

**DEVELOPMENT AGREEMENT
FOR ROADWAY IMPACT FEE OFFSETS**

This Development Agreement (the “*Agreement*”) is made and entered into by and between the City of New Braunfels, Texas (the “*City*”), a Texas municipal corporation, and, SA Kosta Browne, Ltd., a Texas limited partnership (“*Developer*”) on this the ___ day of _____, 2021.

WHEREAS, Developer submitted an application for platting the Creekside Farm Subdivision, Unit 3 for 141 single-family residential lots (the “**Plat 3**”); and

WHEREAS, Creekside Farms Subdivision Unit 1 consisting of 125 single-family residential lots and Creekside Farms Subdivision Unit 2 consisting of 90 single-family residential lots were platted and such plats were recorded prior to Plat 3, and

WHEREAS, the Plat 3 was approved by the City’s Planning Commission subject to conditions on November 4, 2019 (The Creekside Farms, Unit 3) and was recorded on October 2, 2020 which is attached as Exhibit A; and

WHEREAS, Creekside Farms Subdivision Unit 4 consisting of 92 single-family residential lots were approved by Planning Commission and was recorded on April 4, 2021 by filing security in lieu of completing construction in compliance with Chapter 118 of the City Code of Ordinances; and

WHEREAS, the Plat 3 is subject to the requirement that sections of Orion Drive (the “**Subdivision Road**”) abutting or interior to the Plat be constructed to minor collector specifications and the dedication of right-of-way, pursuant to Chapter 118 of the City Code of Ordinances; and

WHEREAS, the City has adopted a roadway impact fees program, which requirements are codified as Chapter 100, City Code of Ordinances, as amended (the “**Ordinance**”); and

WHEREAS, Chapter 100 requires the payment of roadway impact fees adopted for service area No. 3 for dwelling units constructed on lots within the Plat, upon the issuance of a building permit; and

WHEREAS, the Ordinance provides that an owner/developer of a tract of land can petition the City for offsets for the costs of capital improvements that provide additional capacity to the City's thoroughfare system against the roadway impact fees to be charged to the development; and

WHEREAS, the Ordinance authorizes the City to enter into an agreement with an owner/developer of a tract of land for the construction and/or financing of such capital improvements; and

WHEREAS, the Subdivision Road is identified on the City's Thoroughfare Plan as a minor collector street; and

WHEREAS, the costs of constructing and dedication of right-of-way for the Subdivision Road within or abutting the Plat to minor collector specifications (the "**Reimbursable Cost**") is \$595,221.20 which is comprised of \$456,558.20 for construction costs and \$138,663.00 for the value of right of way as more precisely set forth in **Exhibit B** attached hereto and incorporated herein by reference; and

WHEREAS, the City Engineer has reviewed and approved such Reimbursable Cost amount; and

WHEREAS, Developer has petitioned the City for offsets against roadway impact fees due for the Reimbursable Cost of the Subdivision Road; and

WHEREAS, the total amount of roadway impact fees due by the builders of 448 single-family residential (detached) lots subject to the Plat 3 and the plats for Units, 1, 2, and 4 is \$840,00.00 based on roadway impact fees currently in effect, as shown on the Roadway Impact

Fee Calculation Worksheets attached hereto and incorporated herein by reference as **Exhibit C**; and

WHEREAS, the total amount of roadway fees collected by the City to date of April 30, 2021, for the Subdivision is \$451,875.00; and

WHEREAS, the City desires to offset the Reimbursable Cost upon the construction, dedication to the City and acceptance by the City of the Subdivision Road against roadway impact fees due.

NOW, THEREFORE, the parties agree as follows:

1. Developer has constructed the Subdivision Road to the City's minor collector specifications and has dedicated such road to the City. Developer has also dedicated 1.26 acres of right-of-way necessary to construct the Subdivision Road to minor collector specifications.

2. Developer has constructed and dedicated right-of-way for the Subdivision Road to the City's specifications and has dedicated such road to the City, the Reimbursable Cost for the Subdivision Road shall be apportioned to 318 lots subject to all the plats. As of July 31, 2021, the City has collected sufficient roadway impact fees in the amount of \$ 595,221.20 for all of the Units which shall be paid to the Developer within 5 business days following execution of this Agreement provided all required documents for the transfer have been delivered to City. .

3. Developer and City hereby covenant and agree that this 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.

4. The following events shall be deemed to be events of default by Developer or City under this Agreement:

- a. City fails to pay Developer the Reimbursable Cost as set forth in this Agreement.
- b. City fails to apply an offset to roadway impact fees due for a lot subject to the Plat in accordance with this Agreement.
- c. Developer or City fails to comply with any other term, provision, or covenant of this Agreement.

5. A defaulting party shall have 30 days after receiving written notice of an event of default from the non-defaulting party to cure the default, or such longer period as may be reasonably necessary if such default is not subject to cure within 30 days so long as the defaulting party commencing activities to cure such default with 30 days and continues to diligently pursue such cure (such period of 30 days or longer as may be applicable (the "Cure Period").

6. In addition to the exercise of any other remedies available at law or in equity, the non-defaulting party may terminate this Agreement upon the occurrence of any event of default, the expiration of the required Cure Period, and the failure of the defaulting party to cure the default during the Cure Period.

7. Notwithstanding any provision herein to the contrary, if notice of default has been given by one party to the other party, and the other party believes that it is not in default or there is a dispute as to whether the default has been cured, then the parties shall make a good faith effort to resolve the dispute before the Agreement is declared terminated or in default.

8. 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 Development Agreement. This foregoing paragraph shall not be effective until the tender of payment of all of the Reimbursable Costs by the City to the Developer as set forth in this Agreement.

9. 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 this Development Agreement. This foregoing paragraph shall not be effective until the tender of payment of full the Reimbursable Costs by the City to the Developer.

10. This Agreement 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 Agreement 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 Agreement 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

With a copy to:

City Attorney
City of New Braunfels
550 Landa Street,
New Braunfels, Texas 78730

Developer:

SA Kosta Browne, Ltd.
By:

SA Kosta Browne GP, LLC,
a Texas limited liability company,
its General Partner

1802 NW Military Dr. Suite 100
San Antonio, Texas 78213

Tom Yantis
Mosaic Land Development LLC
6812 West Avenue, Suite 100
San Antonio, Texas 78213

With a copy to:

Karl P. Baker
Golden Steves & Gordon, LLP
200 East Basse Road, Suite 200
San Antonio, Texas 78209

12. This Agreement 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 Agreement 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 Agreement shall

be considered as if such invalid, illegal, or unenforceable provision had never been contained in the Agreement.

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

15. This Agreement, and any requirement contained in this Agreement, shall not constitute a “permit,” as defined Chapter 245, Texas Local Government Code. This paragraph shall survive the termination of this Agreement.

16. This Agreement shall be effective upon the signature of all Parties hereto. The City shall be the last Party to execute the Development Agreement.

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney

CITY OF NEW BRAUNFELS, TEXAS:

By: Robert Camareno, City Manager

DATE: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF _____ §

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/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

DEVELOPER:

SA Kosta Browne, LTD,
a Texas limited partnership

By: SA Kosta Browne GP, LLC,
a Texas limited liability company,
its General Partner

By: _____
Name: Thomas Yantis
Title: Manager

DATED: _____

ACKNOWLEDGEMENT

STATE OF TEXAS

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COUNTY OF BEXAR

Before me, _____, a notary public for the State of Texas, on this day personally appeared Thomas Yantis, the _____ of SA Kosta Browne GP, LLC, a Texas limited liability company, the General Partner of SA Kosta Browne, Ltd., LTD, a Texas limited partnership, 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