

ORDINANCE NO. 2021-[__]

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS AMENDING THE PROJECT PLAN AND REINVESTMENT ZONE FINANCING PLAN FOR THE REINVESTMENT ZONE NUMBER ONE, CITY OF NEW BRAUNFELS, TEXAS; APPROVING A SECOND AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF NEW BRAUNFELS, TEXAS AND A-L 95 CREEKSIDE TOWN CENTER, L.P.; AND OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the City Council (the "Council") of the City of New Braunfels, Texas (the "City") adopted Ordinance No. 2007-45 on May 29, 2007, which designated Reinvestment Zone Number One, City of New Braunfels, Texas (the "Zone") pursuant to Section 311.005(a) of the Tax Increment Finance Act, Texas Tax Code, Chapter 311, as amended (the "Act"); and

WHEREAS, the Board of Directors of the Zone (the "Zone Board") prepared and adopted a Project Plan and Reinvestment Zone Financing Plan (the "Project and Financing Plan") for the Zone in Reinvestment Zone Number One Resolution 2007-R01 pursuant to Section 311.011 of the Act; and

WHEREAS, the Council adopted Ordinance No. 2007-59 on July 9, 2007, which approved the Project and Financing Plan for the Zone pursuant to Section 311.011(d) of the Act; and

WHEREAS, the Council adopted Ordinance No. 2010-85 on November 22, 2010, which enlarged the boundaries of the Zone by approximately 18 acres and approved an amendment to the Project and Financing Plan for the Zone adopted to reflect the addition of such land and the amendment of certain exhibits in connection therewith; and

WHEREAS, the Board of Directors of the New Braunfels Development Authority (the "Corporation") previously authorized the issuance of two series of obligations designated, respectively, as "New Braunfels Development Authority Tax Increment Contract Revenue Improvement and Refunding Bonds, Series 2012", dated December 1, 2012, in the original principal amount of \$11,670,000, currently stated to mature on June 15 in each of the years 2021 through 2032, in the aggregate principal amount outstanding of \$7,920,000 (the "2012 Obligations") and "New Braunfels Development Authority Tax Increment Contract Revenue Notes, Series 2014", dated June 1, 2014, in the original principal amount of \$17,000,000, currently stated to mature on June 15 in each of the years 2021 through 2032, in the aggregate principal amount outstanding of \$12,460,000 (the "2014 Obligations"); and

WHEREAS, the Council adopted Ordinance No. 2019-10 on January 28, 2019, which enlarged the boundaries of the Zone by approximately 4.5 acres for the purpose of constructing the City's fire station and fire training facility thereon and approved an amendment to the Project and Financing Plan for the Zone to reflect the addition of such land and include the Phase II Project Improvements and estimates of the Phase II Project Costs with an aggregate reimbursement to A-

L 95 Creekside Town Center, L.P., a Texas limited partnership (the "Developer") from lawfully available Zone revenues held within the Phase II Tax Increment Fund in an amount not to exceed \$3,500,000 (the "Phase II Project") pursuant to the Amendment to Economic Development Agreement by and between the City and the Developer entered into on February 11, 2019 (the "Amendment to Economic Development Agreement"); and

WHEREAS, the Council adopted Ordinance No. 20-533 on August 10, 2020, which enlarged the boundaries of the Zone by approximately 35.452 acres for the purpose of constructing the City's fire station and fire training facility thereon after determining such site was more appropriately suited for those purposes and approved an amendment to the Project and Financing Plan for the Zone to reflect the addition of such land and include the anticipated costs and estimates associated with the relocation of the City's fire station and fire training facility and other related facilities; and

WHEREAS, the City desires to modify its sales and use tax contribution collected within the Zone from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% (which includes 100% of the New Braunfels Economic Development Corporation sales tax contribution within the Zone) and expects to offset any reimbursements owed to the Developer for costs related to the Phase II Project with certain unrestricted funds held within the Tax Increment Fund for the Zone, all as set forth in an amendment to the Economic Development Agreement attached hereto as Exhibit B (the "Second Amendment to Economic Development Agreement") to be executed by and between the City and the Developer; and

WHEREAS, on May 13, 2021, the Zone Board adopted an amendment to the Project and Financing Plan decreasing the percentage of sales tax increment to be contributed by the City as a taxing unit within the Zone from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% (which includes 100% of the New Braunfels Economic Development Corporation sales tax contribution within the Zone) pursuant to Section 311.011(e) of the Act and amend certain exhibits showing the projected Zone revenues in connection therewith as set forth and further described in the amended Project and Financing Plan (the "Amended Project and Financing Plan") attached as Exhibit A and recommended that the City approve the Amended Project and Financing Plan; and

WHEREAS, on June 1, 2021, pursuant to Section 14.5 of the Corporation's Resolutions authorizing the 2012 Obligations and 2014 Obligations (the "Authorizing Resolutions"), the Corporation, after receiving the consent to reduce the sales tax contribution from BBVA Mortgage Corporation f/k/a Compass Mortgage Corporation, an Alabama Corporation, as the sole owner of all of the 2012 Obligations and 2014 Obligations, amended the Authorizing Resolutions to reference the sales tax reduction as provided in the Second Amendment to Economic Development Agreement and recommended that the City approve the Amended Project and Financing Plan all as set forth in the Resolutions by the Board of Directors of the Corporation attached hereto as Exhibit C; and

WHEREAS, the City desires to approve the Amended Project and Financing Plan pursuant to Section 311.011(e) of the Act attached as Exhibit A; and

WHEREAS, pursuant to the Act, the City must approve the Amended Project and Financing Plan by ordinance; and

WHEREAS, notice of a public hearing to be held on June 28, 2021, was duly published in the *New Braunfels Herald-Zeitung* in its issue dated June 16, 2021, in compliance with Section 311.003 of the Act; and

WHEREAS, a public hearing was held on June 28, 2021, at 6:00 p.m. in City Hall, New Braunfels, Texas (the "Hearing") to consider the Amended Project and Financing Plan at which time the City provided a reasonable opportunity for protest in accordance with Section 311.003(d) of the Act; and

WHEREAS, in connection with the modification of the City's sales and use tax contribution in the Zone, the City desires to amend the Economic Development Agreement between the City and the Developer to decrease the percentage of sales tax increment to be contributed by the City as a taxing unit within the Zone from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% and to provide that the Developer is entitled to reimbursement from unrestricted funds held in the Tax Increment Fund as needed to fully reimburse the Developer for the Phase II Project Costs as a result of the decreased percentage of sales tax increment, as set forth and further described in the Second Amendment to Economic Development Agreement attached as Exhibit B; and

WHEREAS, the Council hereby finds and determines that the adoption of this Ordinance is in the best interests of the citizens of New Braunfels, Texas; and

WHEREAS, it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1. The City, after conducting the Hearing and having heard such evidence and testimony, has made the following findings and determinations based upon the testimony presented:

- (a) That the Hearing on the proposed Amended Project and Financing Plan has been properly called, held and conducted and that notices of the Hearing have been published at least seven (7) days before the Hearing in a newspaper of general circulation in the City.
- (b) The percentage of sales tax increment to be contributed by the City as a taxing unit within the Zone should be decreased from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% (which includes 100% of the New Braunfels Economic Development Corporation sales tax contribution within the Zone) pursuant to Section 311.011 of the Act and certain exhibits showing the projected Zone revenues in connection therewith should be amended as set forth and further described in the Amended Project and Financing Plan attached as Exhibit A.

SECTION 2. The Project and Financing Plan is hereby amended to decrease the percentage of sales tax increment to be contributed by the City as a taxing unit within the Zone from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% (which includes 100% of the New Braunfels Economic Development Corporation sales tax contribution within the Zone) pursuant to Section 311.011 of the Act and to amend certain exhibits showing the projected Zone revenues in connection therewith as set forth and further described in the Amended Project and Financing Plan attached as Exhibit A.

SECTION 3. The Council hereby approves the Amended Project and Financing Plan attached as Exhibit A.

SECTION 4. The Economic Development Agreement is hereby amended to decrease the percentage of sales tax increment to be contributed by the City as a taxing unit within the Zone from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% and to provide that the Developer is entitled to reimbursement from unrestricted funds held in the Tax Increment Fund as needed to fully reimburse the Developer for the Phase II Project Costs as a result of the decreased percentage of sales tax increment, as set forth and further described in the Second Amendment to Economic Development Agreement attached as Exhibit B.

SECTION 5. The Council hereby approves the Second Amendment to Economic Development Agreement attached as Exhibit B and the execution of the same by the City is hereby authorized.

SECTION 6. The officers of the City are authorized to take any and all action necessary to carry out and consummate the transactions described in or contemplated by the documents approved hereby or otherwise to give effect to the actions authorized hereby and the intent hereof.

SECTION 7. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

SECTION 8. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

SECTION 9. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 10. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, as if such invalid provision had never appeared herein, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 11. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 12. This Ordinance shall be in force and effect from and after its final passage and it is so ordained.

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FIRST READING on the 28th day of June, 2021.

SECOND AND FINAL READING, PASSED, AND ADOPTED on the ___ day of _____, 2021.

CITY OF NEW BRAUNFELS

Rusty Brockman, Mayor

ATTEST:

Caitlin Krobot, City Secretary
(City Seal)

APPROVED AS TO FORM:

Valeria Acevedo, City Attorney

EXHIBIT A

[Amended Project and Financing Plan]

**Amended Project Plan & Reinvestment Zone Financing Plan
Tax Increment Reinvestment Zone No.1
City of New Braunfels, Texas**

**Amended Project Plan and Reinvestment Zone
Financing Plan**

1. Summary of Amendment

2. Exhibits

Summary of Amendment

Pursuant to Section 311.011(e), Texas Tax Code, an Amended Project Plan and Reinvestment Zone Financing Plan (the "Amended Project and Financing Plan") was adopted by the City of New Braunfels, Texas (the "City") on June 28, 2021 to reduce the City's participation of its sales and use tax collected within the Tax Increment Reinvestment Zone No. 1, City of New Braunfels, Texas (the "TIRZ"), from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% (which includes 100% of the New Braunfels Economic Development Corporation sales tax contribution within the TIRZ). The City will offset the decrease in any tax increments that would have otherwise been available to make reimbursement payments owed to A-L 95 Creekside Town Center, L.P. (the "Developer") for the Phase II Project Improvements with unrestricted reserves held in the Tax Increment Fund for the TIRZ. The reduction in the City's sales tax contribution will have no material impact on the current debt obligations or any potential future debt obligations of the TIRZ.

A Second Amendment to Economic Development Agreement was executed by and between the City and the Developer dated June [], 2021 (the "Second Amended Development Agreement"), which is hereby incorporated by reference. The Second Amended Development Agreement amends the City's sales and use tax participation as noted above and provides that the Developer will be reimbursed for the Phase II Project Improvements from unrestricted reserves held in the Tax Increment Fund to offset any tax increments that would have otherwise been generated by the City's additional $\frac{1}{8}$ cent sales tax previously collected within the boundaries of the Phase II Project to the extent such funds are lawfully available.

In connection with the decrease in the City's sales and use tax contribution, the exhibits attached hereto shall be incorporated into the Amended Project and Financing Plan. Except as amended by the revised exhibits attached hereto, the Project Plan and Reinvestment Zone Financing Plan for the TIRZ remains unchanged and in full force and effect.

EXHIBIT A

[Supplements Participating Jurisdictions on Page 19]

	Tax Rate	Tax Rate Dedicated	% Dedicated	Term
Sales Tax*				
City of New Braunfels	1.125%	0.000%	0%	10 (2022-2032)
Economic Development Corporation	0.375%	0.375%	100%	10 (2022-2032)

*Sales tax participation in the TIRZ for Collection Years 2022-2033 are adjusted for removal of the City of New Braunfels' ⅛ cent sales tax contribution pursuant to the Second Amendment to Economic Development Agreement as further detailed herein in the Summary of Amendment.

EXHIBIT B

[Supplements Zone Increment Revenue on Page 19]

Tax Year	Collection Year (fiscal year)	Zone Increment Revenue				
		City Zone Revenue (Real Property and BPP&I)	County Zone Revenue (Real Property and BPP&I)	City/EDC Zone Revenue (Sales Tax)	Total Annual Zone Revenue	
2008	2009	\$ -		\$ 184,323	\$ 184,323	ACTUALS
2009	2010	\$ 160,709		\$ 338,815	\$ 499,524	
2010	2011	\$ 270,799		\$ 417,065	\$ 687,864	
2011	2012	\$ 320,677		\$ 498,108	\$ 818,785	
2012	2013	\$ 394,370		\$ 608,854	\$ 1,003,224	
2013	2014	\$ 527,042		\$ 904,236	\$ 1,431,278	
2014	2015*	\$ 1,071,265	\$ 1,081,543	\$ 938,817	\$ 3,091,625	
2015	2016	\$ 1,318,493	\$ 845,491	\$ 955,583	\$ 3,119,567	
2016	2017	\$ 1,477,982	\$ 972,789	\$ 941,067	\$ 3,391,838	
2017	2018	\$ 1,579,977	\$ -	\$ 1,016,149	\$ 2,596,126	
2018	2019*	\$ 1,532,619	\$ 2,157,308	\$ 1,498,943	\$ 5,188,870	
2019	2020	\$ 1,635,169	\$ 1,148,237	\$ 1,406,463	\$ 4,189,869	
2020	2021	\$ 1,748,229	\$ 1,230,015	\$ 1,450,000	\$ 4,428,244	PROJECTIONS
2021	2022*	\$ 1,954,186	\$ 1,374,922	\$ 1,150,985	\$ 4,480,093	
2022	2023	\$ 2,089,901	\$ 1,470,407	\$ 1,138,476	\$ 4,698,784	
2023	2024	\$ 2,227,831	\$ 1,567,452	\$ 1,161,245	\$ 4,956,528	
2024	2025	\$ 2,368,056	\$ 1,666,111	\$ 1,184,470	\$ 5,218,637	
2025	2026	\$ 2,438,271	\$ 1,715,513	\$ 1,208,159	\$ 5,361,943	
2026	2027	\$ 2,510,943	\$ 1,766,643	\$ 1,232,323	\$ 5,509,909	
2027	2028	\$ 2,713,625	\$ 1,909,245	\$ 1,256,969	\$ 5,879,839	
2028	2029	\$ 2,808,602	\$ 1,976,069	\$ 1,386,606	\$ 6,171,277	
2029	2030	\$ 2,906,903	\$ 2,045,231	\$ 1,414,338	\$ 6,366,472	
2030	2031	\$ 3,008,644	\$ 2,116,815	\$ 1,442,625	\$ 6,568,084	
2031	2032	\$ 3,113,947	\$ 2,190,903	\$ 1,471,477	\$ 6,776,327	
2032	2033*	\$ -	\$ -	\$ -	\$ -	
Totals		\$ 40,178,240	\$ 27,234,694	\$ 25,206,096	\$ 92,619,030	
* 2015 Collection Year - County Zone Real Property and BPP&I revenue represents the 2013 & 2014 tax year payments						
* 2019 Collection Year - County Zone Real Property and BPP&I revenue represents the 2017 & 2018 tax year payments						
*2022 Collection Year - City/EDC Zone Revenues (Sales Tax) adjusted for removal of 1/8 cent sales tax						
*2033 Collection Year - No revenue projections are provided as zone is set to terminate on December 31, 2032, or the date when all project costs are paid and all debt is retired. Given that all outstanding obligations will be paid by the end of the 2022 Collection Year, the projections do not go beyond this year.						

The supplement to the Zone Increment Revenue table attached hereto as **Exhibit B** is provided to show (i) the actual collections within the TIRZ from Collection Years 2009-2020 and (ii) the estimated projected collections for Collection Years 2021-2033. The City/EDC Zone Revenue (Sales Tax) projections for Collection Years 2022-2033 are based on the amended sales tax participation rates shown in **Exhibit A**.

Due to property values in the TIRZ increasing beyond the estimated property values included in the Project and Financing Plan approved in June of 2007 (the "Original Project and Financing Plan"), which are anticipated to continue to exceed such estimated values, this supplement to the Zone Increment Revenue table shows estimated Zone Revenue for the City and County Real Property and BPP&I that are greater than those included in the Original Project and Financing Plan. Further, due to economic retail trends, the City/EDC Zone Revenue (Sales Tax) amounts shown in this supplement are lower than the estimates included for the same in the Original Project and Financing Plan.

EXHIBIT C

[Supplements Schedule G Projected Zone Revenue (Sales Tax) on Page 26]

REVISED SCEHDULE G - Projected Zone Revenue (Sales Tax)

Collection Year	Gross Sales	City Tax 1.125%	EDC Sales Tax Revenue .375% Tax	County Sales Tax Revenue .5% Tax	Total Sales Tax Revenue	Sales Tax Revenue Available for Zone Projects*	
2009	\$ 27,648,450	\$ 311,045	\$ 103,682	\$ 138,242	\$ 552,969	\$ 184,323	ACTUALS
2010	\$ 50,822,250	\$ 571,750	\$ 190,583	\$ 254,111	\$ 1,016,445	\$ 338,815	
2011	\$ 62,559,750	\$ 703,797	\$ 234,599	\$ 312,799	\$ 1,251,195	\$ 417,065	
2012	\$ 74,716,200	\$ 840,557	\$ 280,186	\$ 373,581	\$ 1,494,324	\$ 498,108	
2013	\$ 91,328,100	\$ 1,027,441	\$ 342,480	\$ 456,641	\$ 1,826,562	\$ 608,854	
2014	\$ 135,635,400	\$ 1,525,898	\$ 508,633	\$ 678,177	\$ 2,712,708	\$ 904,236	
2015	\$ 140,822,550	\$ 1,584,254	\$ 528,085	\$ 704,113	\$ 2,816,451	\$ 938,817	
2016	\$ 143,337,450	\$ 1,612,546	\$ 537,515	\$ 716,687	\$ 2,866,749	\$ 955,583	
2017	\$ 141,160,050	\$ 1,588,051	\$ 529,350	\$ 705,800	\$ 2,823,201	\$ 941,067	
2018	\$ 152,422,350	\$ 1,714,751	\$ 571,584	\$ 762,112	\$ 3,048,447	\$ 1,016,149	
2019	\$ 224,841,450	\$ 2,529,466	\$ 843,155	\$ 1,124,207	\$ 4,496,829	\$ 1,498,943	
2020	\$ 210,969,450	\$ 2,373,406	\$ 791,135	\$ 1,054,847	\$ 4,219,389	\$ 1,406,463	PROJECTIONS
2021	\$ 217,500,000	\$ 2,446,875	\$ 815,625	\$ 1,087,500	\$ 4,350,000	\$ 1,450,000	
2022*	\$ 230,197,000	\$ 2,589,716	\$ 863,239	\$ 1,150,985	\$ 4,603,940	\$ 1,150,985	
2023	\$ 227,695,200	\$ 2,561,571	\$ 853,857	\$ 1,138,476	\$ 4,553,904	\$ 1,138,476	
2024	\$ 232,249,000	\$ 2,612,801	\$ 870,934	\$ 1,161,245	\$ 4,644,980	\$ 1,161,245	
2025	\$ 236,894,000	\$ 2,665,058	\$ 888,353	\$ 1,184,470	\$ 4,737,880	\$ 1,184,470	
2026	\$ 241,631,800	\$ 2,718,358	\$ 906,119	\$ 1,208,159	\$ 4,832,636	\$ 1,208,159	
2027	\$ 246,464,600	\$ 2,772,727	\$ 924,242	\$ 1,232,323	\$ 4,929,292	\$ 1,232,323	
2028	\$ 251,393,800	\$ 2,828,180	\$ 942,727	\$ 1,256,969	\$ 5,027,876	\$ 1,256,969	
2029	\$ 277,321,200	\$ 3,119,864	\$ 1,039,955	\$ 1,386,606	\$ 5,546,424	\$ 1,386,606	
2030	\$ 282,867,600	\$ 3,182,261	\$ 1,060,754	\$ 1,414,338	\$ 5,657,352	\$ 1,414,338	
2031	\$ 288,525,000	\$ 3,245,906	\$ 1,081,969	\$ 1,442,625	\$ 5,770,500	\$ 1,442,625	
2032	\$ 294,295,400	\$ 3,310,823	\$ 1,103,608	\$ 1,471,477	\$ 5,885,908	\$ 1,471,477	
Totals	\$ 4,483,298,050	\$ 50,437,103	\$ 16,812,368	\$ 22,416,490	\$ 89,665,961	\$ 25,206,096	

*2022 Collection Year - City/EDC Zone Revenues (Sales Tax) adjusted for removal of 1/8 cent sales tax

The supplement to Schedule G attached hereto as **Exhibit C** is provided to show (i) the actual sales tax collections within the TIRZ from Collection Years 2009-2020 and (ii) the estimated projected collections for Collection Years 2021-2033. The Total Sales Tax Revenue projections for Collection Years 2022-2033 are based on the amended sales tax participation rates shown in **Exhibit A**.

Due to economic retail trends, the Total Sales Tax Revenue amounts shown in this supplement to Schedule G are lower than the estimates included Schedule G of the Original Project and Financing Plan.

EXHIBIT B

[Second Amendment to Economic Development Agreement]

**SECOND AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT
BY AND BETWEEN NEW BRAUNFELS, TEXAS
AND
A-L 95 CREEKSIDE TOWN CENTER, L.P.**

THIS SECOND AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT (the "Second 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 (the "Developer"), (collectively referred to as the "Parties") is entered into on this [__] day of [____], 2021 (the "Effective Date").

RECITALS

WHEREAS, Developer and the City entered into an Economic Development Agreement dated March 12, 2007 (the "Original 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 completed the Project and the Project Improvements as defined in the Original Agreement and was reimbursed the full Reimbursement Amount from TIRZ revenues in accordance with the Project Plan and Plan of Finance and the terms of the Original Agreement; and

WHEREAS, the Developer and the District entered into an Amendment to Economic Development Agreement dated February 11, 2019 (the "First Amendment" and, together with the Original Agreement, the "Agreement") for the purpose of increasing the Reimbursement Amount from TIRZ revenues to include the Phase II Project Costs as defined in the First Amendment in order to further such economic development purposes within the City and the TIRZ; and

WHEREAS, pursuant to the First Amendment, the Developer will be reimbursed for the Phase II Project Costs by the New Braunfels Development Authority for the Phase II Developer Reimbursement through TIRZ revenues only from the Phase II Tax Increment collected in the Phase II Tax Increment Fund; and

WHEREAS, the Council adopted Ordinance No. 2019-10 on January 28, 2019, which approved an amended Project Plan and Plan of Finance for the TIRZ that included the Phase II Project Improvements and estimates of Phase II Project Costs; and

WHEREAS, the City desires to amend the Agreement and the Project Plan and Plan of Finance to decrease the percentage of sales tax increment to be contributed by the City as a taxing unit within the TIRZ from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% (which includes 100% of the New Braunfels Economic Development Corporation sales tax contribution within the TIRZ) pursuant to Section 311.011(e) of the Tax Increment Finance Act, Texas Tax Code, Chapter 311, as amended (the "Act") and amend certain exhibits showing the projected TIRZ revenues in connection therewith as set forth and further described in the amended Project Plan and Plan of Finance (the "Amended Project Plan and Plan of Finance"); and

WHEREAS, the City expects to supplement any reimbursements owed to the Developer for costs related to the Phase II Project pursuant to the First Amendment with certain unrestricted funds held within the Tax Increment Fund for the TIRZ to the extent the decrease in the percentage of sales tax increment affects the Phase II Developer Reimbursement and such funds are lawfully available as set forth herein; and

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 amending the fifth sentence in Article II, Section 1, Designation of Tax Increment Reinvestment Zone:

The City shall participate in the TIRZ during the term of the TIRZ in an amount equal to 85% of its real and personal property ad valorem taxes actually collected and $\frac{3}{8}$ of 1% of sales and use taxes actually collected within the TIRZ (which may include the New Braunfels EDC sales taxes) from fiscal year 2022 until the expiration of the TIRZ.

2. The Agreement is amended by amending the last sentence of Article IV, Section 4, Phase II Developer Reimbursement:

The Phase II Developer Reimbursement shall be paid solely from the Phase II Tax Increment Fund (defined below), except as described in subsection (a) below.

3. The Agreement is amended by amending the last sentence to Article IV, Section 4(a), Phase II Tax Increment Fund:

The Developer is entitled to reimbursement herein only from the Phase II Tax Increment collected in the Phase II Tax Increment Fund unless

additional unrestricted funds held in the Tax Increment Fund are needed to fully reimburse the Developer the Phase II Developer Reimbursement owed to the Developer for the Phase II Projects Costs as a result of the decreased percentage of sales tax increment from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% to be contributed by the City for fiscal year 2022 until the expiration of the TIRZ as set forth herein.

4. Except as explicitly set forth in this Second 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.

5. The provisions of this Second 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 Second Amendment and the Agreement, the provisions of this Second Amendment shall control.

6. The Agreement (including the Second 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.

7. 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.

8. The Developer represents and warrants, for purposes of Chapter 2271 of the Texas Government Code that at the time of execution and delivery of this Second Amendment, 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 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.

9. 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 Second 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: _____
Name: _____
Title: _____

EXHIBIT C

[Resolutions by the Board of Directors of the New Braunfels Development Authority Approving
Amendments to the Authorizing Resolutions]

NEW BRAUNFELS DEVELOPMENT AUTHORITY RESOLUTION 2021-[]

**RESOLUTION BY THE BOARD OF DIRECTORS OF THE NEW
BRAUNFELS DEVELOPMENT AUTHORITY APPROVING AN
AMENDMENT TO THE RESOLUTION AUTHORIZING THE
ISSUANCE OF \$11,670,000 NEW BRAUNFELS DEVELOPMENT
AUTHORITY TAX INCREMENT CONTRACT REVENUE
IMPROVEMENT AND REFUNDING OBLIGATIONS, SERIES 2012**

WHEREAS, the City Council (the "Council") of the City of New Braunfels, Texas (the "City") adopted Ordinance No. 2007-45 on May 29, 2007, which designated Reinvestment Zone Number One, City of New Braunfels, Texas (the "Zone") pursuant to Section 311.005(a) of the Tax Increment Finance Act, Texas Tax Code, Chapter 311, as amended (the "Act"); and

WHEREAS, the Board of Directors of the New Braunfels Development Authority (the "Corporation") previously authorized the issuance of two series of obligations designated, respectively, as "New Braunfels Development Authority Tax Increment Contract Revenue Improvement and Refunding Bonds, Series 2012", dated December 1, 2012, in the original principal amount of \$11,670,000, currently stated to mature on June 15 in each of the years 2021 through 2032, in the aggregate principal amount outstanding of \$7,920,000 (the "2012 Obligations") and "New Braunfels Development Authority Tax Increment Contract Revenue Notes, Series 2014", dated June 1, 2014, in the original principal amount of \$17,000,000, currently stated to mature on June 15 in each of the years 2021 through 2032, in the aggregate principal amount outstanding of \$12,460,000 (the "2014 Obligations"); and

WHEREAS, the City desires to modify its sales and use tax contribution collected within the Zone from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% (which includes 100% of the New Braunfels Economic Development Corporation sales tax contribution within the Zone) as set forth in an amendment to the Economic Development Agreement between the City and A-L 95 Creekside Town Center, L.P., a Texas limited partnership (the "Developer"), to be executed by and between the City and the Developer (the "Second Amendment to Development Agreement") attached hereto as Exhibit A; and

WHEREAS, such sales tax is part of the security for the 2012 Obligations; and

WHEREAS, pursuant to Section 14.5 of the Corporation's Resolution authorizing the 2012 Obligations (the "2012 Resolution"), the Corporation may adopt an amendment to the Resolution affecting the security of the 2012 Obligations only upon the consent of all holders of the outstanding 2012 Obligations; and

WHEREAS, on May 10, 2021 the Corporation received the consent attached hereto as Exhibit B to the reduction of the sales tax contributions described herein of BBVA Mortgage

Corporation f/k/a Compass Mortgage Corporation, an Alabama Corporation (the "Holder"), which is the sole owner of all of the 2012 Obligations; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF NEW BRAUNFELS DEVELOPMENT AUTHORITY:

SECTION 1. INCORPORATION OF RECITALS. The Corporation Board hereby finds that the statements set forth in the recitals of this Resolution are true and correct, and the Corporation Board hereby incorporates such recitals as part of this Resolution.

SECTION 2. DEFINITIONS. If a capitalized term is used herein but not defined, it shall have the meaning ascribed to it in the Second Amendment to Development Agreement.

SECTION 3. AMENDING THE 2012 RESOLUTION. The Corporation Board hereby adopts the following amendment to the 2012 Resolution with any such further modifications needed to give full affect to the actions contemplated by this Resolution and to conform to the final business terms as agreed to by the City Manager and directs its submission to the Council for approval:

The sixth recital to the 2012 Resolution is deleted in its entirety and hereby replaced with the following:

"WHEREAS, the City and A-L95 Creekside Town Center, L.P. and its lawful successors or assigns (the "Developer") entered into a Development Agreement dated March 12, 2007, as amended by resolution of the Corporation on June 24, 2014 and by resolution on May 13, 2021 (collectively, the "Development Agreement") establishing that the City would contribute certain funds as described in the Project and Financing Plan and the Development Agreement into the Pledged Revenue Fund (as hereinafter defined) to further the purposes of the Project (as defined in the Development Agreements) and the TIRZ Act; and"

SECTION 4. RECOMMENDING THE CITY APPROVE THE AMENDMENT TO THE 2012 RESOLUTION. The Corporation Board recommends that the City approve the amendment contemplated herein to reflect the decrease in the percentage of sales tax increment to be contributed by the City as a taxing unit within the Zone from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% and any other revisions to any other agreement necessary to give full effect to the actions contemplated herein.

SECTION 5. FURTHER PROCEEDINGS. The Corporation Board is authorized to take any and all action necessary to carry out and consummate the transactions described in or contemplated by the documents approved hereby or otherwise to give effect to the actions authorized hereby and the intent hereof including revising any necessary documents to conform to the terms hereof or State law.

SECTION 6. SEVERABILITY. If any provision of this Resolution or the application thereof to any circumstance shall be held to be invalid, the remainder of this Resolution and the application thereof to other circumstances shall nevertheless be valid, as if such invalid provision had never appeared herein, and the Corporation Board hereby declares that this Resolution would have been enacted without such invalid provision.

[The remainder of this page intentionally left blank.]

PASSED AND APPROVED THIS 1ST DAY OF JUNE, 2021.

By: _____
Chairperson, Board of Directors

EXHIBIT A

[Second Amendment to Development Agreement]

**SECOND AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT
BY AND BETWEEN NEW BRAUNFELS, TEXAS
AND
A-L 95 CREEKSIDE TOWN CENTER, L.P.**

THIS SECOND AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT (the "Second 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 (the "Developer"), (collectively referred to as the "Parties") is entered into on this [__] day of [____], 2021 (the "Effective Date").

RECITALS

WHEREAS, Developer and the City entered into an Economic Development Agreement dated March 12, 2007 (the "Original 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 completed the Project and the Project Improvements as defined in the Original Agreement and was reimbursed the full Reimbursement Amount from TIRZ revenues in accordance with the Project Plan and Plan of Finance and the terms of the Original Agreement; and

WHEREAS, the Developer and the District entered into an Amendment to Economic Development Agreement dated February 11, 2019 (the "First Amendment" and, together with the Original Agreement, the "Agreement") for the purpose of increasing the Reimbursement Amount from TIRZ revenues to include the Phase II Project Costs as defined in the First Amendment in order to further such economic development purposes within the City and the TIRZ; and

WHEREAS, pursuant to the First Amendment, the Developer will be reimbursed for the Phase II Project Costs by the New Braunfels Development Authority for the Phase II Developer Reimbursement through TIRZ revenues only from the Phase II Tax Increment collected in the Phase II Tax Increment Fund; and

WHEREAS, the Council adopted Ordinance No. 2019-10 on January 28, 2019, which approved an amended Project Plan and Plan of Finance for the TIRZ that included the Phase II Project Improvements and estimates of Phase II Project Costs; and

WHEREAS, the City desires to amend the Agreement and the Project Plan and Plan of Finance to decrease the percentage of sales tax increment to be contributed by the City as a taxing unit within the TIRZ from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% (which includes 100% of the New Braunfels Economic Development Corporation sales tax contribution within the TIRZ) pursuant to Section 311.011(e) of the Tax Increment Finance Act, Texas Tax Code, Chapter 311, as amended (the "Act") and amend certain exhibits showing the projected TIRZ revenues in connection therewith as set forth and further described in the amended Project Plan and Plan of Finance (the "Amended Project Plan and Plan of Finance"); and

WHEREAS, the City expects to offset any reimbursements owed to the Developer for costs related to the Phase II Project pursuant to the First Amendment with certain unrestricted funds held within the Tax Increment Fund for the TIRZ to the extent such funds are lawfully available as set forth herein; and

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 amending the fifth sentence in Article II, Section 1, Designation of Tax Increment Reinvestment Zone:

The City shall participate in the TIRZ during the term of the TIRZ in an amount equal to 85% of its real and personal property ad valorem taxes actually collected and $\frac{3}{8}$ of 1% of sales and use taxes actually collected within the TIRZ (which may include the New Braunfels EDC sales taxes) from fiscal year 2022 until the expiration of the TIRZ.

2. The Agreement is amended by amending the last sentence to Article IV, Section 4(a), Phase II Tax Increment Fund:

The Developer is entitled to reimbursement herein only from the Phase II Tax Increment collected in the Phase II Tax Increment Fund unless additional unrestricted funds held in the Tax Increment Fund are needed to offset any reimbursements owed to the Developer for the Phase II Projects Costs due to the decreased percentage of sales tax increment from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% to be contributed by the City for fiscal year 2022 until the expiration of the TIRZ as set forth herein.

3. Except as explicitly set forth in this Second 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.

4. The provisions of this Second 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 Second Amendment and the Agreement, the provisions of this Second Amendment shall control.

5. The Agreement (including the Second 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.

6. 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.

7. The Developer represents and warrants, for purposes of Chapter 2271 of the Texas Government Code that at the time of execution and delivery of this Second Amendment, 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 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.

8. 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 Second 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: _____
Name: _____
Title: _____

EXHIBIT B

[Waiver and Consent of Sole Holder of 2012 Obligations]

WAIVER AND CONSENT OF SOLE BONDHOLDER

WHEREAS, the Board of Directors of the New Braunfels Development Authority (the *Corporation*) previously authorized the issuance of two series of obligations designated, respectively, as "New Braunfels Development Authority Tax Increment Contract Revenue Improvement and Refunding Bonds, Series 2012", dated December 1, 2012, in the original principal amount of \$7,920,000, currently stated to mature on June 15 in each of the years 2021 through 2032, in the aggregate principal amount outstanding of \$10,950,000 and "New Braunfels Development Authority Tax Increment Contract Revenue Notes, Series 2014", dated June 1, 2014, in the original principal amount of \$17,000,000, currently stated to mature on June 15 in each of the years 2021 through 2032, in the aggregate principal amount outstanding of \$12,460,000 (collectively, the *Original Obligations*); and

WHEREAS, BBVA Mortgage Corporation f/k/a Compass Mortgage Corporation, an Alabama Corporation (the *Holder*), is the sole owner of all of the Original Obligations; and

WHEREAS, the Corporation and the City of New Braunfels, Texas (the *City*) desires to decrease the percentage of sales tax increment to be contributed by the City as a taxing unit within the TIRZ from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% (which includes 100% of the New Braunfels Economic Development Corporation sales tax contribution within the TIRZ) pursuant to Section 311.011(e) of the Tax Increment Finance Act, Texas Tax Code, Chapter 311, as amended (the "Act") and amend certain exhibits to the Project and Finance Plan for the TIRZ showing the projected TIRZ revenues in connection therewith as set forth and further described in the amended Project Plan and Plan of Finance (the "Amended Project Plan and Plan of Finance"); and

WHEREAS, the Corporation, acting through its authorized representatives, has communicated directly with the Holder and has expressed its desire to obtain the Holder's consent, and the Holder has consented to the Corporation's request, to the actions described in the preceding paragraph as well as any corresponding amendments to the resolutions authorizing the Original Obligations to give effect to the decrease in the percentage of sales tax increment to be contributed by the City; and

WHEREAS, the Corporation must receive the consent of the Holder in order to amend, add to, or rescind any portion of the resolutions authorizing the Original Obligations; and

WHEREAS, this Waiver and Consent is executed by the authorized representative of the Holder, now, therefore,

BE IT RESOLVED BY THE UNDERSIGNED HOLDER THAT:

SECTION 1: The undersigned is the authorized representative of BBVA Mortgage Corporation f/k/a Compass Mortgage Corporation, an Alabama Corporation, and is duly authorized to execute this Waiver and Consent.

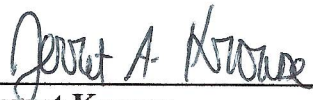
SECTION 2: The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Waiver and Consent for all purposes.

SECTION 3: This Waiver and Consent may be relied upon the by Texas Attorney General in his review and approval of the Notes.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, I have signed my name officially, this 10th day of May, 2021.

BBVA MORTGAGE CORPORATION F/K/A
COMPASS MORTGAGE CORPORATION,
an Alabama Corporation

BY: 
Jerret Krouse

TITLE: Authorized Signatory

NEW BRAUNFELS DEVELOPMENT AUTHORITY RESOLUTION 2021-[]

**RESOLUTION BY THE BOARD OF DIRECTORS OF THE NEW
BRAUNFELS DEVELOPMENT AUTHORITY APPROVING AN
AMENDMENT TO THE RESOLUTION AUTHORIZING THE
ISSUANCE OF \$17,000,000 NEW BRAUNFELS DEVELOPMENT
AUTHORITY TAX INCREMENT CONTRACT REVENUE NOTES,
SERIES 2014**

WHEREAS, the City Council (the "Council") of the City of New Braunfels, Texas (the "City") adopted Ordinance No. 2007-45 on May 29, 2007, which designated Reinvestment Zone Number One, City of New Braunfels, Texas (the "Zone") pursuant to Section 311.005(a) of the Tax Increment Finance Act, Texas Tax Code, Chapter 311, as amended (the "Act"); and

WHEREAS, the Board of Directors of the New Braunfels Development Authority (the "Corporation") previously authorized the issuance of two series of obligations designated, respectively, as "New Braunfels Development Authority Tax Increment Contract Revenue Improvement and Refunding Bonds, Series 2012", dated December 1, 2012, in the original principal amount of \$11,670,000, currently stated to mature on June 15 in each of the years 2021 through 2032, in the aggregate principal amount outstanding of \$7,920,000 (the "2012 Obligations") and "New Braunfels Development Authority Tax Increment Contract Revenue Notes, Series 2014", dated June 1, 2014, in the original principal amount of \$17,000,000, currently stated to mature on June 15 in each of the years 2021 through 2032, in the aggregate principal amount outstanding of \$12,460,000 (the "2014 Obligations"); and

WHEREAS, the City desires to modify its sales and use tax contribution collected within the Zone from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% (which includes 100% of the New Braunfels Economic Development Corporation sales tax contribution within the Zone) as set forth in an amendment to the Economic Development Agreement between the City and A-L 95 Creekside Town Center, L.P., a Texas limited partnership (the "Developer"), to be executed by and between the City and the Developer (the "Second Amendment to Development Agreement") attached hereto as Exhibit A; and

WHEREAS, such sales tax is part of the security for the 2014 Obligations; and

WHEREAS, pursuant to Section 14.5 of the Corporation's Resolution authorizing the 2014 Obligations (the "2014 Resolution"), the Corporation may adopt an amendment to the Resolution affecting the security of the 2014 Obligations only upon the consent of all holders of the outstanding 2014 Obligations; and

WHEREAS, on May 10, 2021 the Corporation received the consent attached hereto as Exhibit B to the reduction of the sales tax contributions described herein of BBVA Mortgage

Corporation f/k/a Compass Mortgage Corporation, an Alabama Corporation (the "Holder"), which is the sole owner of all of the 2014 Obligations; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF NEW BRAUNFELS DEVELOPMENT AUTHORITY:

SECTION 1. INCORPORATION OF RECITALS. The Corporation Board hereby finds that the statements set forth in the recitals of this Resolution are true and correct, and the Corporation Board hereby incorporates such recitals as part of this Resolution.

SECTION 2. DEFINITIONS. If a capitalized term is used herein but not defined, it shall have the meaning ascribed to it in the Second Amendment to Development Agreement.

SECTION 3. AMENDING THE 2014 RESOLUTION. The Corporation Board hereby adopts the following amendment to the 2014 Resolution with any such further modifications needed to give full affect to the actions contemplated by this Resolution and to conform to the final business terms as agreed to by the City Manager and directs its submission to the Council for approval:

The sixth recital to the 2014 Resolution is deleted in its entirety and hereby replaced with the following:

"WHEREAS, the City and A-L95 Creekside Town Center, L.P. and its lawful successors or assigns (the "Developer") entered into a Development Agreement dated March 12, 2007, as amended by resolution of the Corporation on June 24, 2014 and by resolution on May 13, 2021 (collectively, the "Development Agreement") establishing that the City would contribute certain funds as described in the Project and Financing Plan and the Development Agreement into the Pledged Revenue Fund (as hereinafter defined) to further the purposes of the Project (as defined in the Development Agreements) and the TIRZ Act; and"

SECTION 4. RECOMMENDING THE CITY APPROVE THE AMENDMENT TO THE 2014 RESOLUTION. The Corporation Board recommends that the City approve the amendment contemplated herein to reflect the decrease in the percentage of sales tax increment to be contributed by the City as a taxing unit within the Zone from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% and any other revisions to any other agreement necessary to give full effect to the actions contemplated herein.

SECTION 5. FURTHER PROCEEDINGS. The Corporation Board is authorized to take any and all action necessary to carry out and consummate the transactions described in or contemplated by the documents approved hereby or otherwise to give effect to the actions authorized hereby and the intent hereof including revising any necessary documents to conform to the terms hereof or State law.

SECTION 6. SEVERABILITY. If any provision of this Resolution or the application thereof to any circumstance shall be held to be invalid, the remainder of this Resolution and the application thereof to other circumstances shall nevertheless be valid, as if such invalid provision had never appeared herein, and the Corporation Board hereby declares that this Resolution would have been enacted without such invalid provision.

[The remainder of this page intentionally left blank.]

PASSED AND APPROVED THIS 1ST DAY OF JUNE, 2021.

By: _____
Chairperson, Board of Directors

EXHIBIT A

[Second Amendment to Development Agreement]

**SECOND AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT
BY AND BETWEEN NEW BRAUNFELS, TEXAS
AND
A-L 95 CREEKSIDE TOWN CENTER, L.P.**

THIS SECOND AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT (the "Second 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 (the "Developer"), (collectively referred to as the "Parties") is entered into on this [__] day of [____], 2021 (the "Effective Date").

RECITALS

WHEREAS, Developer and the City entered into an Economic Development Agreement dated March 12, 2007 (the "Original 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 completed the Project and the Project Improvements as defined in the Original Agreement and was reimbursed the full Reimbursement Amount from TIRZ revenues in accordance with the Project Plan and Plan of Finance and the terms of the Original Agreement; and

WHEREAS, the Developer and the District entered into an Amendment to Economic Development Agreement dated February 11, 2019 (the "First Amendment" and, together with the Original Agreement, the "Agreement") for the purpose of increasing the Reimbursement Amount from TIRZ revenues to include the Phase II Project Costs as defined in the First Amendment in order to further such economic development purposes within the City and the TIRZ; and

WHEREAS, pursuant to the First Amendment, the Developer will be reimbursed for the Phase II Project Costs by the New Braunfels Development Authority for the Phase II Developer Reimbursement through TIRZ revenues only from the Phase II Tax Increment collected in the Phase II Tax Increment Fund; and

WHEREAS, the Council adopted Ordinance No. 2019-10 on January 28, 2019, which approved an amended Project Plan and Plan of Finance for the TIRZ that included the Phase II Project Improvements and estimates of Phase II Project Costs; and

WHEREAS, the City desires to amend the Agreement and the Project Plan and Plan of Finance to decrease the percentage of sales tax increment to be contributed by the City as a taxing unit within the TIRZ from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% (which includes 100% of the New Braunfels Economic Development Corporation sales tax contribution within the TIRZ) pursuant to Section 311.011(e) of the Tax Increment Finance Act, Texas Tax Code, Chapter 311, as amended (the "Act") and amend certain exhibits showing the projected TIRZ revenues in connection therewith as set forth and further described in the amended Project Plan and Plan of Finance (the "Amended Project Plan and Plan of Finance"); and

WHEREAS, the City expects to offset any reimbursements owed to the Developer for costs related to the Phase II Project pursuant to the First Amendment with certain unrestricted funds held within the Tax Increment Fund for the TIRZ to the extent such funds are lawfully available as set forth herein; and

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 amending the fifth sentence in Article II, Section 1, Designation of Tax Increment Reinvestment Zone:

The City shall participate in the TIRZ during the term of the TIRZ in an amount equal to 85% of its real and personal property ad valorem taxes actually collected and $\frac{3}{8}$ of 1% of sales and use taxes actually collected within the TIRZ (which may include the New Braunfels EDC sales taxes) from fiscal year 2022 until the expiration of the TIRZ.

2. The Agreement is amended by amending the last sentence to Article IV, Section 4(a), Phase II Tax Increment Fund:

The Developer is entitled to reimbursement herein only from the Phase II Tax Increment collected in the Phase II Tax Increment Fund unless additional unrestricted funds held in the Tax Increment Fund are needed to offset any reimbursements owed to the Developer for the Phase II Projects Costs due to the decreased percentage of sales tax increment from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% to be contributed by the City for fiscal year 2022 until the expiration of the TIRZ as set forth herein.

3. Except as explicitly set forth in this Second 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.

4. The provisions of this Second 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 Second Amendment and the Agreement, the provisions of this Second Amendment shall control.

5. The Agreement (including the Second 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.

6. 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.

7. The Developer represents and warrants, for purposes of Chapter 2271 of the Texas Government Code that at the time of execution and delivery of this Second Amendment, 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 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.

8. 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 Second 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: _____
Name: _____
Title: _____

EXHIBIT B

[Waiver and Consent of Sole Holder of 2014 Obligations]

WAIVER AND CONSENT OF SOLE BONDHOLDER

WHEREAS, the Board of Directors of the New Braunfels Development Authority (the *Corporation*) previously authorized the issuance of two series of obligations designated, respectively, as "New Braunfels Development Authority Tax Increment Contract Revenue Improvement and Refunding Bonds, Series 2012", dated December 1, 2012, in the original principal amount of \$7,920,000, currently stated to mature on June 15 in each of the years 2021 through 2032, in the aggregate principal amount outstanding of \$10,950,000 and "New Braunfels Development Authority Tax Increment Contract Revenue Notes, Series 2014", dated June 1, 2014, in the original principal amount of \$17,000,000, currently stated to mature on June 15 in each of the years 2021 through 2032, in the aggregate principal amount outstanding of \$12,460,000 (collectively, the *Original Obligations*); and

WHEREAS, BBVA Mortgage Corporation f/k/a Compass Mortgage Corporation, an Alabama Corporation (the *Holder*), is the sole owner of all of the Original Obligations; and

WHEREAS, the Corporation and the City of New Braunfels, Texas (the *City*) desires to decrease the percentage of sales tax increment to be contributed by the City as a taxing unit within the TIRZ from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% (which includes 100% of the New Braunfels Economic Development Corporation sales tax contribution within the TIRZ) pursuant to Section 311.011(e) of the Tax Increment Finance Act, Texas Tax Code, Chapter 311, as amended (the "Act") and amend certain exhibits to the Project and Finance Plan for the TIRZ showing the projected TIRZ revenues in connection therewith as set forth and further described in the amended Project Plan and Plan of Finance (the "Amended Project Plan and Plan of Finance"); and

WHEREAS, the Corporation, acting through its authorized representatives, has communicated directly with the Holder and has expressed its desire to obtain the Holder's consent, and the Holder has consented to the Corporation's request, to the actions described in the preceding paragraph as well as any corresponding amendments to the resolutions authorizing the Original Obligations to give effect to the decrease in the percentage of sales tax increment to be contributed by the City; and

WHEREAS, the Corporation must receive the consent of the Holder in order to amend, add to, or rescind any portion of the resolutions authorizing the Original Obligations; and

WHEREAS, this Waiver and Consent is executed by the authorized representative of the Holder, now, therefore,

BE IT RESOLVED BY THE UNDERSIGNED HOLDER THAT:

SECTION 1: The undersigned is the authorized representative of BBVA Mortgage Corporation f/k/a Compass Mortgage Corporation, an Alabama Corporation, and is duly authorized to execute this Waiver and Consent.

SECTION 2: The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Waiver and Consent for all purposes.

SECTION 3: This Waiver and Consent may be relied upon the by Texas Attorney General in his review and approval of the Notes.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, I have signed my name officially, this 10th day of May, 2021.

BBVA MORTGAGE CORPORATION F/K/A
COMPASS MORTGAGE CORPORATION,
an Alabama Corporation

BY: Jerret A. Krouse
Jerret Krouse

TITLE: Authorized Signatory