DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is entered into by and between the **CITY OF SEGUIN, TEXAS,** a home rule municipality (the "City"), and **2021 FII WALNUT, LP**, a Texas limited partnership ("Developer") (each individually, a "Party," and collectively, the "Parties"), to be effective on the Effective Date, as defined herein.

SECTION 1
RECITALS

WHEREAS, certain capitalized terms used in these recitals are defined in Section 2;

WHEREAS, Developer is the owner of that approximately 411 acres of real property, described by the metes and bounds and survey in **Exhibit A** (the "Property");

WHEREAS, the Property is located wholly within the corporate limits of the City;

WHEREAS, Developer intends to develop, the Property as a Planned Unit Development ("PUD") community that will include approximately 1,140 single-family residential homes upon completion, retail areas, an extensive public trail system, a regional park with open space, and a fire station, which development will be known as "Walnut Springs" (the "Project");

WHEREAS, City water and wastewater facilities are currently available to the Property in accordance with the City's typical extension policies;

WHEREAS, Developer anticipates commencing development of the Property upon: (i) the execution of this Agreement, (ii) the submission to and approval by the City of a "Concept Plan" for the Property generally as depicted in **Exhibit B** and subject to changes as negotiated by the Parties (the "Concept Plan"), (iii) creation of a Public Improvement District (or "PID") by the City encompassing the Project, and (iv) the City and Developer entering into a PID Reimbursement Agreement;

WHEREAS, the Parties desire and intend that Developer will design, construct, install, and/or make financial contributions toward the Authorized Improvements and conveyance to a public entity, and that certain costs incurred therewith will be partially financed or reimbursed from, Assessments levied on the Lots (as those capitalized terms are defined herein below);

WHEREAS, the Parties intend that Developer will apply to create and that City will create by ordinance a Tax Increment Reinvestment Zone (or "TIRZ") on the Property that will, in conjunction with the intended PID, allow the Developer to construct the desired Authorized Improvements;

WHEREAS, the Parties intend to negotiate and execute a 380 Agreement, pursuant to Ch. 380 of the Texas Local Government Code;

WHEREAS, the Parties intend for the design, construction, and installation of the Authorized Improvements to occur in potentially more than one phase and that Developer will

dedicate said Authorized Improvements to the City and the City will accept the Authorized Improvements for public use and maintenance, subject to the City's approval of the plans and inspection and acceptance of the Authorized Improvements in accordance with this Agreement and City Regulations;

WHEREAS, Developer estimates that the overall development costs, including the Authorized Improvements Cost will be as set forth in **Exhibit C**;

WHEREAS, in consideration of Developer's agreements contained herein and upon the creation of the PID, the City intends to exercise its powers under the PID Act to provide financing arrangements that will enable Developer, in accordance with the procedures and requirements of the PID Act and this Agreement, to: (a) fund the Authorized Improvements; and (b) be reimbursed for all or a portion of the Authorized Improvements, from Assessments on the Property;

WHEREAS, the City, subject to Developer's compliance with this Agreement, and in accordance with the terms of this Agreement, intends to or through previous processes has already taken steps to: (i) create the PID; (ii) approve the Concept Plan; (iii) adopt a Service and Assessment Plan; (iv) adopt an Assessment Ordinance that will pay back the PID Bonds issued for Authorized Improvements Cost or to reimburse Developer for all or a portion of the Authorized Improvements Cost, and pay the costs associated with the administration of the PID; (v) enter into the PID Reimbursement Agreement; and (vi) fund Developer construction from PID Bond Proceeds or reimburse Developer from Assessments for Authorized Improvements in accordance with the Service and Assessment Plan;

WHEREAS, unless expressly set forth to the contrary in this Agreement, to the extent permissible by law, the Parties intend this Agreement to supersede City Regulations to the extent that City Regulations conflict with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereby agree as follows:

SECTION 2
DEFINITIONS

Certain terms used in this Agreement are defined in this Section 2. Other terms used in this Agreement are defined in the recitals or in other sections of this Agreement. Unless the context requires otherwise, the following terms shall have the meanings hereinafter set forth:

Administrative Expenses means reasonable expenses incurred by the City in the establishment, administration, and operation of the PID and the collection of any Assessments and other amounts associated with same.

Applicable Law means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator, or other Governmental Authority. Applicable Laws shall include, but not be limited to, City Regulations.

Assessment(s) means the special assessments levied within the PID boundary under one or more Assessment Ordinances adopted to repay bond issuances and/or pay or reimburse Developer for those Authorized Improvements benefitting the Property as set forth in the Service and Assessment Plan, including the Administrative Expenses.

Assessment Ordinance means an ordinance approved by the City Council under the PID Act levying one or more Assessment(s).

Authorized Improvements means the on-site and off-site public water, sewer, drainage, and roadway facilities, along with other Public Infrastructure, such as landscaping and screening, that confer a special benefit to the Property authorized by the PID Act and the SAP, to be constructed by Developer. The Authorized Improvements are generally identified on **Exhibit C**, and for which the Parties intend Developer will be fully or partially reimbursed pursuant to the terms of this Agreement.

Authorized Improvements Cost(s) means the actual costs of design, engineering, construction, acquisition, and inspection of the Authorized Improvements and all costs related in any manner to the Authorized Improvements.

Budgeted Cost(s) means, with respect to any given Authorized Improvement, the estimated cost of the improvement as set forth by phase in **Exhibit C**.

Capital Improvement(s) shall have the meaning provided in Chapter 395, Texas Local Government Code.

Capital Improvement Costs means any construction, contributions, or dedications of Capital Improvements, including actual costs of design, engineering, construction, acquisition, and inspection, and all costs related in any manner to the Capital Improvement.

Capital Improvement Fund means the City-operated account funded by Roadway Facilities Impact Fees collected.

Capital Improvements Plan ("CIP") means all capital improvements plan(s) duly adopted by the City under Chapter 395, Texas Local Government Code, as may be updated or amended from time to time.

Certificate of Occupancy means a certificate under City Codes and Ordinances or the UDC, as amended, and other applicable City Code provisions required to use or occupy or permit the use or occupancy of any building or premises.

Chapter 245 means Chapter 245, Texas Local Government Code.

Chapter 395 means Chapter 395, Texas Local Government Code.

City means the City of Seguin, Texas.

City Code means the Code of Ordinances, City of Seguin, Texas.

City Council means the governing body of the City.

City Manager means the current or acting City Manager of the City, or a person designated to act on behalf of that individual.

City Regulations means the City's applicable development regulations in effect on the Effective Date, being the City Code provisions, ordinances and other policies duly adopted by the City; provided, however, that as it relates to Public Infrastructure for any given phase of the Project, the applicable construction standards shall be those that the City has duly adopted at the time of the filing of an application for a preliminary plat for that phase unless construction has not commenced within two years of approval of such preliminary plat in which case the construction standards shall be those that the City has duly adopted at the time that construction commences. The term does not include Impact Fees.

Continuing Party means any party that continues to be bound by this Agreement after an authorized assignment of this Agreement as described in Section 9.1 hereof.

County means Guadalupe County.

Developer means 2021 FII Walnut, LP, or any subsequent entity(ies) responsible for developing the Property in accordance with this Agreement and their permitted assigns.

Effective Date means the date upon which all Parties have fully executed this Agreement.

End User means any tenant, user, or owner of a Fully Developed and Improved Lot or Parcel, excluding the HOA.

Equivalent Tax Rate shall have the meaning described in Section 3, herein.

Estimated Build Out Value means the fair market value of a developed Lot, including the finished residential unit and all improvements to be constructed thereon, as estimated at the time the applicable Assessments are levied.

Fire Station/Fire Station Site means the fire station facility that the City intends to construct on a tract of land within the Property.

Fully Developed and Improved Lot means any privately-owned lot in the Project, regardless of proposed use, intended to be served by the Authorized Improvements and for which a final plat has been approved by the City and recorded in the Real Property Records of Guadalupe County.

HOA means the Walnut Springs Residential Homeowners Association, which shall be created in conjunction with the Development, a privately function as a homeowner's association for the Project, or such other name as may be available with Texas Secretary of State, and its successors.

Home Buyer Disclosure Program means the disclosure program, administered by the PID Administrator, as set forth in a document in the form of **Exhibit D** or another form agreed to by the Parties, that establishes a mechanism to disclose to each End User the terms and conditions under which their lot is encumbered by the PID assessment.

Huber Road Project means the improvements to Huber Road as depicted on **Exhibit H**, including but not limited to costs associated with land acquisition for right-of-way, constructing sidewalks, landscaping, lighting, and other improvements necessary for project completion.

Impact Fees means those fees assessed and charged against the Project in accordance with this Agreement and Chapter 395 and as defined therein.

Impact Fee Credits means credits against Impact Fees otherwise due from the Project to offset Capital Improvements Costs.

Landowner Consent Certificate means a certificate of the owner(s) of the Property consenting to the creation of the PID, the levy of the Assessments, and/or the issuance of the PID Bonds.

Lien Declaration means a certain form of a document titled "Walnut Springs Declaration of Covenants, Conditions, and Restrictions Accepting and Approving Assessments and Lien" the substance of which is as set forth in **Exhibit E** and described in further detail in Section 3.3.

Lot means a parcel of land in a plat within the Property developed for single family residential, commercial, or other approved use for which the Authorized Improvements have been constructed and a final plat has been recorded.

Non-Benefited Property means Lots that accrue no special benefit from the Authorized Improvements, including but not limited to, property encumbered with a public utility easement that restricts the use of such property to such easement.

Notice means any notice required or contemplated by this Agreement (or otherwise given in connection with this Agreement).

Oversized Public Infrastructure means Public Infrastructure that the City has identified as a need to be oversized to provide a benefit to land outside the Property and that Developer has agreed to accommodate prior to the commencement of construction of such improvement.

P&Z means the City's Planning and Zoning Commission, which body is responsible for the review and approval of those certain plats that require a public hearing, pursuant to the UDC.

Parcel means a tract of land within the Property developed for any purpose other than single-family residential purposes and a final plat has been recorded.

PID means a public improvement district created in conformance with the PID Act, encompassing the Property, which the City agrees to exert good faith efforts to create pursuant to this Agreement.

PID Act means Chapter 372, Texas Local Government Code, as amended.

PID Administrator means an employee, consultant, or designee of the City who shall have the responsibilities provided in the Service and Assessment Plan, an Indenture, or any other agreement or document approved by the City related to the duties and responsibilities for the administration of the PID.

PID Bonds means the bonds authorized by the City to be issued, in one or more series, in accordance with the PID Reimbursement Agreement.

PID Bond Proceeds or Net PID Bond Proceeds means the proceeds of the PID Bonds, net of costs of issuance, capitalized interest, reserve funds and other financing costs, which are deposited to the Project Fund.

PID Documents means, collectively, the PID Resolution, the SAP, the Assessment Ordinance(s), and the PID Reimbursement Agreement.

PID Improvement Area(s) mean specifically defined and designated portions of the District that are developed in phases and specifically defined and designated as a phase of development.

PID Reimbursement Agreement means an agreement by and between the City and Developer, consistent with the terms of this Agreement, by which the Parties establish the terms by which Developer may obtain reimbursements for Authorized Improvements serving all or a portion of the Property through Assessments.

PID Resolution means the resolution and improvement order adopted by the City Council creating the PID pursuant to Section 372.010 of the PID Act and approving the advisability of the Authorized Improvements.

Private Improvements means the improvements and amenities Developer shall cause to be constructed, as more particularly discussed in Section 7.2.

Private Improvements Cost means Developer's actual cost to entitle, design, and construct the Private Improvements.

Project means the "Walnut Springs" development described in the recitals above.

Project and Financing Plan means a combination of a "project plan" and "reinvestment zone financing plan" as those terms are defined in the TIRZ Act, created for the TIRZ to describe the project covered by the TIRZ and the proposed financing of those items listed therein, as approved and periodically amended by the TIRZ Board and incorporated by reference for all purposes into this document as if set out in its entirety.

Property means the real property described by metes and bounds on **Exhibit A** and depicted on **Exhibit B**, consisting of approximately 411 acres.

Public Infrastructure means all water, wastewater/sewer, detention and drainage, roadway, park and trail, and other infrastructure necessary to serve the full development of the Project and/or to be constructed and dedicated to the City under this Agreement. The term includes without limitation the Authorized Improvements.

Real Property Records means the official land recordings of the Guadalupe County Clerk's Office.

Refunding Bonds means bonds issued pursuant to Section 372.027 of the PID Act.

Regional Park Improvements means the improvements to the regional park as depicted on **Exhibit J**, labeled as the Regional Park Concept Plan.

Road Improvements means all road improvements necessary to serve the Property as described in **Exhibit C**, which Developer is responsible for constructing, including the design and installation of such improvements.

Roadway Facilities Impact Fees means those fees assessed and charged against the Project in accordance with this Agreement, Chapter 102, Article IX of the City's Code of Ordinances, and Chapter 395 of the Texas Local Government Code and as defined therein.

Service and Assessment Plan ("SAP") means the SAP for the PID, to be updated, adopted and amended annually by the City Council pursuant to the PID Act for the purpose of defining annual indebtedness and projected cost for the improvements, and assessing allocated costs against portions of the Property, having terms, provisions, and findings approved by the City, consistent with the terms of this Agreement.

TIRZ means the Tax Increment Reinvestment Zone established under Texas Tax Code Chapter 311, as amended, to be created for the boundary area of the Project by separate ordinance to work in conjunction with the PID and serve the purposes stated therein and called Reinvestment Zone Number [One], City of Seguin.

TIRZ Act means Texas Tax Code Chapter 311, as amended.

TIRZ Board means the board of directors, as defined by the TIRZ Act, for the TIRZ as set forth in the ordinance creating the TIRZ.

TIRZ Fund means a Tax Increment Reinvestment Zone Fund for the TIRZ and managed by the City or its designee for funds received from revenues derived through the TIRZ.

UDC means the Unified Development Code of the City of Seguin, Texas, as amended, Appendix A to the City Code, and may also be referred to as the "Development Code," "Zoning Code," or "Subdivision Code."

Wastewater Improvements means all wastewater improvements necessary to serve the Property and described in **Exhibit C**, which Developer is responsible for constructing, including the design and installation of such improvements.

Water Improvements means all water improvements necessary to serve the Property and described in **Exhibit C**, which Developer is responsible for constructing, including the design and installation of such improvements.

SECTION 3
PUBLIC IMPROVEMENT DISTRICT

3.1 Creation of the PID; Levy of Assessments.

(a) The City intends to initiate and approve all necessary documents and ordinances, including without limitation the PID Documents, required to effectuate this Agreement, to create the PID and levy the Assessments on benefiting properties. The Assessments, when approved by the City Council, shall be levied: (i) on a phase-by-phase basis against the applicable phase(s) benefited by the applicable portion of the Authorized Improvements for which the applicable series of the PID Bonds are issued, and (ii) prior to the sale of any Lots to End Users. The City will select a PID Administrator and the City Council will consider approval of the preliminary SAP, which shall include the Authorized Improvements, and provide for the levy of the Assessments on the Lots. Promptly following the preparation and approval of the preliminary SAP, the City Council shall make findings that the Authorized Improvements confer a special benefit on the Lots and subsequently consider adopting an Assessment Ordinance for the levy of the Assessments.

(b) In conjunction with the development of the Property, the Developer shall propose to the City the Assessments to be levied on the Lots consistent with the provisions of Section 3.1(c). Such Assessments shall be used to either: (i) repay PID Bonds or (ii) reimburse the Developer for constructing or causing to construct the Authorized Improvements. Each Assessment shall have a payment term of not greater than thirty (30) years.

(c) The Assessment to be levied on a Lot shall have a maximum ad valorem tax rate of $1.304 per $100 valuation ("Equivalent Tax Rate"), on the Estimated Build Out Value of each Lot being assessed, which rate is acknowledged by the Parties to exceed the maximum tax rate of $0.55 per $100 valuation stated in the City's current PID Policy document. The Equivalent Tax Rate, as determined at the time of the levy of the Assessments, applies on an individual assessed Lot basis, as will be set forth in the Service and Assessment Plan.

3.2 Acceptance of Assessments and Recordation of Covenants Running with the Land. Following each levy of the Assessments applicable to a particular phase of the Property, Developer, in a Landowner Consent Certificate filed in the land records of the County, shall: (a) approve and accept in writing the levy of the Assessment(s) on all land owned by Developer; (b) approve and accept in writing the Lien Declaration and Home Buyer Disclosure Program related to such phase; and (c) cause the Lien Declaration and declarations, covenants and restrictions—in accordance with this Agreement—running with the land to be recorded against the portion of the Property within the applicable phase that will bind any and all current and successor developers and owners of all or any part of such phase of the Property to: (i) pay the Assessments, with

applicable interest and penalties thereon, as and when due and payable hereunder and cause the purchasers of such land to take their title subject to and expressly assuming the terms and provisions of such assessments and the liens created thereby; and (ii) comply with the Home Buyer Disclosure Program codified in Texas Property Code Section 5.014. The covenants required to be recorded under this paragraph shall be recorded substantially contemporaneously with the recordation of the final plat of the applicable phase.

3.3 Issuance of PID Bonds. The City intends to issue PID Bonds, in multiple series, to fund or reimburse Authorized Improvements in accordance with the PID Act, and as necessary, to make progress payments to the Developer for the Authorized Improvements, unless Developer, in their sole discretion, request reimbursement from annual PID proceeds. Developer may request issuance of PID Bonds by filing a written request with the City including a list of the Authorized Improvements to be funded or acquired with the PID Bond Proceeds and the estimated or actual costs of such Authorized Improvements. The issuance of PID Bonds is a discretionary action that may be taken by a future City Council, in its sole discretion, and such future City Council shall not be bound by the terms of this agreement with respect to the issuance of PID Bonds. The issuance of PID bonds is also subject to market conditions at the time of issuance and shall be issued with the terms deemed appropriate by the City at the time of issuance, if at all. Those terms agreed upon by the Parties must include:

(a) City Bond Rating. The City has evaluated and determined that there will not be substantial negative impact on the City's creditworthiness, bond rating, access to or cost of capital, or potential for liability.

(b) Reasonableness. The City has determined that the Assessment level, structure, terms, conditions, and timing of the issuance of the PID Bonds are reasonable for the Authorized Improvements Cost to be financed and that there is sufficient security for the PID Bonds to be creditworthy.

(c) Administration Costs. All costs incurred by the City that are associated with the administration of the PID shall be paid out of Assessments levied against property within the PID. City administration costs shall include those associated with continuing disclosure, compliance with federal tax law, agent fees, staff time, regulatory reporting, and legal and financial reporting requirements.

(d) Sufficient Assessment. The Service and Assessment Plan and the Assessment Ordinance levying assessments on all or any portion of the Property benefited by Authorized Improvements provide for amounts sufficient to pay all costs related to such PID Bonds.

(e) Financing Team. The City has formed and utilized its own financing team including, but not limited to, bond counsel, financial advisor, Administrator, and underwriters related to the issuance of PID Bonds and bond financing proceedings.

(f) Sufficient PID Bond. Such to the terms of this Agreement, the PID Bonds shall be in an amount estimated to be sufficient to fund the Authorized Improvements or portions thereof for which such PID Bonds are being issued.

(g) Texas AG. Approval by the Texas Attorney General of the PID Bonds and registration of the PID Bonds by the Comptroller of Public Accounts of the State of Texas.

(h) Current Taxes. Developer is current on all taxes, assessments, and fees owed to the City including without limitation payment of Assessments.

(i) No Default. Developer is not in default under this Agreement.

(j) HOA Creation. The Developer agrees to create the HOA prior to the issuance of the first certificate of occupancy for a dwelling unit as part of the Project to provide for the operation and maintenance of the applicable Authorized Improvements, as provided in Section 6.3(c) hereof.

(k) Outstanding PID Bonds. No outstanding PID Bonds are in default and no reserve funds established for outstanding PID Bonds have been drawn upon that have not been replenished.

(l) Cost Eligibility. The Administrator has indicated that the specified portions of the Authorized Improvements Cost to be paid from the proceeds of the PID Bonds are eligible to be paid with the proceeds of such PID Bonds.

(m) Construction Standards. The Authorized Improvements to be financed by the PID Bonds have been or will be constructed according to the standards imposed by this Agreement including any applicable City Regulations not superseded by this Agreement.

(n) PID Bond Operations. The aggregate principal amount of PID Bonds to be issued shall not exceed $66,796,434.00, which shall be used to fund: (i) the actual costs of the Authorized Improvements, (ii) to the extent permitted by law, capitalized interest during the period of construction and not more than twelve (12) months after the completion of construction of all Authorized Improvements covered by the PID Bond issue in question and in no event for a period greater than twenty-four (24) months from the date of the initial delivery of the PID Bonds, (iii) PID reserve fund and administrative fund, and (iv) any costs of issuance for the PID Bonds; provided, however, that to the extent the law(s) that limit the period of capitalized interest to twelve (12) months after completion of construction change, the foregoing limitation may, with the agreement of the Parties, be adjusted to reflect the law(s) in effect at the time of future PID Bond issuances.

(o) Maturity. The final maturity for a series of PID Bonds shall occur no later than thirty (30) years from the issuance date of said PID Bonds.

(p) Appraisal. The City agrees that the appraisal is to be performed by a MAI accredited appraiser and that the appraisal is to be based on fair market value of the property referenced therein, based on assumptions agreed to by the City, the Developer, and the underwriter of any bond at the time the appraisal is commissioned.

(q) Value to Lien Ratio. Unless agreed to otherwise by the City, the minimum value to lien ratio ("VTL Ratio") at the issuance date of each series of PID Bonds shall be at least

2.0 to 1 on a parcel-by-parcel basis. In the event the City levies an Assessment to fund the construction of the Authorized Improvements (based upon a VTL Ratio of less than 2.0:1), the City, in consultation with the Developer, may undertake certain alternative financing structures including, but not limited to, directing the PID Bond trustee to hold a portion of the applicable PID Bond Proceeds in escrow until the VTL Ratio reaches 2.0:1, issuing the PID Bonds on a senior and subordinate lien basis, or other alternative financing means as provided in the applicable Indenture. .

(r) Deficit. At or prior to the closing of any series of PID Bonds intended to fund construction of all or a portion of the Authorized Improvements that have not been constructed by the Developer, Developer shall provide sufficient evidence of Developer's available funds, or evidence of financial security from a Lender (as hereinafter defined) of funds available under a loan extended to the Developer by a financial institution or other lender ("Lender") for purposes of development of those Authorized Improvements in an amount equal to or greater than the below defined Deficit.

Total amount of Authorized Improvement Costs of the Phase

- (less) PID Bond Proceeds deposited to Improvement Account of the Project Fund

- (less) Verified and approved Developer expenditures of Authorized Improvement Costs

= Deficit

The determination of the amount of the Deficit shall be estimated thirty (30) days prior to pricing of each series of PID Bonds and shall be finalized within fifteen (15) business days prior to pricing of each series of PID Bonds.

(s) Disclosures. Developer agrees to provide periodic information and notices of certain events regarding Developer and Developer's development within the PID in accordance with Securities and Exchange Commission Rule 15c2-12 and any continuing disclosure agreements executed by Developer in connection with the issuance of PID Bonds.

3.4 Infrastructure Oversizing. Developer shall not be required to construct or fund any Oversized Public Infrastructure unless, by the commencement of construction, the City has made arrangements to finance the City's pro-rata portion of the costs of construction attributable to the oversizing requested by the City.

3.5 Payment Process for Authorized Improvements.

(a) The City shall authorize the payment and/or reimbursement of the Authorized Improvement Costs from PID Bond Proceeds. Developer shall submit for approval to the City a Certificate for Payment Form, no more frequently than monthly, unless otherwise

requested by City, for Authorized Improvement Costs, including a completed segment, of an Authorized Improvement. The Certificate for Payment Form is set forth in **Exhibit F**, and may be modified by the Indenture or, if applicable, a PID Reimbursement Agreement. The City shall review the sufficiency of each Certificate for Payment Form submission ("Payment Certificate") to ensure compliance with this Agreement, compliance with City Regulations, compliance with any applicable Indenture and compliance with the SAP. The City shall review each Payment Certificate within ten (10) business days of receipt thereof and upon approval, certify the Payment Certificate pursuant to the provisions of the Indenture or, if applicable, a PID Reimbursement Agreement, and payment shall be made to such contractor or Developer as applicable, pursuant to the terms of the Indenture or, if applicable, a PID Reimbursement Agreement, provided that funds are available under the Indenture or such PID Reimbursement Agreement. If a Payment Certificate is approved only in part, the City shall specify the extent to which the Payment Certificate is approved and payment for such partially approved Payment Certificate shall be made to the contractor or Developer as applicable, pursuant to the terms of the Indenture or, if applicable, a PID Reimbursement Agreement, provided that funds are available under the Indenture or PID Reimbursement Agreement. To the extent that a portion of the Payment Certificate was not initially approved by the City and/or its representative(s) and such denied costs are reimbursable costs pursuant Chapter 372 and/or this Agreement, the Developer will have the opportunity to correct the disallowed portion of the Payment Certificate for the initially denied eligible costs pursuant directions provided by the City and/or their representative(s) and resubmit such revised Payment Certificate for such initially denied costs for reimbursement and/or payment.

(b) The City shall reimburse the Authorized Improvement Costs as set forth in the SAP, from funds available pursuant to the applicable Indenture or PID Reimbursement Agreement.

(c) Reimbursement to the Developer and the City for administrative costs relating to the creation of the PID, the levy of Assessments and issuance of the PID Bonds may be distributed at closing of the applicable series of PID Bonds pursuant to a Closing Disbursement Request, in the form attached as **Exhibit G**.

3.6 City Participation.

(a) Impact Fees. For the duration of this Agreement, impact fees shall be assessed at the rates established and put into place by the City at the time of the Effective Date hereof.

(b) Parkland Dedication and Development. In exchange for the dedication of the parkland and open spaces reflected in the Concept Plan approved by the City, Developer shall be deemed to have satisfied all applicable parkland/open space dedication requirements. Developer and the City shall execute a separate Capital Improvements Agreement to establish the terms and conditions related to Development of the Regional Park Improvements. As indicated in Section 4.5, below, Developer's participation in the Capital Improvements Agreement shall be at least one million dollars ($1,000,000.00 USD) toward the Regional Park Improvements. The City shall contribute at least two million dollars ($2,000,000.00) toward the Regional Park Improvements, which shall generally be made in accordance with the Regional Park Concept Plan attached hereto

as Exhibit J. It is intended that Developer and City will co-operate in the design of the Regional Park, however, City will have all final decision-making authority on the design of the Regional Park.

(c) Tree Mitigation. Developer shall be obligated to comply with Chapter 5 in the City of Seguin Code of Ordinances, regarding Tree Protection and Mitigation,

(d) Streetlights. All streetlights shall be located within public access easements and shall be selected, installed, operated, and maintained as public streetlights, and included as part of street design as an Authorized Improvement.

(e) Root Barriers. Trees included on the City approved street tree list do not require root barriers.

(f) Administration Selection. City shall be responsible for selecting the underwriter for all PID Bonds issued pursuant to the PID, and for selecting the PID Administrator, unless either responsibility is granted to Developer or others agreed to in writing by the Parties.

3.7 Payee Information. With respect to any and every type of payment/remittance due to be paid at any time by the City to Developer after the Effective Date under this Agreement, the name and delivery address of the payee for such payment shall be:

Bitterblue Development
11 Lynn Batts Lane, Suite 100
San Antonio, 78218

Developer may change the name of the payee and/or address set forth above by delivering written notice to the City designating a new payee and/or address or through an assignment of Developer's rights hereunder.

SECTION 4
TAX INCREMENT REINVESTMENT ZONE

4.1 Creation. The Parties herein agree that it is their intention to create a TIRZ that will cover the boundary of the Property and Project therein and will be fully or partially utilized to offset costs associated with the Authorized Improvements that are constructed pursuant to the PID and terms of this Agreement. City will be responsible for initiating the TIRZ creation process and for producing the Project and Financing Plan. The City shall create an account (the "Walnut Springs TIRZ Account") within the TIRZ Fund in order to identify and allocate the tax increment to the residential property within the TIRZ.

4.2 TIRZ Reimbursement Agreement. In the event that the TIRZ is created as intended, it is understood that administration of such shall require a TIRZ reimbursement agreement separate from this Agreement that is intended to address those terms discussed herein.

4.3 TIRZ Improvements & City Contribution. In the event that the TIRZ is created for the Project, it is herein agreed that it is the intention of the City to contribute forty percent (40%)

of eligible incremental ad valorem tax revenue generated from the TIRZ, which will be utilized in part to offset Assessments through a TIRZ credit.

4.4 Flow of City Tax Increment. The City Tax Increment collected within the TIRZ shall be deposited as follows:

(a) First, to pay the City administrative costs relating to the TIRZ, including any reasonable third-party administrative costs;

(b) Second, to offset Assessments on a parcel by parcel basis;

(c) Third, to reimburse Developer for eligible project cost expenditures as listed in the approved Project and Financing Plan;

(d) Fourth, to be used in any other manner authorized by the City and as allowed pursuant to the TIRZ Act; and

(e) Fifth, after all eligible project cost expenditures listed in the approved Project and Financing Plan have been paid, any excess shall be returned to the general fund of the City.

4.5 Dedication for Public Park. In addition to the public infrastructure improvements generally listed in this section, it is herein agreed that it is intended that the Developer will dedicate land and make monetary and/or in-kind contributions totaling at least $1,000,000.00, not including the cost of the land, toward the establishment and creation of a public park within the boundaries of the Project, which contributions will be eligible for reimbursement through the TIRZ, to the extent permitted by the TIRZ Act and Texas law.

4.6 Dedication of the Site for Fire Station.

(a) In addition to those listed above, it is the intention of the Parties that Developer will dedicate to the City a Fire Station Site for the design and construction of a Fire Station for the benefit of the City and community. Developer will be responsible for completing the site work necessary to prepare the Fire Station Site for vertical or horizontal improvements to commence. After conveyance of the Fire Station Site, Developer shall be responsible for up to a maximum of $1,000,000.00 contribution of funding or in-kind contributions, solely for use in the design, construction, and completion of the Fire Station and Fire Station Site. All contributions of land, cost of site work described herein, and money or value of in-kind contributions shall be eligible for reimbursement through the TIRZ, to the extent permitted by the TIRZ Act and Texas law.

(b) It is intended that Developer and City will co-operate in the design of the Fire Station and its location so that such building is compatible with the homes being built within the Property, however, City will have all final decision-making authority on the design of the Fire Station.

4.7 Construction Administration. It is the intention of the Parties that Developer will manage all construction of the items listed in this section and under the proposed TIRZ development agreement if it is more cost effective for those projects to be managed as private projects instead of public projects.

4.8 TIRZ Board. In the event that the TIRZ is created as intended, the City shall be responsible for appointing the members of the TIRZ Board, to be created along with the creation of the TIRZ.

SECTION 5
IMPACT FEES

5.1 Purpose. The City herein agrees that it intends to provide a mechanism for the reinvestment of Roadway Facilities Impact Fees generated by the Project and collected by the City. The Parties agree that such Roadway Facilities Impact Fees shall be used toward the Developer's construction of the Huber Road Project.

5.2 Roadway Facilities Impact Fees.

(a) Developer, in constructing or causing to construct the Huber Road Project may request from the City a draw of funds from the roadway Capital Improvement Fund for the amount required to construct such Huber Road Project improvements or three million dollars ($3,000,000.00 USD), whichever is less. Such request may be for funds to be dispersed for eligible expenses i) prior to commencement of construction, ii) during the construction, iii) or following the completion of all or a portion of the Huber Road Project as a reimbursement.

(b) Developer request for a draw from the Capital Improvement Fund for the Huber Road Project prior to, or during, construction for improvements not yet constructed must be made in writing to the City, specifying the amount of funds requested with accompanying drawings, exhibits, and estimated costs for those improvements intended to be constructed. Subject to availability of the amount requested, City shall have thirty (30) days following a complete submittal of a draw request to transfer available funds to Developer. In the event the amount of funding requested is not available in the Capital Improvement Fund, City will notify Developer in writing, and agrees to transfer to the Developer the amount that is available. Developer shall utilize transferred funds only for the expenses identified in the corresponding draw request.

(c) In the event Developer requests a reimbursement from the Capital Improvement Fund for costs incurred in constructing the Huber Road Project, Developer must submit such request in writing to the City, specifying the amount of funds requested with accompanying drawings, exhibits, and evidence of actual costs incurred for those improvements. The reimbursement from the Capital Improvement Fund by City is subject to availability and is the sole source of payment and/or reimbursement to Developer for construction of the Huber Road Project. Total reimbursement to Developer from the Capital Improvement Fund will not exceed the cost to construct the Huber Road Project, less any funds already received from the City prior

to or during construction as a draw on the Capital Improvement Fund. Developer is eligible for reimbursement of Huber Road Project costs only in accordance with this Agreement.

(d) Developer and City herein agree that the Parties may negotiate and execute a separate Capital Improvements Agreement to establish the terms and conditions related to development of and payment for the Huber Road Project and related improvements.

SECTION 6
AUTHORIZED IMPROVEMENTS & DEVELOPMENT STANDARDS

6.1 Authorized Improvements.

(a) The Authorized Improvements and Authorized Improvements Cost are subject to change as may be agreed upon by Developer and the City and, if changed, shall be updated by Developer and the City consistent with the Service and Assessment Plan and the PID Act. All approved final plats within the Project shall include those Authorized Improvements located therein. The Budgeted Cost, Authorized Improvements Cost, and the timetable for installation of the Authorized Improvements will be reviewed at least annually by the Parties in an annual update of the Service and Assessment Plan adopted and approved by the City.

(b) Proposed Authorized Improvements. The following specific public improvements have been contemplated by the Parties for inclusion in the Project and may be constructed and are intended to be included by Developer as eligible Authorized Improvements, along with any other improvements authorized by the PID Act, subject to additional discussions with the City and adherence to statutory eligibility requirements:

(1) Enhanced community monumentation;

(2) Upgraded community landscaping;

(3) Internal streets;

(4) Internal utilities;

(5) Drainage and detention improvements; and

(6) Parking pods

6.2 Construction, Ownership, and Transfer of Authorized Improvements.

(a) Contract Specifications. Developer's engineers shall prepare, or cause the preparation of, and provide the City with contract specifications and necessary related documents for the Authorized Improvements.

(b) Construction Standards, Inspections and Fees. Except as otherwise expressly set forth in this Agreement, the Authorized Improvements and all other Public

Infrastructure required for the development of the Property shall be constructed and inspected, and all applicable fees, including but not limited to Impact Fees (subject to the terms hereof and any applicable credits), permit fees, and inspection fees, shall be paid by Developer, in accordance with this Agreement, the City Regulations, and any other governing body or entity with jurisdiction over the Authorized Improvements, except that in the event of a conflict, this Agreement shall rule.

(c) Construction Agreements. The Developer shall provide all construction documents for the Authorized Improvements and shall acknowledge that the City has no obligations and liabilities thereunder. The Developer shall include a provision in the construction documents for the Authorized Improvements that the contractor will indemnify the City and its officers and employees against any costs or liabilities thereunder, as follows:

> **CITY OF SEGUIN, TEXAS ("CITY") SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR ANY LOSS, DAMAGE, INJURY OF ANY KIND OR CHARTER, INCLUDING DEATH, TO ANY PERSON, ENTITY, OR PROPERTY ARISING OUT OF OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF CONTRACTOR UNDER THIS CONTRACT, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS CONTRACT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT CITY FROM THE CONSEQUENCES OF THE CONTRACTOR'S ACTS, INCLUDING NEGLIGENCE, WHETHER SUCH ACTS OR NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE. CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, OR SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, OR SUPPLIES OBTAINED IN FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT**

(d) Construction Oversight. The City agrees to allow Developer to request to carry out and perform oversight for any Authorized Improvements, and that in such event,

Developer will be compensated at least four percent (4%) of eligible costs, which include hard costs of Authorized Improvements only, for such services performed.

(e) Ownership. Unless otherwise specifically set forth herein, all of the Authorized Improvements and Public Infrastructure shall be owned, operated and maintained by the City upon acceptance. The Developer shall furnish to the City a preliminary title report for land with respect to the Authorized Improvements, including any related rights-of-way, easements, and open spaces if any, to be acquired and accepted by the City from the Developer and not previously dedicated or otherwise conveyed to the City, for review and approval at least 30 calendar days prior to the transfer of title of a Authorized Improvement to the City. The City Representative shall approve the preliminary title report unless it reveals a matter which, in the reasonable judgment of the City, could materially affect the City's use and enjoyment of any part of the property or easement covered by the preliminary title report. In the exercise of reasonable judgment, the City Representative shall review the title report using their normal and customary review process for an easement and shall only object to matters in the title report if they would do so for any other easement granted directly to the City or to be obtained by the City for a public improvement. In the event the City Representative does not approve the preliminary title report, the City shall not be obligated to accept title to the Authorized Improvement until the Developer has cured such objections to title to the satisfaction of the City Representative.

(f) City's Role. The City shall have no responsibility for the cost of planning, design, engineering construction, furnishing/equipping the Authorized Improvements (before, during or after construction) except to the extent of the reimbursement the Authorized Improvements Project Costs as set forth in this Agreement. The Developer will not hold the City responsible for any costs of the Authorized Improvements other than the reimbursements described in this Agreement. The City shall have no liability for any claims that may arise out of design or construction of the Authorized Improvements, and the Developer shall cause all of its contractors, architects, engineers, and consultants to agree in writing that they will look solely to the Developer, not to the City, for payment of all costs and valid claims associated with construction of the Authorized Improvements.

(g) Public Bidding. This Agreement and construction of the Authorized Improvements are anticipated to be exempt from competitive bidding pursuant to Texas Local Government Code, Sections 252.022(a)(9) and 252.022(a)(11), based upon current cost estimates. In the event that the actual costs for the Authorized Improvements do not meet the parameters for exemption from the competitive bid requirement, then either competitive bidding or alternative delivery methods may be utilized as allowed by law.

(h) Construction Trailer. Until the Property is fully developed, Developer shall be entitled to locate a construction trailer within the Property without being required to plat the location. However, Developer recognizes that placement of a Construction Trailer on the Property requires a permit from the City prior to placement.

6.3 Operation and Maintenance.

(a) Unless otherwise specifically provided herein, upon inspection, approval, and acceptance of the Authorized Improvements or any portion thereof, the City shall maintain

and operate the accepted Public Infrastructure and provide retail water and sewer service to the Property.

(b) Upon final inspection, approval, and acceptance of the roadway Authorized Improvements required under this Agreement or any portion thereof, the City shall maintain and operate the public roadways and related drainage improvements.

(c) It is the Developer's intent that the HOA shall maintain and operate any open spaces, nature trails, any amenity center, common areas, landscaping, detention ponds, screening walls, parking pods, development signage, and any other common improvements or appurtenances within the Property that are not maintained or operated by the City, including without limitation such facilities financed by the PID.

6.4 Proposed Authorized Improvements. The following certain Authorized Improvements have been contemplated by the Parties for inclusion in the Project and may be constructed and included by Developer as eligible Authorized Improvements, subject to additional discussions with the City and adherence to statutory eligibility requirements:

(a) Enhanced community monumentation;

(b) Upgraded community landscaping;

(c) Internal streets;

(d) Internal utilities, including water and sewer;

(e) Drainage and detention facilities;

(f) Parking pods (the Parties shall construe this improvement in such a way that it is maintained by the Developer or HOA);

(g) Parks, trails, and open space

6.5 Water Facilities.

(a) Water Service. The City will utilize its existing and future water capacity to timely provide water supply for the full development of the Property. "Timely" shall mean that water is available so that (i) construction of the Authorized Improvements, (ii) construction of improvements on the Lots and Parcels, and (iii) issuance of Certificates of Occupancy, are not unreasonably delayed because of the unavailability of water.

(b) Developer's General Obligations. Developer is responsible for design, installation, and construction of the Water Improvements. Developer shall be responsible for the dedication of any easements lying within the Property necessary for Water Improvements (the size and extent of each such easement or other property interest to be reasonably approved by the City).

(c) Timing of Developer's Obligations. Except as otherwise provided herein, Developer shall complete in a good and workmanlike manner all Water Improvements necessary to serve each phase of the Project.

6.6 Wastewater Facilities.

(a) Wastewater Service. The City will utilize its existing and future wastewater conveyance and treatment facilities to timely provide wastewater treatment service for the full development of the Property. "Timely" shall mean that wastewater treatment service is available so that (i) construction of the Authorized Improvements, (ii) construction of improvements on the Lots and Parcels, and (iii) issuance of Certificates of Occupancy, are not unreasonably delayed because of the unavailability of wastewater treatment service.

(b) Developer's General Obligations. Developer is responsible for the design, installation, and construction of all Wastewater Improvements. Developer shall be responsible for the dedication of any easements lying within the Property necessary for Wastewater Improvements (the size and extent of each such easement or other property interest to be that required by the City).

(c) Timing of Developer's Obligations. Except as otherwise provided herein, Developer or an affiliate of Developer shall complete in a good and workmanlike manner, and in compliance with all applicable laws and ordinances and all applicable regulations, rules, policies, standards, and orders of any governmental entity with jurisdiction over same and compliant with applicable TCEQ design criteria, all Wastewater Improvements necessary to serve the Property.

6.7 Water and Wastewater Services.

(a) Wastewater. Except as otherwise provided herein, upon completion of the Wastewater Improvements the Property shall be provided with retail wastewater treatment service by the City. The City shall provide adequate and continuous retail wastewater treatment service to the Property on the same terms and provisions as other in-City properties.

(b) Water. Except as otherwise provided herein, upon completion of all the Water Improvements necessary to serve the Property in phases as the Property is developed, the Property shall be provided with retail water service by the City. The City shall provide adequate and continuous retail water service to the Property on the same terms and provisions as other in-City properties.

(c) Maintenance and Operation. Upon acceptance by the City of all or any the water and wastewater facilities described herein, and upon expiration of the applicable maintenance bond period as provided in the City Regulations, the City shall, at its sole cost, operate or cause to be operated said water and wastewater facilities serving the Project and use them to provide service to all customers within the Project at the same rates as similar projects located within the City as otherwise required by State law. Upon acceptance by the City, the City shall at all times maintain said water and wastewater facilities, or cause the same to be maintained, in good condition and working order in compliance with all applicable laws and ordinances and all

applicable regulations, rules, policies, standards, and orders of any governmental entity with jurisdiction over same.

6.8 Roadway Facilities and Drainage Improvements.

(a) Developer's General Obligations. Developer is responsible for the design, installation, and construction of all roadway facilities required to within the Property. The design of all roadway improvements shall be approved by the City in advance of the construction of same.

(b) Timing of General Obligations. Prior to the recordation of any final plat for any phase of the Property, Developer shall complete, in a good and workmanlike manner, construction of all roadway facilities and related improvements necessary to serve such phase in accordance with construction plans approved by the City. Thereafter, the roads shall be conveyed to the City for ownership and maintenance. The Parties acknowledge that the Property may be developed in phases, and the preliminary plats to be submitted to the City for approval may likewise be phased. If deemed necessary, Developer may submit a replat or amending plat for all or any portions of the Property in accordance with applicable law.

(c) Drainage/Detention Infrastructure. Developer shall have full responsibility for designing, installing, and constructing the drainage/detention infrastructure that will serve the Property. Prior to the recordation of the final plat for any phase of development, Developer shall complete in a good and workmanlike manner construction of the drainage/detention improvements necessary to serve such phase. Upon inspection and approval, HOA shall maintain the detention for the Property.

6.9 Eminent Domain.

(a) The Parties acknowledge that the Developer may be required to acquire certain off-site property rights and interests to allow certain Authorized Improvements to be constructed to serve the Property. Developer shall use commercially reasonable efforts to obtain all third-party rights-of-way, consents, or easements, if any, needed to construct the off-site improvements. If, however, Developer is unable to obtain such third-party rights-of-way, consents, or easements within ninety (90) days of commencing efforts to obtain the needed rights-of-way, consents, or easements, then, as a condition to requiring the Developer to construct off-site improvements, the City, after making necessary findings including, but not limited to, the reasonableness of the efforts made by Developer and the necessity of acquiring the off-site property rights through eminent domain procedures, shall take reasonable steps to secure same through the use of the City's power of eminent domain. If the City takes such eminent domain action, the Developer shall fund all reasonable and necessary legal proceeding/litigation costs, compensation awards by courts or negotiated amounts for the condemned property interest, attorneys' fees, appraiser and expert witness fees, interest, court costs, mediation fees, deposition costs, copy charges, courier fees, postage and taxable court costs (collectively, "Eminent Domain Fees") paid or incurred by the City in the exercise of its eminent domain powers that for any reason are not funded by Assessments and shall escrow with a mutually agreed upon escrow agent the City's reasonably estimated Eminent Domain Fees both in advance of the initiations of each eminent domain proceeding and as funds are needed by the City. If the escrow fund remains appropriately funded in accordance with this Agreement and in accordance with the City's

discretionary governmental powers, the City will use all reasonable efforts to expedite such condemnation procedures so that the Authorized Improvements can be constructed as soon as reasonably practicable. If the Eminent Domain Fees exceed the amount of funds escrowed in accordance with this paragraph, Developer shall deposit additional funds as requested by the City into the escrow account within thirty (30) days after written Notice from the City. Any unused escrow funds will be refunded to Developer within thirty (30) days after any condemnation award or settlement becomes final and non-appealable. Nothing in this subsection is intended to constitute a delegation of the police powers or governmental authority of the City, and the City reserves the right, at all times, to control its proceedings in eminent domain.

(b) To the extent Eminent Domain Fees are paid by the Developer, the Developer may be reimbursed any or all eligible Eminent Domain Fees from Assessments.

SECTION 7
ADDITIONAL OBLIGATIONS AND AGREEMENTS

7.1 Administration of Construction of Public Infrastructure. Subject to the terms of this Agreement, Developer shall be solely responsible for the construction of all Public Infrastructure. The public on-site and off-site infrastructure and all other related improvements will be considered a City project and the City will own all such Public Infrastructure upon completion and acceptance.

7.2 Private Improvements. Developer, at Developer's cost, will (or will cause) the design, construction, maintenance, and operation of the Private Improvements described herein and identified in **Exhibit C**.

7.3 Mandatory Homeowners Association. Developer will create the HOA and shall establish bylaws, rules, regulations, and restrictive covenants to assure the HOA performs and accomplishes the duties and purposes required to be performed and accomplished by the HOA pursuant to this Agreement. The owner of each Lot shall be required to be a member of the HOA, which HOA shall levy and collect from homeowners' annual fees in an amount calculated to maintain the Private Improvements described in Section 7.2, right-of-way irrigation systems, detention ponds, parking pods, raised medians and other right-of-way landscaping, and screening walls within the Project. Common areas, including, but not limited to, all landscaped entrances to the residential portion of the Property and right-of-way landscaping and signage, shall be maintained solely by the HOA. Maintenance of public rights-of-way by the HOA shall comply with City Regulations and shall be subject to oversight by the City.

7.4 Marketing.

(a) Developer shall have the right to place a sales trailer within the Property complete with gravel drive and parking upon the Effective Date of this Agreement and may keep the sales trailer until Developer determines such temporary sales trailer is no longer needed.

7.5 Conflicts. To the extent permissible by law, in the event of any direct conflict between this Agreement and any other ordinance, rule, regulation, standard, policy, order, guideline, or other City adopted or City enforced requirement, including the City Regulations, whether existing on the Effective Date or thereafter adopted, this Agreement, including its exhibits, as applicable, shall control.

7.6 Compliance with City Regulations. Development and use of the Property, including, without limitation, the construction, installation, maintenance, repair, and replacement of all buildings and all other improvements and facilities of any kind whatsoever on and within the Property, shall be in compliance with City Regulations unless expressly stated to the contrary in this Agreement. City Regulations shall apply to the development and use of the Property unless expressly set forth to the contrary in this Agreement. It is expressly understood, and the Parties agree, that City Regulations applicable to the Property and its use and development include but are not limited to City Code and UDC provisions, ordinances, design standards, uniform codes, zoning regulations not affected by this Agreement, and other policies duly adopted by the City.

7.7 Public Infrastructure, Generally. Except as otherwise expressly provided for in this Agreement, Developer shall provide all Public Infrastructure necessary to serve the Project, including streets, utilities, drainage, sidewalks, trails, street lighting, and street signage, and all other required improvements, at no cost to the City except as expressly provided in this Agreement or the PID Reimbursement Agreement. Developer shall cause the installation of the Public Infrastructure within all applicable time frames in accordance with the City Regulations unless otherwise established in this Agreement. Developer shall provide engineering studies, plan/profile sheets, and other construction documents at the time of platting as required by City Regulations and as required by this Agreement. Such plans shall be approved by the City's engineer or his or her agent prior to approval of a final plat. Construction of any portion of the Public Infrastructure shall not be initiated until a pre-construction conference with a City representative has been held regarding the proposed construction and the City has issued a written notice to proceed. No final plat may be recorded in the Real Property Records until construction of all Public Infrastructure shown thereon shall have been constructed and thereafter inspected, approved, and accepted by the City, or construction bonds have been secured for such improvements as allowed under City Code.

7.8 Maintenance Bonds. For each construction contract for any part of the Public Infrastructure, Developer, or Developer's contractor, must execute a maintenance bond in accordance with applicable City Regulations that guarantees the costs of any repairs that may become necessary to any part of the construction work performed in connection with the Public Infrastructure, arising from defective workmanship or materials used therein, for a full period of two (2) years from the date of final acceptance of the Public Infrastructure constructed under such contract.

7.9 Inspections, Acceptance of Public Infrastructure, and Developer's Remedy.

(a) Inspections, Generally. The City shall have the right to inspect, at any time, the construction of all Public Infrastructure necessary to support the Project, including without limitation water, wastewater/sanitary sewer, drainage, roads, streets, alleys, park facilities,

electrical, and streetlights and signs. The City's inspections and/or approvals shall not release Developer from its responsibility to construct, or cause the construction of, adequate Authorized Improvements and Public Infrastructure in accordance with approved engineering plans, construction plans, and other approved plans related to development of the Property. Notwithstanding any provision of this Agreement, it shall not be a breach or violation of the Agreement if the City withholds building permits, certificates of occupancy or City utility services as to any portion of the Project until Developer has met its obligations to provide for required Public Infrastructure necessary to serve such portion according to the approved engineering plans and City Regulations and until such Public Infrastructure is operational and has been dedicated to and accepted by the City. Acceptance by the City shall not be unreasonably withheld, conditioned, or delayed.

(b) Acceptance; Ownership. From and after the inspection and acceptance by the City of the Public Infrastructure and any other dedications required under this Agreement, such improvements and dedications shall be owned by the City. Acceptance of Public Infrastructure by the City shall be evidenced in a writing issued by the City Manager or his designee.

(c) Approval of Plats/Plans. Approval by the City, the City's engineer, or other City employee or representative, of any plans, designs, or specifications submitted by Developer pursuant to this Agreement or pursuant to applicable City Regulations shall not constitute or be deemed to be a release of the responsibility and liability of Developer, his engineer, employees, officers, or agents for the accuracy and competency of their design and specifications. Further, any such approvals shall not be deemed to be an assumption of such responsibility and liability by the City for any defect in the design and specifications prepared by Developer or Developer's engineer, or engineer's officers, agents, servants or employees, it being the intent of the parties that approval by the City's engineer signifies the City's approval on only the general design concept of the improvements to be constructed. In accordance with Chapter 245, all development related permits issued for the Project, including the Preliminary Plat, shall remain valid for a period of at least two (2) years and shall not thereafter expire so long as progress has been made toward completion of the Project.

7.10 Record Keeping/Audit.

Developer shall maintain records that clearly memorialize revenues and expenditures incurred in relation to the Project and under this Development Agreement. If requested by the City Manager, or their designee, Developer may be required to send the supporting documentation to support expenditures made hereunder.

Additionally, the City shall have the right to audit the books and records related to the Development Agreement throughout the development of the Project and for two (2) years after substantial completion. The City shall notify the Developer in advance in writing of its intent to audit in order to allow the Developer adequate time to make such books and records available. Review of such books and records shall be conducted during regular business hours at a location agreed upon by the Parties.

7.11 Insurance. Developer or its contractor(s) shall acquire and maintain, during the period of time when any of the Public Infrastructure is under construction (and until the full and

final completion of the Public Infrastructure and acceptance thereof by the City): (a) workers compensation insurance in the amount required by law; and (b) commercial general liability insurance including personal injury liability, premises operations liability, and contractual liability, covering, but not limited to, the liability assumed under any indemnification provisions of this Agreement, with limits of liability for bodily injury, death and property damage of not less than $1,000,000.00. Such insurance shall also cover any and all claims which might arise out of the Public Infrastructure construction contracts, whether by Developer, a contractor, subcontractor, material man, or otherwise. Coverage must be on a "per occurrence" basis. All such insurance shall: (i) be issued by a carrier which is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas; and (ii) name the City as an additional insured and contain a waiver of subrogation endorsement in favor of the City. Upon the execution of Public Infrastructure construction contracts, Developer shall provide to the City upon request certificates of insurance evidencing such insurance coverage together with the declaration of such policies, along with the endorsement naming the City as an additional insured. Each such policy shall provide that, at least 30 days prior to the cancellation, non-renewal, or modification of the same, the City shall receive written notice of such cancellation, non-renewal, or modification.

7.12 INDEMNIFICATION and HOLD HARMLESS. DEVELOPER, INCLUDING ITS RESPECTIVE SUCCESSORS AND ASSIGNS, HEREBY COVENANT AND AGREE TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY THE CITY AND ITS OFFICIALS, OFFICERS, AGENTS, REPRESENTATIVES, SERVANTS AND EMPLOYEES (COLLECTIVELY, THE "RELEASED PARTIES"), FROM AND AGAINST ALL THIRD-PARTY CLAIMS, SUITS, JUDGMENTS, DAMAGES, AND DEMANDS AGAINST THE CITY OR ANY OF THE RELEASED PARTIES, WHETHER REAL OR ASSERTED INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEY'S FEES, RELATED EXPENSES, EXPERT WITNESS FEES, CONSULTANT FEES, AND OTHER COSTS (TOGETHER, "CLAIMS"), ARISING OUT OF THE NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF DEVELOPER, INCLUDING THE NEGLIGENCE OF ITS RESPECTIVE EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, MATERIALMEN, AND/OR AGENTS, IN CONNECTION WITH THE DESIGN OR CONSTRUCTION OF ANY PUBLIC INFRASTRUCTURE, STRUCTURES, OR OTHER FACILITIES OR IMPROVEMENTS THAT ARE REQUIRED OR PERMITTED UNDER THIS AGREEMENT; **AND IT IS EXPRESSLY UNDERSTOOD THAT SUCH CLAIMS SHALL, EXCEPT AS MODIFIED BELOW, INCLUDE CLAIMS EVEN IF CAUSED BY THE CITY'S OWN CONCURRENT NEGLIGENCE SUBJECT TO THE TERMS OF THIS SECTION**. **DEVELOPER SHALL NOT, HOWEVER, BE REQUIRED TO INDEMNIFY THE CITY AGAINST CLAIMS CAUSED BY THE CITY'S SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.** IF THE CITY INCURS CLAIMS THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE OF DEVELOPER AND THE CITY, DEVELOPER'S INDEMNITY OBLIGATION WILL BE LIMITED TO A FRACTION OF THE TOTAL CLAIMS EQUIVALENT TO DEVELOPER'S OWN PERCENTAGE OF RESPONSIBILITY. DEVELOPER, INCLUDING ITS RESPECTIVE SUCCESSORS AND ASSIGNS, FURTHER COVENANTS AND AGREES TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY, THE CITY AGAINST ANY AND ALL CLAIMS BY ANY PERSON CLAIMING AN OWNERSHIP INTEREST IN THE PROPERTY PRIOR TO THE EFFECTIVE DATE WHO HAS NOT SIGNED THIS AGREEMENT IF SUCH CLAIMS RELATE IN ANY

MANNER OR ARISE IN CONNECTION WITH: (1) THE CITY'S RELIANCE UPON DEVELOPER'S REPRESENTATIONS IN THIS AGREEMENT; (2) THIS AGREEMENT OR OWNERSHIP OF THE PROPERTY; OR (3) THE CITY'S APPROVAL OF ANY TYPE OF DEVELOPMENT APPLICATION OR SUBMISSION WITH RESPECT TO THE PROPERTY. DEVELOPER, INCLUDING ITS RESPECTIVE SUCCESSORS AND ASSIGNS, FURTHER COVENANTS AND AGREES TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY, THE RELEASED PARTIES AGAINST ANY AND ALL CLAIMS BY ANY PERSON CLAIMING THAT ANY PROVISION OR STATEMENT IN THIS AGREEMENT CONFERS OR POTENTIALLY CONFERS ANY BENEFIT OR THING OF VALUE TO OWNER THAT IS INVALID, ILLEGAL, UNLAWFUL OR THAT THE CITY IS NOT LEGALLY PERMITTED TO CONFER TO OWNER UNDER THIS AGREEMENT.

7.13 Status of Parties. At no time shall the City have any control over or charge of Developer's design, construction, or installation of any of the Public Infrastructure, nor the means, methods, techniques, sequences, or procedures utilized for said design, construction or installation. This Agreement does not create a joint enterprise or venture or employment relationship between the City and Developer.

7.14 Vested Rights. Except for matters related to the PID, PID Bonds, Assessments, and the TIRZ, this Agreement shall constitute a "permit" (as defined in Chapter 245) that is deemed filed with the City on the Effective Date.

7.15 Legislative Discretion. The City shall use its best efforts to initiate and approve all necessary documents and ordinances required to effectuate this Agreement including, but not limited to, the creation of the PID, the levying of Assessments, and issuance of bonds. Except as otherwise permitted by law, nothing contained in this Agreement shall be construed as creating a contractual obligation that controls, waives, or supplants the City Council's legislative discretion or functions.

7.16 Anti-Boycott Verification. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

7.17 Iran, Sudan, and Foreign Terrorist Organizations. The Developer represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company 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/sudan-list.pdf,
https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or
https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and excludes the Developer and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, 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.

7.18 Petroleum. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 of the Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement.

7.19 Firearms. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 of the Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

SECTION 8
EVENTS OF DEFAULT; REMEDIES

8.1 Events of Default. No Party shall be in default under this Agreement until Notice of the alleged failure of such Party to perform has been given in writing (which Notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time to be determined based on the nature of the alleged failure, but in no event more than thirty (30) days, or any longer time period to the extent expressly stated in this Agreement as relates to a specific failure to perform) after written notice of the alleged failure has been given. Notwithstanding the foregoing, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. Notwithstanding the foregoing, however, a Party shall be in default of its obligation to make any payment required under this Agreement if such payment is not made within twenty (20) business days after it is due.

8.2 Remedies. IF A PARTY IS IN DEFAULT, THE AGGRIEVED PARTY MAY, AT ITS OPTION AND WITHOUT PREJUDICE TO ANY OTHER RIGHT OR REMEDY UNDER THIS AGREEMENT, SEEK ANY RELIEF AVAILABLE AT LAW OR IN EQUITY, INCLUDING, BUT NOT LIMITED TO, AN ACTION UNDER THE UNIFORM DECLARATORY JUDGMENT ACT, SPECIFIC PERFORMANCE, MANDAMUS, AND

INJUNCTIVE RELIEF. NOTWITHSTANDING THE FOREGOING, HOWEVER, NO DEFAULT UNDER THIS AGREEMENT SHALL:

(a) Entitle the aggrieved Party to terminate this Agreement without first providing the non-aggrieved Party an opportunity to cure as provided for in 8.1;

(b) Entitle the aggrieved Party to suspend performance under this Agreement unless the portion of the Property for which performance is suspended is the subject to the default (for example, the City shall not be entitled to suspend its performance with regard to the development of "Tract X" on the grounds that Developer is in default with respect to "Tract Y").

8.3 Attorney Fees. If any Party hereto is the prevailing Party in any legal proceedings against the other brought under or with relation to this Agreement, such prevailing Party shall additionally be entitled to recover court costs and reasonable attorney's fees from the non-prevailing Party to such proceedings.

SECTION 9
ASSIGNMENT; ENCUMBRANCE; AMENDMENT

9.1 Assignment.

(a) Developer has the right (from time to time, without the consent of the City, but upon written notice to the City) to assign all or any part, of Developer's right, title, and interest under this Agreement, to any person or entity that is controlled by or under common control of Developer or its owners or affiliates. Each assignment shall be in writing executed by Developer and the assignee and shall obligate the assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. A copy of each assignment shall be provided to all Continuing Parties as set forth in Section 9.4 hereof. City shall not be bound by any assignment of this Agreement unless and until City has received a fully signed copy of the assignment. Developer shall maintain written records of all assignments made by Developer to, and, upon written request from the City, shall provide a copy of such records to the requesting person or entity. Notwithstanding anything to the contrary above, City shall be obligated to recognize and be obligated to no more than one entity or person that is the "Developer" as a party to this Agreement.

(b) The obligations, requirements, or covenants to develop the Property subject to this Agreement shall be freely assignable, in whole or in part, to any affiliate or related entity of Developer or any Continuing Party or any lien holder on the Property without the prior written consent of the City. Except as otherwise provided in this paragraph, the obligations, requirements or covenants to the development of the Property shall not be assigned, in whole or in part, by Developer or any Continuing Party to a non-affiliate or non-related entity of Developer or the Continuing Party without the prior written consent of the City Manager, subject to the advice and written consent of the Mayor, which consent shall not be unreasonably withheld or delayed if the assignee demonstrates financial ability to perform. An assignee shall be considered a "Party" for the purposes of this Agreement. Each assignment shall be in writing executed by Developer, or the Continuing Party, and the assignee and shall obligate the assignee to be bound by this

Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. No assignment by Developer, or the Continuing Party, shall release Developer, or the Continuing Party, from any liability that resulted from an act or omission by Developer, or the Continuing Party, that occurred prior to the effective date of the assignment unless the City approves the release in writing. Developer, or the Continuing Party, shall maintain written records of all assignments made by Developer, or the Continuing Party, to assignees, including a copy of each executed assignment and, upon written request from any Party or assignee, shall provide a copy of such records to the requesting person or entity, and this obligation shall survive the assigning Party's sale, assignment, transfer, or other conveyance of any interest in this Agreement or the Property. Notwithstanding the foregoing, no assignment of this Agreement or any rights of or receivables due Developer, or the Continuing Party, under this Agreement or any other agreement relating to the PID may be made by Developer, or the Continuing Party, to any party or entity for the purpose of or relating to the issuance of bonds or other obligations.

9.2 Assignees as Parties. An assignee authorized in accordance with this Agreement and for which notice of assignment has been provided in accordance herewith shall be considered a "Party" for the purposes of this Agreement. With the exception of: (a) the City, (b) an End User, (c) a purchaser of a Fully Developed and Improved Lot, any person or entity upon becoming an owner of land within the PID or upon obtaining an ownership interest in any part of the Property shall be deemed to be a "Developer" and have all of the rights and obligations of Developer as set forth in this Agreement and all related documents to the extent of said ownership or ownership interest.

9.3 Third Party Beneficiaries. Except as otherwise provided herein and except for an authorized Continuing Party, this Agreement inures to the benefit of, and may only be enforced by, the Parties, including an authorized assignee of Developer. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

9.4 Notice of Assignment. Subject to Section 9.1 and Section 9.2 of this Agreement, the following requirements shall apply in the event that Developer sells, assigns, transfers, or otherwise conveys the Property or any part thereof and/or any of its rights or benefits under this Agreement: (i) Developer must provide written notice to the City to the extent required under Section 9.1 or Section 9.2 at least 15 business days in advance of any such sale, assignment, transfer, or other conveyance; (ii) said notice must describe the extent to which any rights or benefits under this Agreement will be sold, assigned, transferred, or otherwise conveyed; (iii) said notice must state the name, mailing address, telephone contact information, and, if known, email address, of the person(s) that will acquire any rights or benefits as a result of any such sale, assignment, transfer or other conveyance; and (iv) said notice must be signed by a duly authorized person representing Developer and a duly authorized representative of the person that will acquire any rights or benefits as a result of the sale, assignment, transfer or other conveyance.

9.5 Amendment. This Agreement may be amended only upon written amendment approved by the City Council and executed by the City and the Developer. In the event the Developer sells any portion of the Property, Developer may, but is not required to, assign to such

purchaser the right to amend this Agreement as to such purchased Property. In the absence of assignment of such right to a purchaser, such purchaser's signature is not required to amend this Agreement.

SECTION 10
RECORDATION AND ESTOPPEL CERTIFICATES

10.1 Binding Obligations. This Agreement and all amendments thereto and assignments hereof shall be recorded in the Real Property Records. This Agreement binds and constitutes a covenant running with the Property and, upon the Effective Date, is binding upon Developer and the City, and forms a part of any other requirements for development within the Property. This Agreement, when recorded, shall be binding upon the Parties and their successors, and assigns as permitted by this Agreement and upon the Property.

10.2 Estoppel Certificates. From time to time, upon written request of Developer or any future owner, and upon the payment to the City of a $100.00 fee plus all reasonable costs incurred by the City in providing the certificate described in this section, the City Manager, or his/her designee will, in his/her official capacity and to his/her reasonable knowledge and belief, execute a written estoppel certificate identifying any obligations of an owner under this Agreement that are in default.

SECTION 11
GENERAL PROVISIONS

11.1 Term.

11.2 The term of this Agreement shall be fifteen (15) years after the Effective Date (the "Term"). Upon expiration of the Term, the City shall have no obligations under this Agreement except for maintaining and operating the PID in accordance with the SAP and any Indenture.

11.3 Notwithstanding the provisions of (a) above, Developer shall have the right to terminate this Agreement in the event within six (6) months following the Effective Date the City fails: (i) to approve a preliminary plat of the Property consistent with the Concept Plan, (ii) to enter into a PID Reimbursement Agreement with Developer, or (iii) to create or agree to the creation of the TIRZ contemplated herein.

11.4 Recitals. The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) reflect the final intent of the Parties regarding the subject matter of this Agreement; and (d) are fully incorporated into this Agreement for all purposes. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this

Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

11.5 Acknowledgments. In negotiating and entering into this Agreement, the Parties respectively acknowledge and understand that:

(a) Developer's obligations hereunder are primarily for the benefit of the Property;

(b) The improvements to be constructed and the open space dedications and donations of real property that Developer is obligated to set aside and/or dedicate under this Agreement will benefit the Project by positively contributing to the enhanced nature thereof, increasing property values within the Project, and encouraging investment in and the ultimate development of the Project;

(c) Developer's consent and acceptance of this Agreement is not an exaction or a concession demanded by the City, but is an undertaking of Developer's voluntary design to ensure consistency, quality, and adequate public improvements that will benefit the Property;

(d) The Determination of Rough Proportionality as set forth in **Exhibit C** is correct and accurate, and Developer does not dispute any of the determinations, statements, or other information contained therein;

(e) The Authorized Improvements will benefit the City and promote state and local economic development, stimulate business and commercial activity in the City for the development and diversification of the economy of the state, promote the development and expansion of commerce in the state, and reduce unemployment or underemployment in the state;

(f) Nothing contained in this Agreement shall be construed as creating or intended to create a contractual obligation that controls, waives, or supplants the City Council's legislative discretion or functions with respect to any matters not specifically addressed in this Agreement;

(g) To the extent permitted under Section 395.023, Texas Local Government Code, Developer shall be entitled to Impact Fee Credits against roadway Impact Fees for Capital Improvement Costs incurred in connection with Huber Road shown on the City's CIP, master thoroughfare plan, or comparable planning document.

11.6 Notices. Any notice, required or permitted by this Agreement ("Notice") to be given by e-mail if provided below and by certified mail, postage prepaid, addressed as follows:

To the City:	City of Seguin, Texas Attn: Steve Parker 205 N. River St. Seguin, TX 78156 sparker@seguintexas.gov
With copies to:	City of Seguin, City Attorney Attn: Mark Kennedy 205 N. River St. Seguin, TX 78156 mkennedy@seguintexas.gov Norton Rose Fulbright US, LLP Attn: Stephanie Leibe 98 San Jacinto Boulevard, Ste. 1100 Austin, Texas 78701 stephanie.leibe@nortonrosefulbright.com
To Developer:	2021 FII Walnut GP, LLC Attn: Scott Teeter 11 Lynn Batts Lane, Ste. 100 San Antonio, TX 78218 scott@bitterblue.com
With a copy to:	Ortiz McKnight PLLC Attn: James McKnight 112 E. Pecan, Ste. 1350 San Antonio, TX 78205 jmcknight@ortizmcknight.com

Any Party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other Party.

11.7 Interpretation. Each Party has been actively involved in negotiating this Agreement. Accordingly, a rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will be interpreted fairly and

reasonably and neither more strongly for nor against any Party, regardless of which Party originally drafted the provision.

11.8 Time. In this Agreement, time is of the essence and compliance with the times for performance herein is required.

11.9 Authority and Enforceability. The City represents and warrants that this Agreement has been approved by official action by the City Council of the City in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been duly authorized to do so. Developer represents and warrants that this Agreement has been approved by appropriate action of Developer, and that each individual executing this Agreement on behalf of Developer has been duly authorized to do so. Each Party respectively acknowledges and agrees that this Agreement is binding upon such Party and is enforceable against such Party, in accordance with its terms and conditions.

11.10 Limited Waiver of Immunity. The parties are entering into this Agreement in reliance upon its enforceability. Consequently, the City unconditionally and irrevocably waives all claims of sovereign and governmental immunity which it may have (including, but not limited to, immunity from suit and immunity to liability) to the extent, but only to the extent, that a waiver is necessary to enforce specific performance of this Agreement (including all of the remedies provided under this Agreement) and to give full effect to the intent of the parties under this Agreement. Notwithstanding the foregoing, the waiver contained herein shall not waive any immunities that the City may have with respect to claims of injury to persons or property, which claims shall be subject to all of their respective immunities and to the provisions of the Texas Tort Claims Act. Further, the waiver of immunity herein is not enforceable by any party not a party to this Agreement, or any party that may be construed to be a third-party beneficiary to this Agreement. The City acknowledges that this is an agreement for the providing of goods and services.

11.11 Severability. This Agreement shall not be modified or amended except in writing signed by the Parties. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this Agreement; (b) the unenforceable provision shall, to the extent possible and upon mutual agreement of the parties, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

11.12 Applicable Law; Venue. This Agreement is entered into pursuant to and is to be construed and enforced in accordance with, the laws of the State of Texas, and all obligations of the Parties are performable in Guadalupe County. Exclusive venue for any action related to, arising out of, or brought in connection with this Agreement shall be in the Guadalupe County District Court.

11.13 Non-Waiver. Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all

provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

11.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

11.15 Force Majeure. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to force majeure, to perform its obligations under this Agreement, then the obligations affected by the force majeure shall be temporarily suspended. Within three (3) business days after the occurrence of a force majeure, the Party claiming the right to temporarily suspend its performance, shall give Notice to all the Parties, including a detailed explanation of the force majeure and a description of the action that will be taken to remedy the force majeure and resume full performance at the earliest possible time. The term "force majeure" shall include events or circumstances that are not within the reasonable control of the Party whose performance is suspended and that could not have been avoided by such Party with the good faith exercise of good faith, due diligence, and reasonable care. A Party that has claimed the right to temporarily suspend its performance shall provide written reports to the other Party at least once every week detailing: (i) the extent to which the force majeure event or circumstance continue to prevent the Party's performance; (ii) all of the measures being employed to regain the ability to perform; and (iii) the projected date upon which the Party will be able to resume performance.

11.16 Disclosure of Developer Litigation. City acknowledges that Developer has disclosed to it any relevant litigation it currently is engaged in, and that the existence of such litigation in its current form will not prevent the City from proceeding with the development program contemplated hereunder, including the City's levying of assessments.

11.17 Complete Agreement. This Agreement embodies the entire Agreement between the Parties and cannot be varied or terminated except as set forth in this Agreement, or by written agreement of the Parties expressly amending the terms of this Agreement. By entering into this Agreement, any previous agreements or understanding between the Parties relating to the same subject matter are null and void.

11.18 Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is hereby acknowledged.

11.19 Exhibits. The following exhibits are attached to this Agreement and are incorporated herein for all purposes:

Exhibit A	Metes and Bounds Description of the Property
Exhibit B	Concept Plan
Exhibit C	Authorized Improvements and Costs
Exhibit D	Home Buyer Disclosure Program

Exhibit E	Lien Declaration
Exhibit F	Form of Payment Certificate
Exhibit G	Form of Closing Disbursement Request
Exhibit H	Huber Road Project
Exhibit J	Regional Park Improvements and Regional Park Concept Plan

[SIGNATURES PAGES AND EXHIBITS FOLLOW;
REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

EXECUTED BY THE PARTIES TO BE EFFECTIVE ON THE EFFECTIVE DATE:

CITY OF SEGUIN

By:_____
Name: _____
Title: _____
Date: _____

ATTEST

_____
Name:
Title: City Secretary

APPROVED AS TO FORM

_____
Name:
Title: City Attorney

Date: _____

STATE OF TEXAS §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on this _____ day of _____, 2025, by _____, _____ of the City of Seguin, Texas, on behalf of said City.

_____
Notary Public, State of Texas

[SEAL]

DEVELOPER:

2021 FII Walnut, LP
a Texas limited partnership

By: **2021 FII Walnut GP, LLC**
a Texas limited liability company

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me, on the ___ day of _____, 2025, by _____, _____ of 2021 FII Walnut GP, LLC, a Texas limited liability company, on behalf of said company.

_____
Notary Public in and for the State of Texas

[SEAL]

Exhibit A
Description of Property

Exhibit B
Concept Plan of the Property

Exhibit C
Authorized Improvements and Costs

Exhibit D
Home Buyer Disclosure Program

Exhibit E
Lien Declaration

Exhibit F
Form of Payment Certificate

Reference is made to that certain Indenture of Trust by and between the City and the Trustee dated as of _____ (the "Indenture") relating to the "City of Seguin, Texas, Special Assessment Revenue Bonds, Series 20__ (Walnut Springs Public Improvement District Project)" (the "Bonds"). Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the Indenture. The Developer (or to the person designated by the Developer) requests payment from:

_____ the Public Improvement Account of the Project Fund

from _____, N.A., (the "Trustee"), in the amount of _____ ($_____) for labor, materials, fees, and/or other general costs related to the creation, acquisition, or construction of certain Authorized Improvements providing a special benefit to property within the Walnut Springs Public Improvement District.

In connection with the above referenced payment, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Certificate for Payment Form on behalf of the Developer and is knowledgeable as to the matters set forth herein.

2. The itemized payment requested for the below referenced Authorized Improvements has not been the subject of any prior payment request submitted for the same work to the City or, if previously requested, no disbursement was made with respect thereto.

3. The itemized amounts listed for the Authorized Improvements below is a true and accurate representation of the Authorized Improvements associated with the creation, acquisition, or construction of said Authorized Improvements and such costs (i) are in compliance with the Development Agreement, and (ii) are consistent with and within the cost identified for such Authorized Improvements as set forth in the Service and Assessment Plan.

4. The Developer is in compliance with the terms and provisions of the Development Agreement, the Indenture, and the Service and Assessment Plan.

5. The Developer has timely paid all ad valorem taxes (including any taxes required to be paid during a protest) and Annual Installments of Public Assessments it owes or an entity the Developer controls owes, located in the Walnut Springs Public Improvement District, and has no outstanding delinquencies for such Assessments.

6. All conditions set forth in the Indenture and the Development Agreement for the payment hereby requested have been satisfied.

7. The work with respect to Authorized Improvements referenced below (or its completed segment) has been completed, and the City has inspected such Authorized Improvements (or its completed segment).

8. The Developer agrees to cooperate with the City in conducting its review of the requested payment and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

Payments requested are as follows:

Payee / Description of Authorized Improvement	**Total Cost Authorized Improvement**	**Budgeted Cost of Authorized Improvement**	**Amount requested be paid from the Authorized Improvement Account**

Attached hereto are receipts, purchase orders, change orders, and similar instruments which support and validate the above requested payments. Also attached hereto are **"bills paid" affidavits and supporting documentation** in the standard form for City construction projects. Pursuant to the Development Agreement, after receiving this payment request, the City has inspected the Authorized Improvements (or completed segment) and confirmed that said work has been completed in accordance with approved plans and all applicable governmental laws, rules, and regulations.

Payments requested hereunder shall be made as directed below:

a. X amount to Person or Account Y for Z goods or services.

b. Payment instructions

I hereby declare that the above representations and warranties are true and correct.

By: _____

APPROVAL OF REQUEST

The City is in receipt of the attached Certificate for Payment, acknowledges the Certificate for Payment, and finds the Certificate for Payment to be in order. After reviewing the Certificate for Payment, the City approves the Certificate for Payment and authorizes and directs payment of the amounts set forth below by Trustee from the Project Fund to the Developer or other person designated by the Developer as listed and directed on such Certificate for Payment. The City's approval of the Certificate for Payment shall not have the effect of estopping or preventing the City from asserting claims under the Development Agreement, the PID Reimbursement Agreement, the Indenture, the Service and Assessment Plan, or any other agreement between the parties or that there is a defect in the Authorized Improvements.

Amount of Payment Certificate Request	Amount to be Paid by Trustee from Improvement Account
$_____	$_____

CITY OF SEGUIN, TEXAS

By:_____

Name: _____

Title: _____

Date: _____

Exhibit G
Form of Closing Disbursement Request

The undersigned is an agent for 2021 FII WALNUT, LP, a Texas corporation, (the "Developer") and requests payment from:

[the Cost of Issuance Account of the Project Fund][the Improvement Account of the Project Fund] from _____, (the "Trustee") in the amount of _____DOLLARS ($_____) for costs incurred in the establishment, administration, and operation of the Walnut Springs Public Improvement District (the "District"), as follows:

Closing Costs Description	Cost	PID Allocated Cost
TOTAL		

In connection to the above referenced payments, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Closing Disbursement Request on behalf of the Developer and is knowledgeable as to the matters set forth herein.

2. The payment requested for the above referenced establishment, administration, and operation of the District at the time of the delivery of the Bonds has not been the subject of any prior payment request submitted to the City.

3. The amount listed for the below itemized costs is a true and accurate representation of the Actual Costs incurred by Developer with the establishment of the District at the time of the delivery of the Bonds, and such costs are in compliance with and within the costs as set forth in the Service and Assessment Plan.

4. The Developer is in compliance with the terms and provisions of the Development Agreement, the Indenture, and the Service and Assessment Plan.

5. All conditions set forth in the Indenture for the payment hereby requested have been satisfied.

6. The Developer agrees to cooperate with the City in conducting its review of the requested payment and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

Payments requested hereunder shall be made as directed below:

c. X amount to Person or Account Y for Z goods or services.

d. Payment instructions

I hereby declare that the above representations and warranties are true and correct.

By: _____

APPROVAL OF REQUEST

The City is in receipt of the attached Closing Disbursement Request, acknowledges the Closing Disbursement Request, and finds the Closing Disbursement Request to be in order. After reviewing the Closing Disbursement Request, the City approves the Closing Disbursement Request to the extent set forth below and authorizes and directs payment by Trustee in such amounts and from the accounts listed below, to the Developer or other person designated by the Developer herein.

Exhibit H
Huber Road Project

Exhibit J
Regional Park Improvements and Regional Park Concept Plan