

SOLMS LANDING PUBLIC IMPROVEMENT DISTRICT

**IMPROVEMENT AREA #1 LANDOWNER AGREEMENT
AND NOTICE OF ASSESSMENTS**

between

THE CITY OF NEW BRAUNFELS, TEXAS

and

SOLMS LANDING DEVELOPMENT, LLC

and

THE JEROME W. TIMMERMAN FAMILY TRUST

and

CHUPIK SOLMS LANDING, LLC

Dated as of:

_____, 2021

**IMPROVEMENT AREA #1 LANDOWNER AGREEMENT AND NOTICE OF
ASSESSMENTS
(Solms Landing Public Improvement District)**

This **IMPROVEMENT AREA #1 LANDOWNER AGREEMENT AND NOTICE OF ASSESSMENTS** (the “**Agreement**”) is entered into between the CITY OF NEW BRAUNFELS, TEXAS, a political subdivision and home rule law municipality of the State of Texas (the “**City**”), and SOLMS LANDING DEVELOPMENT, LLC, a Texas limited liability company, and CHUPIK SOLMS LANDING, LLC, a Texas limited liability company (collectively, the “**Landowners**” and each a “**Landowner**”), and THE JEROME W. TIMMERMANN FAMILY TRUST (the “**Trust**”) (each Landowner, the Trust, and the City may be referred to individually as a “**Party**” or collectively the “**Parties**”). This Agreement shall be effective on the date it is executed by all Parties.

RECITALS

WHEREAS, Landowners, together with the Trust, collectively own that certain real property located in New Braunfels, Comal County, Texas more particularly described in “**Exhibit A-1**” attached hereto (the “**Land**”);

WHEREAS, on January 14, 2019, the City Council of the City (the “**City Council**”) passed and approved Resolution No. 2019-R09 authorizing the creation of the Solms Landing Public Improvement District (the “**District**”) pursuant to Chapter 372 of the Texas Local Government Code (the “**PID Act**”), with the boundaries of such District being coterminous with the boundaries of the Land;

WHEREAS, the City Council amended the District pursuant to Resolution No. 2021-32 on April 12, 2021 for the sole purpose of increasing the cost of improvements in the District;

WHEREAS, the District was created, in part, to undertake and finance the construction and acquisition of those certain improvements (the “**Authorized Improvements**”) provided and identified in the Service and Assessment Plan and Improvement Area #1 Assessment Roll dated of even date herewith (as such may be amended from time to time, the “**Service and Assessment Plan**”);

WHEREAS, contemporaneously herewith, the City Council passed and approved Ordinance No. _____ (the “**Assessment Ordinance**”) that, among other things, approved the Service and Assessment Plan that identified the amount of certain assessments on parcels within Improvement Area #1 (as defined in the Service and Assessment Plan and more particular described in “**Exhibit A-2**” attached hereto), and established the dates upon which interest on Improvement Area #1 Assessments will begin to accrue and upon which collection of Assessments will begin;

WHEREAS, in addition to approving the Service and Assessment Plan, the Assessment Ordinance levied the Improvement Area #1 Assessments against certain parcels within the

boundaries of Improvement Area #1 to finance the Authorized Improvements in accordance with the Service and Assessment Plan;

WHEREAS, a copy of the Assessment Ordinance is attached hereto as “**Exhibit B**”; and

WHEREAS, the Service and Assessment Plan includes an “**Assessment Roll**” setting forth, among other things, the amount of the Assessment (as that term is defined in the Service and Assessment Plan) for each parcel currently subject to an Assessment (an “**Assessed Parcel**”), including the amount of the “**Annual Installment**” (as that term is defined in the Service and Assessment Plan, but only with respect to Assessments) for each Assessment paid in installments.

NOW THEREFORE, for and in consideration of the mutual promises, covenants, obligations, and benefits hereinafter set forth, the Parties agree as follows:

ARTICLE I **APPROVAL OF AGREEMENTS**

The matters set forth in the recitals of this Agreement are true and correct and are incorporated in this Agreement as official findings of the City Council.

ARTICLE II **AGREEMENT OF LANDOWNER**

A. Each Landowner (and the Trust as to subparts (i) and (ii) below) ratifies, confirms, accepts, agrees to, and approves;

(i) the creation of the District, the boundaries of the District, and the boundaries of the Assessed Parcels;

(ii) the location and construction of the Authorized Improvements;

(iii) the determinations and findings of special benefit to the Assessed Parcels made by the City Council in the Assessment Ordinance and Service and Assessment Plan; and

(iv) the Assessment Ordinance and the Service and Assessment Plan.

B. Each Landowner (and the Trust as to subparts (ii) and (viii)-(xi)) consents, acknowledges, accepts, and agrees:

(i) to the Improvement Area #1 Assessments to be levied against the applicable Assessed Parcels as shown on the Assessment Roll, as the Assessment Roll may be amended from time to time;

(ii) that the Authorized Improvements and administration and operation of the District confer a special benefit on the Assessed Parcels in an amount that exceeds the

Improvement Area #1 Assessments against the Assessed Parcels as shown on the Assessment Roll;

(iii) that the Improvement Area #1 Assessments against the Assessed Parcels are final, conclusive, and binding upon each Landowner and their successors and assigns;

(iv) to pay the Improvement Area #1 Assessments and Annual Installments against the Assessed Parcels that Landowner owns when due and in the amounts stated in the Assessment Ordinance, Service and Assessment Plan, and Assessment Roll;

(v) that each Assessment or reassessment against the Assessed Parcels, with interest, the expense of collection, and reasonable attorney's fees, if incurred, is a first and prior lien against the Assessed Parcels, superior to all other liens and monetary claims except liens or monetary claims for state, county, school district, or municipal ad valorem taxes, and is a personal liability of and charge against the owner of the Assessed Parcels regardless of whether the owner is named;

(vi) that the Assessment liens on the Assessed Parcels are liens and covenants that run with the land and are effective from the date of the Assessment Ordinance and continue until the Improvement Area #1 Assessments are paid in full and may be enforced by the governing body of the City in the same manner that ad valorem tax liens against real property may be enforced;

(vii) that delinquent installments of Improvement Area #1 Assessments against the Assessed Parcels shall incur and accrue interest, penalties, and attorney's fees as provided in the PID Act;

(viii) that the owner of an Assessed Parcel may pay at any time the entire Assessment against the Assessed Parcel, with interest that has accrued on the Assessment to the date of such payment;

(ix) that Annual Installments may be adjusted, decreased, and extended and that owners of the Assessed Parcels shall be obligated to pay such Annual Installments as adjusted, decreased, or extended, when due and without the necessity of further action, assessments, or reassessment by the City Council;

(x) that each Landowner (and the Trust, as applicable) has received, or hereby waives, all notices required by the laws of the State of Texas (including, but not limited to the PID Act and Texas Property Code Section 5) in connection with the creation of the District and the adoption and approval by the City Council of the Assessment Ordinance, the Service and Assessment Plan, and the Assessment Roll; and

(xi) that this Agreement may be recorded in the real property records of Comal County (the contents of which shall be consistent with the Assessment Ordinance, the Service and Assessment Plan, and this Agreement) that evidence the lien and encumbrance created upon each Landowner's Assessed Parcels by the Assessment Ordinance.

C. Each Landowner (and the Trust as to subparts (i), (ii), and (iv)) hereby waives:

(i) any and all defects, irregularities, illegalities, or deficiencies in the proceedings establishing the District, defining the Assessed Parcels, adopting the Assessment Ordinance, Service and Assessment Plan, and Assessment Roll, levying of the Improvement Area #1 Assessments, and determining the amount of the Annual Installments;

(ii) any and all notices and time periods provided by Texas Property Code 5.014 and the PID Act including, but not limited to, notice of the establishment of the District and notice of public hearings regarding the approval of the Assessment Ordinance, Service and Assessment Plan, and Assessment Roll and regarding the levying of the Improvement Area #1 Assessments and determining the amount of the Annual Installments of the Assessments;

(iii) any and all actions and defenses against the adoption or amendment of the Assessment Ordinance, Service and Assessment Plan, and Improvement Area #1 Assessment Roll;

(iv) any and all actions and defenses against the City's finding of "special benefit" pursuant to the PID Act and as set forth in the Service and Assessment Plan and the levying of the Improvement Area #1 Assessments and determining the amount of the Annual Installment; and

(v) any right to object to the legality of the Assessment Ordinance, Service and Assessment Plan, Improvement Area #1 Assessment Roll, or Improvement Area #1 Assessments or to any proceedings connected therewith.

D. The Trust and each Landowner agrees to comply with the notice requirements of Section 5.014 of the Texas Property Code as to the purchaser or recipient of any property within the District.

ARTICLE III

TEXAS PROPERTY CODE SECTION 5.014 NOTICE

Section 5.014 of the Texas Property Code requires that a person who proposes to sell or otherwise convey real property that is located in a public improvement district shall first give to the purchaser or recipient of the property written notice of the district in the form set forth on Section 5.014 of the Texas Property Code. The seller is required to deliver the notice to the purchaser before execution of an executory contract binding the purchaser to purchase the property.

ARTICLE IV

DEDICATION OF AUTHORIZED IMPROVEMENTS

Each Landowner acknowledges that the Authorized Improvements, together with the land, easements, or other rights-of-way needed for the Authorized Improvements, shall be dedicated to

the City or the applicable owner's association as provided in the documents pertaining to the issuance of bonds for the District. Each Landowner, as applicable, will execute such conveyances and/or dedications as may be reasonably required to evidence the same.

ARTICLE V
MISCELLANEOUS

A. Notices. Any notice or other communication (a “**Notice**”) required or contemplated by this Agreement shall be given at the addresses set forth below. Notices as to one or more Assessed Parcels shall only be given to the Landowner that owns the applicable Assessed Parcels. Notices as to all of the Land shall be given to all Landowners. Notices shall be in writing and shall be deemed given: (i) five business days after being deposited in the United States Mail, Registered or Certified Mail, Return Receipt Requested; or (ii) when delivered by a nationally recognized private delivery service (e.g., FedEx or UPS) with evidence of delivery signed by any person at the delivery address. Each Party may change its address by written notice to the other Parties in accordance with this section.

If to Solms Landing
Development, LLC:

Solms Landing Development, LLC
Attn: James Mahan III
648 South Castell Avenue
New Braunfels, Texas 78130

With a copy to:

Metcalf Wolff Stuart & Williams, LLP
Attn: Talley Williams
221 W. 6th, Suite 1300
Austin, Texas 78701
Facsimile: (512) 404-2234

If to Chupik Solms
Landing, LLC:

Chupik Solms Landing, LLC
1410 Woodlawn Blvd., Suite A
Austin, Texas 78703

If to the
Trust:

Jerome W. Timmermann Family Trust
Attn: Trustee
516 Jo Lynn Lane
New Braunfels, Texas 78130

If to City: City of New Braunfels
Attn: City Manager
550 Landa Street
New Braunfels, Texas 78130
Facsimile: 830.626.5578

With a copy to: City of New Braunfels
Attn: City Attorney
550 Landa Street
New Braunfels, Texas 78130
Facsimile: 830.626.5578

B. Parties in Interest. In the event of the sale or transfer of an Assessed Parcel or any portion thereof, the purchaser or transferee shall be deemed to have assumed the obligations of the Landowner with respect to such Assessed Parcel or such portion thereof, and the seller or transferor shall be released with respect to such Assessed Parcel or portion thereof. Notwithstanding the foregoing, the holders of bonds issued for the District are express beneficiaries of this Agreement and shall be entitled to pursue any and all remedies at law or in equity to enforce the obligations of the Parties, subject to the limitations set forth in the Indenture.

C. Amendments. This Agreement may be amended only by a written instrument executed by all the Parties. No termination or amendment shall be effective until a written instrument setting forth the terms thereof has been executed by the then-current owners of the Land and recorded in the Official Public Records of Comal County, Texas.

D. Estoppels. Within ten (10) days after written request from any Party, the other Parties shall provide a written certification indicating whether this Agreement remains in effect as to an Assessed Parcel and whether any Party is then in default hereunder.

E. Termination. This Agreement shall terminate as to each Assessed Parcel upon payment in full of the Assessment against the Assessed Parcel.

[SIGNATURE PAGES TO FOLLOW]

EXECUTED by the Parties on the dates stated below.

**THE CITY OF NEW BRAUNFELS,
TEXAS**

a political subdivision and home rule law
municipality of the State of Texas

By: _____
Rusty Brockman, Mayor

ATTEST:

By: _____
Caitlin Krobot, City Secretary

STATE OF TEXAS

202

COUNTY OF COMAL

 \mathcal{S}

§

BEFORE ME, a Notary Public, on this day personally appeared, by Rusty Brockman, Mayor, and Patrick Aten, City Secretary, of the City of New Braunfels, Texas, a political subdivision and home rule law municipality of the State of 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 on behalf of that municipal corporation.

GIVEN UNDER MY HAND AND SEAL of office this ____ day of _____, 2021.

(SEAL)

Notary Public, State of Texas
My Commission Expires: _____

LANDOWNER:

SOLMS LANDING DEVELOPMENT, LLC, a
Texas limited liability company

By: _____

Name: _____

Title: _____

STATE OF TEXAS

§

§

COUNTY OF COMAL

§

BEFORE ME, a Notary Public, on this day personally appeared _____,
_____ of Solms Landing Development, LLC, a Texas limited liability company, known
to me to be the person whose name is subscribed to the foregoing instrument and acknowledged
to me that he or she executed the same for the purposes and consideration therein expressed on
behalf of said entity.

GIVEN UNDER MY HAND AND SEAL of office this ____ day of _____, 2021.

(SEAL)

Notary Public, State of Texas

My Commission Expires: _____

LANDOWNER:

Chupik Solms Landing, LLC,
a Texas limited liability company

By: _____

Name: _____

Title: _____

STATE OF TEXAS

§

§

COUNTY OF COMAL

§

BEFORE ME, a Notary Public, on this day personally appeared _____,
_____ of Chupik Solms Landing, LLC, a Texas limited liability company, known to me
to be the person whose name is subscribed to the foregoing instrument and acknowledged to me
that he or she executed the same for the purposes and consideration therein expressed on behalf of
said entity.

GIVEN UNDER MY HAND AND SEAL of office this ____ day of _____, 2021.

(SEAL)

Notary Public, State of Texas

My Commission Expires: _____

TRUST:

The Jerome W. Timmermann Family Trust

By: _____

Name: _____

Title: _____

STATE OF TEXAS

§

§

COUNTY OF COMAL

§

BEFORE ME, a Notary Public, on this day personally appeared _____,
_____ of The Jerome W. Timmermann Family Trust, known to me to be the person
whose name is subscribed to the foregoing instrument and acknowledged to me that he or she
executed the same for the purposes and consideration therein expressed on behalf of said entity.

GIVEN UNDER MY HAND AND SEAL of office this ____ day of _____, 2021.

(SEAL)

Notary Public, State of Texas

My Commission Expires: _____

EXHIBIT A-1 to LANDOWNER AGREEMENT

District Legal Description

[See Attached]

EXHIBIT A-2 to LANDOWNER AGREEMENT

Improvement Area #1 Legal Description

[See Attached]

EXHIBIT B to LANDOWNER AGREEMENT

Assessment Ordinance

[See Attached]