

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into by and between the CITY OF NEW BRAUNFELS, TEXAS, a Texas municipal corporation (the “**City**”) and AC3 VENTURES, LLC, a Texas limited liability company (“**Developer**”), effective as of the date the City executes this Agreement after Developer first execute this Agreement. The City and Developer shall hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, Developer is under contract to purchase two adjacent properties located at 2257 SH 46 and 2265 SH 46, more particularly described on Exhibit A attached hereto (the “**Properties**”), subject to the terms and conditions of such contracts;

WHEREAS, Developer is pursuing the rezoning of the Properties from R-2 to C-1B under zoning case PZ23-0230;

WHEREAS, on July 5, 2023, Developer received unanimous approval from the Planning Commission for recommendation of approval, and on July 24, 2023, Developer received unanimous approval from City Council at the first public hearing of the zoning change for approval;

WHEREAS, Section 144-5.3-1(c) of the City of New Braunfels Code of Ordinances (the “**Ordinance**”) requires a tree removal permit to remove certain protected or heritage trees, as set forth in the Ordinance;

WHEREAS, a tree removal permit is not currently required for the Properties pursuant to Section 144-5.3-1(c)(2)(ii)(1) of the Ordinance because the Properties are zoned for and used for single family dwellings, but such permit would be required following the approval of the requested zoning change and the change in use of the Properties to a commercial use;

WHEREAS, the Ordinance provides that if the planning director determines that it is not practical to plant the number of replacement trees required at the removal property, then the planning director may require only the amount of trees that are practical at the removal property;

WHEREAS, the recommended replacement requirement for a tree removal permit on a commercially zoned tract would not be practical on the Properties due to the small size of the tracts and the number of existing trees on the Properties;

WHEREAS, in lieu of obtaining a tree removal permit, Developer has agreed to pay \$100,000 (the “**Fee**”) to the City or an entity designated by the City upon Developer’s receipt of a site permit, demolition permit or building permit for Developer’s proposed development; and

WHEREAS, the parties wish to enter into this Agreement to evidence (i) the City’s agreement that no tree removal permit is required for the Properties and the Developer’s agreement

to pay the Fee and (ii) certain other matters relating to the landscape plan for Developer's proposed development.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Tree Removal. The City agrees that no tree removal permit under the Ordinance or any similar City ordinance will be required for the Properties. Following payment of the Fee as described in Section 2, Developer has the right to remove any tree on the Properties without prior approval from the City. Developer agrees to comply in all other respects with the landscaping and screening requirements under Section 5.3-1(b) of the City of New Braunfels Code of Ordinances, including street frontage and parking lot shading requirements.

2. Fee. Developer has agreed to pay the Fee to the City or an entity designated by the City upon Developer's receipt of a site permit, demolition permit or building permit for Developer's proposed development on the Properties; provided, however, that the Fee may be reduced by \$175 per caliper inch for any protected tree that Developer preserves on the Properties and \$300 per caliper inch for any heritage tree that Developer preserves on the Properties. For example, the preservation of ten (10) protected tree inches would result in a reduction of the Fee by \$1,750 and the preservation of thirty (30) heritage tree inches would result in a reduction of the Fee by \$9,000.

3. Conceptual Landscape Plan. Attached hereto as Exhibit B is a conceptual landscape plan for the Properties (the "***Conceptual Landscape Plan***"), which shows additional landscape screening along the Highway 46 frontage that exceeds the current minimum requirements of the City of New Braunfels Code of Ordinances. Developer intends to follow the Conceptual Landscape Plan's intent of exceeding landscape requirements along the Highway 46 frontage as reasonably practicable given various third-party constraints in the development of the Properties, including but not limited to (i) Fire Marshall approval, (ii) approval from TXDOT with respect to line of sight requirements at curb cuts, (iii) compliance with septic field requirements, (iv) adherence to building permit requirements, (v) compliance with the Americans with Disabilities Act and related rules and regulations, (vi) compliance with utility requirements and setbacks including proximity of certain trees to utility lines along Highway 46 and location of improvements in the water line easement along Highway 46, (vii) detention and filtration requirements relating to water quality including Edwards Aquifer requirements, (viii) compliance with the City of New Braunfels Code of Ordinances and (ix) other reasonable and unanticipated development constraints (collectively, the "***Development Constraints***"). Developer and the City agree that the Conceptual Landscape Plan is reflective of the intent of the agreement between the Parties, but that the landscape plan will evolve to a more detailed version of the plan through the building permit process with the Developer and the City. The City's comments and Development Constraints may require changes to the Conceptual Landscape Plan, including planting different trees or shrubs or planting the required trees and shrubs in alternative locations. Other than changes necessitated by Development Constraints, Developer shall not make any material changes to the Conceptual Landscape Plan without the prior approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. Approval of the final landscape permit will remain a City staff approval, which will not require further City Council approval.

4. Binding Effect. This agreement binds, benefits, and may be enforced by the Parties and their respective successors and assigns. Developer may assign this Agreement to (i) any owner of the Properties or (ii) any entity or entities that succeed to Developer's interests in the contracts to purchase the Properties.

5. Equitable Rights of Enforcement. This Agreement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the Parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

6. Modification. The provisions of this Agreement cannot under any circumstance be modified orally, and no agreement shall be effective to waive, change, modify, or discharge the same in whole or in part unless such agreement is in writing and is signed by the City and Developer.

7. Choice of Law. This agreement will be construed under the laws of the state of Texas. Exclusive venue shall lie in Comal County, Texas.

8. Counterparts. This agreement may be executed in multiple counterparts. All counterparts taken together constitute this agreement.

9. Waiver of Default. A default is not waived if the non-defaulting Party fails to declare default immediately or delays in taking any action with respect to the default. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

10. Entire Agreement. This agreement and any exhibits are the entire agreement of the Parties concerning the subject matter described herein. There are no representations, agreements, warranties, or promises, and neither Party is relying on any statements or representations of the other Party or any agent of the other Party, that are not in this agreement and any exhibits.

11. Legal Construction. If any provision in this agreement is unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the Parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. This agreement will not be construed more or less favorably between the Parties by reason of authorship or origin of language.

12. Notices. Any notice, communication, request, demand, reply or advice (severally and collectively referred to as "**Notice**") in this Agreement required or permitted to be given, made or accepted must be in writing. Notice may, unless otherwise specifically provided herein, be given

or served (a) by depositing the same in a receptacle regularly maintained and serviced by the United States Postal Service, postage pre-paid, registered or certified, and addressed to the Party to be notified, with return receipt requested, (b) by delivering the same to such party, or an agent of such party, in person or by commercial courier or (c) by regular mail, facsimile transmission, email or other commercially reasonable means addressed to the party to be notified. Notice sent by registered or certified mail in the manner hereinabove described shall be effective on the date of deposit as evidenced by the mail receipt stamped by the post office. Notice given in any other manner shall be effective only if and when received by the party to be notified. A Party's legal counsel may give any notice on its client's behalf. For the purposes of Notice, the addresses of the parties shall, until changed as provided below, be as follows.

If to City:                      City Engineer  
   City of New Braunfels  
   550 Landa Street  
   New Braunfels, Texas 78130

With a copy to:                City Attorney  
   City of New Braunfels  
   550 Landa Street  
   New Braunfels, Texas 78130

If to Developer:                AC3 Ventures, LLC  
   15614 Cloud Top  
   San Antonio, Texas 78248

The addresses and addressees, for the purpose of this Agreement, may be changed by the Parties by giving notice of such change to the other Party in the manner provided herein for giving notice. For the purpose of changing such addresses or addressees only, unless and until such written notice is received, the last address and addressee stated herein will be deemed to continue in effect for all purposes.

13.     City Approval. This Agreement shall be approved by the City Council by formal action and shall be effective upon the signature of all parties hereto. The City shall be the last Party to execute this Agreement.

*[Signature pages follow]*

**DEVELOPER:**

AC3 VENTURES, LLC,  
a Texas limited liability company

By:   
Clint Wynn, Managing Member

Date: 11/14/2023

**CITY:**

CITY OF NEW BRAUNFELS, TEXAS

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

Name: Neal Linnartz\_\_\_\_\_

Title: Mayor\_\_\_\_\_

Date: \_\_\_\_\_ (Effective Date)

Attest:

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

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

Title: \_\_\_\_\_

Approved As To Form:

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

Name: Valeria M Acevedo

Title: City Attorney

## Exhibit A

### Description of the Properties

FOREST SURVEYING AND MAPPING CO.  
T.B.P.L.S Firm # 10002000  
1002 Ash St.  
Georgetown, TX, 78626

DESCRIPTION FOR: Michael Dischinger

0.9892 Acres

BEING 0.9892 acres of land (43,090 square feet), situated in the J. M. Steiner Survey No. 279, Abstract No. 708, in Comal County, Texas, said 0.9892 acres being a portion out of a 0.991 acre tract, of record to Michael Dischinger, Document No. 202106002463, (OPRCCT). This tract was surveyed on the ground in June of 2021 under the direction of William F. Forest, Jr., Registered Professional Land Surveyor No. 1847. Survey note: The bearing basis for this survey is the State Plane Coordinate System, Texas South Central Zone (4204), and being more particularly described by metes and bounds as follows:

BEGINNING, at a nail found in the top of an 8" Cedar post, for the Northwest corner hereof, said point being a point in the West boundary line of said 0.991 acre tract, same being a point in the East boundary line of a 50.23 acre tract, of record to Sandra & Duane Dischinger, Document No. 202006031527, (OPRCCT), same being the Southeast corner of a 0.064 acre tract, described in Document No. 201006002561, (OPRCCT), said point being a point in the South Right-of-Way line of State Highway 46,

THENCE, with the South boundary line of said 0.009 acre tract and the South Right-of-Way line of State Highway 46, over and across said 0.991 acre tract, the following three (3) courses and distances:

1. N 86°31'55" E, 27.11 feet, to a TXDOT Type II marker, a bronze disk in concrete, marked "TXDOT", for an angle point hereof,
2. N 86°31'55" E, 53.17 feet, to a Mag nail set with washer, marked "FOREST RPLS 1847", for an angle point hereof, said point being the Southwest corner of a 0.009 acre tract, described in Document No. 202106002463 (OPRCCT),
3. S 88°47'53" E, 119.92 feet, with the South line of said 0.009 Acre tract, to a Mag nail set with washer, marked "FOREST RPLS 1847", for the Northeast corner hereof, said point being a point in the East boundary line of said 0.991 acre tract, said point being a point in the West boundary line of a 0.99 acre tract, of record to Laurie & Johnny Oberkamp, Document No. 202006016652, (OPRCCT), said point being the Southeast corner of said 0.009 acre tract, same being the Southwest corner of a 0.053 acre tract, described in Document No. 200906040066, (OPRCCT), said point being the Northwest corner of a 0.9468 acre tract, surveyed this date, from which a 1/2" capped iron pin set, marked "FOREST RPLS 1847", at the Northeast corner of said 0.9468 acre tract, bears: N 88°47'53" E, 200.28 feet,

THENCE, with the common boundary line of said 0.991 acre tract and said 0.99 acre tract, along or near a fence, S 01°50'13" E, 211.49 feet, to a 1/2" capped iron pin set, marked "FOREST RPLS 1847", at the Southeast corner of said 0.991 acre tract, for the Southeast corner hereof,

THENCE, with the South boundary line of said 0.991 acre tract and the North line of said 50.23 acre tract, along or near a fence, S 88°10'58" W, 200.00 feet, to a 1/2" capped iron pin set, marked "FOREST RPLS 1847", at the Southwest corner of said 0.991 acre tract, for the Southwest corner hereof,

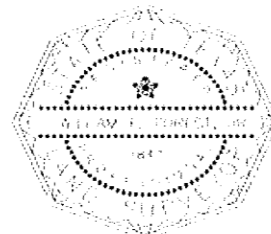
THENCE, with the West boundary line of said 0.991 acre tract along or near a fence, N 01°50'13" W, 215.49 feet, to the POINT OF BEGINNING, and containing 0.9892 acres (43,090 square feet), more or less.

STATE OF TEXAS :  
COUNTY OF WILLIAMSON : KNOW ALL MEN BY THESE PRESENTS;

I, WM. F. FOREST, JR., do hereby certify that this survey was made on the ground of the property legally described hereon, under my supervision. This description is true and correct to the best of my knowledge and belief. The attached plat identifies any significant boundary line conflicts, shortages in area, apparent protrusions, intrusions or overlapping of improvements. This property abuts a public roadway, except as shown. Ownership and easement information for this tract has not been researched except as shown on the attached plat.

TO CERTIFY WHICH, WITNESS my hand and seal at Georgetown, Texas,  
this, the 18th day of June 2021, A.D. File: 2257 W SH 46.doc

  
WM.F. FOREST JR.  
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 1847



Surveying Services are regulated by the Texas Board of Professional Engineers and Land Surveyors  
1917 S Interstate 35 Austin, TX 78741, US (512) 440-7723

FOREST SURVEYING AND MAPPING CO.  
T.B.P.L.S Firm # 10002000  
1002 Ash St.  
Georgetown, TX, 78626

DESCRIPTION FOR: Laurie & Johnny Oberkamp

0.9468 Acres

BEING 0.9468 acres of land (41243 square feet), situated in the J. M. Steiner Survey No. 279, Abstract No. 708, in Comal County, Texas, said 0.9468 acres being a portion out of a 0.99 acre tract, of record to Laurie & Johnny Oberkamp, Document No. 202006016652, Official Public Records Comal County, Texas (OPRCCT). This tract was surveyed on the ground in June of 2021 under the direction of William F. Forest, Jr., Registered Professional Land Surveyor No. 1847. Survey note: The bearing basis for this survey is the State Plane Coordinate System, Texas South Central Zone (4204), and being more particularly described by metes and bounds as follows:

BEGINNING, at a Mag nail set with washer, marked "FOREST RPLS 1847", for the Northwest corner hereof, said point being a point in the West boundary line of said 0.99 acre tract, same being the Northeast corner of a 0.9892 acre tract, surveyed this date, said point being a point in the East boundary line of a 0.991 acre tract, of record to Michael Dischinger, Document No. 202106002463, (OPRCCT), same being the Southwest corner of a 0.053 acre tract, described in Document No. 200906040066, (OPRCCT), said point being a point in the South Right-of-Way line of State Highway 46, from which a Mag nail set with washer, marked "FOREST RPLS 1847", bears: N 88°47'53" W, 119.92 feet,

THENCE, with the South boundary line of said 0.053 acre tract and the South Right-of-Way line of State Highway 46, over and across said 0.99 acre tract, along or near a fence, S 88°47'53" E, 200.28 feet, to a 1/2" capped iron pin set, marked "FOREST RPLS 1847", at the Southeast corner of said 0.053 acre tract, for the Northeast corner hereof, said point being a point in the East boundary line of said 0.99 acre tract, said point being a point in the West boundary line of a 50.23 acre tract, of record to Sandra & Duane Dischinger, Document No. 202006031527, (OPRCCT), same being the Southwest corner of a 0.072 acre tract, described in Document No. 201006002561 (OPRCCT),

THENCE, departing said Right-of-Way line, with the common boundary line of said 0.99 acre tract and said 50.23 acre tract, along or near a fence, S 01°50'13" E, 200.94 feet, to a 1/2" capped iron pin set, marked "FOREST RPLS 1847", at the Southeast corner of said 0.99 acre tract, for the Southeast corner hereof, same being a point in the Northwest boundary line of an 8.184 acre tract, of record to Sandra Dischinger Singleton, Document No. 9706024289, (OPRCCT),

THENCE, with the South boundary line of said 0.99 acre tract and the North line of said 50.23 acre tract, along or near a fence, S 88°10'58" W, 200.00 feet, to a 1/2" capped iron pin set, marked "FOREST RPLS 1847", at the Southwest corner of said 0.99 acre tract, for the Southwest corner hereof, same being the Southeast corner of said 0.991 acre tract, from which a 1/2" capped iron pin set, marked "FOREST RPLS 1847", at the Southwest corner of said 0.991 acre tract, bears: S 88°10'58" W, 200.00 feet,

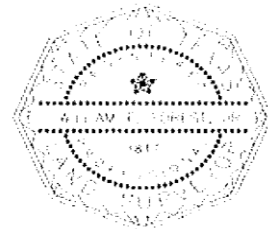
THENCE, with the common boundary line of said 0.99 acre tract and said 0.991 acre tract, along or near a fence, N 01°50'13" W, 211.49 feet, to the POINT OF BEGINNING, and containing 0.9468 acres (41243 square feet), more or less.

STATE OF TEXAS :  
: KNOW ALL MEN BY THESE PRESENTS;  
COUNTY OF WILLIAMSON :

I, WM. F. FOREST, JR., do hereby certify that this survey was made on the ground of the property legally described hereon, under my supervision. This description is true and correct to the best of my knowledge and belief. The attached plat identifies any significant boundary line conflicts, shortages in area, apparent protrusions, intrusions or overlapping of improvements. This property abuts a public roadway, except as shown. Ownership and easement information for this tract has not been researched except as shown on the attached plat.

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WM.F. FOREST JR.  
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 1847



Surveying Services are regulated by the Texas Board of Professional Engineers and Land Surveyors  
1917 S Interstate 35 Austin, TX 78741, US (512) 440-7723





FOR REVIEW ONLY  
Not for regulatory approval,  
permitting or construction.

Project Number:  
22052

SUREPOINT STORAGE  
NEW BRAUNFELS, TEXAS

Client:  
SUREPOINT DEVELOPMENT

REVIEW SET

Date Issued:  
OCTOBER 18, 2023

Revisions:

Sheet Title:  
PLANTING PLAN

Sheet Number:  
LP 1.1

Exhibit B  
Conceptual Landscape and Site Plan

