding any limitation to the contrary in this Agreement; and
- 19.2.8. refuse to consent to the sale or issuance of any bonds by a District.

19.3. **Limitations on City Remedies.** Notwithstanding the foregoing:

- 19.3.1. the City may not exercise the remedies specified in Sections 19.2.5, 19.2.6, 19.2.7 and 19.2.8 if the Event of Default arises from a breach of Section 5.4.1;
- 19.3.2. the City may not exercise the remedies specified in Section 19.2.6 (refuse to accept or process Applications) or Section 19.2.7 (early annexation) and the limitations contained in Sections 19.4.1 and 19.4.2 shall not apply with respect to (a) lot(s) contained in an Approved Final Plat that are owned by an End User, or (b) lot(s) contained in an Approved Final Plat that are owned by an individual or entity who does not qualify as an End User of such lot(s), but only if the Event of Default does not arise from the failure to perform an obligation reflected on the Approved Final Plat; and
- 19.3.3. the City may not exercise the remedy specified in Section 19.2.8, or enforce the limitation on the Owner and the District described in Section 19.4.3, for any unsold or unissued bonds that relate to improvements that have been completed as of the date of the Event of

Default unless the Event of Default relates to (a) the improvements or other matters that are the subject of such proposed bonds, (b) the obligations of the District and the Owner pursuant to Section 5.2, Section 5.3 or Section 5.16, or (c) the obligations of the District and the Owner pursuant to Section 7.1. Nothing herein shall restrict the City in the exercise of the remedy specified in Section 19.2.8, or the limitation on the Owner and the District in Section 19.4.3, for any unsold or unissued bonds that relate to improvements that have not been completed as of the date of the Event of Default.

19.4. **Limitations on the Owner.** Except as provided in Sections 19.3.2, 19.3.3 and 19.4.4, in the event of an Event of Default by the Owner or the District with respect to the District Obligations, the Owner or the District, as applicable, shall not have the right to:

- 19.4.1. submit any Application for any portion of the Property;
- 19.4.2. receive from the City any permit, Approval, or similar permission; and
- 19.4.3. issue any debt, including without limitation, any bonds that were previously approved by the City. This limitation, subject to the terms of Section 19.3.3, shall explicitly control over any law or agreement to the contrary and to the extent any such right would exist at law, in equity or otherwise, same is hereby RELEASED, WAIVED and RELINQUISHED by Owner on behalf of themselves and their respective successors and assigns, if any, until and unless the City provides written notice that the Event of Default has been cured or remedied to the satisfaction of the City.
- 19.4.4. Notwithstanding anything to the contrary, this Section 19.4 does not apply to an Event of Default arising from a breach of Section 5.4 or Section 10.3 of this Agreement.

19.5. **Prior Notice Required.** If the City becomes aware of a violation of the terms of this Agreement, the City shall, except as expressly set forth herein, notify the defaulting party and the owner(s) of the portion(s) of the Property involved in such violation and request corrective action sufficient to abate such violation and, if applicable, restore the surface of the affected portions of the Property to its previous condition prior to the violation. Failure to abate the violation and take such other corrective action as may be required to cure the violation within the Cure Period will entitle the City to exercise any and all rights and remedies available to it at law or in equity as a result of such failure. Prior to exercising the City's rights to one or more available remedies, the City shall provide written notice as stated in this Section 19.5.

19.6. **Failure to Act or Delay.** Forbearance by the City from exercising any of its rights under this Agreement in the event of any breach of any term of this

Agreement by Owner, or the District with respect to the District Obligations, shall not be deemed or construed to be a waiver by the City of such term or of any subsequent breach of the same or any other term of this Agreement or of any of the City's rights under this Agreement. No delay or omission by the City in the exercise of any right or remedy upon any breach by Owner, or the District with respect to the District Obligations, or any subsequent Owner shall impair such right or remedy or be construed as a waiver. No covenant, term, condition or restriction of this Agreement or the breach thereof by Owner, or the District with respect to the District Obligations, will be deemed waived, except by written consent of the City, and any waiver of the breach of any such covenant, term, condition or restriction will not be deemed or construed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, condition or restriction. The City shall retain the right to take any action as may be necessary to ensure compliance with this Agreement notwithstanding any prior failure to act.

- 19.7. **Waiver of Certain Defenses.** Owner and District hereby waive any defense of laches, estoppel, or prescription.
20. **EVENT OF DEFAULT BY CITY.** In the event of an Event of Default by the City, the Owner shall be entitled to seek an injunction without posting bond and/or a writ of mandamus from a court of competent jurisdiction compelling and requiring the City and its officers to observe and perform the covenants, obligations and conditions of this Agreement. The City shall not be liable to Owner for monetary damages, except in the event of a willful abandonment or refusal to perform by the City of all or part of its obligations under this Agreement. The City shall have no liability to the Owner, except in accordance with the terms hereof.
21. **MITIGATION OF DAMAGES.** In the event of a breach of this Agreement by either Party, the non-defaulting Party shall mitigate direct or consequential damages arising from any default to the extent reasonably possible under the circumstances.
22. **DISTRICT OBLIGATIONS.** By its signature below, the District agrees to the terms of this Development Agreement and the District Obligations described in Sections 5.1, 5.2, 5.4, 5.16, 6.20, 7.2, 7.3, and 8. The City agrees that for so long as the District collects no or nominal ad valorem tax, the City will not seek to impose liability on the District for failure to perform the District Obligations and the City will look solely to the Owner to meet the District Obligations. The District agrees that any amendments to this Agreement that do not expressly modify Sections 5.1, 5.2, 5.4, 5.16, 6.20, 7.2, 7.3, and 8, including but not limited to Major Amendments to the Master Framework Plan, will not require the consent of the District.
23. **MISCELLANEOUS PROVISIONS.**
 - 23.1. **Actions Performable.** The City and the Owner agree that all actions to be performed under this Agreement are performable solely in Comal County, Texas.

23.2. **Governing Law.** The City and the Owner agree that this Agreement has been made under the laws of the State of Texas in effect on this date, and that any interpretation of this Agreement at a future date shall be made under the laws of the State of Texas.

23.3. **Non-Severability.** In the event that any provision of this Agreement regarding the land use and development approvals granted to the Owner or the commitment for utility services and costs for facilities to be provided is subsequently determined to be unenforceable or otherwise materially altered by a court of competent jurisdiction, then the Owner or the City shall have the right to terminate the remainder of this Agreement within sixty (60) days of such determination whereupon any bonds posted by the Owner pursuant to this Agreement shall be immediately released by the City. If a court of competent jurisdiction or any other governmental entity with appropriate jurisdiction determines that any portion of this Agreement is beyond the scope or authority of applicable Texas law, then, subject to the immediately preceding sentence, the City and the Owner agree to immediately amend this Agreement so as to conform to such ruling or decision in such a manner that is most consistent with the original intent of this Agreement as legally possible.

23.4. **Representation of Authority.** The City represents and warrants to the Owner that the City is duly authorized and empowered to enter into this Agreement. The Owner represents and warrants to the City that it has the requisite authority to enter into this Agreement.

23.5. **Other Approvals.** The City agrees to cooperate with the Owner in seeking necessary approvals or waivers from the County, TCEQ, U.S. Environmental Protection Agency, Texas Parks & Wildlife Commission, Edwards Aquifer Authority, or any proper approval authority in an expedited manner and agrees to exercise its reasonable efforts to assure that other approval authorities cooperate with the City in coordinating and expediting approvals required by the Owner, as long as such approvals are consistent with this Agreement and the City's general policies regarding any issues reflected in such other approvals.

23.6. **Exhibits.** All exhibits attached to this Agreement are incorporated by reference and expressly made part of this Agreement as if copied verbatim.

23.7. **Complete Agreement; Amendments.** This Agreement represents a complete Agreement of the Parties and supersedes all prior written and oral matters related to this Agreement. Any amendment to this Agreement must be signed by the Owner and the City, but not the other Parties provided however the District must consent to amendments to the extent required in Section 22. All amendments shall be incorporated herein by reference as if they were part of the Agreement as of the Effective Date.

23.8. **Assignment.** This Agreement is for the benefit of the City and the Owner. The City expressly agrees that the Owner may assign all or part of its rights and obligations under this Agreement to subsequent purchasers of all or part of the Property and/or one or more Homeowners' Associations or a similar non-profit entity owned either by residents or by the Owner, and following receipt of notice of such assignment, the City shall look only to such assignee(s) with respect to such assigned rights or obligations. The foregoing shall not apply to the obligations of the Owner pursuant to Section 15.3.

23.9. **Covenants Running With the Property; Recording Fees.** This Agreement is intended to and shall create conditions or exceptions to title or covenants running with the Property, provided that, in accordance with § 212.172(f) of the Texas Local Government Code, this Agreement is not binding on, and does not create any encumbrance to title as to any End User within the Project, except as to land use and development regulations specified in this Agreement that apply to that specific lot. In the event the Owner elects to record the fully executed Development Agreement in accordance with the terms of Section 23.15, all recording costs shall be the responsibility of the Owner. Additionally, in the event that (a) any amendment to this Agreement is executed in accordance with Section 23.7 or (b) any amendment of an exhibit of this Agreement, or any addendum to an exhibit of this Agreement, is properly made pursuant to the terms of this Agreement, the cost of recording such amendment or addendum to an exhibit to this Agreement shall be the responsibility of the Owner.

23.10. **Notice.** All notices, requests or other communications required or permitted by this Agreement shall be in writing and shall be sent by (a) telecopy or electronic mail, with the original delivered by hand or overnight carrier, (b) by overnight courier or hand delivery, or (c) certified mail, postage prepaid, return receipt requested, and addressed to the parties at the following addresses:

City:

City of New Braunfels
Attn: City Manager
424 S. Castell Avenue
New Braunfels, Texas 78130

with copies to:

City Attorney
424 S. Castell Avenue
New Braunfels, Texas 78130

WB Ranch JV:

ASA Properties LLC
177 W. Mill Street, Suite 200
P.O. Box 310699
New Braunfels, Texas 78131

and

Word Borchers Ranch Real Estate Limited Partnership
c/o Dean Word III
220 Lakeview Blvd.
New Braunfels, TX 78130

with copies to:

McGinnis, Lochridge & Kilgore, L.L.P.
Attn: Phillip Schmandt
600 Congress Avenue
Suite 2100
Austin, Texas 78701

District:

Comal County Water Improvement District No. 1,
c/o Tim Green
Coats Rose
3 East Greenway Plaza, Suite 2000
Houston, Texas 77046

23.11. Contest of Agreement. In the event of a third party lawsuit, a taxpayer suit or other claim relating to the validity of this Agreement or any actions taken in compliance therewith, (a) the Owner and the City agree to cooperate in the defense of such claim and the City and the Owner shall use their respective reasonable efforts to resolve the conflict in the mutual best interest of the City and the Owner, and (b) the Owner agrees to indemnify, defend and hold harmless the City against the reasonable costs and expenses incurred by the City in connection with such third party lawsuit, taxpayer suit or other claim relating to the validity of this Agreement or any actions taken in compliance therewith, provided that the Owner shall not be obligated to indemnify the City for claims arising out of (i) the intentional or constructed willful misconduct of the City or its agents, or (ii) any claim arising out of or related to the German Creek Diversion Channel, the Alternate Stormwater Management Improvement or External Traffic Improvements constructed by the City, or the City's construction thereof or (iii) claims arising from actions taken by the City pursuant to Section 3.7. Nothing in this Agreement shall be construed as a waiver of governmental and sovereign immunity by the City.

23.12. **Force Majeure.** The Owner and the City agree that the obligations of each party, except the obligation to make financial payments, shall be subject to force majeure events such as acts of God, natural calamity, fire or strike; provided, however, such force majeure shall not apply to the deadlines described in Sections 15.3 and 23.15.

23.13. **District Approval.** By its signature below, the District agrees to this Agreement and agrees to abide by this Agreement applicable to the District. The District may enforce any rights established in favor of the District under this Agreement.

23.14. **Signature Warranty Clause.** The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the City and the Owner, respectively.

23.15. **Effective Date and Recording.** This Agreement shall be executed by City, the Owner, the District, and the Landowner promptly following approval of this Agreement by the City Council, provided that this Agreement shall not be binding upon the Property until and unless this Agreement recorded by the Owner in the real property records of the County. In the event the Owner fails to record this Agreement in the real property records of the County within one (1) year following approval of this Agreement by the City Council, this Agreement shall automatically terminate and be null and void with no party having any further obligation or liability under this Agreement, except for the obligations of the Owner in Section 15.3, which shall survive such termination. Following the Full Execution Date, the Planning Director shall hold the fully executed Development Agreement in trust pending (a) the possible amendments of this Agreement pursuant to Section 3.2.1 and Section 3.2.2 and (b) the notification from the Owner that it intends, or does not intend, to record this Agreement as contemplated above; provided, however, the Planning Director's sole obligation under this Section 23.15 shall be to deliver the fully executed Development Agreement to the Owner within seven (7) days of the Planning Director's receipt of the Owner's written instruction to deliver the fully executed Development Agreement to the Owner in anticipation of recording the fully executed Development Agreement as contemplated in this Section 23.15.

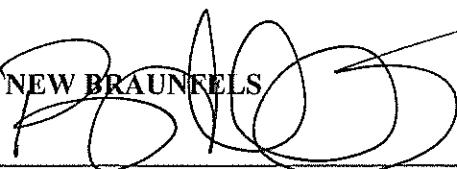
23.15.1. **RSF Easement and RSF Escrow Agreement.** Pursuant to the terms of Section 5.3.1, the Owner shall be required to deliver the RSF Easement and the RSF Escrow Agreement to the escrow holder designated in the RSF Escrow Agreement prior to the recording of this Agreement. Without in any way limiting the terms of Section 5.3.4 or Section 19, in the event that the Owner fails to timely deliver the RSF Easement or the RSF Escrow Agreement to the escrow holder designated in the RSF Escrow Agreement prior to recording of this Agreement, until such failure is cured by delivery of same to the escrow holder designated in the RSF Escrow Agreement the Owner

shall have no rights under this Agreement, including, without limitation, the right to submit any Applications.

23.16. **Captions.** The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

(EXECUTION PAGE(S) TO FOLLOW)

CITY OF NEW BRAUNFELS

By: 
Mayor

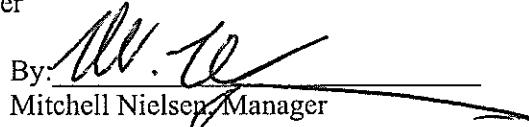
Date: July 24, 2015

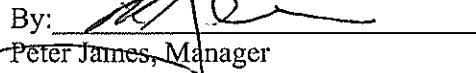
(EXECUTION PAGE TO DEVELOPMENT AGREEMENT)

WORD-BORCHERS RANCH JOINT VENTURE

By: **ASA Properties LLC,**
Its: **Manager**

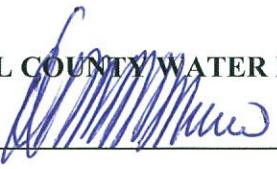
By: **ASA Properties Holding Co. LLC**, a Texas liability company, its sole
manager

By: 
Mitchell Nielsen, Manager

By: 
Peter James, Manager

(EXECUTION PAGE TO DEVELOPMENT AGREEMENT)

COMAL COUNTY WATER IMPROVEMENT DISTRICT NO. 1

By: 

Name: Donnie Shaw, President

Date: 11/19/14

(EXECUTION PAGE TO DEVELOPMENT AGREEMENT)

WORD-BORCHERS RANCH REAL ESTATE LIMITED PARTNERSHIP,
a Texas limited partnership

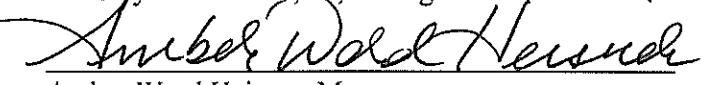
By: **Word-Borchers Ranch Management Company, L.L.C.,**
a Texas limited liability company, its General Partner

By:



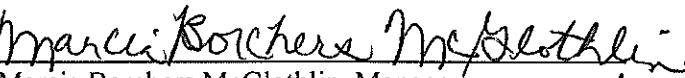
Timothy Dean Word, III, Manager

By:



Amber Word Heisner, Manager

By:



Marcia Borchers McGlothlin, Manager

By:



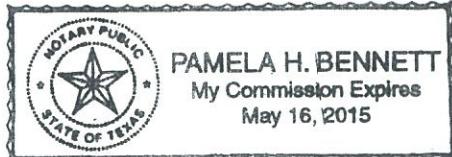
Georgia Borchers Duetra, Manager

(EXECUTION PAGE TO DEVELOPMENT AGREEMENT)

STATE OF TEXAS §
COUNTY OF COMAL §

CORPORATE ACKNOWLEDGMENT

This instrument was acknowledged before me on this the 13th day of February, 2014, by Mitchell Nielsen and Peter James, persons known to me in their capacities as managers of ASA Properties Holding Co. LLC, the sole manager of ASA PROPERTIES, L.L.C., on behalf of Word-Borchers Ranch Joint Venture.

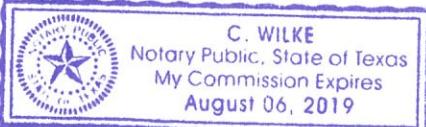


Pamela Bennett
Notary Public, in and for the State of Texas

STATE OF TEXAS §
COUNTY OF COMAL §

CORPORATE ACKNOWLEDGMENT

This instrument was acknowledged before me on this the 21 day of July,
2015 by Barron Carter, a person known to me in her capacity as Mayor of the
City of New Braunfels, on behalf of the City of New Braunfels.

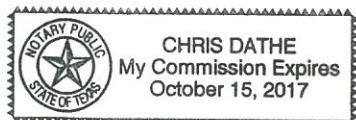


Notary Public, in and for the State of Texas

STATE OF TEXAS
COUNTY OF COMAL

CORPORATE ACKNOWLEDGMENT

This instrument was acknowledged before me on this the 19th day of November, 2014, by Donnie Shaw, a person known to me in his capacity as President of Comal County Water Improvement the District No. 1, on behalf of Comal County Water Improvement the District No. 1.

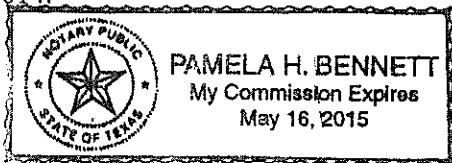


Notary Public, in and for the State of Texas

THE STATE OF Texas §§
COUNTY OF Comal §§

Before me, the undersigned authority, on this day personally appeared Timothy Dean Word III, ✓
Manager of Word-Borchers Ranch Real Estate Limited Partnership, a Texas limited partnership,
known to me to be the person and officer whose name is subscribed to the foregoing instrument,
and acknowledged to me that he executed the same as the act and deed of said water control
improvement district, for the purposes and consideration therein expressed and in the capacity
therein stated.

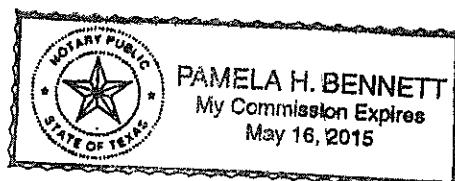
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 13th day of February,
2014.



THE STATE OF Texas §§
COUNTY OF Comal §§

Before me, the undersigned authority, on this day personally appeared Amber Word-Heisner,
Manager of Word-Borchers Ranch Real Estate Limited Partnership, a Texas limited partnership,
known to me to be the person and officer whose name is subscribed to the foregoing instrument,
and acknowledged to me that he executed the same as the act and deed of said water control
improvement district, for the purposes and consideration therein expressed and in the capacity
therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 13th day of February,
2014.



Pamela Bennett
Notary Public, State of Texas
Print Name: Pamela Bennett
My Commission Expires: May 16, 2015

Pamela Bennett
Notary Public, State of Texas
Print Name: Pamela Bennett
My Commission Expires: May 16, 2015

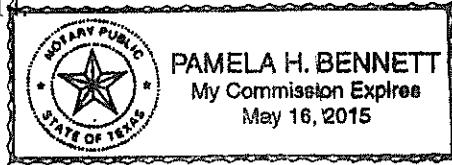
THE STATE OF Texas

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COUNTY OF Comal

Before me, the undersigned authority, on this day personally appeared Marcia Borchers McGlothlin, Manager of Word-Borchers Ranch Real Estate Limited Partnership, a Texas limited partnership, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said water control improvement district, for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 13th day of February, 2014.



Pamela Bennett
Notary Public, State of Texas
Print Name: Pamela Bennett
My Commission Expires: May 16, 2015

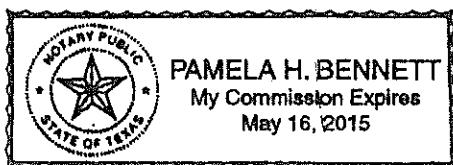
THE STATE OF Texas

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COUNTY OF Comal

Before me, the undersigned authority, on this day personally appeared Georgia Borchers Duettra, Manager of Word-Borchers Ranch Real Estate Limited Partnership, a Texas limited partnership, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said water control improvement district, for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 13th day of February, 2014.



Pamela Bennett
Notary Public, State of Texas
Print Name: Pamela Bennett
My Commission Expires: May 16, 2015

LIST OF EXHIBITS

Exhibit A	Consent Resolution
Exhibit B	Description of Property
Exhibit C	Disannexed Property
Exhibit D	Code of Ordinances
Exhibit E	Development Standards (Development & Design Control Document)
Exhibit F	Listed Minimum Development Standards
Exhibit G	Development Standard Requirements for Specialised Areas
Exhibit H	Master Framework Plan
Exhibit I	Stormwater Management Report (Stormwater Management & Flood Control Analysis)
Exhibit J	Regional Stormwater Facility
Exhibit K	Regional Stormwater Facility Easement
Exhibit L	Regional Stormwater Facility Easement Property
Exhibit M	Regional Stormwater Facility Escrow Agreement
Exhibit N	Sediment Study Report (Sediment Yield Analysis)
Exhibit O	Comal County Flood Control Dam Watershed
Exhibit P	Regional Stormwater Facility Watershed
Exhibit Q	German Creek Deviation Channel (Blieders/German Creek Area Preliminary Engineering Report)
Exhibit R	Traffic Impact Analysis (Project Transportation Plan)
Exhibit S	Internal Traffic Improvements
Exhibit T	External Traffic Improvements
Exhibit U	Main Plaza
Exhibit V	SH Loop 337 Improvement Triggers & Responsibilities
Exhibit W	SH Loop 337 Improvement Segments

Exhibit X	SH Loop 337 Owner & Third Party Improvements
Exhibit Y	Additional SH Loop 337 ROW & Valued SH Loop 337 ROW
Exhibit Z	External FM 1863 Connection ROW
Exhibit AA	Regional Park Locations
Exhibit BB	District Division Plan
Exhibit CC	Utility Agreement
Exhibit DD	Strategic Partnership Agreement
Exhibit EE	Application Fees