

**PHASE II TAX INCREMENT PARTICIPATION INTERLOCAL AGREEMENT
FOR REINVESTMENT ZONE NUMBER ONE**

THIS PHASE II TAX INCREMENT PARTICIPATION INTERLOCAL AGREEMENT ("Agreement") is made pursuant to Section 311.013 of the Texas Tax Code by and between the City of New Braunfels, Texas (the "City"), a municipal corporation and home-rule city of the State of Texas principally situated in the County of Comal, acting by and through its City Manager pursuant to Ordinance No. 2019-___, passed and approved by the City Council on January 28, 2019; Comal County (the "County"), a political subdivision of the State of Texas, acting by and through its County Judge pursuant to authority granted by the Comal County Commissioners Court on January 31, 2019; and the Board of Directors for Reinvestment Zone Number One (1), City of New Braunfels, Texas (the "Zone Board"), a Reinvestment Zone created by the City pursuant to Chapter 311 of the Texas Tax Code; and A-L 95 Creekside Town Center, L.P., a Texas Limited Partnership (the "Developer"), acting through the manager of its general partner A-L 95, L.C., a Texas Limited Liability Company. Collectively, the City, County, Developer, and Zone Board may be referred to herein singularly as a "Party" or collectively as "Parties."

In consideration of the covenants set forth herein, and subject to the terms and conditions herein, the City, County, Developer and Zone Board hereby agree to the terms and conditions of this Agreement. All exhibits are hereby incorporated into this Agreement by this reference for all purposes.

RECITALS

WHEREAS, on July 26, 2007, the Parties entered into a Tax Increment Participation Interlocal Agreement for Reinvestment Zone Number One (as amended, the "Phase I Agreement") providing for payments into the Tax Increment Fund of Tax Increments produced from property located in Reinvestment Zone Number One pursuant to Chapter 311 of the Texas Tax Code; and

WHEREAS, the Developer has completed the Project and the Project Improvements as defined in the Phase I Agreement and has been reimbursed the full Reimbursement Amount, set forth in the Phase I Agreement, from Reinvestment Zone Number One revenues in accordance with the terms of the Phase I Agreement; and

WHEREAS, the Developer intends to construct an additional mixed-use phase totaling up to 500,000 square feet with an estimated construction cost of approximately \$3,005,830 within the existing Reinvestment Zone Number One (the "Phase II Project") and is seeking reimbursement of the Phase II Project Costs as defined herein; and

WHEREAS, the City and Developer intend to jointly prepare and approve an amendment to the Project Plan and Plan of Finance to include the Phase II Project Improvements and estimates of Phase II Project Costs, and reimburse the Developer, to the extent revenues from the Phase II Project are lawfully available and after all Obligations of the Authority have been satisfied, for the Phase II Project Costs in order to further economic development within the City and the Reinvestment Zone Number One; and

WHEREAS, the Developer, to the extent such funds are lawfully available and all Obligations of the Authority have been satisfied, will be reimbursed by the Authority through the Phase II Tax Increments contributed by the City and the County in accordance with this Agreement for the actual construction costs included in the Amended Project Plan and Plan of Finance in an aggregate amount not to exceed \$3,500,000 (the "Phase II Developer Reimbursement Amount"); and

WHEREAS, the City intends to create a subaccount of the Tax Increment Fund pursuant to the terms of the Management and Administrative Services Agreement between the City, the Zone Board and the Authority (the "Tri-Party Agreement"), of which lawfully available Phase II Tax Increment will be deposited after all Obligations of the Authority have been satisfied; and

WHEREAS, the Developer is entitled to reimbursement of the Phase II Project Costs only from the Phase II Tax Increment collected in the Phase II Tax Increment Fund to the extent such funds are lawfully available and all Obligations of the Authority; and

WHEREAS, the Tax Increment and the Phase II Tax Increment shall be disbursed in accordance with the Tri-Party Agreement which gives priority to owners and holders of any bonds or other obligations issued or entered into by the Authority, and the reimbursement to the Developer of the Phase II Tax Increment pursuant to this Agreement is subordinate to those obligations; and

WHEREAS, this Agreement is intended to supplement the Phase I Agreement and should be read in conjunction therewith. This Agreement is not intended to interfere or conflict with the Phase I Agreement.

ARTICLE ONE

PREAMBLE

SECTION 1.01 INCORPORATION OF PREAMBLE. The Parties hereby incorporate the recitals set forth in the preamble hereto as if set forth in full at this place and further finds and determines that the recitals are true and correct and are adopted as part of the judgment and findings of the Commissioners Court, the City Council and the Board of Trustees of the Corporation.

ARTICLE TWO

DEFINITIONS AND INTERPRETATIONS

SECTION 2.01 DEFINITIONS. When used in this Phase II Agreement, and in any amendment or supplement hereto, the terms listed below shall have the meanings specified below, unless it is otherwise expressly provided or unless the context otherwise requires:

"Administrative Costs" means the costs of organizing the Reinvestment Zone, the costs of operating the Reinvestment Zone and the imputed administrative costs associated with the

Reinvestment Zone incurred by the City in connection with the implementation of the project plan.

"Agreement" means this agreement between the City, County, Developer and Zone Board.

"Authority" means the New Braunfels Development Authority, a local government corporation created by the City.

"Captured Appraised Value" means the captured appraised value of the Reinvestment Zone, as defined by Section 311.012(b), Texas Tax Code, as may be amended from time to time.

"City" means the City of New Braunfels, Texas, a municipal corporation and home-rule city of the State of Texas principally situated in the County, including its successors and assigns.

"County" means Comal County, Texas, a political subdivision of the State of Texas.

"County Tax Rate Participation" means the amount of the County tax levy on the Captured Appraised Value which the County agrees to contribute to the Reinvestment Zone pursuant to Section 3.02 of this Agreement.

"Developer" means A-L 95 Creekside Town Center L.P., a Texas limited partnership.

"Obligations" means all contractual obligations of the Authority entered into prior to the date of this Agreement, including, but not limited to, those contained within the Tri-Party Agreement, and all bonds, notes, leases or other debt instruments issued by the Authority and the authorizing documents related thereto.

"Phase II Improvements" means those improvements of the Phase II Project identified in the Project and Financing Plan.

"Phase II Project Costs" means the project costs set forth for the Phase II Project identified in the Project and Financing Plan.

"Phase II Tax Increment" means the aggregate amount of property taxes levied each year by the City and County over the Phase II Tax Increment Base, all pursuant to the Project Plan.

"Phase II Tax Increment Base" means the total appraised value of all real property taxable by the City and/or the County and located within the boundaries of the Phase II Project as of January 1, 2019, the year in which the Phase II Project was designated.

"Phase II Tax Increment Fund" means the tax increment fund created by the City in the City Treasury for the Reinvestment Zone for the deposit of Tax Increments within the Phase II Project.

"Project Plan" means the Project Plan and Reinvestment Zone Financing Plan for the Reinvestment Zone initially approved by the City Council of the City on May 29, 2007, and as

amended by the City Council of the City on November 22, 2010 and subsequently on January 28, 2019 to reflect an increase of the geographic boundaries of the Zone and to include the Phase II Project Improvements and estimates of the Phase II Project Costs, attached and incorporated into this agreement for all purposes as Exhibit "B."

"Reinvestment Zone" means Reinvestment Zone Number One, City of New Braunfels, Texas created by the City on May 14, 2007, by Ordinance No. 2007-45 and later amended by Ordinance No. 2010-85 and Ordinance No. 2019-__ to reflect increases of the geographic boundaries of the Zone, attached and incorporated into this Agreement for all purposes as Exhibit "A."

"Tax Increment" means the aggregate amount of ad valorem taxes levied and collected each year by the City and/or the County, respectively, on the Captured Appraised Value of taxable real property in the Reinvestment Zone, all pursuant to the terms of the Project and Financing Plan.

"Tax Increment Base" means the total appraised value of all real property taxable by the City and/or the County and located in the Reinvestment Zone as of January 1, 2007, the year the Reinvestment Zone was created.

"Tax Increment Payment" means the amount of the Tax Increment that the City and/or County deposit annually into the Tax Increment Fund in accordance with the Phase I Agreement and the Project Plan.

ARTICLE THREE

PHASE II TAX INCREMENT PARTICIPATION

SECTION 3.01 PHASE II TAX INCREMENT PARTICIPATION BY THE CITY. For and in consideration of the agreements of the Parties set forth herein, the City agrees to deposit, to the extent such funds are lawfully available and all Obligations of the Authority have been satisfied, eighty-five percent (85%) of its Phase II Tax Increment produced each year in the Phase II Project into the Phase II Tax Increment Fund.

SECTION 3.02 PHASE II TAX INCREMENT PARTICIPATION BY THE COUNTY. For and in consideration of the agreements of the Parties set forth herein, the County agrees to contribute, to the extent such funds are lawfully available, eighty-five percent (85%) of its Phase II Tax Increment produced each year in the Phase II Project within the Reinvestment Zone into the Phase II Tax Increment Fund extending no longer than the 2032 tax year. The Parties agree that the County's Phase II Tax Increment shall (i) only be used by the Zone Board to reimburse the Developer for the public improvement costs actually incurred by the Developer limited to the Phase II Improvements defined in the Project Plan, and (ii) not be used to reimburse any costs of the City's fire station described in the Project Plan. The Parties further agree that the County's contribution described herein shall terminate at the first to occur: (1) when both the City and the County have contributed Phase II Tax Increments sufficient to enable the Developer to receive the maximum total reimbursement of three million five hundred thousand dollars (\$3,500,000) and two years of interest attributable to Developer's financing costs related to the

public improvement costs as defined in the Project Plan and to pay the required debt service on any bonds issued, the proceeds of which were used to reimburse the Developer; or (2) until the 2032 tax year. The County's Phase II Tax Increment participation shall be restricted to its tax increment collected on the Captured Appraised Value in the Phase II Project within the Reinvestment Zone. The Parties agree that all ad valorem taxes collected each year by the County that are attributable to real property in the Reinvestment Zone shall first constitute taxes on the Tax Increment Base, and after the total amount of taxes on the Tax Increment Base have been collected, shall then constitute the Tax Increment. The County shall not be obligated to contribute to the Tax Increment Fund non-tax increment County taxes or revenues or until the County's Tax Increment is actually collected.

SECTION 3.03 DATE OF PAYMENT. The obligation of the City and County to pay make deposits to the Phase II Tax Increment Fund, to the extent such funds are lawfully available and all Obligations of the Authority have been satisfied, shall accrue as Phase II Tax Increments are collected and payment shall be due on the first day of August of each calendar year.

SECTION 3.04 PARTICIPATION LIMITED TO PHASE II. The obligation of the City and the County to participate in the Phase II Tax Project within the Reinvestment Zone is limited to the area and improvements described as the Phase II Project in the Project Plan. The Phase II Tax Increment participation by the City and the County shall not extend beyond the Phase II Project or on any additional property added to the Reinvestment Zone unless the City and County approves the additional participation in writing.

SECTION 3.05 LIMITATION ON PROJECTS AND SPENDING. The Developer may not be reimbursed with funds lawfully available in the Phase II Tax Increment Fund for any improvements other than the approved Phase II Improvements set forth in the Project Plan.

SECTION 3.06 ZONE PROGRESS REPORTING. The Zone Board will submit reports annually and upon reasonable request to the Parties detailing percent completion of the development, Phase II Improvements underway or completed, tax increment revenue, and reimbursements or bond payments made.

ARTICLE FOUR

MISCELLANEOUS PROVISIONS

SECTION 4.01 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute one and the same instrument.

SECTION 4.02 CAPTIONS. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

SECTION 4.03 ENTIRE AGREEMENT. This Agreement embodies the entire agreement of the Parties and supplements the Phase I Agreement, and there are no other agreements, assurances, condition, covenants, either express or implied, or other terms with respect to the covenants, whether written or verbal, antecedent or contemporaneous, with the execution hereof.

SECTION 4.04 INCONSISTENT PROVISIONS. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Agreement are hereby repealed to extent of such conflict, and the provisions of this Agreement shall be and remain controlling as to the matter provided herein.

SECTION 4.05 GOVERNING LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 4.06 CONSTRUCTION. Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity of the Agreement.

SECTION 4.07 SEVERABILITY. In the event any term, covenant or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice the Parties in their respective rights and obligations contained in the valid terms, covenants or conditions hereof.

SECTION 4.08 AMENDMENT. Unless otherwise provided here, this Agreement may be amended only by written instrument duly executed on behalf of each Party.

SECTION 4.09 ASSIGNMENT. No Party shall assign this Agreement at law or otherwise without the prior written consent of the other Parties. No Party shall delegate any portion of its performance under this Agreement without the written consent of the other Parties.

SECTION 4.10 COMPLIANCE WITH TEXAS OPEN MEETING ACT. If it is officially found, determined, and declared that the meeting of each of the City, the County and the Corporation at which this Agreement is adopted was open to the public and public notice of the time, place and subject matter of the public business was considered at such meeting, including this Agreement, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 4.11 TEXAS ETHICS COMMISSION FORM 1295. Unless otherwise exempt, the Developer has delivered to the City, County and Zone Board a Certificate of Interested Parties Form 1295 ("Form 1295") and certification of filing generated by the Texas Ethics Commission's (the "TEC") electronic portal, signed by an authorized agent of each respective entity prior to the execution of this Agreement by the Parties. The Parties understand and agree that, with the exception of information identifying the City, County and Zone Board, and the

contract identification number in each Form 1295, with respect to an exemption from the filing requirement of a Form 1295, the Developer is solely responsible for its claim of exemption, and neither the City, County nor Zone Board, nor its consultants, are responsible for a determination made by the Developer that the Developer is exempt from filing a Form 1295, or for the information contained in any Form 1295 and neither the City, County nor Zone Board, nor its consultants, have verified such information.

SECTION 4.12 VERIFICATION PURSUANT TO CHAPTER 2270 OF THE TEXAS GOVERNMENT CODE. The Developer represents and warrants, for purposes of Chapter 2270 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. The foregoing verification is made solely to comply with Section 2270.002, 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 4.13 VERIFICATION PURSUANT TO CHAPTER 2252 OF THE TEXAS GOVERNMENT CODE. The Developer represents 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 representation 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.

[Signature of Parties on next page]

IN WITNESS WHEREOF, the City, the County, the Developer and the Zone Board have made and executed this Agreement, as of the date and year first above written.

CITY OF NEW BRAUNFELS, TEXAS,
a home rule municipality

REINVESTMENT ZONE NUMBER ONE,
CITY OF NEW BRAUNFELS, TEXAS,

City Mayor _____ Date _____

Chairperson, Board of Directors Date

ATTEST:

ATTEST:

City Secretary
(Seal of City)

Secretary, Board of Directors

(Seal of City)

COMAL COUNTY

By: _____

Name: _____

Title: County Judge

APPROVED AS TO FORM:

District Attorney

DEVELOPER:

A-L 95 Creekside Town Center, L.P.,
A Texas limited partnership

By: A-L 95, L.C., a Texas limited liability Company,
its general partners

By:_____