

**FINAL ADDENDUM TO
DEVELOPMENT AGREEMENT
FOR ROADWAY IMPACT FEE OFFSETS**

WHEREAS, the City of New Braunfels, Texas (“**City**”), a Texas municipal corporation, and Milestone Crest Investments, LTD a Texas limited liability company (“**Developer**”) have entered into the following agreements: Development Agreement for Roadway Impact Fee Offsets (“**Development Agreement**”) and Settlement and Release Agreement (“**Settlement Agreement**”) on or about October 11, 2017.

WHEREAS, the City and Developer entered into the Development Agreement and Settlement Agreement to settle all disputes concerning development and approval of the Silos Subdivision, Units 1 and 2 and any additional Units, now Unit 3, developed pursuant to the now revised Master Plan for the Silos Subdivision, pertaining to the real property described in the Development Agreement, including but not limited to the construction and dedication of right-of-way for a minor collector street therein and offsets against roadway impact fees due for each of the single family residential (detached) lots within Units 1, 2, and now Unit 3.

WHEREAS, the City and Developer desire to amend the Development Agreement as set forth in this Final Addendum to Development Agreement for Roadway Impact Fee Offsets, as provided in paragraph 4, that as Additional Units may be finally platted, subject to the contribution of Additional Improvements, the verified costs of the Additional Improvements shall be applied against roadway impact fees otherwise due for the Additional Lots, subject to execution of an addendum to the Development Agreement. (“**Final Addendum**”); and

WHEREAS, the dedication of land and construction of additional improvements for Pahmeyer Road (“**Additional Improvements**”) associated with the final plat of additional units of The Silos subdivision, as shown in **Exhibit A**, are entitled to offsets against roadway impact

fees upon verification of costs in accordance with the procedures applied to land and improvement costs for Units 1 and 2; and

WHEREAS, the Revised Master Plan for The Silos, as shown in **Exhibit B**, was administratively approved by the City on January 18, 2018; and

WHEREAS, the Developer submitted an application for platting the Silos Subdivision, Unit 3, for 101 single-family residential lots (the “**Plat**”); and

WHEREAS, the Plat, as shown in **Exhibit C**, was approved by the City’s Planning Commission subject to conditions on January 9, 2018; and

WHEREAS, the Traffic Impact Analysis Worksheet, as shown in **Exhibit D**, was approved with the Plat and showing 101 peak hour trips for Unit 3; and

WHEREAS, the Plat is subject to the requirement that sections of Pahmeyer Road (the “**Subdivision Road**”) abutting or interior to the Plat be constructed to minor collector specifications, and as necessary the dedication of additional right-of-way, pursuant to Chapter 118 of the City Code of Ordinances, Section 118-46; and

WHEREAS, the “**Excess Cost**” of constructing the Subdivision Road within or abutting the Plat to minor collector specifications, as shown in **Exhibit E**, over the costs of constructing a local street section, is \$59,331.29; and

WHEREAS, the total amount of roadway impact fees due by the builders of 101 single-family residential (detached) lots subject to the Plat is \$189,375.00 as shown on the Roadway Impact Fee Calculation Worksheets attached hereto and incorporated herein by reference as **Exhibit F**; and

WHEREAS, the City desires to offset the Excess Cost against roadway impact fees due upon the construction, dedication to the City and acceptance by the City of the Subdivision Road which has now been completed; and

WHEREAS, the Developer has completed all the Additional Improvements on the Subdivision Road as required for Units 1, 2, and 3, and the City has approved and accepted the dedication of such Additional Improvements; and the City has collected sufficient roadway impact fees to reimburse the Developer for such offsets for Excess Costs.

NOW, THEREFORE, the parties agree as follows:

1. Developer has constructed the Subdivision Road required by the Plat to the City's minor collector specifications and has offered to dedicate such road to the City which the City has accepted.

2. Developer has constructed the Additional Improvements for the portion of the Subdivision Road associated with Unit 3 to the City's specifications and offered to dedicate such road to the City, the Excess Cost for Unit 3 that has been previously paid to the City at the time of issuance of a building permit shall be reimbursed to the Developer. In no event shall the City be required to reimburse all or a portion of the Excess Cost not previously paid to the City by the Developer. Sufficient Roadway Impact Fees have been collected to pay Developer for Unit 3 Excess Costs in the amount of \$59,331.29.

3. Likewise, Developer has met the obligations to construct the Additional Improvements for the portion of the Subdivision Road associated with Units 1 and 2 to the City's specifications and offered to dedicate such road to the City. The Excess Cost for Units 1 and 2 that has been previously paid to the City at the time of the issuance of building permits shall be reimbursed to Developer as set forth in the Development Agreement. In no event shall the City be required to

reimburse all or a portion of the Excess Cost not previously paid to the City by the Developer. Sufficient Roadway Impact Fees have been collected to pay the Developer for Units 1 and 2 Excess Costs which are \$174,454.00.

4. Developer and City hereby covenant and agree that this Final Addendum to the Development Agreement cannot be assigned, transferred, or conveyed, in whole or in part, to a third party without the prior written consent of the other party, except that the benefit of the Offsets Credit assigned to each lot shall run with the land and be automatically transferred to the new owner in connection with the conveyance of each lot subject to the Replat. .

5. All other non-conflicting provisions of the Development Agreement and Settlement Agreement shall apply to this Final Addendum. In the event of a conflict, the Final Addendum shall control.

6. The City and Developer agree that with the revised Master Plan, Exhibit B and with the Plat for Unit 3 Exhibit C, no other additional unit of the Property, known as the Silos Subdivision, is or will be eligible for a claim for any further offsets for Excess Costs from roadway impact fees collected for the Property.

7. The City and Developer agree that with payment to the Developer of the Excess Costs for Unit 3 in the amount of \$59,331.29 and for Units 1 and 2 in the amount of \$174,454.00 that all duties and obligations set forth in this Final Addendum, the Development Agreement and Settlement Agreement have been satisfied and no claims remain existing between the two parties. Payment shall be tendered after approval by the City Council of this Final Addendum and within 14 days after the complete execution of this Final Addendum.

8. Therefore, in consideration of the premises, mutual promises, and covenants contained herein, **Developer**, on behalf of itself and its agents, predecessors, successors, assigns, legal

representatives and affiliates, **RELEASES, ACQUITS, FORGIVES, AND FOREVER DISCHARGES**, the **City** and its officers, agents, and employees, elected or appointed officials, predecessors, successors, assigns and legal representatives, (the “**Released City Parties**”), jointly and severally, each and all other them, of and from any and all debts, liabilities, claims, controversies, actions, causes of action and demands of every kind and character whatsoever, known or unknown, suspected or unsuspected that **Developer** has, claims to have or may hereafter have arising out of or related to the Final Addendum, Development Agreement or Settlement Agreement. This foregoing paragraph shall not be effective until the tender of payment of the Excess Costs by the City to the Developer in the above paragraph.

9. Therefore, in consideration of the premises, mutual promises, and covenants contained herein, **City**, on behalf of itself and its agents, predecessors, successors, assigns, legal representatives and affiliates, **RELEASES, ACQUITS, FORGIVES, AND FOREVER DISCHARGES**, **Developer** and its agents, predecessors, successors, assigns and legal representatives, (the “**Released Developer Parties**”), jointly and severally, each and all other them, of and from any and all debts, liabilities, claims, controversies, actions, causes of action and demands of every kind and character whatsoever, known or unknown, suspected or unsuspected that City has, claims to have or may hereafter have arising out of or related to the application of the Final Addendum, Development Agreement or Settlement Agreement. This foregoing paragraph shall not be effective until the tender of payment of the Excess Costs by the City to the Developer in the above paragraph

10. This Final Addendum is made subject to the existing provisions of the Charter of the City of New Braunfels, its rules, regulations, procedures, and ordinances, present and future, and all applicable laws of the State of Texas and the United States. The parties agree that this Final Addendum will be performable in New Braunfels, Texas, and that if legal action is necessary to enforce this Agreement, exclusive venue will lie in Comal County, Texas.

11. All notices required under this Final Addendum to be written shall be mailed, hand-delivered, or faxed to the respective parties at the addresses shown below, unless either party notifies the other party in writing of a change in address:

City:

City Engineer
City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130
Fax: 830-608-2217

With a copy to:

City Attorney
City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130
Telephone 830-221-4281

Developer:

Milestone Crest Investments, GP, LLC
P.O. Box 6862
San Antonio, Texas 78209

With Copy to
Milestone Crest Investments Ltd.
9800 Richmond Avenue, Suite 490
Houston, Texas 77042

12. This Final Addendum may be amended only by the written agreement of the parties.

13. In the event that any one or more of the provisions contained in this Final Addendum shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Final Addendum shall be considered as if such invalid, illegal or unenforceable provision had never been contained in the Final Addendum .

14. The findings in the recitals of this Final Addendum are hereby found to be true and correct and are hereby incorporated by reference as is set out in full.

15. This Agreement shall be effective upon the signature of all Parties hereto. The City shall be the last Party to execute the Final Addendum.

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney

CITY OF NEW BRAUNFELS, TEXAS:

By: Robert Camareno
City Manager

DATE: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §
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COUNTY OF COMAL §

Before me, _____, a notary public for the State of Texas, on this day personally appeared Robert Camareno, City Manager for the City of New Braunfels, Texas known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2021.

Notary Public, State of Texas

DEVELOPER:

By:

Manager of Milestone Crest Investments, LTD

DATED: _____

ACKNOWLEDGEMENT

STATE OF TEXAS

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COUNTY OF _____

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Before me, _____, a notary public for the State of Texas, on this day personally appeared _____, Manager of Milestone Crest Investments, LTD, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2021.

Notary Public, State of Texas