

SOLMS LANDING PUBLIC IMPROVEMENT DISTRICT
FINANCING AGREEMENT

BETWEEN

SOLMS LANDING DEVELOPMENT, LLC, A TEXAS LIMITED LIABILITY COMPANY

AND

THE CITY OF NEW BRAUNFELS, TEXAS

SOLMS LANDING PUBLIC IMPROVEMENT DISTRICT
FINANCING AGREEMENT

This SOLMS Landing Public Improvement District Financing Agreement (this “**Agreement**”), dated as of _____, 2021, (the “**Effective Date**”), is entered into between SOLMS LANDING DEVELOPMENT, LLC, a Texas limited liability company (including its Designated Successors and Assigns, the “**Developer**”), and the City of New Braunfels, Texas (the “**City**”), a municipal corporation, acting by and through its duly authorized representative. The Developer’s and the City’s entry into this Agreement is being consented to by The Jerome W. Timmermann Family Trust (the “**Timmerman Trust**”) and Chupik Properties & Design, Inc. a Texas corporation (“**Chupik Properties**”) (the Timmerman Trust and Chupik Properties collectively the “**Consenting Parties**” and individually a “**Consenting Party**”).

Recitals:

WHEREAS, Developer and the Consenting Parties own a total of approximately 97.97 acres of land more particularly described on Exhibit “B” attached hereto and made a part hereof (the “**Property**”).

WHEREAS, the City adopted Ordinance No. 2017R-20 on April 10, 2017 establishing a Planned Unit Development (as amended, the “**PUD**”) for the Property;

WHEREAS, it is intended that the Property will be developed by Developer, its affiliates and/or their successors and assigns in phases to include a mix of residential and commercial uses (the “**Project**”);

WHEREAS, the City Council authorized the formation of the Solms Landing Public Improvement District pursuant to Resolution No. 2019-R09 (the “**District**”) on January 14, 2019 in accordance with the PID Act;

WHEREAS, the City Council amended the District pursuant to Resolution No. 2021-32 on April 12, 2021 for the sole purpose of increasing the cost of improvements in the District;

WHEREAS, on October 11, 2021, the City Council approved the Cost Determination Resolution (Resolution No. _____) including the Preliminary Assessment Plan;

WHEREAS, pursuant to the terms of this Agreement, the City has agreed to allow financing of certain public improvements within the Property via a public improvement district;

WHEREAS, the Developer proposes to construct certain improvements over time to serve Property located in the District (or portions thereof) and dedicate some or all of those improvements to the City in accordance with the terms and provisions of this Agreement;

WHEREAS, the City intends to on even date herewith, adopt the Initial Assessment Ordinance and adopt the Assessment Plan that provides for the construction and financing of certain public improvements within the District pursuant to the Assessment Plan, payable in whole

or in part, by and from assessments levied against property within the District, as more specifically provided for in the Assessment Plan;

WHEREAS, the City intends to (upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement) levy assessments on all or a portion of the property located within the District and issue PID Bonds for payment of costs associated with construction and/or acquisition of the Authorized Improvements included in the Assessment Plan, as such plan may be amended from time to time;

WHEREAS, the City has determined that it is in its best interests to contract with the Developer for the construction of the Authorized Improvements, which will result in the efficient and effective implementation of the Assessment Plan;

WHEREAS, from the proceeds of the PID Bonds, the City will, upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement, acquire those certain Authorized Improvements provided for in this Agreement and the Developer will be paid or repaid or reimbursed for the costs of acquisition, construction and improvement of the Segments that are completed from time to time and operative, subject to the terms and limitations set forth herein; and

WHEREAS, it is anticipated that the Project will be developed and financed in phases, and that certain Authorized Improvements that benefit Improvement Area #1 and Improvement Area #2 will be constructed over time. It is currently contemplated that Special Assessments will be levied on Improvement Area #1 first in the Initial Assessment Ordinance on even date herewith, and Special Assessments will be levied upon Improvement Area #2 at a later date.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I. SCOPE OF AGREEMENT

This Agreement establishes provisions for the apportionment, levying, and collection of Special Assessments on the Property (Article II); the construction of Authorized Improvements to be acquired by the City (Article III); reimbursement and/or advancement of construction funds for the PID Bonds, and acquisition, ownership and maintenance of Authorized Improvements within the District (Article IV); the issuance of PID Bonds for the financing of the Authorized Improvements (Article V); representations and warranties of Developer (Article VI); and defaults and remedies (Article VII). Definitions used herein are set forth in Exhibit "A" attached hereto and made a part hereof.

ARTICLE II. APPORTIONMENT, LEVY AND COLLECTION OF ASSESSMENTS

Section 2.01. Preliminary Matters

- (a) The Recitals above are hereby incorporated by reference as if set forth herein.

(b) On January 14, 2019, the City authorized the formation of the District in Resolution No. 2019-R09. The District includes all of the Property. The City Council amended the District pursuant to Resolution No. 2021-32 on April 12, 2021 for the sole purpose of increasing the estimated cost of improvements in the District;

(c) The Parties anticipate that certain Authorized Improvements will be constructed that benefit only Improvement Area #1 (the “**Improvement Area #1 Improvements**”) , while other Authorized Improvements will benefit only Improvement Area #2 (the “**Improvement Area #2 Improvements**”). No Authorized Improvement is intended to benefit more than one Improvement Area. As a result, Special Assessments will be levied on each Improvement Area at separate times. Simultaneously with the execution of this Agreement it is anticipated that Special Assessments will be levied on Improvement Area #1. A portion of the Actual Costs of the Authorized Improvements (including costs for professional services required to construct the Authorized Improvements and any other soft costs) incurred by the Developer prior to closing of the Improvement Area #1 Bonds shall be reimbursed from the proceeds of the Improvement Area #1 Bonds. Developer may also be reimbursed for its Actual Costs of Improvement Area #1 Improvements on a cash flow basis pursuant to the Reimbursement Agreement. It is anticipated that Special Assessments will be levied on Improvement Area #2 and Improvement Area #2 Bonds will be issued in 202_.

(d) The Developer acknowledges and agrees that the Assessment Plan, which (among other things) describes Project development, timing and amount of Special Assessments, the Reimbursement Agreement, schedules for issuance of PID Bonds, and methodology for payment of the costs of acquiring, constructing, installing and (as applicable) maintaining Authorized Improvements, must meet the requirements of Sections 372.013-.014, as amended, Texas Local Government Code, and be presented to the City Council for review and approval prior to issuance of any series of PID Bonds. The Assessment Plan shall be substantially similar to the Preliminary Assessment Plan. The Assessment Plan, which initially encompasses the Improvement Area #1 Bonds, the Reimbursement Agreement, and the City’s adoption of the Initial Assessment Ordinance, will, as required by the Act, be updated and amended by the PID Administrator at least once per year and submitted to the City Council for review and approval. The Parties understand and acknowledge that the Special Assessments that are the subject of the Initial Assessment Ordinance (and the resultant and respective Special Assessment Revenues that will be pledged as security for and serve as the sole source of payment of the Improvement Area #1 Bonds and, as applicable, the Reimbursement Agreement) are the only Special Assessments that can currently be addressed with reasonable certainty in the Assessment Plan. As a result, the Assessment Plan will need to be amended over time as Improvement Area #2 is developed and the Improvement Area #2 Bonds are issued and/or related Reimbursement Agreements entered into. Nevertheless, the basic terms and methodology described in the Assessment Plan initially presented to City Council and thereby adopted will generally apply to the Improvement Area #2 Bonds and related Reimbursement Agreement.

(e) Special Assessments on any portion of the Property will bear a direct proportional relationship to and be less than or equal to the special benefit of the Authorized Improvements whose Actual Costs are paid from the Special Assessment Revenues.

(f) Special Assessments on any given portion of the Assessed Property may be adjusted so long as the Special Assessments are determined in accordance with the Assessment Plan.

(g) The Property shall be subject to an Owner's Association assessment for the provision of authorized services, including but not limited to maintaining public areas (e.g., parks and open space and landscaping) within the District as set forth in Section 3.08.

(h) Subject to the City Council meeting schedule and any applicable review processes of the City, promptly following submission to the City of an updated Assessment Plan (or any subsequent amendment or supplement to the Assessment Plan) acceptable in form and substance to the City and to the Developer with respect to the matters therein that require review and/or approval by the Developer as provided in this Agreement (if any), the City Council shall consider an Assessment Ordinance relating to the applicable plan or amendment or supplement. If an Assessment Ordinance is adopted, the City shall use reasonable, good faith efforts to expeditiously initiate and approve all necessary documents and orders required to effectuate and implement the Assessment Plan and Assessment Ordinance.

(i) As more particularly specified in the analyses prepared by the SAP Consultant and provided to the City, as well as more particularly specified in the Assessment Plan, the Authorized Improvements, the full scope of which would not be feasible but not for the existence of the District and its contemplated attendant financing, will benefit the current and future owners of property within the District, and will benefit the City, its residents, and its economy, by increasing commercial and residential development density in the District and City, and provide for an increase in both the ad valorem and sales tax receipts in the area.

Section 2.02. Apportionment and Levy of Assessments.

As stated above, the City intends to levy Special Assessments on the Property in accordance herewith and with the Assessment Plan (as such plan is amended from time to time) in accordance with Article IV hereof. The City's apportionment and levy of Special Assessments shall be made in accordance with the PID Act.

Section 2.03. Collection of Assessments.

(a) The City covenants and agrees that it shall, as authorized by the PID Act and other applicable law, continuously collect or cause to be collected Special Assessments levied pursuant to the Assessment Plan during the term of this Agreement in the manner and to the maximum extent permitted by applicable law. The City covenants and agrees that to the extent permitted by applicable law, it will not permit a reduction, abatement, or exemption in the Special Assessments due on any portion of the Property until the PID Bonds related to that particular portion of the Property are no longer outstanding, whether as a result of payment in full, defeasance or otherwise. The City shall use good and sound practices to collect the Special Assessments consistent with the City's policies and standard practices applicable to the collection of City taxes and assessments.

(b) Notwithstanding anything to the contrary contained herein or in the Assessment Plan, the Special Assessment Revenues collected annually from an Improvement Area for the

applicable series of PID Bonds will be deposited to the various accounts as set forth in the applicable Indenture.

(c) Further notwithstanding anything to the contrary contained herein, the City covenants to use diligent, good faith efforts to contract with Comal County for the collection of the Special Assessments such that the Special Assessments will be included on the ad valorem tax bill(s) for parcels within the Property and will be collected as part of and in the same manner as ad valorem taxes.

Section 2.04. Approval and Recordation of Special Assessments through Landowner Agreement.

Concurrently with the levy of the Special Assessments for any portion of the Property, the Developer and the applicable Consenting Party (if a Consenting Party still owns a portion of the Property at such time) shall execute (and shall cause any other owner of any of the Property that will be subject to the future special assessments to execute prior to the levy of said future special assessments): (i) a Landowner Agreement (herein so called) in which the Developer (and the Consenting Parties, if and as applicable) shall approve and accept the apportionment of assessments in the Assessment Plan and the levy of the Special Assessments by the City. Further, the Developer and Consenting Parties (if and as applicable) shall comply with the Home Buyer Disclosure Program. The Landowner Agreement further shall (a) evidence the Developer's and the Consenting Party's intent that the Special Assessments be covenants running with the land that (i) will bind any and all current and successor owners of the Property to the Special Assessments, including applicable interest thereon, as and when due and payable thereunder and (ii) provide that subsequent purchasers of such land take their title subject to and expressly assume the terms and provisions of the Special Assessments; and (b) provide that the liens created by the levy of the Special Assessments are a first and prior lien on the Property, subject only to liens for ad valorem taxes of the State or municipality (if any), County, school district, special district or other political subdivision.

Section 2.05. Actual Costs

(a) Notwithstanding anything to the contrary contained herein, the City and Developer hereby acknowledge and agree that the Actual Costs expended by Developer may not be fully reimbursed from the PID Bonds or from Special Assessment Revenues pursuant to the Reimbursement Agreement. The City and Developer hereby acknowledge and agree that the reimbursements made under this Section 2.05 shall hereby constitute a "reimbursement" under Chapter 372 of the Texas Local Government Code.

(b) The Developer reimbursement provisions contained in this Section 2.05 shall not, under any circumstances, give rise to or create a charge against the general credit or taxing power of the City or a debt or other obligation of the City payable from any source other than net proceeds from the PID Bonds and Special Assessment Revenues.

(c) Developer's right, title and interest in and to the payments of unreimbursed Actual Costs shall be the sole and exclusive property of Developer (or its Transferee) and no other third party shall have any claim or right to such funds unless Developer transfers its rights to its

unreimbursed Actual Costs to a Transferee in writing and otherwise in accordance with the requirements set forth herein. Developer, if any applicable Authorized Improvement to be constructed in accordance with this Agreement has been constructed and accepted by the City, has the right to convey, transfer, assign, mortgage, pledge, or otherwise encumber, in whole or in part without the consent of (but with notice to) the City, all or any portion of Developer's right, title, or interest in and to payment of its unreimbursed Actual Costs for the applicable Authorized Improvement (a "Transfer," and the person or entity to whom the transfer is made, a "Transferee") provided, however, that no such conveyance, transfer, assignment, mortgage, pledge or other encumbrance shall be made without the prior written approval of the City Council if such conveyance, transfer, assignment, mortgage, pledge or other encumbrance would result in the payments hereunder being pledged to the payment of debt service on public securities issued by any other state of the United States or political subdivision thereof. . Notwithstanding the foregoing, no Transfer shall be effective until written notice of the Transfer, including the name and address of the Transferee, is provided to the City. The City may rely conclusively on any written notice of a Transfer provided by Developer without any obligation to investigate or confirm the Transfer.

Section 2.06. Obligations Secured by Pledged Revenues.

THE PID BONDS ARE LIMITED AND SPECIAL OBLIGATIONS OF THE CITY SECURED BY AND PAYABLE FROM THE PID BOND SECURITY, AS AND TO THE EXTENT PROVIDED IN THE INDENTURE. THE PID BONDS DO NOT GIVE RISE TO A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE CITY, THE PID BONDS ARE SECURED ONLY AS PROVIDED IN THE INDENTURE. THE HOLDERS OF THE BONDS SHALL NEVER HAVE THE RIGHT TO DEMAND PAYMENT THEREOF OUT OF ANY FUNDS OF THE CITY OTHER THAN THE PID BOND SECURITY, AS AND TO THE EXTENT PROVIDED IN THE INDENTURE. THE CITY SHALL HAVE NO LEGAL OR MORAL OBLIGATION TO THE HOLDERS OF THE BONDS TO PAY THE BONDS OUT OF ANY FUNDS OF THE CITY OTHER THAN THE PID BOND SECURITY, AS AND TO THE EXTENT PROVIDED IN THE INDENTURE.

ARTICLE III. CONSTRUCTION AND ACQUISITION

Section 3.01. Acquisition of Authorized Improvements

(a) The Developer has incurred Actual Costs attributable to certain of the Authorized Improvements prior to the issuance of the PID Bonds. Therefore, Developer and the City have executed that certain Solms Landing Public Improvement District Reimbursement Agreement (Improvement Area #1 and Improvement Area #2) dated effective May 24, 2021 (the "Reimbursement Agreement") covering the Authorized Improvements.

(b) The Developer will dedicate the Authorized Improvements identified on Exhibit "D" to the City upon completion of said Authorized Improvements and the City will accept dedication of such Authorized Improvements after confirming that the applicable Authorized Improvements have been completed in accordance with this Agreement, the approved construction

plans for the Authorized Improvements, and good engineering practices. With respect to the HOA – Maintained Improvements identified in Exhibit “D-1”, the Developer and/or the Owner’s Association shall enter into a license agreement with the City in a form substantially similar to that attached hereto in Exhibit “I” concurrently with the conveyance of such HOA – Maintained Improvements.

Section 3.02. Designation of Construction Manager, Construction Engineers

(a) The City hereby designates the Developer, or its assignees, as the Construction Manager with full responsibility for the design, the designation of easement locations, facilities site designations and acquisitions, supervision of construction, and the bidding and letting of construction contracts for the construction of the Authorized Improvements in accordance with the provisions of this Article III, subject to the City’s review and written approval of design specifications and easement locations.

(b) Inspection of the construction of all Authorized Improvements shall be completed by City Construction Representative or its designees. If the PID Bonds for the Improvement Area to which the Authorized Improvements are applicable have not been issued, the Developer shall pay the inspection fee which shall be included in the Actual Costs and may later be reimbursed to Developer when PID Bonds are issued. If the PID Bonds applicable to the Authorized Improvements have been issued, the Developer may pay the inspection fee out of the PID Bond proceeds.

(c) The Developer shall be entitled to a separate Construction Management Fee for the construction of each Segment, unless Developer contracts with a third party to act as the Construction Manager with respect to construction of the Authorized Improvements.

(d) The City shall cooperate with the Developer in connection with its services as Construction Manager.

(e) The Developer shall designate the consulting engineers for the Authorized Improvements for the compensation specified by the Developer.

Section 3.03. Designation of Construction Manager Subcontractor

The City acknowledges and agrees that Developer may subcontract out all or some of the duties of Construction Manager to a third party. Developer may designate an individual, company, or partnership or other entity as a subcontractor for construction management services for one or more Authorized Improvements or distinct Segments thereof and shall provide the City with written notice of the name of the subcontractor and evidence of the designation.

Section 3.04. Fiscal Security

If prior to commencement of construction of a given Authorized Improvement, there are funds within the Project Fund of the Indenture sufficient to pay for completion of that Authorized Improvement, it is intended that the Developer not be required to post fiscal security for the applicable Authorized Improvement; provided however, a payment and performance bond (as described in Section 3.06(d) below) will still be required. If subcontractors providing labor or

materials for the Authorized Improvements file claims or otherwise give notice asserting failure to receive payment for such labor or materials, the City may require the Developer to post a payment bond for the estimated cost of constructing the Authorized Improvements. The City acknowledges that it will accept fiscal security, if required, for the Authorized Improvements in the form of an irrevocable letter of credit, surety bond, cash deposit, or other security acceptable to the City.

Section 3.05. Maintenance of Project, Warranties

Unless otherwise provided for, the Developer shall maintain each Authorized Improvement (or Segment thereof) in good working order and safe condition until such Authorized Improvement (or Segment thereof) is accepted by the City. The City's acceptance of Authorized Improvements shall be in accordance with the City's standard rules and procedures for the acceptance of subdivision improvements, as modified by this Agreement. Prior to such acceptance, the Developer shall be responsible for performing any required maintenance on such Authorized Improvement. On or before the acceptance by the City of an Authorized Improvement (or Segment thereof), the Developer shall assign to the City all of the Developer's rights in any warranties, guarantees, maintenance obligations or other evidences of contingent obligations of third persons with respect to such Authorized Improvement (or Segment thereof).

Section 3.06. Regulatory Requirements

(a) Notwithstanding anything to the contrary contained herein, the Developers shall be responsible for the costs of designing, constructing, and obtaining the City's acceptance of the Authorized Improvements, in accordance with applicable local, state, and federal regulations, the City-approved plans and specifications, and good engineering practices. The Developer will be entitled to reimbursement for the Actual Costs of the Authorized Improvements as provided in this Agreement and any other agreement with the City, subject to the terms and limitations of said agreements; provided that Developer will be responsible for the costs that exceed the authorized reimbursement amounts. Once Developer begins construction of any Authorized Improvement or Segment thereof, Developer shall use its best efforts to complete said Authorized Improvement or Segment thereof within timeframes required, if any, for completion of public infrastructure set forth in the applicable subdivision ordinance of the City, subject to force majeure.

(b) The District will be exempt from any public bidding or other purchasing and procurement policies pursuant to Texas Local Government Code Section 252.022(a)(9), which states that a project is exempt from such policies for "paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements." For any Authorized Improvements where construction has not commenced as of the Effective Date, the Developer shall procure bids from at least three (3) independent, competent contractors for the construction of the Authorized Improvements and provide copies of the bids to the City. The Authorized Improvements shall be bid based on the construction plans and specifications approved by the City.

(c) The City Construction Representative agrees to cooperate with the Developer to the extent reasonably possible without detriment to proper engineering review, comment, and revision on the review and approval of the engineering, design, plans, and specifications of all Authorized

Improvements submitted by the Developer.

(d) After the Effective Date and prior to commencement of construction of an Authorized Improvement, Developer shall cause its general contractor to provide a payment and performance bond meeting the requirements set forth in Chapter 2253, Texas Government Code.

(e) The Parties agree that, as municipally and publicly owned and acquired properties, all costs of materials, other properties and services used in constructing the Authorized Improvements to be acquired by the City are exempt under the Texas Tax Code from sales and use taxes levied by the State of Texas, or by any city, special district, or other political subdivision of the State, as set forth in Texas Tax Code Section 151.309. The City will provide such certifications to the Developer and/or to suppliers and contractors as may be required to assure the exemptions claimed hereunder. The City and the Developer shall cooperate in structuring the construction contracts for the Authorized Improvements to comply with requirements (including those set forth in Texas Tax Code Section 151.309) for exemption from sales and use taxes.

Section 3.07. Additional Requirements for Authorized Improvements Funded with Progress Payments

The following additional requirements shall be applicable to Authorized Improvements funded in accordance with the procedures set forth in Section 4.02 that Developer has not commenced construction of prior to the Effective Date:

(a) Prior to commencing construction of any such Authorized Improvements, the Project Engineer shall review all plans and specifications, construction contract and related materials for the applicable Authorized Improvement, and shall certify to the Developer, City and Trustee that the estimated amount of funding under the PID Bonds (as specified in the Assessment Plan and Indenture), including but not limited to the fiscal security referenced in Section 3.04 above, is sufficient to fund the full cost of design and construction of the applicable Authorized Improvements or Segments thereof (but excluding any Construction Management Fee or contingencies as set forth in the Assessment Plan).

(b) The Construction Manager will maintain a quarterly updated accounting of funds disbursed, work progress and remaining funding needed to complete each applicable Authorized Improvement. Such accounting to include a reconciliation of any un-advanced amounts out of the segregated accounts in the Project Fund under the applicable Indenture as compared to the remaining costs to complete each applicable Authorized Improvement. The Construction Manager will provide such quarterly reports to the Developer, the City Construction Representative and the Trustee.

(c) All change orders or costs for applicable Authorized Improvements shall be approved by the Developer, Construction Manager and the City Construction Representative, to the extent any such change order that causes an increase to the total costs of the Authorized Improvements and is in excess of \$50,000.00 or decreases the contract by twenty-five percent (25%). The Construction Manager shall provide copies of all approved change orders to the Financial Advisor, and Trustee within ten (10) days after approval. As required by Section 4.02(d), the Developer shall contribute cash, an irrevocable letter of credit or surety bond for increases in

the total costs of the Authorized Improvements to fully fund the applicable Authorized Improvements due to the impact of the increased change order.

Section 3.08. Owner's Association

(a) The Developer will create, or cause to be created, one or more property and/or homeowners associations for the Property (collectively the "**Owners' Association**"), and shall establish bylaws, rules, regulations and restrictive covenants (collectively the "**Association Regulations**") to assure the Owners' Association performs and accomplishes the duties and purposes required to be performed and accomplished by the Owners' Association pursuant to this Agreement. The Owners' Association will have binding, continuing responsibility for the maintenance, repair and operation of the HOA-Maintained Improvements (the "**Maintenance Obligation**"). The HOA's Maintenance Obligation shall be noted on the plat and in the restrictive covenants filed of record for the applicable portion of the Project. The License Agreement will also set forth the maintenance obligations for the HOA- Maintained Improvements.

(b) The Owners' Association dues and assessments required to be established, maintained and collected by the Owners' Association pursuant to this Agreement shall be in addition to, and not in lieu of, any and all other fees, charges and assessments that will be applicable to the Property.

ARTICLE IV. PAYMENT FOR AUTHORIZED IMPROVEMENTS

Section 4.01. Overall Requirements

(a) The City shall not be obligated to provide funds for any Authorized Improvement except from the proceeds of the PID Bonds or from Special Assessment Revenues. The City makes no warranty, either express or implied, that the proceeds of the PID Bonds or the collected Special Assessment Revenues available for the payment of the Actual Cost of the Authorized Improvements to be constructed for or acquired by the City will be sufficient for the construction or acquisition of all of those particular Authorized Improvements. The Parties anticipate that the cost to construct the Authorized Improvements may be greater than the proceeds of the PID Bonds and Special Assessment Revenues available for Authorized Improvements.

(b) Developer may enter into agreements with one or more real estate owners or builders (commercial or residential) to sell or develop a portion of the Property and/or to construct certain Authorized Improvements (each such owner, a "**Co-Developer**") in accordance with the terms and conditions of this Agreement. The Developer may submit Actual Costs paid for by a Co-Developer and obtain reimbursement of such Actual Costs on behalf of and to be paid to such Co-Developer. The City, may, in its discretion, determine that a Developer or Co-Developer is an "**Obligated Person**" for the purposes of compliance with 17 C.F.R. § 240.15c2-12 (f)(10) (Rule 15c-12). The Developer shall be responsible for obtaining the City's determination as to whether the Developer or Co-Developer will be an Obligated Person before it enters into an agreement to sell or develop a portion of the Property.

(c) The procedures set forth in Section 4.02 below shall apply to all Certifications for

Payment for Improvement Area #1 regardless of which account within a Project Fund the actual funds are being paid from and the procedures set forth in Section 4.03 below shall apply to all Certifications for Payment for Improvement Area #2 regardless of which account within a Project Fund the actual funds are being paid from.

(d) Notwithstanding anything contained herein to the contrary, the City will not release any payments for the Actual Costs of an applicable Authorized Improvement then being funded by PID Bonds until the Developer has submitted and obtained approval by the City of construction plans for the applicable Authorized Improvement, and evidence of any and all bonds and insurance policies required by this Agreement. The foregoing provision shall not apply to any design and/or engineering costs (i.e. soft costs) incurred prior to commencement of construction of the applicable Authorized Improvement.

Section 4.02. Payments for Improvement Area #1 Improvements

(a) Developer and the City have previously entered into the Reimbursement Agreement.

(b) The City shall, on even date herewith, consider the approval of the Assessment Plan and the adoption of the Initial Assessment Ordinance, which will levy the Improvement Area #1 Special Assessments.

(c) The City will cause the Improvement Area #1 Special Assessments to be billed in calendar year 2021 and such Special Assessments will begin being collected in calendar year 2021 (provided, however, the Parties acknowledge that all property owners will have through and including January 31, 2022 to pay said Special Assessments without penalty). Upon collection of the Improvement Area #1 Special Assessments, the City will place those Improvement Area #1 Special Assessments in a designated account separate from the City's other accounts. Until the Improvement Area #1 Bonds are issued, the funds within the account will be used to reimburse Developer for the Actual Costs of the Improvement Area #1 Improvements pursuant to the terms of the Reimbursement Agreement. After the issuance of the Improvement Area #1 Bonds the funds within the account will be applied in accordance with the applicable Indenture and the Reimbursement Agreement.

(d) The City will issue the Improvement Area #1 Bonds, subject to meeting the requirements and conditions stated in Section 5.01 and State law, to reimburse the Developer for Actual Cost of the Improvement Area #1 Improvements less any amounts already reimbursed to Developer pursuant to the Reimbursement Agreement. To the extent not already commenced, the City shall commence the documentation and preparation for sale of the Improvement Area #1 Bonds based upon execution of this Agreement and approval by the City Council. If the proceeds of the Improvement Area #1 Bonds are not sufficient to pay or reimburse Developer for Actual Costs of the Improvement Area #1 Improvements, then at the request of Developer pursuant to a Bond Issuance Request, the City may consider the issuance of Parity Bonds, subject to meeting the requirements and conditions stated in Section 5.01 and State law, to reimburse the Developer for Actual Cost of the Authorized Improvements less any amounts already reimbursed to Developer pursuant to the Reimbursement Agreement.

(e) If any of the Improvement Area #1 Improvements have not been completed by Developer by the time the Improvement Area #1 Bonds are issued, then payments will be made to Developer periodically as construction progresses. The procedures for such progress payments are contained in this Section 4.02 and the Indenture. Such payments shall be made by Trustee on no more than once every thirty (30) days and within five (5) business days of the Trustee's receipt of the completed Certification for Payment (the forms of which are attached as Exhibits "E-1" and "E-2") from the Finance Director. A Completed Certification for Payment shall also include the following:

- (i) Copies of all supporting invoices with respect to such payment;
- (ii) Waivers of liens for work on the applicable Improvement Area #1 Improvement through the previous Certification for Payment, receipts for payment from the contractor and any subcontractors for the current Certification for Payment, and verification in a form acceptable to the City that any subcontractors have been paid; and
- (iii) City inspection and approval of the constructed Improvement Area #1 Improvement.

The Construction Manager or its designee shall deliver to the City Construction Representative his/her concurrence to pay pursuant to a completed Certification for Payment, as applicable and the City Construction Representative shall then have up to fifteen (15) calendar days to sign or disapprove the Certification for Payment. The City Construction Representative shall forward the executed Certification for Payment to the Finance Director who shall then have up to ten (10) calendar days to forward the same to the Trustee for payment. If the City disapproves any Certification for Payment, the City shall provide a written explanation of the reasons for such disapproval so that if the Certification for Payment is revised in accordance with City's comments, the Certification for Payment can be approved. Notwithstanding anything to the contrary contained herein, if the quarterly reconciliation provided by the Construction Manager pursuant to Section 3.07(b) above for a particular Improvement Area #1 Improvement shows there are not enough funds in the Project Fund to fund the remaining design and construction costs of such Improvement Area #1 Improvement after taking into consideration any contingencies, the City Construction Representative shall not be obligated to authorize payments of a Certification for Payment until such time as Developer provides evidence satisfactory to the City Construction Representative that Developer has or will provide funds in an amount sufficient to fully fund the remaining design and construction costs of that Improvement Area #1 Improvement. Furthermore, notwithstanding anything contained herein to the contrary, in the event a subcontractor supplying labor or materials for an Improvement Area #1 Improvement claims that the subcontractor has not been paid for such labor or materials and has filed a mechanics lien, the City Construction Representative shall not be obligated to authorize payment of a Certification for Payment until such claim is resolved.

(h) In addition to the submitted items required in 4.02(g) above, in order to obtain the final payment for an Improvement Area #1 Improvement funded by the Improvement Area #1 Bonds or excess Special Assessment Revenues, the following are required:

(i) The Developer shall have provided to the City an assignment of the warranties and guaranties, if applicable, for such Improvement Area #1 Improvement and all documentation and information reasonably required by the City; and

(ii) After the final Certification for Payment is submitted to the City, the City shall conduct a review to confirm that such Improvement Area #1 Improvement was constructed in accordance with the plans therefor and this Agreement and to verify the Actual Cost of the applicable Improvement Area #1 Improvement specified in such Certification for Payment. The City agrees to conduct each such review in an expeditious manner after the Certification for Payment is submitted to the City and the Developer agrees to cooperate with the City in conducting each such review and to provide the City with such additional information and documentation as is reasonably necessary for the City to conclude each such review. Upon confirmation by the City that such Improvement Area #1 Improvement has been constructed in accordance with the plans therefor, and verification and approval of the Actual Cost of such Improvement Area #1 Improvement, the City shall within fifteen (15) calendar days thereafter accept such Improvement Area #1 Improvement and an authorized representative of the City shall sign the Certification for Payment and forward the same to the Finance Director. The Finance Director shall then have up to ten (10) calendar days to forward the executed Certification for Payment to the Trustee for payment.

(i) A retainage of five percent (5%) shall be withheld from each payment. Retainage will be released upon final completion of the applicable Improvement Area #1 Improvement and the expiration of the statutory time period for a mechanics and materialman's lien to be filed. The Developer will cause each construction contract for an Improvement Area #1 Improvement not completed by the closing of the Improvement Area #1 Bonds to include a provision requiring five percent (5%) retainage to be disbursed only upon completion and acceptance by the City of the applicable Improvement Area #1 Improvement.

(j) At the time of the closing of the Improvement Area #1 Bonds, Developer shall, concurrently with the draw from the proceeds of the Improvement Area #1 Bonds, submit a Closing Disbursement Request (herein so called) to the City and the Trustee in substantially the same form attached hereto as Exhibit "H" to be reimbursed for those Developer Expended Funds accrued to date not previously reimbursed to Developer. Prior to disbursement of proceeds of any PID Bonds for such Closing Disbursement Request, the City will sign the Closing Disbursement Request and deliver said Closing Disbursement Request to the Trustee. At the closing of the Improvement Area #1 Bonds, Developer shall be reimbursed an amount equal to the applicable Developer Expended Funds and such amount shall be transferred to the Trustee for distribution to the Developer or the Developer's designee.

Section 4.03. Payment for Improvement Area #2 Improvements

(a) The Parties intend and anticipate that, with respect to continued development of the Project, Improvement Area #2 Bonds shall be issued in the future. At any time in the future when Developer is ready to construct Authorized Improvements for Improvement Area #2, Developer

may deliver a written Bond Issuance Request to the City. Upon receipt, the City shall consider the request, and subject to satisfaction of applicable conditions precedent applicable to any such issuance (whether by contract or agreement or applicable law), place before the City Council for consideration the issuance of the Improvement Area #2 Bonds in accordance with Article V below. Approval of any the issuance of Improvement Area #2 Bonds shall be accompanied or preceded by the levy of Special Assessments on Improvement Area #2 as contemplated by Section 2.01(c).

(b) The City will use its best efforts to cause the Improvement Area #2 Special Assessments to be billed in the calendar year in which such Special Assessments were levied and, to the extent possible, such Special Assessments will begin being collected in the same year (provided, however, the Parties acknowledge that all property owners will have through and including January 31 of the following year to pay said Special Assessments without penalty).

Upon collection of the Improvement Area #2 Special Assessments, the City will place those Improvement Area #2 Special Assessments in a designated account separate from the City's other accounts. If Improvement Area #2 Bonds are not issued concurrently with the levy of the Improvement Area #2 Special Assessments, the funds within the account will be used to reimburse Developer for the Actual Costs of the Improvement Area #2 Improvements pursuant to the terms of the Reimbursement Agreement. After the issuance of the Improvement Area #2 Bonds the funds within the account will be applied in accordance with the applicable Indenture and the Reimbursement Agreement.

(c) The general terms of Sections 4.02(d), 4.02(e), 4.02(f), 4.02(g), 4.02(h), 4.02(i), and 4.02(j) shall apply to the payment of Actual Costs for the Improvement Area #2 Improvements.

ARTICLE V. PID BONDS

Section 5.01. Issuance of PID Bonds.

(a) Subject to the terms and conditions set forth in this Article V, the City intends to use its diligent, good faith efforts to authorize the issuance of the PID Bonds as expediently as possible once a Bond Issuance Request is made to pay for the Authorized Improvements. The City is currently in the process of preparing for consideration and possible issuance of the Improvement Area #1 Bonds, and will use diligent, good faith efforts to issue the Improvement Area #1 Bonds by January 31, 2022. Further, the City will use diligent, good faith efforts to issue the Improvement Area #2 and/or Parity Bonds within four (4) to six (6) months after receiving a Bond Issuance Request that includes any and all reasonably requested information that is necessary and useful for the City to determine whether an issuance of bonds is advisable from the Developer, provided that Developer can reasonably demonstrate to the City and its financial advisor that (i) there is sufficient security for the PID Bonds, based upon the market conditions existing at the time of such proposed sale, and (ii) the City shall have obtained from the Developer the Appraisal and any other financial analysis required hereby.

(b) The aggregate principal amount of PID Bonds required to be issued hereunder shall not exceed an amount sufficient to fund: (i) the Actual Costs of the Authorized Improvements, (ii)

required reserves and capitalized interest during the period of construction and not more than 12 months after the completion of construction of all Authorized Improvements covered by the PID Bond issue in question and in no event for a period greater than 24 months from the date of the initial delivery of the PID Bonds, (iii) the Reserve Fund and the Administrative Fund (as defined in the Indenture), and (iv) any costs of issuance for the PID Bonds. Provided, however that to the extent the law(s) which limit the period of capitalized interest to 12 months after completion of construction change, the foregoing limitation may be adjusted to reflect the law(s) in effect at the time of future PID Bond issuances. Notwithstanding the foregoing, the aggregate principal amount of all PID Bonds issued shall not exceed \$17,000,000.00.

(c) Prior to the issuance of any PID Bonds, the following conditions must be met:

(1) The Developer is current on all taxes, assessments, fees and other monetary obligations to the City, County, any school district or other taxing authority within the District.

(2) The Developer is not in default (beyond any applicable notice and cure period) under this Agreement or any other agreement to which the Developer and City are parties relating to the Property.

(3) The final maturity for each series of PID Bonds shall occur no later than 30 years from the issuance date of said PID Bonds.

(4) PID Bonds are not required to be issued under this Article V unless (i) the statutory requirements set forth in Chapter 372 of the Texas Local Government Code have been satisfied; (ii) the City shall receive at the time of issuance an opinion of counsel selected by the City stating in effect that the PID Bonds are legal and valid under Texas law and that all preconditions to their issuance under State law have been satisfied; and (iii) the approving opinion of the Attorney General of the State of Texas as required by the PID Act.

(5) No outstanding PID Bonds are in default and no reserve funds have been drawn upon that have not been replenished.

(6) The PID Administrator has certified that the specified portions of the costs of the Authorized Improvements to be paid from the proceeds of the PID Bonds are eligible to be paid with the proceeds of such PID Bonds.

(7) An appraisal of the Property must be provided by an appraiser selected by the City which demonstrates a 3 to 1 value to lien ratio on the Property.

(8) An engineering report satisfactory to the City must be provided.

(9) The Authorized Improvements to be financed by the PID Bonds have been or will be constructed according to the City's required standards for similar developments.

(d) If proceeds from PID Bonds are still available after all the Authorized Improvements are accepted by the City and Developer has been reimbursed for all unreimbursed Actual Costs incurred in connection therewith, such excess proceeds shall be applied in accordance with the terms of the Indenture.

Section 5.02. Project Fund

The City hereby covenants and agrees that if PID Bonds are issued, the Indenture will establish a Project Fund as a separate fund to be held by the Trustee under the Indenture. The portion of the proceeds of the PID Bonds issued to pay Actual Costs of Authorized Improvements and Bond Issuance Costs shall be deposited upon issuance into separate accounts within the Project Fund as described in the Indenture.

Section 5.03. Denomination, Maturity, Interest, and Security for Bonds

(a) The PID Bonds shall be finally authorized by the City Council and shall be issued in the denominations, shall mature and be prepaid, shall bear interest, and shall be secured by and payable solely from the PID Bond Security, all to be as described and provided in the PID Bond Ordinance or Indenture, as applicable.

(b) The final and adopted versions of the PID Bond Ordinance and the Indenture (and all documents incorporated or approved therein) shall contain provisions relating to the withdrawal, application, and uses of the proceeds of the PID Bonds when and as issued and delivered and otherwise contain such terms and provisions as are mutually approved by the City and the Developer.

Section 5.04. Sale of PID Bonds.

The PID Bonds, except for any refunding bonds which may be sold pursuant to any method of sale determined to be appropriate by the City at that time, shall be issued by the City and shall be marketed and sold through negotiated sale to an approved third party with the cooperation and assistance of the Developer in all respects with respect to the preparation of marketing documents, such as preliminary and final official statements or in such other marketing and/or sales method mutually agreed upon by the City and the Developer.

Section 5.05. Disclosure Information.

Prior to the issuance of PID Bonds by the City, the Developer agrees to provide all relevant information, including financial information, that is reasonably necessary in order to provide potential bond investors with a true and accurate offering document for any PID Bonds. The Developer agrees, represents, and warrants that any information provided by the Developer for inclusion in a disclosure document for an issue of PID Bonds will not, to the Developer's actual knowledge, contain any untrue statement of a material fact or omit any statement of material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading, and the Developer further agrees that it will provide a certification to such effect as of the date of the closing of any PID Bonds.

Section 5.06 Qualified Tax-Exempt Status.

(a) Generally. In any calendar year in which PID Bonds are issued, the Developer agrees to pay the City its actual additional costs (“**Additional Costs**”) the City may incur in the issuance of its own public securities or obligations on its own taxing power of municipal revenues (the “**City Obligations**”), as described in this section, if the City Obligations are deemed not to qualify for the designation of qualified tax-exempt obligations (“**QTEO**”), as defined in section 265(b)(3) of the Internal Revenue Code (“**IRC**”) as amended, as a result of the issuance of PID Bonds by the City in any given year. The City agrees to deposit all funds for the payment of such Additional Costs received under this section into a segregated account of the City, and such funds shall remain separate and apart from all other funds and accounts of the City until December 31 of the calendar year in which the PID Bonds are issued, at which time the City is authorized to utilize such funds for any purpose permitted by law; provided, however that if the City fails to use diligent, good faith efforts to issue PID Bonds as required by Article V and that failure causes PID Bonds to be issued in a different calendar year or not be issued at all, the City shall refund to Developer all Additional Costs paid by Developer as a result of such failure. Additionally, the City will provide the Developer on an annual basis no later than December 15th each year the projected amount of City Obligations to be issued in the upcoming year based on its annual budget process however such projection is not a binding amount under this agreement but merely an expression of the City's then expected amount of Obligations to be issued during the next calendar year. On or before January 15th of the following calendar year, the final Additional Costs shall be calculated. By January 31st of such year, any funds in excess of the final Additional Costs that remain in such segregated account on December 31st of the preceding calendar year shall be refunded to the Developer and any deficiencies in the estimated Additional Costs paid to the City by the Developer shall be remitted to the City by the Developer).

(b) Issuance of PID Bonds prior to City Obligations. In the event the City issues PID Bonds prior to the issuance of City Obligations, the City, with assistance from its Financial Advisor, shall estimate the Additional Costs based on the market conditions as they exist approximately forty five (45) days prior using independent third party public pricing information to the date of the pricing of the PID Bonds (the “**Estimated Costs**”). The Estimated Costs are an estimate of the increased cost to the City to issue its City Obligations as non QTEO. Promptly following the determination of the Estimated Costs, the City shall provide a written invoice to the Developer and the Developer shall have twenty (20) days to review and provide input on the calculation to the City. The Developer shall pay such Estimated Costs on or before the earlier of: (i) twenty (20) business days after the date of said invoice, or (ii) fifteen (15) business days prior to pricing the PID Bonds. The City shall not be required to price or sell any series of PID Bonds until the Developer has paid the invoice of Estimated Costs related to the PID Bonds then being issued.

(c) Upon the City’s issuance of the City Obligations, and if the City actually issues PID Bonds in that calendar year, the Financial Advisor shall calculate the Additional Costs to the City of issuing its City Obligations as non QTEO. The City will, within five (5) business days of the issuance of the City Obligations, provide written notice to the Developer of the amount of the Additional Costs. In the event the Additional Costs are less than the Estimated Costs, the City will refund to the Developer the difference between the Additional Costs and the Estimated Costs within ten (10) business days of the date of the City’s notice to the Developer required under this paragraph. If the Additional Costs are more than the Estimated Costs, the Developer will pay to the City the difference between the Additional Costs and the Estimated Costs within fifteen (15) business days of the date of the City’s notice required under this paragraph. If the Developer does not pay to the City the difference between the Additional Costs and the Estimated Costs within fifteen (15) business days of the date of the City’s notice required under this paragraph, the Developer shall not be paid any reimbursement amounts under any PID agreement related to the Property until such payment of Additional Costs is made in full. If the City does not issue the City Obligations by the end of the calendar year in which PID Bonds are issued, the City will refund to the Developer the Additional Costs paid by the Developer in such calendar year within ten (10) business days after the end of such calendar year.

(d) Issuance of City Obligations prior to PID Bonds.

(1) In the event the City issues City Obligations prior to the issuance of PID Bonds, the City, with assistance from the Financial Advisor, shall calculate the Estimated Costs based on the market conditions as they exist approximately forty five (45) days prior to the date of the pricing of the City Obligations. Promptly following the determination of the Estimated Costs, the City shall provide a written invoice to the Developer and the Developer shall have twenty (20) days to review and provide input on the calculation to the County. The Developer shall pay such Estimated Costs to the City at least fifteen (15) days prior to the pricing the City Obligations. If the Developer has not paid the Estimated Costs to the City by the required time, the City, at its option, may elect to designate the City Obligations as QTEO, and the City shall not be required to issue any PID Bonds in such calendar year.

(2) Upon the City's approval of the City Obligations, and if the City actually issues PID Bonds in that calendar year, the Financial Advisor shall calculate the actual Additional Costs to the City of issuing non QTEO City Obligations. The City will, within five (5) business days of the issuance of the City Obligations, provide written notice to the Developer of the Additional Costs. In the event the Additional Costs are less than the Estimated Costs, the City will refund to the Developer the difference between the Additional Costs and the Estimated Costs within fifteen (15) business days of the date of the City's notice to the Developer. If the Additional Costs are more than the Estimated Costs, the Developer will pay to the City the difference between the Additional Costs and the Estimated Costs within fifteen (15) business days of the date of the City's notice. If the Developer does not pay to the City the difference between the Additional Costs and the Estimated Costs as required under this paragraph, then the Developer shall not be paid any reimbursement amounts under any PID agreement related to the Property until such payment of Additional Costs is made in full.

(e) To the extent any Developer(s) or property owner(s) (including the Developer, as applicable) has (have) paid Additional Costs for any particular calendar year, any such Additional Costs paid subsequently by a developer or property owner (including the Developer, as applicable) to the City applicable to the same calendar year shall be reimbursed by the City to the developer(s) or property owner(s) (including the Developer, as applicable) as necessary so as to put all developers and property owners (including the Developer, if applicable) so paying for the same calendar year in the proportion set forth in subsection (e), below, said reimbursement to be made by the City within 15 business days after its receipt of such subsequent payments of such Additional Costs.

(f) The City shall charge Additional Costs attributable to any other developer or property owner on whose behalf the City has issued debt in the same manner as described in this section, and the Developer shall only be liable for its portion of the Additional Costs under this provision, and if any Additional Costs in excess of the Developer's portion has already been paid to the City under this provision, then such excess of Additional Costs shall be reimbursed to the Developer. The portion owed by the Developer shall be determined by dividing the total proceeds from any debt issued on behalf of the Developer in such calendar year by the total proceeds from any debt issued by the City pursuant to the PID Act for the benefit of all developers (including the Developer) in such calendar year.

Section 5.07. Tax Certificate.

If in connection with the issuance of PID Bonds, the City is required to deliver a certificate as to tax exemption (a "**Tax Certificate**") to satisfy requirements of the Internal Revenue Code, the Developer agrees to provide, or cause to be provided, such facts and estimates as the City reasonably considers necessary to enable it to execute and deliver its Tax Certificate. The Developer represents that such facts and estimates will be based on its reasonable expectations on the date of issuance of the PID Bonds and will be, to the best of the knowledge of the officers of the Developer providing such facts and estimates, true, correct and complete as of such date. To the extent that it exercises control or direction over the use or investment of the PID Bond proceeds (including, but not limited to, the use of the Authorized Improvements), the Developer further agrees that it will not knowingly make, or permit to be made, any use or investment of such funds

that would cause any of the covenants or agreements of the City contained in a Tax Certificate to be violated or that would otherwise have an adverse effect on the tax-exempt status of the interest payable on the PID Bonds for federal income tax purposes.

Section 5.08. Special Obligations.

THE PID BONDS ARE SPECIAL OBLIGATIONS OF THE CITY SECURED SOLELY BY PLEDGED REVENUES (AS DEFINED IN AN INDENTURE) AND ANY OTHER FUNDS HELD UNDER AN INDENTURE, AS AND TO THE EXTENT PROVIDED IN SUCH INDENTURE. THE PID BONDS DO NOT GIVE RISE TO A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE CITY AND ARE NOT SECURED EXCEPT AS PROVIDED IN AN INDENTURE. THE OWNERS OF PID BONDS SHALL NEVER HAVE THE RIGHT TO DEMAND PAYMENT THEREOF OUT OF ANY FUNDS OF THE CITY OTHER THAN THE PLEDGED REVENUES AND ANY OTHER FUNDS HELD UNDER AN INDENTURE, AS AND TO THE EXTENT PROVIDED IN SUCH INDENTURE. THE CITY SHALL HAVE NO LEGAL OR MORAL OBLIGATION TO THE OWNERS OF PID BONDS TO PAY THE BONDS OUT OF ANY FUNDS OF THE CITY OTHER THAN THE PLEDGED REVENUES. NONE OF THE CITY, NOR ANY OF ITS ELECTED OR APPOINTED OFFICIALS NOR ANY OF ITS OFFICERS, EMPLOYEES, CONSULTANTS OR REPRESENTATIVES SHALL INCUR ANY LIABILITY HEREUNDER TO THE OWNER OR ANY OTHER PARTY IN THEIR INDIVIDUAL CAPACITIES BY REASON OF THIS AGREEMENT OR THEIR ACTS OR OMISSIONS UNDER THIS AGREEMENT UNLESS SUCH ACT OR OMISSION IS IN VIOLATION OF STATE OR FEDERAL LAW AND IS DONE RECKLESSLY OR INTENTIONALLY.

ARTICLE VI. REPRESENTATIONS AND WARRANTIES

Section 6.01. Representation and Warranty of City.

The City makes the following representation and warranty for the benefit of the Developer:

The City is a municipal corporation and political subdivision of Texas, duly incorporated, organized and existing under the Constitution and general laws of the State, and has full legal right, power and authority under the PID Act and other applicable law (i) to enter into, execute, deliver and perform this Agreement, (ii) to adopt each Assessment Ordinance, and (iii) to carry out and consummate the transactions contemplated by this Agreement.

Section 6.02. Representation and Warranties of Developer

The Developer makes the following representations, warranties, and covenants for the benefit of the City:

(a) The Developer represents and warrants that the Developer is a limited liability company duly organized and validly existing under the laws of Texas, is in compliance with the laws of the Texas, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(b) The Developer represents and warrants that the Developer has the power and authority to execute, deliver and perform into this Agreement, and has taken all action necessary

to cause this Agreement to be executed, delivered, and performed this Agreement has been duly and validly executed and delivered on behalf of the Developer.

(c) The Developer represents and warrants that this Agreement is valid and enforceable obligation of the Developer and is enforceable against the Developer in accordance with its terms, subject to bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(d) The Developer covenants that once it commences construction of a Segment it will use its reasonable and diligent efforts to do all things which may be lawfully required of it in order to cause such Segment of the Authorized Improvements to be completed in accordance with this Agreement.

(e) The Developer covenants that it will not commit any act in, upon or to the Property or the Project in violation of any law, ordinance, rule, regulation, or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the Property or the Project.

(f) The Developer represents and warrants that (i) it will not request payment from the City for the acquisition of any Authorized Improvements that are not part of the Project, and (ii) it will diligently follow all procedures set forth in this Agreement with respect to Certification for Payment.

(g) For a period of five (5) years after the final Acceptance Date of the Authorized Improvements, the Developer covenants to maintain proper books of record and account for the Authorized Improvements and all costs related thereto. The Developer covenants that such accounting books will be maintained in accordance with sound accounting practices, and will be available for inspection by the City or its agent at any reasonable time during regular business hours upon at least 72 hours' notice.

(h) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY (AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITIES AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY AND RELATING TO DEVELOPER'S CONSTRUCTION OF THE AUTHORIZED IMPROVEMENTS INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER OR DEVELOPER'S CONTRACTORS' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER OR DEVELOPER'S CONTRACTORS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF DEVELOPER OR DEVELOPER'S CONTRACTORS AND THEIR RESPECTIVE

OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY, RELATED TO OR ARISING OUT OF DEVELOPER OR DEVELOPER'S CONTRACTORS ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE DEVELOPER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. THE CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

IT IS THE EXPRESS INTENT OF THIS SECTION 6.2(h) OF THE AGREEMENT THAT THE INDEMNITY PROVIDED TO THE CITY BY THE DEVELOPER SHALL SURVIVE THE TERMINATION AND / OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND / OR ITS OFFICERS, EMPLOYEES, REPRESENTATIVES AND ELECTED OFFICIALS PERMITTED BY LAW.

ARTICLE VII. DEFAULT AND REMEDIES

(a) A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

(b) Before any failure of any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice (or five (5) days in the case of a monetary default), subject, however, in the case of non-monetary default, to the terms and provisions of subparagraph (c). Upon a breach of this Agreement, the non-defaulting Party in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained (and/or an action for mandamus as and if appropriate). Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Article VII or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party. Notwithstanding any provision contained herein to the contrary, the

Developer shall not be required to construct any portion of the Authorized Improvements (or take any other action related to or in furtherance of same) while the City is in default under this Agreement.

(c) Notwithstanding any provision in this Agreement to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, widespread pestilence, fire or other casualty, shortage of materials, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or tornadoes, labor action, strikes, changes in the law affecting the obligations of the Parties hereunder, or similar acts), the time for such performance shall be extended by the amount of time of the delay directly caused by and relating to such uncontrolled circumstances. The Party claiming delay of performance as a result of any of the foregoing “force majeure” events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a “force majeure” event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Article.

ARTICLE VIII. GENERAL PROVISIONS

Section 8.01. Notices.

Any notice, communication or disbursement required to be given or made hereunder shall be in writing and shall be given or made by facsimile, hand delivery, overnight courier, or by United States mail, certified or registered mail, return receipt requested, postage prepaid, at the addresses set forth below or at such other addresses as any be specified in writing by any Party hereto to the other parties hereto. Each notice which shall be mailed or delivered in the manner described above shall be deemed sufficiently given, served, sent and received for all purpose at such time as it is received by the addressee (with return receipt, the delivery receipt or the affidavit of messenger being deemed conclusive evidence of such receipt) at the following addresses:

If to City: City of New Braunfels
 Attn: City Manager
 550 Landa Street
 New Braunfels, Texas 78130
 Facsimile: 830.626.5578

With a copy to: City of New Braunfels
 Attn: City Attorney
 550 Landa Street
 New Braunfels, Texas 78130
 Facsimile: 830.626.5578

If to Developer: Solms Landing Development, LLC
 Attn: James Mahan III

648 South Castell Avenue
New Braunfels, Texas 78130

With a copy to: Metcalfe Wolff Stuart & Williams, LLP
Attn: Talley Williams
221 West 6th, Suite 1300
Austin, Texas 78701
Facsimile: 512.404.2245

Section 8.02. Fee Arrangement

(a) The Developer agrees that it will pay all of the City's costs and expenses (including the City's third party advisors and consultants) related to the creation and administration of the District, as well as costs and expenses relating to the development and review of the Assessment Plan (including legal fees and financial advisory fees), estimates of which are reflected on the Schedule attached as Exhibit "F" ("**Initial City PID Costs**"). Developer and the City have entered into that certain Agreement for Payment and Review and Development Expenses dated January 31, 2019 and the Developer has deposited funds pursuant to said agreement. If the City's costs and expenses are not fully paid prior to the Issue Date of the PID Bonds, the City shall submit to the Developer invoices and other supporting documentation evidencing the Initial City PID Costs and the Developer agrees that such costs and fees, as applicable, will be paid at the closing of the applicable PID Bonds to the City or on behalf of the City from proceeds of the PID Bonds. In addition to any Initial City PID Costs paid by the Developer pursuant to the preceding sentences, all fees of legal counsel related to the issuance of the applicable PID Bonds (including Developer's attorney fees and financial consultants fees), including fees for the preparation of customary bond documents and the obtaining of Attorney General approval for the PID Bonds, will be paid at closing from the proceeds of the PID Bonds. It is hereby acknowledged and agreed that fees for the City's Bond Counsel, Trustee, Trustee's Counsel, Financial Advisor, the Underwriter, and Underwriter's Counsel will be paid at the Issue Date of the PID Bonds.

(b) Pursuant to a separate agreement, the City may contract with a third party to serve as the PID Administrator and to administer the PID after Closing. The Administrative Expenses shall be collected as part of and in the same manner as Annual Installments in the amounts set forth in the Assessment Plan.

Section 8.03. Assignment

(a) Subject to Section 2.05(c) and subparagraph (b) below, Developer may, in its sole and absolute discretion, with the prior written consent of the City (which consent will not be unreasonably withheld), assign this Agreement with respect to all or part of the Project from time to time to any party so long as the assignee has demonstrated to the City's satisfaction that the assignee has the financial, technical, and managerial capacity, the experience, and expertise to perform any duties or obligations so assigned and so long as the assigned rights and obligations are assumed without modifications to this Agreement. Developer shall provide the City thirty (30) days prior written notice of any such assignment. Upon such assignment or partial assignment, Developer shall be fully released from any and all obligations under this Agreement and shall have no further liability with respect to this Agreement for the part of the Project so assigned.

(b) Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a sale or assignment to a Designated Successor or Assign unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is to a Designated Successor or Assign.

(c) Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a Transfer unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is deemed to be a Transfer.

Section 8.04. Term of Agreement

This Agreement shall terminate on the date on which the City and Developer discharge all of their obligations hereunder. In the case of any termination of this Agreement and/or dissolution of the District, the obligation of any Party to pay any Project Costs expended prior to the termination of this Agreement and/or dissolution of the District and remaining unpaid shall survive such termination and/or dissolution.

Section 8.05. Construction of Certain Terms

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction shall apply:

- (a) Words importing a gender include either gender.
- (b) Words importing the singular include the plural and vice versa.
- (c) A reference to a document includes an amendment, supplement, or addition to, or replacement, substitution, or novation of, that document but, if applicable, only if such amendment, supplement, addition, replacement, substitution, or novation is permitted by and in accordance with that applicable document.
- (d) Any term defined herein by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect.
- (e) A reference to any Party includes, with respect to Developer, its Designated Successors and Assigns, and reference to any Party in a particular capacity excludes such Party in any other capacity or individually.
- (f) All references in this Agreement to designated "Articles," "Sections," and other subdivisions are to the designated Articles, Sections, and other subdivisions of this Agreement. All references in this Agreement to "Exhibits" are to the designated Exhibits to this Agreement.
- (g) The words "herein," "hereof," "hereto," "hereby," "hereunder," and other words of similar import refer to this Agreement as a whole and not to the specific Section or provision where such word appears.

(h) The words "including" and "includes," and words of similar import, are deemed to be followed by the phrase "without limitation."

(i) Unless the context otherwise requires, a reference to the "Property," the "Authorized Improvements," or the "District" is deemed to be followed by the phrase "or a portion thereof."

(j) Every "request," "order," "demand," "direction," "application," "appointment," "notice," "statement," "certificate," "consent," "approval," "waiver," "identification," or similar action under this Agreement by any Party shall, unless the form of such instrument is specifically provided, be in writing duly signed by a duly authorized representative of such Party.

(k) The Parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Agreement. Accordingly, the Parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Agreement.

Section 8.06. Table of Contents; Titles and Headings

The titles of the articles, and the headings of the sections of this Agreement, are solely for convenience of reference, are not a part of this Agreement, and shall not be deemed to affect the meaning, construction, or effect of any of its provisions.

Section 8.07. Amendments.

This Agreement may be amended, modified, revised or changed by written instrument executed by the Parties.

Section 8.08. Time

In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays, and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday, or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday, or legal holiday.

Section 8.09. Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.

Section 8.10. Entire Agreement

This Agreement contains the entire agreement of the Parties as to the matters contained herein.

Section 8.11. Severability; Waiver

If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid, or enforceable provision as is possible.

Any failure by a Party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver or of any other provision, and such Party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

Section 8.12. Developer as Independent Contractor

In performing under this Agreement, it is mutually understood that the Developer is acting as an independent contractor, and not an agent of the City.

Section 8.13. Supplemental Agreements

Other agreements and details concerning the obligations of the Parties under and with respect to this Agreement are included in the Assessment Plan, the Assessment Ordinance, PID Bond Ordinance and Indenture.

Section 8.14. Anti-Boycott.

The Developer hereby verifies, for purposes of Section 2271 of the Texas Government Code, that at the time of execution and delivery of this Agreement, neither the Developer, nor any parent company, wholly- or majority-owned subsidiaries or affiliates of the same, if any, boycotts Israel or will boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, "boycotts Israel" and "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

Section 8.15. Terrorist Organizations.

The Developer hereby verifies that, neither the Developer, nor any parent company, wholly- or majority-owned subsidiaries or affiliates of the same, if any, are companies identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website: <https://comptroller.texas.gov/purchasing/docs/sudanlist.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or

<https://comptroller.texas.gov/purchasing/docs/ftolist.pdf>. The foregoing verification is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Developer and each parent company, wholly- or majority-owned subsidiaries, and other affiliates of the same, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Developer understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

Section 8.16. Discrimination Against Firearm Entity or Trade Association.

The Developer hereby verifies, for purposes of Section 2274 of the Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session), that at the time of execution and delivery of this Agreement, neither the Developer, nor any of its parent company, wholly- or majority- owned subsidiaries, and other affiliates of the same, if any, have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association or will discriminate during the term of this Agreement against a firearm entity or firearm trade association. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" means, with respect to the entity or association, to (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association, as set forth in Section 2274.001(3), Texas Government Code. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the [Paying/Escrow] and exists to make a profit.

Section 8.17. Anti-Boycott of Energy Companies.

The Developer hereby verifies, for purposes of Section 2274 of the Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session), that neither the Developer, nor any parent company, wholly- or majority- owned subsidiaries, and other affiliates of the same, if any, boycott energy companies or will boycott energy companies through the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies" means, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A), as set forth in Section 809.001, Texas Government Code. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the [Paying/Escrow] and exists to make a profit.

Section 8.18. Exhibits

The following exhibits are attached to and incorporated into this Agreement for all purposes:

<u>Exhibit "A"</u>	-	Definitions
<u>Exhibit "B"</u>	-	Property
<u>Exhibit "B-1"</u>		Improvement Area #1
<u>Exhibit "B-2"</u>		Improvement Area #2
<u>Exhibit "C"</u>	-	Preliminary Assessment Plan
<u>Exhibit "D"</u>	-	Authorized Improvements
<u>Exhibit "D-1"</u>		HOA – Maintained Improvements (Description)
<u>Exhibit "D-2"</u>		HOA – Maintained Improvements (Depiction)
<u>Exhibit "E-1"</u>	-	Form of Certification for Payment (Design)
<u>Exhibit "E-2"</u>	-	Form of Certification for Payment (Construction)
<u>Exhibit "F"</u>	-	Fee Schedule
<u>Exhibit "G"</u>	-	Home Buyer Disclosure Program
<u>Exhibit "H"</u>	-	Closing Disbursement Request
<u>Exhibit "I"</u>		Form of License Agreement

CITY OF NEW BRAUNFELS, TEXAS
a home rule city and Texas municipal corporation

By: _____
Name: _____
Title: _____

[Signatures Continue on Next Page]

SOLMS LANDING DEVELOPMENT, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

[Signatures continue on next page]

It is hereby acknowledged that the Consenting Parties are executing this Agreement solely due to the fact that they are an owner of a portion of the Property and, except for its obligations expressly set forth under the Landowner's Agreement, Consenting Parties have no rights, duties, or obligations to the City, the Developer, or otherwise in connection with this Agreement.

The Jerome W. Timmermann Family Trust

By: _____
Name: _____
Title: _____

Chupik Properties & Design, Inc.
a Texas corporation

By: _____
Name: _____
Title: _____

Exhibit "A"

DEFINITIONS

Unless the context requires otherwise, and in addition to the terms defined above, each of the following terms and phrases used in this Agreement has the meaning ascribed thereto below:

"Acceptance Date" means, with respect to a Segment, the date that the Actual Cost thereof is paid to the Developer pursuant to the terms hereof.

"Actual Cost(s)" means the following with respect to the Authorized Improvements: (a) the costs incurred by or on behalf of the Developer (either directly or through affiliates) for the design, planning, financing, administration/management, acquisition, installation, construction and/or implementation of such Authorized Improvements, (b) the fees paid for obtaining permits, licenses or other governmental approvals for such Authorized Improvements, (c) Construction Management Fee, (d) the costs incurred by or on behalf of the Developer for external professional costs, such as engineering, geotechnical, surveying, land planning, architectural landscapers, advertising, appraisals, legal, accounting and similar professional services, taxes (property and franchise) related to the Authorized Improvements; (e) all labor, bonds and materials, including equipment and fixtures, by contractors, builders and materialmen in connection with the acquisition, construction or implementation of the Authorized Improvements, (f) all related permitting, zoning and public approval expenses, architectural, engineering, and consulting fees, financing charges, taxes, governmental fees and charges, insurance premiums, and all payments for Administrative Expenses after the date of a resolution authorizing such reimbursement, plus Interest, if any, calculated from the respective dates of the expenditures until the date of reimbursement therefore. Actual Costs shall not include construction management fees in an amount that exceeds an amount equal to the construction management fee amortized in equal monthly installments over the term of the appropriate construction management agreement. The amounts expended on legal costs, taxes, governmental fees, insurance premiums, permits, financing costs, and appraisals shall be excluded from the base upon which the construction management fees are calculated.

"Administrative Expenses" means the administrative, organization, and operation costs and expenses associated with, or incident to, the administration, organization, and operation of the District, including, but not limited to, the costs of (i) legal counsel, engineers, accountants, financial advisors, investment bankers or other consultants and advisors, (ii) organizing the District and preparing the assessment roll, (iii) computing, levying, collecting and transmitting to the Trustee the Special Assessments or the installments thereof, (iv) maintaining the record of installments, payments and reallocations and/or cancellations of the Special Assessments, (v) issuing, paying and redeeming the PID Bonds, (vi) investing or depositing the Special Assessments, (vii) complying with the PID Act with respect to the PID Bonds, (viii) paying the paying agent/registrar's and trustee's fees and expenses (including the fees and expenses of its legal counsel), and (ix) administering the construction of the Authorized Improvements, in accordance with the terms of this Agreement.

"Agreement" has the meaning given in the recitals to this Agreement.

“Annual Installments” shall have the meaning given in the Assessment Plan.

“Appraisal” means an appraisal of the Property (or such applicable portion thereof) prepared by a duly qualified, licensed appraiser in the Texas acceptable to the Developer and the City.

“Assessed Property” means for any year, Parcels within the District other than Non-Benefited Property.

“Assessment Ordinance” means each ordinance adopted by the City Council approving the Assessment Plan (or such amendments to the Assessment Plan) and levying the Special Assessments, as required by Article II of this Agreement, including the Initial Assessment Ordinance.

“Assessment Plan” means the Solms Landing Public Improvement District Service and Assessment Plan, to be initially adopted by the City Council in the Initial Assessment Ordinance for the purpose of assessing allocated costs against property located within Improvement Area #1 of the District having terms, provisions and findings approved and agreed to by the Developer, as required by Article II of this Agreement. The Parties hereby acknowledge that the Assessment Plan may be amended from time to time.

“Assessment Roll” means the assessment roll approved by City Council in the Assessment Ordinance.

“Association Regulations” has the meaning given in Section 3.08 of this Agreement.

“Attorney General” means the Texas Attorney General’s Office.

“Authorized Improvements” means collectively any and all improvements which are included in the Assessment Plan as may be amended pursuant to any Annual Service Plan Updates and/or amended and restated SAP, are authorized by Section 372.003 of the PID Act, and for which Special Assessments are levied against the Assessed Property receiving a special benefit from such improvements.

“Bond Issuance Costs” means costs relating to the authorization, sale and issuance of the PID Bonds including printing costs; costs of reproducing and binding documents; closing costs; filing and recording fees; initial fees, expenses and charges of the Trustee, including its first annual administration fee; expenses incurred by the City or Developers in connection with the issuance of the PID Bonds; Financial Advisor fees; the SAP Consultant fees; the bond (underwriter’s) discount or underwriting fee; legal fees and charges, including bond counsel; charges for execution, transportation and safekeeping of the PID Bonds; and other costs, charges and fees in connection with the issuance of the PID Bonds.

“Bond Issuance Request” means written request made by Developer to the Finance Director in good faith as evidenced by the Developer’s expenditure of necessary amounts for financial analysis, appraisals, legal counsel, and other professional services and due diligence necessary to support the request to the full degree that the City Council may act on it and issue

Parity Bonds. The City hereby agrees that a Bond Issuance Request has previously been made for the Improvement Area #1 Bonds.

“Certification for Payment” means the certificate(s) in the forms attached hereto as Exhibit “E-1” and Exhibit “E-2”.

“City” has the meaning given in the recitals to this Agreement.

“City Construction Representative” means the employee or designee of the City carrying out the duties as described in this Agreement.

“City Council” means the duly elected governing body and council of the City.

“City Manager” means the City Manager of the City or his/her designee(s).

“Closing Disbursement Request” has the meaning given in Section 4.02(j) of this Agreement.

“Co-Developer” has the meaning given in Section 4.01 of this Agreement.

“Consenting Parties” has the meaning given in the recitals to this Agreement.

“Construction Manager” means initially the Developer, and thereafter subject to change in accordance with Section 3.03 of this Agreement. The City acknowledges and agrees that (i) the Developer intends to serve as the Construction Manager; however, if Developer elects to subcontract out the duties of Construction Manager to a third party in the future, Developer will provide written notice of the name of the new Construction Manager and a copy of the Assignment.

“Construction Management Fee” means 4% of the costs incurred by or on behalf of Developer for the construction of each Segment.

“County” means Comal County, Texas.

“Designated Successors and Assigns” shall mean (i) an entity to which Developer assigns (in writing) its rights and obligations contained in this Agreement pursuant to Section 8.03 related to all or a portion of the Property, (ii) any entity which is the successor by merger or otherwise to all or substantially all of Developer’s assets and liabilities including, but not limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital; or (iii) any entity which may have acquired all of the outstanding stock or ownership of assets of Developer.

“Developer” has the meaning given in the recitals to this Agreement.

“Developer Expended Funds” means collectively, the (i) the Unpaid Balance (as the applicable Acquisition and Reimbursement Agreement defines and quantifies such term) and (ii) any other qualified and permitted costs approved by the City which shall, concurrently with the initial draw from the applicable PID Bonds, be paid to Developer.

“**District**” has the meaning given in the recitals to this Agreement.

“**Effective Date**” has the meaning given in the recitals to this Agreement.

“**Finance Director**” means the Chief Financial Officer of the City or his/her designee.

“**Financial Advisor**” means SAMCO, Inc.

“**HOA-Maintained Improvements**” means the Authorized Improvements identified on Exhibit “D-1” that will be maintained by the Owners’ Association as required by this Agreement.

“**Home Buyer Disclosure Program**” means the disclosure program, administered by the PID Administrator as set forth in a document in the form of Exhibit “G” or another form agreed to by the City and the Developer(s) that establishes a mechanism to disclose to each end user the terms and conditions under which their lot is burdened by the District.

“**Improvement Area**” means Improvement Area #1 and Improvement Area #2.

“**Improvement Area #1**” means the portion of the District consisting of approximately 50 acres which is more particularly described and/or depicted on Exhibit “B-1” attached hereto.

“**Improvement Area #1 Bonds**” means PID Bonds, including refunding bonds secured by Improvement Area #1 Special Assessments.

“**Improvement Area #1 Improvements**” means the Authorized Improvements identified on Exhibit “D” that specially benefit Improvement Area #1.

“**Improvement Area #1 Special Assessments**” means the Special Assessments levied on then Improvement Area #1 for the Improvement Area #1 Improvements, as shown in the Assessment Roll.

“**Improvement Area #2**” means the remaining approximately 48.265 acres of land within the District as generally described and/or depicted on Exhibit “B-2” attached hereto.

“**Improvement Area #2 Bonds**” means PID Bonds issued by the City to be secured by Special Assessments levied on Assessed Parcels within Improvement Area #2 to fund the Improvement Area #2 Improvements.

“**Improvement Area #2 Improvements**” means those certain Authorized Improvements that specially benefit Improvement Area #2.

“**Indenture**” means an Indenture of Trust between the City and Trustee relating to PID Bonds, as same may be amended or supplemented from time to time.

“**Initial City PID Costs**” shall have the meaning given in Section 8.02 of this Agreement.

“Initial Assessment Ordinance” means the Assessment Ordinance approved by the City Council for the Improvement Area #1 Special Assessments.

“Interest” shall mean the interest rate charged for the applicable PID Bonds or such other interest rate as may be required by applicable law or otherwise defined in the Acquisition and Reimbursement Agreement.

“Issue Date” means the date of the initial delivery of the applicable PID Bonds.

“License Agreement” means the agreement in substantially the same form as Exhibit “I” attached hereto.

“Maintenance Obligation” has the meaning given in Section 3.08 of this Agreement.

“Non-Benefitted Property” means Parcels within the boundaries of the District that accrue no special benefit from Authorized Improvements, as determined by the City Council, including Parcels owned by a public entity. A Parcel is not assessed if the Parcel is identified as Non-Benefitted Property at the time the Special Assessments (i) are levied or (ii) are reallocated pursuant to an amendment to the Assessment Plan.

“Notice” means any notice, writing, or other communication given under this Agreement.

“Owners’ Association” has the meaning given in Section 3.08 of this Agreement.

“Parcel” means a property identified by either a tax map identification number assigned by the Comal Appraisal District for real property tax purpose, by metes and bounds description, by lot and block number in a final subdivision plat recorded in the Official Public Records of Comal County, or by any other means determined by the City.

“Parity Bonds” means any PID Bonds issued subsequent to the Improvement Area #1 Bonds or Improvement Area #2 Bonds and secured on a parity basis therewith.

“Party” means the Developer or the City, as parties to this Agreement, and **“Parties”** means collectively, the Developer and the City.

“PID Act” means Chapter 372 of the Texas Local Government Code.

“PID Administrator” means the employee or designee of the City, including a third party designee whom the City designates by contract, who shall have the responsibilities provided for herein and in the Assessment Plan. The initial PID Administrator will be P3 Works, LLC.

“PID Bonds” means the bonds to be issued by the City, the proceeds of which may provide funds for any required reserves and amounts necessary to pay the Bond Issuance Costs, and to be secured by a pledge of the PID Bond Security pursuant to the authority granted in the PID Act, and as required by this Agreement for the purposes of (i) financing the costs of the Authorized Improvements and related costs, and/or (ii) reimbursing the Developer for Actual Costs paid prior to the issuance of the PID Bonds. PID Bonds include the Improvement Area #1 Bonds and the Improvement Area #2 Bonds, and any Parity Bonds thereto.

“PID Bond Ordinance” means and refers to the applicable ordinance or ordinances of the City Council that will authorize and approve the issuance and sale of the PID Bonds and provide for their security and payment, either under the terms of the Bond Ordinance or Indenture related to the PID Bonds.

“PID Bond Security” means the funds that are to be pledged in or pursuant to the PID Bond Ordinance and the Indenture to the payment of the debt service requirements on the PID Bonds, consisting of Special Assessments, including earnings and income derived from the investment or deposit of Special Assessments in the special funds or accounts created and established in the Indenture for the payment of and pledged as security for the PID Bonds.

“Preliminary Assessment Plan” means the preliminary Assessment Plan approved by the City on October 11, 2021 pursuant to Resolution No. ____ and attached hereto as Exhibit “C”.

“Prepayment” means the payment of all or a portion of a Special Assessment before the due date thereof. Amounts received at the time of a Prepayment that represent a payment of principal, interest or penalties on a delinquent installment of a Special Assessment are not to be considered a Prepayment, but rather are to be treated as the payment of the regularly scheduled Special Assessment.

“Project” has the meaning given in the recitals to this Agreement.

“Project Costs” means the total of all Actual Costs.

“Project Engineer” means the civil engineer or firm of civil engineers selected by the Developer to perform the duties set forth herein, which is currently KW Engineering.

“Project Fund” means the separate and unique fund established by the City under such name pursuant to the applicable Indenture as described in Section 5.02 hereof.

“Property” has the meaning given in the recitals to this Agreement.

“PUD” has the meaning given in the recitals of this Agreement.

“Reimbursement Agreement” shall have the meaning given in Section 3.01 hereof.

“Regulatory Requirements” means the requirements and provisions of any state, federal or local law, and any permits, rules, orders or regulations issued or adopted from time to time by any regulatory authority, state, federal or other, having jurisdiction over the Authorized Improvements, as adjusted by the PUD.

“SAP Consultant” means Development Planning and Financing Group, Inc.

“Segment” or Segments” means the discrete portions of the Authorized Improvements identified as such.

“Special Assessments” means the assessments levied against properties in the District, as provided for in the applicable Assessment Ordinance and in the Assessment Plan, including any

supplemental assessments or reallocation of assessments levied in accordance with Sections 372.019 and 372.020 of the PID Act.

“Special Assessment Revenues” means the monies collected from Special Assessments, including supplemental assessments and reassessments, interest, expenses, or penalties on Special Assessments, Prepayments, foreclosure proceeds, and proceeds from a guarantor, if any, of the Special Assessments.

“State” means the State of Texas.

“Trustee” means the trustee under an Indenture, and any successor thereto.

“Underwriter” means FMS Bonds, Inc.

Exhibit "B"

PROPERTY

[See Attached]

Exhibit “B-1”

IMPROVEMENT AREA #1

Exhibit "B-2"

IMPROVEMENT AREA #2

Exhibit “C”

PRELIMINARY ASSESSMENT PLAN

[See Attached]

Exhibit “D”

IMPROVEMENT AREA #1 IMPROVEMENTS

- *Streets and Offsite TIA Improvements*

Improvements including subgrade stabilization (including soil treatment and compaction), concrete and reinforcing steel for roadways, asphalt roadways, testing, handicapped ramps, streetlights. All related earthwork, excavation, erosion control, retaining walls, intersections, signage, lighting, other materials or work that would be necessary to complete a project, and re-vegetation of all disturbed areas within the right-of-way are included.

- *Drainage*

Improvements including earthen channels, gabion baskets, rock walls, storm drains, swales, curb and drop inlets, piping and boxes, headwalls, detention facilities, concrete flumes, rock rip rap, concrete outfalls, and testing as well as all related earthwork, excavation, and erosion control and all other necessary appurtenances to provide storm drainage for the District.

- *Sanitary Sewer*

Improvements including trench excavation and embedment, trench safety, piping, manholes, lift station improvements and modifications, force mains, service connections, testing, related earthwork, excavation, and erosion control and all other necessary appurtenances required to provide wastewater service to the District.

- *Water*

Improvements including trench excavation and embedment, trench safety, piping, valves, fire hydrant assemblies, service connections, testing, related earthwork, excavation, low impact design features, and erosion control and all other necessary appurtenances required to provide water service to the District.

- *Landscaping, Parks and Trails*

Improvements consist of installation of landscaping, including irrigation, in public open spaces, entryway monuments and signs, establishment and improvement of lakes, parks, open space, fitness stations and trails.

- *Engineering/Soft Costs*

Costs related to designing, constructing, and installing the Authorized Improvements including land planning and design, City fees, jurisdictional permitting, engineering, soil testing, surveying, construction management, and costs and expenses directly associated with forming the District.

Exhibit “D-1”

HOA-Maintained Improvements (Description)

The public parks and open space within Improvement Area #1, as generally depicted on Exhibit “D-2” attached hereto together with the landscaping (including irrigation), entryway monuments and signs, and trails located therein.

Exhibit “D-2”

HOA-Maintained Improvements (Depiction)

Exhibit “E-1”

**FORM OF CERTIFICATION FOR PAYMENT
(Design – Solms Landing)**

_____ (“**Construction Manager**”)
hereby requests payment for the percentage of design costs completed (the “**Design Costs**”) described in Attachment A attached hereto. Capitalized undefined terms shall have the meanings ascribed thereto in the Solms Landing Public Improvement District Financing Agreement between Solms Landing Development, LLC and the City of New Braunfels, Texas (the “**City**”), dated as of _____ (the “**Finance Agreement**”). In connection with this Certification for Payment, the undersigned, in his or her capacity as the _____ of Construction Manager, to his or her knowledge, hereby represents and warrants to the City as follows:

1. He (she) is a duly authorized representative of Construction Manager, qualified to execute this request for payment on behalf of the Construction Manager and knowledgeable as to the matters forth herein.

2. The design work described in Attachment A has been completed in the percentages stated therein.

3. The true and correct Design Costs for which payment is requested is set forth in Attachment A and payment for such requested amounts and purposes has not been subject to any previously submitted request for payment.

4. Attached hereto as Attachment B is a true and correct copy of an unconditional waiver(s) evidencing that any contractor or subcontractor having performed design work described in Attachment A has been paid in full for all work completed through the previous Certification for Payment.

5. Attached hereto as Attachment C are invoices, receipts, worksheets and other evidence of costs which are in sufficient detail to allow the City to verify the Design Costs for which payment is requested.

[Signature Page Follows]

SIGNATURE PAGE TO
FORM OF CERTIFICATION FOR PAYMENT

Date : _____

[Construction Manager Signature Block to be
added]

APPROVAL BY THE CITY

The Design described in Attachment A has been reviewed, verified and approved by the City Construction Representative of the City. Payment of the Design Costs is hereby approved.

Date: _____

CITY OF NEW BRAUNFELS, TEXAS

By: _____
City Construction Representative

ATTACHMENT A TO CERTIFICATION OF PAYMENT (DESIGN)

<u>Description of Design Work</u>	<u>Percentage of Design Work Completed under this Certification for Payment</u>	<u>Design Costs</u>	<u>Total Percentage of Design Work Completed</u>
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ATTACHMENT B TO CERTIFICATION OF PAYMENT (DESIGN)

[attached – unconditional waivers]

ATTACHMENT C TO CERTIFICATION OF PAYMENT (DESIGN)

[attached – receipts]

EXHIBIT "E-2"
FORM OF CERTIFICATION FOR PAYMENT
(Construction – SOLMS Landing)

_____ (“Construction Manager”) hereby requests payment of the Actual Cost of the work described in Attachment A attached hereto (the “Draw Actual Costs”). Capitalized undefined terms shall have the meanings ascribed thereto in the SOLMS Landing Public Improvement District Financing Agreement between SOLMS Landing Development, LLC and the City of New Braunfels, Texas (the “City”), dated as of _____. In connection with this Certification for Payment, the undersigned, in his or her capacity as the _____ of Construction Manager, to his or her knowledge, hereby represents and warrants to the City as follows:

1. He (she) is a duly authorized representative of Construction Manager, qualified to execute this request for payment on behalf of the Construction Manager and knowledgeable as to the matters forth herein.
2. The true and correct Draw Actual Costs for which payment is requested is set forth in Attachment A and payment for such requested amounts and purposes has not been subject to any previously submitted request for payment.
3. Attached hereto as Attachment B is a true and correct copy of a true and correct copy of unconditional waiver(s) evidencing that any contractor or subcontractor having performed work on a Segment described in Attachment A has been paid in full for all work completed through the previous Certification for Payment. All work for which Certification for Payment have previously been issued and payment received is free and clear of any liens, claims, security interest or encumbrances of any kind, and all sums received pursuant to this application will be applied so as to assure no liens, security interest or encumbrances attach to the work to which this application applies.
4. Attached hereto as Attachment C are invoices, receipts, worksheets and other evidence of costs which are in sufficient detail to allow the City to verify the Draw Actual Costs of each Segment for which payment is requested.

[Signature Page Follows]

SIGNATURE PAGE TO
FORM OF CERTIFICATION FOR PAYMENT

Date : _____

[Construction Manager Signature Block to
Be inserted]

JOINDER OF PROJECT ENGINEER

The undersigned Project Engineer joins this Certification for Payment solely for the purposes of certifying that the representations made by Construction Manager in Paragraph 2 above are true and correct in all material respects.

Project Engineer

APPROVAL BY THE CITY

The Draw Actual Costs of each Segment described in Attachment A has been reviewed, verified and approved by the City Construction Representative of the City. Payment of the Draw Actual Costs of each such Segment is hereby approved.

Date: _____

CITY OF NEW BRAUNFELS, TEXAS

By: _____
City Construction Representative

ATTACHMENT A TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

<u>Segment</u>	<u>Description of Work Completed under this Certification for Payment</u>	<u>Draw Actual Costs</u>
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ATTACHMENT B TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

[unconditional waivers – attached]

ATTACHMENT C TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

[RECEIPTS – ATTACHED]

Exhibit “F”

FEE SCHEDULE

Bond Counsel	2.00% of par amount of PID Bonds
Underwriter’s Counsel/Underwriter	3.00% of par amount of PID Bonds
Trustee’s Counsel/Trustee	\$_____
City’s Financial Advisor	2.00% of par amount of PID Bonds

Exhibit “G”

BUYER DISCLOSURE PROGRAM

1. A Builder¹ for an Assessed Parcel shall provide each residential homebuyer or purchaser of Commercial property (the “**Buyer**”) with the “Notice of Obligation to Pay Public Improvement District Assessment to the City of New Braunfels” in accordance with the PID Act and on the form attached to the Assessment Plan.
2. A Builder for an Assessed Parcel shall provide evidence of compliance with 1 above, signed by such Buyer, to the City upon receipt of written request by the City or Developer which sets forth the City’s mailing address and other contact information.
3. A Builder for an Assessed Parcel shall prominently display signage provided by Developer or the PID Administrator in its model homes, if any, located within the Property.
4. If prepared and provided by the City and approved by Developer (such approval not to be unreasonably withheld), a Builder for an Assessed Parcel shall distribute informational brochures about the existence and effect of the PID in prospective homebuyer sales packets.
5. A Builder shall include Special Assessments in estimated property taxes, if such Builder estimates monthly ownership costs for prospective homebuyers for an Assessed Parcel.
6. The Developer must post signage along the main entry/exits located at the boundaries of the Public Improvement District that identifies the area as a Public Improvement District. All signage shall be clearly visible to all motorists entering and exiting the District.

¹ A “Builder” shall be defined as a commercial builder or developer who is in the business of (a) constructing and/or selling residences to individual home buyers and/or (b) developing, constructing and/or selling commercial property to end users (e.g. multifamily, office, hotel).

Exhibit "H"

CLOSING DISBURSEMENT REQUEST

FORM OF CLOSING DISBURSEMENT REQUEST

The undersigned is an agent for Solms Landing Development, LLC, a Texas limited liability company (the "Developer") and requests the City of New Braunfels, Texas (the "City") approve payment from the PID Project Fund in the amount of _____ U.S. DOLLARS AND 00/100 (\$_____) to be transferred from the applicable account of the PID Project Fund upon the delivery of the PID Bonds for costs incurred in the establishment, administration, and operation of the Solms Landing Public Improvement District (the "District") and costs associated with the issuance of PID Bonds, as follows. Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the PID Construction, Financing, and Reimbursement Agreement between the Developer and the City (the "Reimbursement Agreement").

In connection with the above referenced payment, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Closing Disbursement Request on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The payment requested for the below referenced establishment, administration, and operation of the PID and/or costs of issuance of the PID Bonds at the time of the delivery of the PID Bonds have not been the subject of any prior payment request submitted to the City.
3. The amount listed for the below costs is a true and accurate representation of the Actual Costs associated with the establishment, administration and operation of the PID at the time of the delivery of the PID Bonds, and such costs are in compliance with the SAP.
4. The Developer is in compliance with the terms and provisions of the Reimbursement Agreement, the SAP, and the Developer Continuing Disclosure Agreement, and the Indenture.
5. All conditions set forth in the Indenture and the Reimbursement Agreement for the payment hereby requested have been satisfied.
6. The Developer agrees to cooperate with the City in conducting its review of the requested payment and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.
7. Payments requested hereunder shall be made as directed below:

[Information regarding Payee, amount, and deposit instructions attached]

I hereby declare that the above representations and warranties are true and correct.

Solms Landing Development, LLC,
a Texas limited liability company

By: _____

Name: _____

Title: _____

Date: _____

APPROVAL OF REQUEST BY CITY

The City is in receipt of the attached Closing Disbursement Request, acknowledges the Closing Disbursement Request, and finds the Closing Disbursement Request to be in order. After reviewing the Closing Disbursement Request, the City approves the Closing Disbursement Request and shall include said payments in the City Order submitted to the Trustee directing payments to be made from the applicable account under the Indenture upon delivery of the PID Bonds.

CITY OF NEW BRAUNFELS, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

Exhibit "I"

City's form of License Agreement