

## DEVELOPMENT AGREEMENT

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

WHEREAS, Developer is the owner of the two adjacent properties located at Saengerhalle Road and Saur Lane, more particularly described on Exhibit A attached hereto (the "*Properties*"), subject to the terms and conditions of such contracts;

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

1. Saengerhalle Road Reconstruction and Widening. The Developer agrees to reconstruct and widen the existing Saengerhalle Road to a collector roadway section including new pavement structure for the full width of the roadway meeting city standards and necessary utility relocation. The new widened roadway will be 36 feet in width and will have a 10-foot-wide shared use path on the southeast side, meeting city standards. The roadway reconstruction and widening will extend approximately 3,480 feet from the southern property corner to the Saur Lane intersection shown in Exhibit B. The Saengerhalle Road Reconstruction and Widening will be phased in accordance with the Saengerhalle Construction Phasing Plan shown in Exhibit C. The Developer will complete the final engineering design of Phase 1 & Phase 2, as shown in Exhibit C, within twelve (12) months of the Effective Date and submit to the City for approval. The Developer will complete the construction of Phase 1, as shown in Exhibit C, within 12 months following the recordation of the first plat of this development, and Phase 2, as shown in Exhibit C, within thirty six (36) months following the recordation of the first plat of this development, subject to the following provision. In the event Developer will be delayed or hindered or prevented from the performance of any obligation required under this Agreement by reason of strikes, lockouts, inability to procure labor or materials, fire or other casualty, acts of God, riots, insurrection, war or any other reason not within the reasonable control of Developer then the performance of the foregoing obligation will be excused for a period of such delay and the period for the performance act will be extended for a period equivalent to the period of such delay, SAVE AND EXCEPT that no such period of delay shall total more than six (6) months, cumulatively, without the express consent of City. The final engineering design of Phase 1 shall be approved by the City Engineer prior to the issuance of building permits in Sections 1A and 1B, as shown in Exhibit C, and the construction of Phase 1 shall be accepted by the City Engineer prior to issuance of a certificate of occupancy for any units/homes in Sections 1A and 1B as shown in Exhibit C. The final engineering design of Phase 2 shall be approved by the City Engineer prior to the issuance of building permits in Sections 2A and 2B, as shown in Exhibit C, and the construction of Phase 2 shall be accepted by the City Engineer prior to issuance of a certificate of occupancy for any units/homes in Sections 2A and 2B as shown in Exhibit C. The Developer's Engineer has determined that there is sufficient existing right of way to construct the proposed infrastructure detailed in this section and no additional right of way will be required of the Developer. The Developer will coordinate design review milestones and construction of each phase of the final engineering design and construction of Saengerhalle Road with the City Engineer. The Developer further agrees to provide security, subject to approval by the City

Engineer and City Attorney, within 60 days after the approval of the final engineering design and cost estimate for the construction of both phases of the Saengerhalle Road Reconstruction and Widening. The Developer agrees to waive its right to apply or appeal for rough proportionality analysis and reimbursement for the Saengerhalle Road Reconstruction and Widening, as shown in Exhibit B.

2. 30-foot Drainage Easement. The Developer shall dedicate to the City, upon the City's request, a 30-foot-wide drainage easement to be placed within the property from Saur Lane to the southwest corner of the property, along the general alignment shown on Exhibit D to be used for future drainage improvements, including drainage infrastructure associated with the Barbarosa Road/Saur Lane Reconstruction Project. The Developer will have full rights to use the drainage easement to convey water on site and into the easement as necessary and the Developer may use underground culverts to convey the necessary drainage and is allowed to build over the dedicated easement in accordance with the City's drainage criteria as such.

3. Avigation Easement: An avigation easement will be provided over the Properties in order to provide an indemnity to the City from any future actions from the Properties' owner and all future residents from all airport effects and impacts and transfers to the new owner(s) if the property is sold. All residents will be notified of this avigation easement upon purchase or rental of property. The avigation easement will be granted pursuant to a separate instrument subject to reasonable terms and conditions approved by the City and Developer and shall be executed prior the execution of this Agreement and filed in the public records of Guadalupe and Comal counties after execution of this Agreement.

4. Sound Transmission – Within the Property, the structures constructed will meet the minimum requirements as written in Section 1206 Sound Transmission, of the 2021 IBC. If there are any conflicts between this section and Section 5 below, the more restrictive will govern.

5. Sound Attenuation – Within the Property, all habitable portions of structures shall be designed and constructed to achieve either: an outside to inside noise level reduction (NLR) of at least twenty-five (25) a-weighted decibels (dBA), or be built to the standards set forth in subsection (1)B. below.

These standards are required regardless of whether the land use is stand-alone as a single use or part of a larger development that may include more than one land use.

(1) Options for Compliance. Compliance may be demonstrated using one of the following methods:

A. Use simultaneous noise readings of instantaneous outside and inside noise levels in accordance with ASTM E 966 to ensure the structure achieves an outside to inside NLR of at least twenty-five (25) dBA; or

B. Utilize construction materials with a minimum tested or listed sound transmission class (STC) rating of forty (40), in accordance with ASTM E 90, for walls and ceilings, and with a minimum tested or listed STC rating for doors and windows as specified below, in accordance with the following construction methods:

1. Walls. The specific exterior wall assemblies listed below shall include the interior finishes set forth therein. Exception: Exterior wall assemblies or materials that have been

tested or listed with a minimum STC rating of forty (40).

- a. Brick veneer. When exterior walls are constructed using brick veneer, a minimum of one-half ( $\frac{1}{2}$ ) inch gypsum drywall shall be applied as the interior finish, or a minimum of three and one-half ( $3\frac{1}{2}$ ) inches of foam insulation shall be sprayed in as allowed by the building and fire code.
- b. Vinyl or cement sidings. When exterior walls are constructed using vinyl or cement sidings, a minimum of five-eighths ( $\frac{5}{8}$ ) inch gypsum drywall shall be applied as the interior finish, or a minimum of three and one-half ( $3\frac{1}{2}$ ) inches of foam insulation shall be sprayed in as allowed by the building and fire code.
- c. Other assemblies and materials. All other exterior wall assemblies or materials shall have a tested or listed minimum STC rating of forty (40).

2. Roof/Ceiling Assemblies. Roof/ceiling assemblies shall be constructed in accordance with the requirements of subsections a or b below. Exception: Roof/ceiling assemblies or materials that have been tested or listed with a minimum STC rating of forty (40).

- a. Ceilings with unconditioned attic space shall be insulated with a minimum of one-half ( $\frac{1}{2}$ ) inch gypsum drywall on the interior ceiling side covered with a minimum of twelve (12) inches of blown in fiberglass insulation, or a minimum of three and one-half ( $3\frac{1}{2}$ ) inches of spray foam insulation shall be applied to the underside of the roof deck as allowed by the building and fire code.
- b. Ceilings without attic space above shall be insulated with a minimum of five-eighths ( $\frac{5}{8}$ ) inch gypsum drywall on the interior side filled with a minimum of nine (9) inches of fiberglass batt insulation with a one (1) inch air space between the roof sheathing and the fiberglass, or a minimum of three and one-half ( $3\frac{1}{2}$ ) inches of spray foam insulation shall be applied to the underside of the roof deck as allowed by the building and fire code

3. Windows. The cavity between the wood framing and the window frame shall be insulated with fiberglass insulation or foam insulation to the depth of the window frame.

- a. If the exterior windows and doors together comprise no more than thirty (30) percent of the total exterior wall area, all windows shall have a minimum tested or listed STC rating of thirty (30).
- b. If the exterior windows and doors together comprise more than thirty (30) percent but no more than forty (40) percent of the total exterior wall area, all windows shall have a minimum tested or listed STC rating of thirty-two (32).
- c. If the exterior windows and doors together comprise more than forty (40) percent of the total exterior wall area, all windows shall have a minimum tested or listed STC rating of forty (40).

4. Doors.

- a. If the exterior windows and doors together comprise no more than thirty (30) percent of the total exterior wall area, all exterior doors shall have a minimum tested or listed STC rating of thirty (30).
- b. If the exterior windows and doors together comprise more than thirty (30) percent but no more than forty (40) percent of the total exterior wall area, all exterior doors shall have a minimum tested or listed STC rating of thirty-two (32).
- c. If the exterior windows and doors together comprise more than forty (40) percent of the total exterior wall area, all exterior doors shall have a minimum tested or listed STC

rating of forty (40). Exception: An exterior door may have a tested or listed STC rating of less than forty (40) when installed with a storm door which when combined, achieve a minimum tested or listed STC rating of forty (40).

5. Mechanical Systems. Mechanical ventilation systems (HVAC) shall provide minimum air circulation and fresh air requirements for various uses in occupied rooms without the need to open any windows, doors, or other openings to the exterior.

- a. In-window, through-wall, or through-floor air conditioning, ventilating, or heating units may be used if:
  - i. the above insulation requirements for walls, ceilings, windows and doors are implemented, or
  - ii. walls, ceilings, windows and doors have a minimum tested or listed STC rating of forty (40).
- b. Evaporative coolers may be installed if the following is implemented to reduce sound entering through the unit:
  - i. Insert a duct extension with at least two (2) ninety degree (90°) "elbows" between the structure and the unit.
  - ii. Add acoustically designed "upducts" in the ceiling of each room to allow proper circulation of air while windows are closed.

(2) Certification

- A. Prior to approval of final inspection or issuance of a certificate of occupancy, all project applicants shall submit to the planning and development services department a signed statement certifying compliance with this section.
- B. A single certification statement for multiple structures in the same development may be used as long as the structures implement the same floor plans and construction methods.

6. City Right of Entry. During periods of design and construction of the Barbarosa Road/Saur Lane Reconstruction Project, separate and apart from the Saengerhalle Road Reconstruction and Widening Project, and prior to acceptance of same by the City, the Developer agrees to grant the City the right of entry and access to the Properties for the purposes of boundary (ground) and topographic surveying, environmental site assessment, archaeological surveying and soil sampling, geotechnical investigation and other related activities in connection with the design and construction of the Barbarosa Road/Saur Lane Reconstruction Project and associated drainage infrastructure within the Properties as generally depicted in Exhibit D. Such access shall be subject to (i) the City providing Developer with advance written notice of at least 48 hours for each design and construction phase, (ii) Developer's right to accompany the City or its contractors and employees during any access of or entry on the Properties, and (iii) all rights of Developer to construct its project on the Properties. The foregoing right of entry and access shall terminate upon completion of the Barbarosa Road/Saur Lane Project and associated drainage infrastructure and shall not include any right of the City to perform any invasive or obtrusive testing of the Properties except for the above stated procedures. The City's access of the Properties pursuant to this section shall not result in any damage to any developer installed infrastructure and fencing located on the Properties and any access or entry activities undertaken by the City shall be at the sole risk of the City. Any damage to any developer installed infrastructure and fencing, caused due to the right of entry will be the responsibility of the City to repair.

7. Binding Effect. This agreement binds, benefits, and may be enforced by the Parties

and their respective successors and assigns. Developer may assign this Agreement to (i) any owner of the Properties or (ii) any entity or entities that succeed to Developer's interests in the contracts to purchase the Properties.

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

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

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

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

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

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

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

15. Notices. Any notice, communication, request, demand, reply or advice (severally and collectively referred to as "**Notice**") in this Agreement required or permitted to be given, made or accepted must be in writing. Notice may, unless otherwise specifically provided herein, be given or served (a) by depositing the same in a receptacle regularly maintained and serviced by the United States Postal Service, postage pre-paid, registered or certified, and addressed to the Party to be notified, with return receipt requested, (b) by delivering the same to such party, or an agent of such

party, in person or by commercial courier or (c) by regular mail, facsimile transmission, email or other commercially reasonable means addressed to the party to be notified. Notice sent by registered or certified mail in the manner hereinabove described shall be effective on the date of deposit as evidenced by the mail receipt stamped by the post office. Notice given in any other manner shall be effective only if and when received by the party to be notified. A Party's legal counsel may give any notice on its client's behalf. For the purposes of Notice, the addresses of the parties shall, until changed as provided below, be as follows.

|                  |   |
|------------------|---|
| If to City:      | City Engineer<br>City of New Braunfels<br>550 Landa Street<br>New Braunfels, Texas 78130                                      |
| With a copy to:  | City Attorney<br>City of New Braunfels<br>550 Landa Street<br>New Braunfels, Texas 78130                                      |
| If to Developer: | Rockspring Saur, LLC<br>Attn.: David Orr<br>3200 Southwest Freeway, Suite 3000<br>Houston, Texas 77027   david@rockspring.com |

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

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

*[Signature pages follow]*

**DEVELOPER:**

Rockspring Saur, LLC,  
a Texas limited liability company

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

  
James A. McAllister, Managing Member

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

May 8, 2024

**CITY:**

CITY OF NEW BRAUNFELS, TEXAS

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

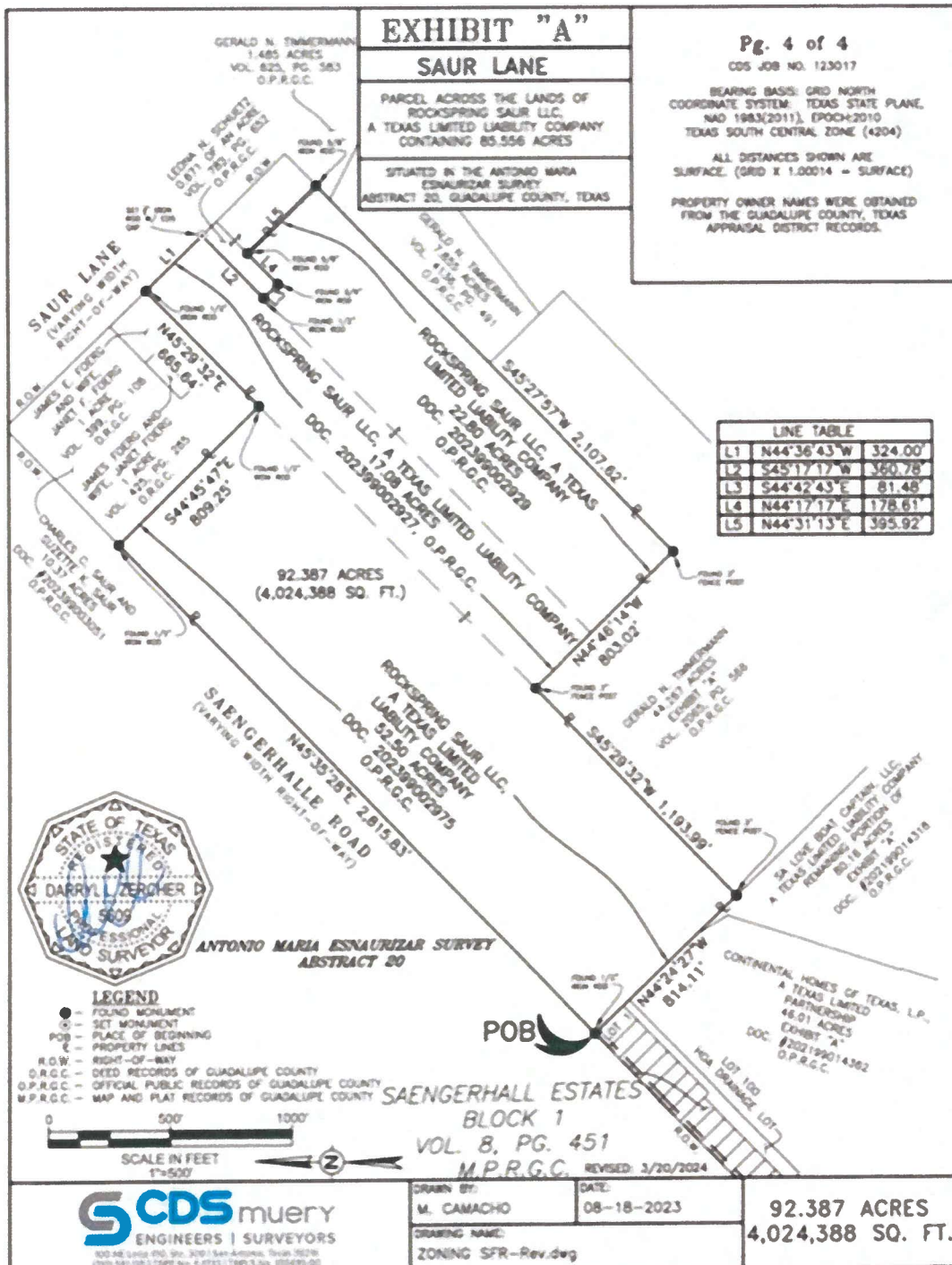
Name: \_\_\_\_\_

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

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



# Exhibit A

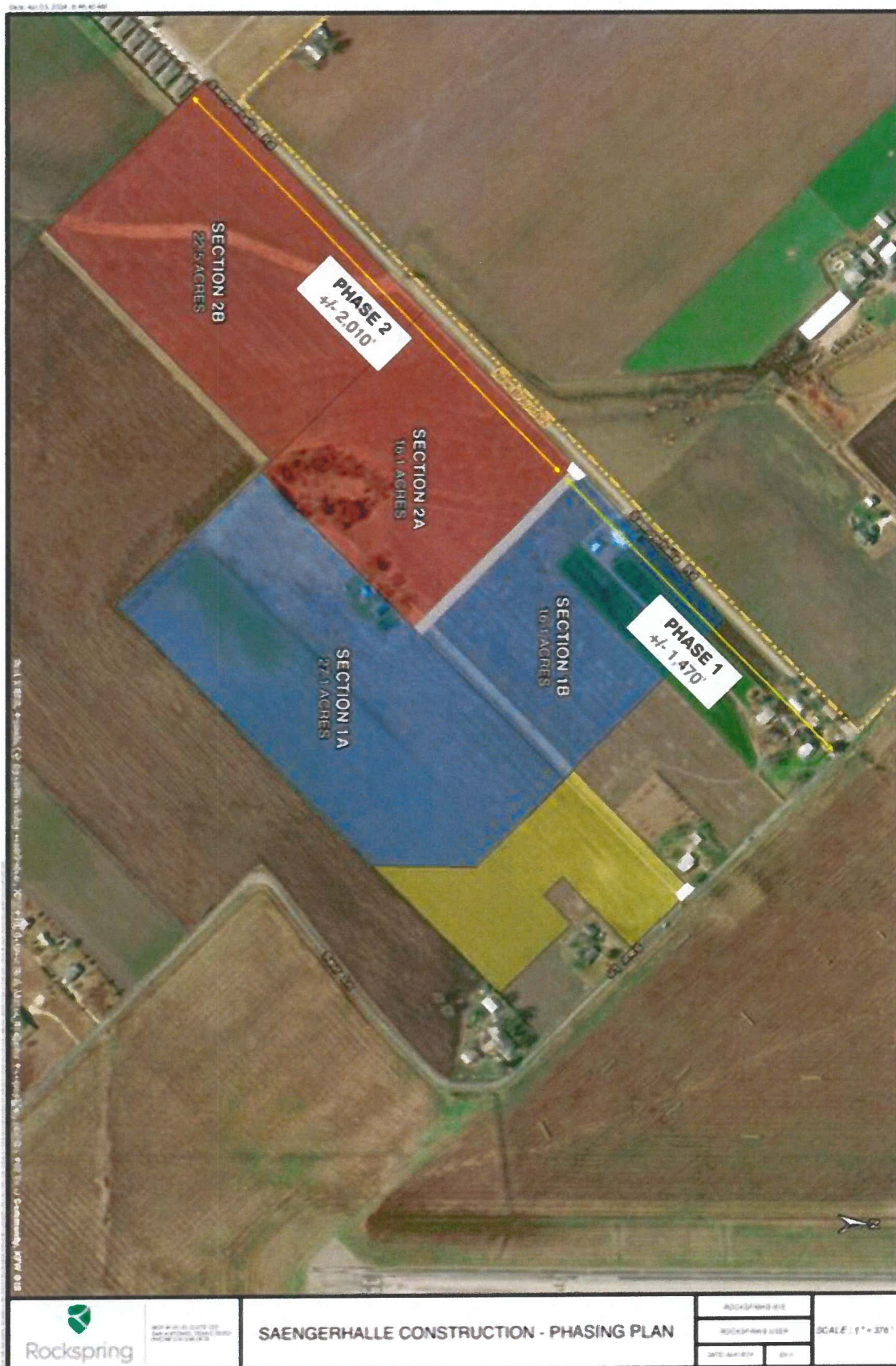


## Development Agreement





# Exhibit C



# Exhibit D

