

**AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT  
BY AND BETWEEN NEW BRAUNFELS, TEXAS  
AND  
A-L CREEKSIDE TOWN CENTER, L.P.**

**THIS AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT** (the “Amendment”) by and between the City of New Braunfels, Texas, a Texas home-rule municipal corporation (the “City”) and A-L 95 Creekside Town Center, L.P., a Texas limited partnership (“Developer”), (collectively referred to as the “Parties”) is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2019 (the “Effective Date”).

**RECITALS**

**WHEREAS**, Developer and the District entered into an Economic Development Agreement dated March 12<sup>th</sup>, 2007 (“Agreement”) for the purpose of enhancing and stimulating business and commercial activity in the City, and promoting economic development in the City; and

**WHEREAS**, the Developer has completed the Project and the Project Improvements as defined in the Agreement and has been reimbursed the full Reimbursement Amount from TIRZ revenues in accordance with the Project Plan of Plan of Finance and the terms of the Agreement;

**WHEREAS**, the Developer intends to construct a Phase II of the Project located within the TIRZ boundaries and is seeking reimbursement of the Phase II Project Costs as defined herein;

**WHEREAS**, the City intends to amend the Project Plan and Plan of Finance to include the Phase II Projects, and the Parties desire to increase the Reimbursement Amount from TIRZ revenues to include the Phase II Project Costs in order to further such economic development purposes within the City and the TIRZ.

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

**AGREEMENT**

1. The Agreement is amended by adding Article IV, **PHASE II PROJECT**.

#### **ARTICLE IV PHASE II PROJECT**

1. Phase II Project. The Developer intends to construct (or cause to be constructed) 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 Creekside Town Center ("Phase II Project"). The Phase II Project is to be constructed in substantial accordance with the Conceptual Site Plan attached as Exhibit "B-1", or such plan as revised from time to time. For purposes of the Agreement, the term "Project" as defined in the Agreement shall also incorporate the Phase II Project.

2. Phase II Project Improvements. The Developer intends to construct or cause the construction of the public infrastructure and improvements set forth in "Exhibit C-1" ("Phase II Project Improvements"). The term "Project Improvements" as defined in the Agreement and terms related thereto shall include and incorporate the Phase II Project Improvements. Expenditures for Phase II Project Improvements included as estimates on "Exhibit C-1" and as included in the Amended Project Plan and Plan of Finance are defined as Phase II Project Costs.

3. Amended Project Plan and Plan of Finance. The City and Developer agree to jointly prepare and approve a mutually acceptable amended Project Plan and Plan of Finance ("Amended Project Plan and Plan of Finance") for the TIRZ that includes the Phase II Project Improvements and estimates of Phase II Project Costs listed on "Exhibit C-1." The Parties agree to use commercially reasonable efforts to mutually agree to an Amended Project Plan and Plan of Finance that is consistent with the terms of this Amendment, and the Parties agree that their approval of an Amended Project Plan and Plan of Finance shall not be unreasonably delayed or withheld.

4. Phase II Developer Reimbursement. The Developer shall be reimbursed by the local government corporation created by the City ("the New Braunfels Development Authority" or the "Authority") through TIRZ revenues 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, plus reimbursement of the Developer's interest on any expenditure authorized in the Amended Project Plan and Plan of Finance for a period of up to two years after the expenditure of funds by the Developer (the "Phase II Developer Reimbursement"). Interest shall

be calculated per the Agreement. The Phase II Developer Reimbursement shall be paid solely from the Phase II Tax Increment Fund (defined below).

(a) Phase II Tax Increment Fund. All Tax Increment (as defined in the Tri-Party Agreement described herein) accruing or generated from the Phase II Project shall be defined as the Phase II Tax Increment. Pursuant to the terms of the Management and Administrative Services Agreement By and Among the City, the TIRZ and the Authority (the "Tri-Party Agreement"), the City shall create a subaccount of the Tax Increment Fund, the Phase II Tax Increment Fund. The City shall deposit all Phase II Tax Increment into the Phase II Tax Increment Fund. The Developer will use all commercially reasonable efforts to provide the Authority and the City on an annual basis (by February 1 of each year) with a list of tax accounts that comprise the Phase II Project. The Developer is entitled to reimbursement herein only from the Phase II Tax Increment collected in the Phase II Tax Increment Fund.

(b) Approval of Phase II Projects; Disbursement of Tax Increment. The Authority (on behalf of the City pursuant to the Tri-Party Agreement) shall pay all or a portion of the Phase II Developer Reimbursement for any Phase II Project Improvement authorized in the Amended Project Plan and Plan of Finance and submitted by the Developer for reimbursement as provided for in this Article IV. The Developer shall request to the Authority in writing that particular expenditures be reimbursed and provide written documentation of such expenditures to the Authority including invoices or other acceptable proof of expenditures satisfactory to the Authority for such payments. For approved Phase II Project Costs, the Authority shall distribute to the Developer any Phase II Tax Increment accrued in the Phase II Tax Increment Fund to pay all or any portion of the Phase II Project Costs for reimbursement. The Authority will make such distributions on a semi-annual basis (each March 1 and September 1) until the Phase II Reimbursement is paid in full.

(c) Priority of Use of Tax Increment; Pledge to Bonds. The Parties understand that the Authority has a duty to use the Tax Increment in accordance with the Tri-Party Agreement which prioritizes the Tax Increment in the TIRZ (including subaccounts and the Phase II Tax Increment) to owners and holders of any Bonds issued by the Authority and any other Authority Obligations, and the disbursement of the Phase II Tax Increment pursuant to this Amendment is subordinate to those obligations.

(d) Reimbursement from Bond Proceeds. As an alternative to this Article IV, Section 4, the City may determine to reimburse the Developer for Phase II Project Costs from bonds issued by the Authority in accordance with the terms of the Agreement.

2. Except as explicitly set forth in this Amendment, no other terms of the Agreement are modified or amended, and except as otherwise modified herein, the terms of the Agreement are in full force and effect.

3. The provisions of the Amendment and the Agreement should be read together and construed as one agreement provided that, in the event of any conflict or inconsistency between the provision of this Amendment and the Agreement, the provisions of this Amendment shall control.

4. The Agreement (including the Amendment) shall remain in force and effect until the Phase II Developer Reimbursement is paid in full or until the expiration date of the TIRZ, whichever is earlier.

5. Unless otherwise exempt, the Developer has delivered to the City, 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 Amendment by the Parties. The Parties understand and agree that, with the exception of information identifying the City, 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 the City, nor its consultants, is 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 the City, nor its consultants, has verified such information.

6. 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.

7. 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.

IN WITNESS WHEREOF, the parties hereto may execute this Amendment in multiple copies, each of equal dignity, as of the date and year set forth on the first page hereof.

CITY:

CITY OF NEW BRAUNFELS, a Texas home-rule municipal corporation

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

Attest:

\_\_\_\_\_  
City Secretary

DEVELOPER:

**A-L 95 CREEKSIDE TOWN CENTER, L.P.,**  
a Texas limited partnership

By: A-L 95, L.C., a Texas limited liability  
company, General Partner

By: \_\_\_\_\_  
Steven D. Alvis, Manager