



City of Hutto

Agenda

Special Called City Council Meeting Monday, August 17, 2020 at 6:00 PM City Council Chambers

In accordance with the Texas Open Meetings Act this meeting agenda is posted for public information, continuously, for at least 72 hours prior to the scheduled time of the meeting on the bulletin board located on the exterior wall of the City Hall building at 500 West Live Oak, Hutto, Texas. This meeting agenda is also accessible via the Internet at www.huttotx.gov

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|------|------------------------------------|------|
| 1. | CALL SESSION TO ORDER | Page |
| 2. | ROLL CALL | |
| 3. | CITY COUNCIL COMMENETS | |
| 3.1. | General Comments from City Council | |
| 4. | PUBLIC COMMENT | |

Any citizen wishing to speak during public comment may do so after completing the required registration form. The purpose of this item is to allow the residents of Hutto and other interested persons an opportunity to address the City Council on agenda issues and on non-agenda issues that are a matter of the jurisdiction of the City Council (i.e., City policy or legislative issues). Non-agenda issues regarding daily operational or administrative matters should be first dealt with at the administrative level by calling City Hall at (512) 759-4839 during business hours. Each person providing public comment will be limited to 3 minutes.

Toll Free Call In: 1-800-717-4201 Conference ID: 242-3288

Once you are in the conference call press *5 to signal that you are requesting to speak during public comment. *[Note: The Texas Open Meetings Act, Texas Government Code, Chapter 551, prohibits the City Council from fully discussing, debating, or considering subjects for which public notice has not been given on the agenda. Issues that cannot be referred to the City Staff for action may be placed on the agenda of a future City Council Session.]*

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| 5. | ORDINANCES | |
| 5.1. | Consideration and possible action to reconsider the second reading of an Ordinance of the City Council of the City of Hutto, Texas, postponing the May 2, 2020 general election for municipal officers until November 3, 2020; and providing for other related matters; and providing an effective date. | 3 - 5 |

[Hutto Postpone Election Ordinance Final 8 11 20](#)

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| 6. | RESOLUTIONS | |
| 6.1. | Consideration and possible action to reconsider a Resolution of the City of Hutto, Texas, amending Resolution R-20-01-23-8C, ordering an election to be held on November 3, 2020, for the purpose of electing City Council Members for Place 1 and Place 4; designating election day precincts and polling places; providing for early voting and election day voting; providing for performance of required administrative duties; making provisions for the conduct of such election; certifying provision of required accessible | 6 - 13 |

voting systems; and providing for other matters related to such election.

[Resolution Calling General Election](#)

- 6.2. Consideration and possible action to reconsider Resolution No. R-2020-069 for a Development Agreement amendment between the City of Hutto and Jerry Wayne Roznovak and Nadine Carole Johnson, for a property being approximately 105 acres, also known as Durango Farms. Durango Farms.

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[Redline - Amended and Restated Durango DA 8.13 Version vs 8.17](#)

[Hutto Durango Farms Amended and Restated Final 8.17.20](#)

7. EXECUTIVE SESSION

The City Council for the City of Hutto reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above as authorized by the Texas Government Code Sections 551.071 [Litigation/Consultation with Attorney], 551.072 [Deliberations regarding real property], 551.073 [Deliberations regarding gifts and donations], 551.074 [Deliberations regarding personnel matters] or 551.076 [Deliberations regarding deployment/implementation of security personnel or devices] and 551.087 [Deliberations regarding Economic Development negotiations].

8. ADJOURNMENT

9. CERTIFICATION

I certify that this notice of the **August 17, 2020** Special City Council meeting was posted on the City of Hutto website and the City Hall bulletin board of the City of Hutto on **August 14, 2020 at 3:30 P.M.**



Holly Nagy

The City of Hutto is committed to comply with the Americans Disability Act. The Hutto City Council Chamber is wheelchair accessible. Request for reasonable special accommodations must be made 48 hours prior to the meeting. Please email the City Secretary's office at City.Secretary@huttox.gov or call (512) 759-4033 for assistance.

ORDINANCE NO. O-2020-030

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUTTO, TEXAS, POSTPONING THE MAY 2, 2020 GENERAL ELECTION FOR MUNICIPAL OFFICERS UNTIL NOVEMBER 3, 2020; AND PROVIDING FOR OTHER RELATED MATTERS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, a general election has been previously ordered to be held on May 2, 2020 for the purposes of electing Council Member Places 1 and 4 for the City of Hutto, Texas; and

WHEREAS, on March 13, 2020 the Governor of the State of Texas declared a state of disaster for all counties in the State of Texas arising out of the COVID-19 pandemic; and

WHEREAS, in response to the COVID-19 pandemic on March 18, 2020 the Governor of Texas did issue a proclamation authorizing all political subdivisions that would otherwise hold general election on May 2, 2020 to move their general election for 2020 only to the November 3, 2020 uniform election date; and

WHEREAS, it is necessary to postpone the May 2 general election for municipal officers to November 3, 2020 in order to minimize gatherings of persons at candidate forums and polling places in order to maintain social distancing and reduce the possibility of transmission of the COVID-19 virus; and

WHEREAS, Williamson County Elections Administrator Chris Davis notified the City that Williamson County Elections Department would not be conducting a May 2, 2020 election for any political subdivision and asked that the City postpone the May 2, 2020 election until the Nov. 3, 2020 election; and

WHEREAS, in accordance with the Texas Secretary of State's Office Elections Advisory No. 2020-12, candidate filings, for the May 2, 2020, election will remain valid for the election to be held on November 3, 2020; the filing period related to the May 2, 2020, election will not be re-opened for the November 3, 2020, election; all applications for a ballot by mail ("ABBM") for voters that are voting by mail due to being over the age of 65 or due to a qualifying disability will still be valid for the November 3, 2020, election; and any ABBM for voters who submitted ABBMs based on expected absence from the county will not be valid for the November 3, 2020, election; and

WHEREAS, on July 27, 2020, the Governor of Texas issued a Proclamation extending the early voting period to allow Texans greater flexibility to cast their ballots in the November 3rd election, while at the same time protecting themselves and others from COVID-19; and

WHEREAS, the City Council now finds it reasonable and necessary to adopt this Ordinance to postpone the May 2, 2020, election to November 3, 2020, and make other necessary changes in accordance with the Governor's Proclamations and Texas Secretary of State's Office Elections Advisory No. 2020-12.

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

SECTION I.

That the findings set forth, above, are incorporated into the body of this Ordinance as if fully set forth, herein.

SECTION II.

Pursuant to the authority granted by the Proclamation of the Governor of the State of Texas issued on March 18, 2020 the May 2, 2020 general election for Council Members for Place 1 and Place 4 for the City of Hutto, Texas is moved to November 3, 2020.

SECTION III.

All candidate filings for the May 2, 2020 general election remain valid for the November 3, 2020 uniform election date and the candidate filing period will not be reopened for the November 3, 2020 election date.

SECTION IV.

All absentee ballot by mail (ABBM) applications for voters that are voting by mail due to being over the age of 65 or due to disability will remain valid for the November 3, 2020 election but no ABBM application based on an expected absence from the county on May 2, 2020 shall be valid for the November 3 elections.

SECTION V.

The voter registration deadline for the November 3 elections shall be October 5, 2020. The deadline to submit applications for ballot by mail (ABBM) shall be October 23, 2020. Early voting for the November 3 elections shall be conducted during the period from October 13 to October 30, 2020.

SECTION VI.

On or before August 17, 2020, the City Council shall make such other and further revisions to the orders for the May 2 elections as are necessary to conform to the schedule for the November 3 election date.

SECTION VIII. Severability Clause

If any subsection, sentence, clause, phrase, or word of this Ordinance or any application of it to any person, structure, gathering, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision will not affect the validity of the remaining portions or applications of this Ordinance and those provisions or applications shall remain in full force and effect.

SECTION IX. Publication Clause

The City Secretary of the City of Hutto is hereby authorized and directed to publish the caption of this ordinance in the manner and for the length of time prescribed by law.

SECTION X. Repealing Clause

All ordinances and resolutions and parts thereof in conflict herewith are hereby expressly repealed insofar as they conflict.

SECTION XI. Open Meetings Clause

The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this ordinance was adopted was posted and that such meeting was open to the public as required by law at all times during which this ordinance and the subject hereof were discussed, considered, and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

SECTION XII. Effective Date

This ordinance shall take effect immediately upon its passage allowed by law.

THE CITY OF HUTTO, TEXAS

Doug Gaul, Mayor

ATTEST:

Holly Nagy, City Secretary

(SEAL)

READ and **APPROVED** on first reading on the **17th** day of **August**, 2020, at a meeting of the City Council of the City of Hutto, Texas at which a quorum was present and for which due notice was given pursuant to Section 551.001, *et. seq.*, of the Texas Government Code.

READ and **APPROVED** on second reading on the **20th** day of **August**, 2020, at a meeting of the City Council of the City of Hutto, Texas at which a quorum was present and for which due notice was given pursuant to Section 551.001, *et. seq.*, of the Texas Government Code.

RESOLUTION NO. R-2020-076

A RESOLUTION OF THE CITY OF HUTTO, TEXAS, AMENDING RESOLUTION R-20-01-23-8C, ORDERING AN ELECTION TO BE HELD ON NOVEMBER 3, 2020, FOR THE PURPOSE OF ELECTING CITY COUNCIL MEMBERS FOR PLACE 1 AND PLACE 4; DESIGNATING ELECTION DAY PRECINCTS AND POLLING PLACES; PROVIDING FOR EARLY VOTING AND ELECTION DAY VOTING; PROVIDING FOR PERFORMANCE OF REQUIRED ADMINISTRATIVE DUTIES; MAKING PROVISIONS FOR THE CONDUCT OF SUCH ELECTION; CERTIFYING PROVISION OF REQUIRED ACCESSIBLE VOTING SYSTEMS; AND PROVIDING FOR OTHER MATTERS RELATED TO SUCH ELECTION.

THE STATE OF TEXAS

COUNTY OF WILLIAMSON

CITY OF HUTTO

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KNOW ALL BY THESE PRESENTS:

WHEREAS, pursuant to the provisions of the Texas Election Code (as amended), other related statutes, and its Home Rule Charter, the City Council of the City of Hutto, Texas, is authorized to order a General Election for the purpose of electing City Council members to Place 1 and Place 4; and

WHEREAS, on March 13, 2020, the Governor of Texas certified that the novel coronavirus (COVID-19) poses an imminent threat of disaster, and under the authority vested in the Governor by Section 418.014 of the Texas Government Code, declared a state of disaster for all counties in Texas; and

WHEREAS, pursuant to Section 418.016 of the Texas Government Code, the Governor has the express authority to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions orders, or rules would in any way prevent hinder, or delay necessary action in coping with a disaster; and

WHEREAS, on March 18, 2020, the Governor of Texas issued a Proclamation pursuant to his powers under Texas law to allow political subdivisions that would otherwise hold elections on May 2, 2020, to move their general and special elections for 2020 to the next uniform election date, occurring on November 3, 2020, without otherwise adjusting the term of office; and

WHEREAS, in accordance with the Governor's Proclamation, on March 30, 2020, the City Council of the City of Hutto, Texas adopted Ordinance No. O-2020-003 postponing the May 2, 2020 General Election for Municipal Officers until November 3, 2020; and

WHEREAS, on May 7, 2020, the City Council of the City of Hutto, Texas adopted

Ordinance No. O-2020-013 postponing the May 2, 2020 General Election to November 3, 2020 as provided by Ordinance No. O-2020-03; and

WHEREAS, in accordance with the Texas Secretary of State's Office Elections Advisory No. 2020-12, candidate filings, for the May 2, 2020, election will remain valid for the election to be held on November 3, 2020; the filing period related to the May 2, 2020, election will not be re-opened for the November 3, 2020, election; all applications for a ballot by mail ("ABBM") for voters that are voting by mail due to being over the age of 65 or due to a qualifying disability will still be valid for the November 3, 2020, election; and any ABBM for voters who submitted ABBMs based on expected absence from the county will not be valid for the November 3, 2020, election; and

WHEREAS, on July 27, 2020, the Governor of Texas issued a Proclamation extending the early voting period to allow Texans greater flexibility to cast their ballots in the November 3rd election, while at the same time protecting themselves and others from COVID-19; and

WHEREAS, the City Council now finds it reasonable and necessary to adopt this Resolution to modify the election order for the November 3, 2020, General Election to update the dates for early voting, and make other necessary changes in accordance with the Governor's Proclamations and Texas Secretary of State's Office Elections Advisory No. 2020-12.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HUTTO, TEXAS, THAT:

SECTION 1. **ORDER OF ELECTION**

The City Council of the City of Hutto hereby amends its call and order for a general election to be held in the City of Hutto for the purpose of electing City Council members to Place 1 and Place 4.

The candidate filings, as have been submitted for the election will remain valid for the election to be held on November 3, 2020 and the filing period will not be re-opened. All election records, including the candidate filings shall continue to be retained and preserved as required by law.

The "Order of Election," notice is additionally attached hereto as "Attachment A" and is incorporated fully herein.

SECTION 2 **ELECTION DAY**

Election Officers. The City Council hereby appoints the Williamson County Elections Administrator and the Hutto City Secretary as the Election Day Officers for the City of Hutto.

Election Date. A General Election shall be held jointly, with participating Williamson County political entities/subdivisions, on Tuesday, November 3, 2020.

Precincts and Polling Places. The City hereby accepts the election precincts and polling places designated by the Williamson County Elections Administrator, and approved by the Williamson County Commissioners Court, for such early voting. The designated polling places for said Election Day shall be open from 7:00 am until 7:00 pm. Said locations are listed in Exhibit “A” of this resolution.

Election Judges. The Williamson County Elections Administrator will conduct said election for the City pursuant to the terms of an approved Election Services Contract. The City Council hereby appoints, for the term of such election, the presiding election judge(s) and alternate election judge(s) as being those designated by the Williamson County Elections Administrator and approved by the Williamson County Commissioners Court.

The Williamson County Elections Administrator is hereby authorized to appoint the number of election clerks necessary to assist in the proper conduct of the election. The appointment of such clerks shall include a person fluent in the Spanish language to serve as a clerk to render oral aid in the Spanish language to any voter desiring such aid at the polls on the day of the election.

SECTION 3 **EARLY VOTING**

Early Voting Clerk. The City Council hereby appoints the Williamson County Elections Administrator as the Early Voting Clerk for the City of Hutto. The Williamson County Elections Administrator shall appoint the presiding judge(s) for each of said Early Voting and Temporary polling places and is hereby further authorized to appoint additional election clerks (not less than two and not more than six) to assist in conducting said election.

Times for Early Voting. During the period in which early voting is required or permitted by law, that being October 13, 2020 through October 30, 2020, the dates and times designated for early voting by personal appearance shall be designated by the Williamson County Elections Administrator.

Places for Early Voting. Early voting shall be conducted by personal appearance at the early voting polling places designated by the Williamson County Elections Administrator and approved by the Williamson County Commissioners Court.

After the Williamson County Elections Administrator finalizes contracts with all of the potential political entities/subdivisions wanting to participate in the November 3, 2020 election a Notice of Election will be posted in Spanish and English by the City Secretary listing the approved early voting locations, dates and times on the bulletin board used for posting notices of City Council meetings, and same shall be posted not later than the twenty-first (21st) day before the date of the election and shall remain posted through Election Day.

Applications for Ballots by Mail: All applications for ballot by mail (ABBM)s that were filed for the May 2, 2020 election that are marked annual will apply for the November 3, 2020 election. All single use ABBMs that were submitted for reasons of age

or disability that were filed for the May 2, 2020 election will apply for the November 3, 2020 election. The Early Voting Clerk's mailing address to which ballot applications and ballots to be voted by mail may be sent is as follows:

Early Voting Clerk
Williamson County Elections Office
Post Office Box 209
Georgetown, TX 78627-0209

Any ABBM that was filed for the May 2, 2020 election date based on expected absence from the county will not be valid for the November 3, 2020 election. The deadline to file an ABBM for the November 3, 2020 election is October 23, 2020.

SECTION 4 **EARLY VOTING BALLOT BOARD**

An Early Voting Ballot Board is hereby created to process early voting results, and the City hereby appoints the presiding judge of the Early Voting Ballot Board as appointed by the Williamson County Elections Administrator. Such presiding judge shall appoint not less than two (2) other qualified members to serve on such Board.

SECTION 5 **CUSTODIAN OF ELECTION RECORDS**

Pursuant to the Texas Election Code and the applicable Election Services Contract, the Williamson County Elections Administrator shall be appointed as custodian of voted ballots and the City Secretary of the City of Hutto will serve as the custodian of all other election records.

SECTION 6 **CANDIDATE FILING PERIOD**

In accordance with Section 143.007 of the Texas Election Code the deadline for filing an application for a place on the ballot, with the City Secretary, is hereby designated as 5:00 p.m. Friday, February 14, 2020. The filing period related to the May 2, 2020, election will not be re-opened for the November 3, 2020, election.

SECTION 7 **VOTERS**

All resident, qualified voters of the City shall be entitled to vote at the elections.

SECTION 8 **NOTICE**

Posting. Notice of this election, including a Spanish translation hereof, shall be posted on the bulletin board used for posting notices of City Council meetings, and same shall be posted not later than the twenty-first (21st) day prior to the date of the election and shall remain posted through Election Day.

Publication. Notice of this election, including a Spanish translation hereof, shall be published at least once in a newspaper of general circulation in the City, the publication

to appear not earlier than the thirtieth (30th) day before or not later than the tenth (10th) day prior to the date of the election and shall remain posted through Election Day.

Authorization to City Secretary. The City Secretary is hereby authorized and directed to publish and post the required notices in the manner and for the time periods required by law.

SECTION 9 **VOTING DEVICES**

Pursuant to the Election Code and the applicable Election Services Contract, the Williamson County Elections Administrator may use electronic voting systems and corresponding voting devices and equipment in conducting the election. Said election equipment has been certified by the Texas Secretary of State.

The Williamson County Elections Administrator will utilize a central counting station, as provided by Texas Election Code § 127.000 *et seq.*, as amended, on Election Day.

SECTION 10 **CONDUCT ACCORDING TO STATUTES**

In all substantive respects, the elections shall be conducted in accordance with applicable provisions of the Texas Election Code, any other applicable statutes, and the City of Hutto's Home Rule Charter.

SECTION 11 **ELECTION RESULTS**

The Williamson County Elections Administrator shall conduct an unofficial tabulation of results after the closing of the polls. The official canvass, tabulation and declaration of the results of the elections shall be conducted by the City Council at a regular or special council meeting held in accordance with provisions of the Texas Election Code.

SECTION 12 **MISCELLANEOUS**

The provisions of this Resolution are severable, and in case any one or more of the provisions of this Resolution or the application thereof to any person or circumstance should be held to be invalid, unconstitutional, or ineffective as to any person or circumstance, then the remainder of this Resolution nevertheless shall be valid, and the application of any such invalid provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

This Resolution shall be in full force and effect from and after its passage on the date shown below; provided that if any term or provision of this resolution conflicts with, or is inconsistent with, the Texas Elections Code, the Texas Election Code shall govern and control and the Election Officer shall comply with the Texas Election Code

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this

Resolution and the subject matter hereof were discussed, considered and formally acted upon, all in accordance with and as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended, and the Act.

RESOLVED on this the 17th day of **August, 2020**.

CITY OF HUTTO, TEXAS

Doug Gaul, Mayor

ATTEST:

Holly Nagy, City Secretary

Attachment A

**ORDER OF GENERAL ELECTION
CITY OF HUTTO, TEXAS**

An Election is hereby ordered to be held on Saturday, November 3, 2020, for the purpose of electing members to the Hutto City Council for Place 1 and Place 4.

Said election for city officers shall be held at the polling places for the precincts designated by the Williamson County as noted in Exhibit "A", which is made a part hereof for all intents and purposes. The polls at the designated polling places shall be open from 7:00 a.m. to 7:00 p.m. on Tuesday, November 3, 2020.

The City Council appoints the Williamson County Elections Administrator as the Early Voting Clerk for the City of Hutto. The Williamson County Elections Administrator shall appoint the presiding judge(s) for each of said Early Voting and Temporary polling places and is hereby further authorized to appoint additional election clerks (not less than two and not more than six) to assist in conducting said election.

Early voting by personal appearance will be conducted at the locations, dates, and specific times designated by the Williamson County as noted in Exhibit "A".

Applications for ballots by mail shall be mailed to:

Williamson County Elections Administrator
P.O. Box 209 Georgetown, Texas 78627-0209

Applications for ballots by mail must be received no later than 5:00 p.m. on Friday, October 23, 2020.

This Order of Election is issued on the 13th day of August, 2020.

CITY OF HUTTO, TEXAS

Doug Gaul, Mayor

Exhibit A

Voting locations and times will be provided by the Williamson County Elections Administrator.

FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT

This First Amended and Restated Development Agreement ("Agreement") is entered into to be effective as of the ____ day of _____, 2020 (the "Effective Date"), by and between the City of Hutto, Texas (the "City"), a home rule city organized under the laws of the State of Texas, and Jerry Wayne Roznovak and Nadine Carole Johnson (collectively the "Owner"). The City and the Owner are, collectively, the "Parties" to this Agreement.

This Agreement amends, restates, and replaces in full the Development Agreement between the City and the Owner dated October 3, 2019, which remains the Effective Date of the Agreement.

RECITALS

WHEREAS, Owner owns that certain tract of land containing approximately 105.60 acres currently in the City (the "Property") as described and shown on Exhibit A; and

WHEREAS, Owner intends to develop the Property into a high-quality mixed-use development that includes single-family residential, multi-family residential and commercial developments (the "Project"), that will serve present and future residents of the City; and

WHEREAS, the Project is anticipated to add significant property tax base and increased property tax revenues in the City; and

WHEREAS, the Owner has advised the City that one or more agreements with the City would be necessary to defray a portion of the costs to be incurred by the Owner as a consequence of developing and constructing the Project; and

WHEREAS, the City may use its discretion to create a Public Improvement District ("PID") to provide utility, roadway, drainage, parks and related infrastructure to support the Project in a financially feasible manner in accordance with Chapter 372 of the Texas Local Government Code, the City's PID Policy and all other applicable state law; and

WHEREAS, the City and the Owner desire to set forth in this Agreement certain terms and conditions for the planning, design, construction, development, and financing of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I PURPOSE AND INTERPRETATION

1.1 **Objectives.** The Owner is proposing to develop a residential subdivision, including multi-family and commercial, near downtown Hutto. Hutto continues to have a need for quality, residential development that complements the economic and strategic goals of the City. The City believes that the development of the Project will provide needed, high quality housing for existing and future residents.

1.2 **Concept and Structure.** Development of the Property will be substantially similar to the Concept Plan attached hereto as **Exhibit B**. The Owner will be responsible for the development and construction of the Project, except as set forth herein. The City will provide financing and economic incentive agreements that are generally described in Article VI.

1.3 **Interpretation.** In this Agreement, unless a clear contrary intention appears;

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Party includes such Party's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Party in a particular capacity excludes such Party in any other capacity or individually;
- (c) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
- (d) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular article, section or other provision thereof;
- (e) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and
- (f) reference to any constitutional, statutory or regulatory provision means such provision as it exists on the Effective Date and any amendatory provision thereof or supplemental provision thereto.

1.4 **Legal Representation of the Parties.** This Agreement was negotiated by the Parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply.

ARTICLE II DEFINITIONS

2.1 **Definitions.** All capitalized terms used in this Agreement shall have the meanings ascribed to them in this Article II, or as otherwise provided herein.

"**Agreement**" means this Development Agreement by and between the City and the Owner.

"**City**" means the City of Hutto, Texas.

"**City Council**" means the City Council of the City of Hutto.

"**Concept Plan**" means the concept plan attached hereto as Exhibit B, as such concept plan may be modified and changed from time to time as set forth in this Agreement. The Parties acknowledge and agree that the Concept Plan is for illustrative purposes only and is only a general representation of the design.

"**Effective Date**" means the date set forth in the opening paragraph on page 1. "Parties" means the City and the Owner.

"**Owner**" means Jerry Wayne Roznovak and Nadine Carole Johnson, and their successors and assigns that specifically assume the rights and obligations of this Agreement.

"Party" means the City or the Owner.

"Project" means the Project as described in **Article IV**.

"Property" means the real property described and shown on **Exhibit A**.

"Public Improvements" has the meaning ascribed to it in **Section 5.2**

"State" means the State of Texas.

ARTICLE III ANNEXATION and ZONING

3.1 **Annexation.** As of the Effective Date, the Property has been annexed into the City.

3.2 **Chapter 245 Permit.** This Agreement shall constitute the first (Permit) in a series of applications for the purpose of vesting as contemplated in Chapter 245 of the Texas Local Government Code (subject to the exemptions as set forth therein), as authorized by Section 212.172(g) of the Texas Local Government Code. All aesthetic requirements of the zoning district, as outlined in the Unified Development Code or Planned Unit Development, as adopted and amended, shall be provided for in accordance with Article IV, 4.5 and 4.6.

ARTICLE IV THE PROJECT

4.1 **General Description.** The Project will be planned, developed and constructed on the Property by the Owner in phases as determined by Owner in accordance with market conditions and otherwise in accordance with any permits and approvals from any applicable governmental authorities.

4.2 **Development.** The Owner intends to construct improvements to real property and additions to personal property within the Property as contemplated by the Concept Plan. However, the parties agree and acknowledge that the actual construction shall be dictated by the ultimate zoning of the Property, platting of the Property, site development permits issued for the Property, submittal of a Traffic Impact Analysis for the Property and associated fees, and other development permits issued for the Property. The Project will be permitted and constructed in accordance with City ordinances and regulations, except as may be specifically set forth in this Agreement.

4.3 **Owner Additional Contributions to Project.** The Owner agrees to perform or allow the following:

- (a) Pay to the City the amount of **TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00)**, herein defined as the "Owner Contribution", on a pro-rata basis as PID Bonds are requested by Owner and issued by the City, and such payments shall be made within 10 calendar days of receipt of funds of the PID Proceeds from the Trustee, as defined in the PID Financing Agreement. As described herein, "PID Bonds" shall mean bonds issued by the City, for the purposes of funding Public Improvements within the Project. For example, if the total amount of net PID Proceeds is equal to \$8,000,000.00, if Owner were to draw down \$2,000,000.00 of the PID Proceeds, Owner shall pay to the

City \$500,000.00 within 10 calendar days of receipt of funds until Owner has drawn down the full \$8,000,000.00 and paid the full amount of the Owner Contribution. If all PID Proceeds are not drawn down by Owner by December 1, 2022, Owner shall pay whatever outstanding amount of the Owner Contribution remains unpaid. Such payment by Owner shall not release City from its obligation to disburse PID Proceeds.

- (b) As part of the construction of the Project, install (including design and approval) at its expense (including with PID Proceeds) a traffic signal (in compliance with City codes and TXDOT regulations) at the intersection of Mager Lane and FM 1660. If the traffic signal does not meet warrants during construction of the Project, then Owner and City can agree upon a fixed amount for Owner to pay to City at such time, which amount will satisfy Owner's requirement herein, and then City agrees to use such funds to construct the traffic signal at such time as it meets warrants.
- (c) As part of the construction of the Project, install at Owner's expense (including with PID Proceeds) a 12" and 8" waterline extension of the City's existing waterline as shown in the attached **Exhibit C**.
- (d) As part of the construction of the Project, install at Owner's expense (including with PID Proceeds) up graded streetlights within the Project.
- (e) As part of the construction of the Project, install at Owner's expense (including with PID Proceeds) open space, trails, and other amenities as may be finally approved and permitted by the City within the Project;
- (f) To facilitate the Project, at Owner's expense, conduct a Traffic Impact Analysis for the Property and pay any associated fees with conducting such analysis.
- (g) On the later of the final plat of the Project, or 30 days following the first issuance of the PID Bonds, Owner shall dedicate to the City, or to a designee of the City, approximately 3.4 acres of parkland described on Exhibit E attached hereto. Maintenance of the parkland shall be the responsibility of the City or City's designee that the parkland is dedicated to. Owner reserves the right to retain access easements and/or utility easements located within any dedicated parkland. Owner further reserves the right to retain, in order to build necessary infrastructure for the Project, a six-month construction easement, commencing upon the date of dedication.:

4.4 **City Incentives to Project.** The City incentives to the Project shall include only the following

- (a) The Owner may use the Alternative Road and Trench Method for construction of the Project, as shown in the attached Exhibit D, as approved by City Engineer.
- (b) The City may use its discretion to create a Public Improvement District ("PID"), in accordance with the City's PID Policy on the Property, as more fully set forth below in Article VI.

- (c) The City shall facilitate the financing of the Public Improvements, as more fully set forth below in Article VI.
- (d) The Owner shall enter into a license agreement with the City to allow Owner to maintain monument signage, other subdivision entry features, and landscaping in the City right-of-way in accordance with the approved site plan. The license agreement may provide that the license agreement shall be assigned to the homeowners' association for the Project.
- (e) The City agrees to enter into a mutually agreeable license agreement to allow Owner to maintain the detention pond and flood area (as such may be finally approved in the site plan), and to allow the license agreement to be assigned to the homeowners' association for the Project. The license agreement will further provide the City with a right of entry and enforcement to enforce its regulations and requirements with respect to maintaining the detention and flood areas.

4.5 **Building Material Deed Restrictions.** The Owner agrees to execute, on behalf of all properties within the Project, a deed restriction requiring compliance with all building material restrictions outlined in Section 3.3 of the Durango Farms Planned Unit Development, approved in Ordinance O-19-10-17-10C ("PUD") for the Project.

4.6 **Homeowners Association.** The Owner agrees that the Project shall include one or more homeowner's associations. Owner agrees to require the homeowner's association to actively enforce the deed restriction described in Section 4.5 above.

ARTICLE V PUBLIC IMPROVEMENTS

5.1 **General.** The Parties agree that the Project will require extension and improvements to the transportation and utility facilities, and the installation of Public Improvements, to adequately serve and develop the Project. Owner or Owner's contractor will construct all Public Improvements and other infrastructure necessary to serve the Project in accordance with the Unified Development Code, (UDC), City ordinances and regulations, except as set forth herein. City will accept such Public Improvements in accordance with the UDC, City ordinances and regulations.

5.2 **Public Improvements.** The term "Public Improvements" shall mean those certain infrastructure improvements required for the Project as finally approved and permitted, including any improvements or facility together with its associated public site, right-of-way or easement necessary to provide transportation, drainage, public utilities, or similar essential public services and facilities, for which the City will ultimately assume the responsibility for maintenance and operation of ownership, or both. This term also includes the following: drainage facilities, streets and other rights-of-way, potable water systems, reuse water system, sanitary sewage system, survey monuments, illumination including street lights, traffic control signs and traffic signalization, fire hydrants, sidewalks and curb ramps, street name signs, traffic control signs, street pavement markings, and open space improvements.

5.3 **Water and Wastewater.** The City holds the water and wastewater Certificates of Convenience and Necessity (CCN) to provide water and wastewater service to the Property. The City

acknowledges that it has capacity to serve the full development of the Property (based on the Concept Plan) with continuous and adequate water and wastewater service. In the event the City is unable or unwilling at any time to provide continuous and adequate water and wastewater service for the development of the Property contemplated by this Agreement, the City agrees that the Property may obtain water and wastewater service from an alternative provider.

ARTICLE VI ECONOMIC INCENTIVES

6.1 **Public Improvement District.** Upon receipt of a petition to create a PID, the City shall use its best efforts to initiate and approve all necessary documents and ordinances required to effectuate this Agreement, to create the PID, and to levy assessments to finance the costs of all or a portion of the Public Improvements. If the City approves a Service and Assessment Plan ("SAP") providing for the levy of the assessments on the Property, the City will levy special PID assessments against the Property with an Assessment Ordinance based on the approved SAP. The final terms of the PID, SAP, levy, and all other required documents are subject to the approval of both the City and the Owner, if applicable. To the extent that the City is in a non-recourse position on any debt, the City will support the creation of the Public Improvement District (PID) in accordance with the City's PID Policy for the purposes of paying for public infrastructure to support the Project. However, in no way will the City be responsible for the debt of the Owner. The City will reimburse eligible Project Costs as defined in the Texas Local Government Code, Chapter 372, Section 372.003, which are deemed substantially complete by the City Engineer for public improvement infrastructure, with funds received by the City from the initiation of a PID assessment. Such reimbursement shall be outlined in a future Reimbursement Agreement between the Parties to reflect specific reimbursement amounts. Any municipal bonds issued for the PID must comply with the City's PID Policy and are subject to all applicable laws. The City, other than as described in the applicable PID Bond ordinance, is in no way responsible for repayment of debt on such bonds. If the City issues PID bonds, the City is only responsible for payments for costs of Public Improvements from revenues to be generated by the levy and collection of assessments within the PID.

6.2 **Financing and PID Bond Issuance.** In accordance with the PID Policy, the City will consider the issuance of PID Bonds for the purposes of acquiring or constructing authorized Public Improvements within the Project (and including those items set forth in 4.3 hereof.) The Owner will prepare and the City will consider the approval of the PID Financing Agreement ("PFA"). As used herein, "PID Proceeds" shall mean proceeds generated from payment of the PID assessments, or bond proceeds generated from the sale of PID Bonds. The PID Proceeds shall be used to fund construction or acquisition of authorized Public Improvements in accordance with applicable law. The PFA, all conditions of financing, and all other required documents are subject to the approval of both the City and the Owner, as applicable.

6.3 Owner agrees to pay to the City the Owner Contribution as set forth in Section 4.3.

ARTICLE VII INSURANCE, CLAIMS, INDEMNIFICATION, PERFORMANCE, PAYMENT AND MAINTENANCE BONDS

7.1 **Insurance.**

- (a) **General.** General. Owner and all contractors, subcontractors, engineers, and consultants shall carry and maintain throughout the term of this Agreement (except as specifically noted below) the following insurance policies:
- (i) Workers' Compensation and Employers' Liability Insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act and minimum policy limits for employers' liability of \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee. City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund. The insurance required by this subsection shall be in effect commencing not later than the commencement of construction of any portion of the Infrastructure as defined in Paragraph 10.
 - (ii) Automobile Liability Insurance for all owned, non-owned, and hired motor vehicles used, with respect to the Property or the Project in a minimum amount of \$1,000,000, combined single limit.
 - (iii) Commercial General Liability policy with a minimum limit of \$1,000,000 per occurrence for bodily injury and/or property damage, with a minimum aggregate of \$1,000,000 and blanket contractual coverage, independent contractors' coverage and explosion, collapse, and underground (X, C & U) coverage.
 - (iv) For contractors/subcontractors providing professional engineering, architectural or design services under this Agreement, Engineers' Professional Liability Insurance or other errors and omissions insurance coverage for the non-engineer professionals with a minimum limit of \$1,000,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured. The insurance required by this subsection shall be in effect commencing not later than the commencement of submission to City for approval of permits for construction of any phase of the Project. The insurance will be renewed or extended as necessary to remain in force as for claims made for two (2) years after final acceptance of the Project by the City.
 - (v) For work that involves asbestos or any Hazardous Materials or risk of air, water or soil pollution, the following will be in addition to the other insurance required hereunder:
 - a. Asbestos abatement endorsement or pollution coverage to the Commercial General Liability policy with minimum bodily injury and Property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy cannot exclude asbestos or any Hazardous

Materials or pollution and shall provide “occurrence” coverage without a sunset clause.

- b. Pollution coverage in accordance with Title 49 C.F.R. § 171.8 requiring an MCS 90 endorsement with a \$5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy that provides coverage for bodily injury and Property damage arising out of the transportation of asbestos or other Hazardous Materials. The endorsement must, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightning, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.
- (b) The insurance required under this subsection 7.1(a)(v) will only be required for the entity that is actually performing work involving asbestos or any Hazardous Materials or risk of air, water or soil pollution. For example, if Owner’s contractor (instead of Owner) is performing such work, the contractor, not Owner, will be required to carry such insurance. The insurance required by this subsection shall be in effect commencing not later than the commencement of each phase of construction if that phase will include work involving asbestos or any Hazardous Materials or risk of air, water or soil pollution.
- (c) **Certificates of Insurance and Insurance Policy Documents.** Certificates of Insurance will not be accepted as substitutes for copies of Insurance Policy Documents. The term “Insurance Policy Documents” means true and correct copies of the relevant policy of insurance including all declarations, definitions, schedules, endorsements, exclusions, exceptions, riders, waivers, jackets, modifications, notices, descriptions of deductibles and of self-insured retentions and all other instruments and other documents governing insurance coverage under such policy.
- (d) **Special Requirements.** Owner shall not cause or permit any insurance required hereunder to be canceled or lapse during the term of this Amendment. With respect to subsections 11.1(a)(i), (ii) and (iii), insurance coverage is to be written by companies duly authorized to do the business of insurance in the State of Texas at the time the policies are issued and will be written by companies with an A.M. Best rating of A-VII or better or otherwise approved in writing by the City. Additionally, with respect to subsections 11.1(a)(i), (ii) and (iii), all policies will contain a provision in favor of the City waiving subrogation and other rights of recovery against the City, and will be endorsed to provide the City with a 30-day advance notice of cancellation or change in coverage. The City will be an additional insured as its interests may appear on the Commercial General and Automobile Liability policies. All policies will provide primary coverage as applicable, with any insurance maintained by the City being excess and non-contributing. Owner shall submit copies of all insurance policies to the City providing evidence of insurance coverage required by this Amendment on or before the commencement of the Project except that asbestos,

Hazardous Waste, pollution, and professional engineers and other errors and omissions policy documents need not be provided until those covered by such insurance commence work on the Project or as otherwise provided in this Amendment. The production of copies of all policies to be promptly supplemented with delivery to the City of copies of any and all changed or new Insurance Policy Documents. Owner will be responsible for (i) overseeing its contractors with respect to such contractors' obtaining and maintaining the insurance required hereunder and (ii) obtaining and keeping copies of such Insurance Policy Documents evidencing the insurance coverages required hereunder.

- (e) **Additional Insured.** All endorsements, waivers, and notices of cancellation as well as the policies of commercial general liability and automobile insurance shall provide that City is an additional insured and will be delivered to the City as provided in the Notices Section of this Amendment or such other address as the City may notify Owner in writing.
- (f) **Cost.** Owner shall be responsible for paying premiums, deductibles and self-insured retentions, if any, stated in the insurance policies to be carried hereunder by Owner (not by its contractors and any subcontractors). All deductibles or self-insured retentions shall be disclosed on the Insurance Policy Documents. The insurance coverages required under this Agreement are required minimums and are not intended to limit or otherwise establish the responsibility or liability of Owner under this Agreement.

7.2 INDEMNIFICATION AND HOLD HARMLESS

OWNER HEREBY COVENANTS AND AGREES TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY CITY, AND THE CURRENT AND FUTURE OFFICERS, AGENTS, SERVANTS AND EMPLOYEES THEREOF, FROM AND AGAINST ALL THIRD-PARTY CLAIMS, SUITS, JUDGMENTS, DAMAGES, AND DEMANDS (TOGETHER, “THIRD PARTY CLAIMS” OR “TPC”) AGAINST THE CITY, WHETHER THREATENED, ANTICIPATED, OR ASSERTED, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEY'S FEES, RELATED EXPENSES, EXPERT WITNESS FEES, CONSULTANT FEES, AND OTHER COSTS, ARISING OUT OF THE NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF ~~OWNERE~~OWNER, INCLUDING THE NEGLIGENCE OF ~~OWNERE~~OWNER'S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, MATERIALMEN, AND AGENTS OCCURRING DURING THE CONSTRUCTION OF ANY PORTION OF THE INFRASTRUCTURE OR PERFORMANCE OF THE PROJECT; AND IT IS EXPRESSLY UNDERSTOOD THAT SUCH TPC SHALL, EXCEPT AS MODIFIED BELOW, INCLUDE TPC EVEN IF CAUSED BY THE CITY'S OWN CONCURRENT (BUT NOT GROSS) NEGLIGENCE. ~~OWNERE~~OWNER SHALL NOT, HOWEVER, BE REQUIRED TO INDEMNIFY THE CITY AGAINST TPC CAUSED BY THE CITY'S SOLE NEGLIGENCE. IF THE CITY INCURS TPC THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE OF ~~OWNERE~~OWNER AND THE CITY, THE ~~OWNERE~~OWNER'S INDEMNITY OBLIGATION WILL BE LIMITED TO A FRACTION OF THE TOTAL TPC AND EXPENSES EQUIVALENT TO ~~OWNERE~~OWNER'S OWN PERCENTAGE OF RESPONSIBILITY. THE OBLIGATIONS UNDER THIS SECTION 11.2 SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

7.3 Claims and Release.

- 7.3.1 **Claims.** If the City notifies Owner of any Claim, Owner shall assume on behalf of the City and conduct with due diligence and in good faith the investigation and defense thereof and the response thereto with counsel selected by Owner but reasonably satisfactory to the City; provided, that City has the right to be represented by advisory counsel of their own selection and at their own expense; and provided further, that if any such Claim involves Owner and the City and the City has been advised in writing by counsel that there may be legal defenses available to it which are inconsistent with those available to Owner, then City has the right to select separate counsel to participate in the investigation and defense of and response to such Claim on City's own behalf, and Owner shall pay or reimburse the City for all reasonable legal fees and costs incurred by the City because of the selection of such separate counsel.
- 7.3.2 **Release.** Other than to the extent caused by a City Event of Default, Owner hereby releases the City with respect to all Claims regarding any alleged, established or admitted negligent or wrongful act or omission of the City, the Corporation or any agents, contractors, representatives or employees of the City, INCLUDING ALL CLAIMS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF THE CITY but excluding Claims to the extent caused by the gross negligence or willful misconduct of the City. The provisions of this Section will survive the expiration or earlier termination of this Agreement.

7.4 **Performance, Payment and Maintenance Bonds.** Owner or Owner's contractor shall obtain performance and payment bonds as required by Chapter 2253, Public Work Performance and Payment Bonds, of the Texas Government Code. After inspection and prior to acceptance of public improvements by the City that benefit the Project, Owner or Owner's contractor shall provide a two (2) year maintenance bond ~~in an amount not less than ten (10) percent of the cost of the public improvements.~~

ARTICLE VIII MISCELLANEOUS

8.1 **Mutual Assistance.** The City and the Owner will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions in order to put each other in the same economic condition contemplated by this Agreement regardless of any changes in public policy, the law, or taxes or assessments attributable to the Property.

8.2 **Default; Remedies.**

(a) No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (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 determined based on the nature of the alleged failure, but in no event more than ten (10) business days for a monetary default, or (b) less than 30 days or more than 90 days after written notice of the alleged failure has been given for a non-monetary default. In addition, no Party

shall be in default under this Agreement if, within the applicable cure period for a non-monetary default, the Party to whom the notice was given, or another Party begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured.

(b) If a Party is in default beyond any applicable notice and cure period, 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 Judgement Act, specific performance, mandamus, and injunctive relief. Notwithstanding the foregoing, however, no default under this Agreement shall:

- (i) entitle the aggrieved Party to terminate this Agreement (except as specifically set forth in this Agreement); or
- (ii) adversely affect or impair the current or future obligations of the City to provide water or wastewater service or any other service to the Property; or
- (iii) entitle the aggrieved Party to seek or recover consequential monetary damages of any kind; or
- (iv) reduce the term of this Agreement (except as specifically set forth in this Agreement).

(c) In the event any legal action or proceeding is commenced between the Parties to enforce provisions of this Agreement and recover damages for breach, each party in such legal action shall pay its own attorneys' fees and expenses incurred by reason of such action..

8.3 Undocumented Workers. The Owner certifies that it does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the term of this Agreement, the Owner is convicted of a violation under 8 U.S.C. § 1324a(f), the Owner shall repay the amount of the public subsidy provided under this Agreement as required by law. Pursuant to Section 2264.101, Texas Government Code, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

8.4 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns.

8.5 Assignment.

(a) This Agreement and the rights and obligations of Owner hereunder may be assigned by Owner upon fifteen (15) days prior written notice to City to MA Partners, LLC or any entity which is:

- (i) the successor by merger or otherwise to all or substantially all of Owner's assets and liabilities including, but not limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital; or
- (ii) any entity which may have acquired all of the outstanding stock or ownership of assets of Owner without the consent of the City, provided that the assignee assumes all of the obligations of Owner hereunder.

Phone: (512) 759-4030

With required copy to: Alan Bojorquez,
Bojorquez Law Firm, PC
11675 Jollyville Road, Suite 300
Austin, Texas 78759
Phone: (512) 250-0411
Email: Alan@texasmunicipallawyers.com

If to Owner: Jerry Wayne Roznovak
3051 CR 101
Hutto, TX 78634

Nadine Carole Johnson
P. O. Box 194
Hutto, Texas 78634

With a required copy to: MA Partners, LLC
230 Klattenhoff Lane, Ste. 102
Hutto, Texas 78634
Attn: Wyatt Henderson and Bob Wunsch
Phone: 972-715-6450
Email: whenderson@madev.com; bob@waterstonedevelopment.com

With required copy to: Alan M. McGraw, PC
211 Round Rock Ave.
Round Rock, Texas 78664
Attn: Alan McGraw
Phone: (512) 246-1986
Email: alan@alanmcgraw.com

Any Party may designate a different address at any time upon written notice to the other Parties.

8.9 **Interpretation.** Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

8.10 **Applicable Law.** This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.

8.11 **Severability.** In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected. It is also the intention of the Parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

8.12 **Waiver.** The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions. Either City or Owner shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the Party for whose benefit such requirement is intended.

8.13 **Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

8.14 **No Personal liability of public officials or the City.** To the extent permitted by State law, neither the City, any City agent or representative, nor any public official or employee shall be personally responsible for any liability arising under or related to this Agreement. Owner is to be compensated, reimbursed, and paid any damages solely from ~~TIRZ-tax-increments~~ special assessments or bond funds. This Agreement imposes no ~~in~~-personal liability upon the City, any of its officers, employees, or agents, ~~or upon any TIRZ, hereinafter, created.~~

8.15 **Approval by the parties.** Whenever this Agreement requires or permits approval or consent to be hereafter given by either of the Parties, the Parties agree that such approval or consent shall not be unreasonably withheld or delayed.

8.16 **Time.** Time is of the essence of this Agreement. In computing the number of days in a time period all days will be counted excluding the day of the event that triggers the period, including Saturdays, Sundays and Legal Holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or Legal Holiday.

8.17 **No Third-Party Beneficiaries.** This Agreement is not intended to confer any rights, privileges or causes of action upon any non-party other than as to insurance, indemnity, defense, and hold harmless.

8.18 **Survival.** In addition to any provisions for survival of provisions of and obligations under this Agreement elsewhere in this Agreement, the following sections and provisions survive any expiration, termination, or rescission of this Agreement.

Indemnity

Insurance coverage for covered risks during the Term of this Agreement.

Coverage of any bonds, letters of credit, and third-party guarantees issued in accordance with this Agreement

Representations and warranties of the parties.

8.19 **No Boycott of Israel.** If applicable, if the contractor employs 10 or more full-time employees and the contract has a value of \$100,000 or more, contractor shall comply with the provisions of Section 2270.001(2), Government Code that the contractor does not boycott Israel or that during the term of the contract will not boycott Israel.

8.20 **HB 1295 Compliance.** Section 2252.908 of the Texas Government Code requires that for certain types of contracts, you must fill out a conflict of interest form ("Disclosure of Interested Parties") at the time you submit your signed contract to the District. For further information please go to the Texas Ethics Commission website via the following link. https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. The City has no obligation under this Agreement until such form is accurately completed and properly submitted, and any City obligation is conditioned on such proper completion and submission.

8.21 **Further Acts.** In addition to the acts and deeds recited in this Agreement and contemplated to be performed, executed, and/or delivered by the parties, the City and Owner agree to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered at such time or times as may be necessary or appropriate under this Agreement any and all further lawful acts, deeds, and assurances as are reasonably necessary or appropriate to consummate and implement the transactions and agreements reasonably contemplated hereby.

8.22 **Reservation of Rights.** To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

8.23 **Force Majeure.** Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (an "Event of Force Majeure"). An Event of Force Majeure for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm, pandemics or similar occurrences; orders or acts of military or civil authority; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay; unusual weather events; a recession; and unusual delays in obtaining City approvals of plats, permits, or other development approvals required to construct and operate the Project. For purpose of this provision, a "recession" shall mean a recession consisting of two (2) consecutive quarters of negative economic growth as measured by the gross domestic product for the Dallas-Fort Worth metropolitan area according to the U.S. Department of Commerce, Bureau of Economic Analysis. Except as otherwise expressly provided herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any Event of Force Majeure.

8.24 **No Joint Venture.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

8.25 **Additional Compliance.** Pursuant to Section 2252.152, Texas Government Code, neither the Owner nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Owner is a company currently listed by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

8.26 **Term.** This Agreement shall become enforceable upon its Effective Date and shall expire 35 years after the date the City has issued the last Certificates of Occupancy for the Project, unless the Parties agree to terminate it sooner.

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

8.28 **Titles and Headings.** All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated.

8.29- **Exhibits.** The following exhibits are attached and incorporated by reference for all purposes:

Exhibit A: Property Description and Depiction

Exhibit B: Concept Plan

Exhibit C: Waterline Extension

Exhibit D: Alternative Road and Trench

Exhibit E: Dedicated Parkland

EXECUTED to be effective as of the Effective Date

**[REMAINDER OF PAGE INTENTIONALLY BLANK]
[SIGNATURES PROVIDED ON NEXT PAGE]**

CITY OF HUTTO, TEXAS,
a home rule city and municipal corporation

By: _____
Charles Daniels
Interim City Manager
Date: _____

ATTEST:

By: _____
Holly Nagy
City Secretary for the City of Hutto

Date: _____

OWNER:

Jerry Wayne Roznovak

Nadine Carole Johnson

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me, the undersigned authority, this _____ day of _____, 2020, by Nadine Carole Johnson.

[Seal]

Notary Public ★ State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me, the undersigned authority, this _____ day of _____, 2020, by Jerry Wayne Roznovak.

[Seal]

Notary Public ★ State of Texas

EXHIBIT A
Property Description and Depiction

Williamson County, Texas
J. Shelton Survey, Abstract No. 560
E. Thomason Survey, Abstract No. 844
W.J. Brown Survey, Abstract No. 105

94.560 Acres
Page 1 of 3

"EXHIBIT —"

DESCRIPTION OF 94.560 ACRES OF LAND IN THE J. SHELTON SURVEY, ABSTRACT NO. 560, THE E. THOMASON SURVEY, ABSTRACT NO. 844, AND THE W.J. BROWN SURVEY, ABSTRACT NO. 105, WILLIAMSON COUNTY, TEXAS; BEING A PORTION OF A CERTAIN CALLED 96.99 ACRE TRACT DESIGNATED AS TRACT ONE AND DESCRIBED IN THE DEED TO JERRY E. ROZNOVAK AND WIFE, HILDA ROZNOVAK OF RECORD IN VOLUME 443, PAGE 472, DEED RECORDS OF WILLIAMSON COUNTY, TEXAS; SAID 94.560 ACRES OF LAND, AS SURVEYED BY LANDDEV CONSULTING, LLC, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½-inch iron rod with a plastic cap stamped "RJ Survey" (Grid Coordinates: N= 10,177,139.20, E= 3,174,174.80) found in the west right-of-way line of F.M. 1660, a variable-width right-of-way, in the north line of the said 96.99 acre tract, at the easterly southeast corner of a certain called 201.06 acre tract described in the deed to Billie B. Davenport of record in Volume 1079, Page 938, Deed Records of Williamson County, Texas, same being the southwest corner of a certain called 4.758 acre tract described in the deed to the State of Texas of record in Volume 476, Page 605, Deed Records of Williamson County, Texas, same being the northwest corner of a certain called 3.722 acre tract described in the deed to the State of Texas of record in Volume 476, Page 607, Deed Records of Williamson County, Texas, for the northeast corner and **POINT OF BEGINNING** of the tract described herein;

THENCE leaving the easterly southeast corner of the said 201.06 acre tract, crossing the said 96.99 acre tract, with the west right-of-way line of said F.M. 1660, and the west line of the said 3.722 acre tract, with the east line of the tract described herein, the following five (5) courses and distances:

1. with the arc of a curve to the left, having a radius of 1,186.28 feet, an arc distance of 167.73 feet, and a chord which bears S 05°38'19" E, a distance of 167.59 feet to a calculated point-of-tangency, from which a destroyed Texas Department of Transportation (TXDOT) Type-1 concrete right-of-way monument found bears S 84°08'53" W, a distance of 0.45 feet,
2. S 09°45'32" E, a distance of 467.63 feet to a Texas Department of Transportation (TXDOT) Type-1 concrete right-of-way monument found at a point-of-curvature,
3. with the arc of a curve to the right, having a radius of 1,106.28 feet, an arc distance of 335.98 feet, and a chord which bears S 01°06'29" E, a distance of 334.69 feet to a Texas Department of Transportation (TXDOT) Type-1 concrete right-of-way monument found at a point-of-tangency,
4. S 07°51'42" W, a distance of 790.50 feet to a ¾-inch iron rod found at an angle point, and
5. S 07°39'43" W, a distance of 421.01 feet to a ½-inch iron rod with a plastic cap stamped "RJ Survey" found in the west line of the said 3.722 acre tract, in the north line of a certain called 0.51 acre tract described in the deed to Nadine Carole Johnson and Dennis Johnson of record in Document No. 2006083936, Official Public Records of Williamson County, Texas, for a southeast corner of the tract described herein, from which a ½-inch iron rod with a plastic cap stamped "RPLS 1433" found in the west right-of-way line of said F.M. 1660 at the northeast corner of the said 0.51 acre tract bears S 82°31'24" E, a distance of 21.83 feet;

THENCE N 82°16'34" W, leaving the west right-of-way line of said F.M. 1660, and the west line of the said 3.722 acre tract, crossing the said 96.99 acre tract, with the north line of the said 0.51 acre tract, and with a south line of the tract described herein, a distance of 179.38 feet to a 1/2-inch iron rod with a plastic cap stamped "RJ Survey" found at the northwest corner of the said 0.51 acre tract, for a re-entrant corner of the tract described herein;

THENCE S 07°29'25" W, continuing across the said 96.99 acre tract, with the west line of the said 0.51 acre tract, with the east line of the tract described herein, a distance of 114.42 feet to a ½-inch iron rod with a plastic cap stamped "RPLS 1433" found at a re-entrant corner of the said 96.99 acre tract, at the southwest corner of the said 0.51 acre tract, same being the northwest corner of a certain called 4/5ths of an acre described in the special warranty deed with life estate to Robert W. Kaderka and wife, Bonnie Kaderka of record in Document No. 2015074295, Official Public Records of Williamson County, Texas, for an angle point in the east line of the tract described herein;

THENCE S 07°42'22" W, with the east line of the said 96.99 acre tract, with the west line of the said 4/5ths of an acre tract, and with the west line of a certain called 0.51 acre tract described in the deed to Bruce Craig Cunningham of record in Volume 1954, Page 227, Official Public Records of Williamson County, Texas, with the east line of the tract described herein, a distance of 180.55 feet to a ½-inch iron rod with a plastic cap stamped "RJ Survey" found at an angle point;

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Williamson County, Texas
J. Shelton Survey, Abstract No. 560
E. Thomason Survey, Abstract No. 844
W.J. Brown Survey, Abstract No. 105

94.560 Acres
Page 2 of 3

THENCE S 06°40'19" W, with the east line of the said 96.99 acre tract, with the west line of the said 0.51 acre tract, and with the west line of a certain called 0.484 acre tract described in the deed to Marla Dawn Burns of record in Document No. 9722814, Official Public Records of Williamson County, Texas, with the east line of the tract described herein, a distance of 200.68 feet to a ½-inch iron rod found in the north line of a certain called 0.480 acre tract described in the deed to John A. Drummond, Sr. of record in Document No. 9662944, Official Public Records of Williamson County, Texas, at the southwest corner of the said 0.484 acre tract, same being a southeast corner of the said 96.99 acre tract, for a southeast corner of the tract described herein;

THENCE N 81°53'59" W, with the north line of the said 0.480 acre tract and a south line of the said 96.99 acre tract, with a south line of the tract described herein, a distance of 10.57 feet to a fence corner post found at a re-entrant corner;

THENCE S 08°03'45" W, with the west line of the said 0.480 acre tract and the west line of a certain called 0.59 acre tract described in the deed to Jonathan M. Wagner and Marci H. Wagner of record in Document No. 2016117309, Official Public Records of Williamson County, Texas, with the east line of the said 96.99 acre tract, with the east line of the tract described herein, a distance of 223.01 feet to a concrete monument found in the north line of a certain called 2.47 acre tract described in the deed to Charles E. Holland and Deborah D. Holland of record in Volume 868, Page 561, Deed Records of Williamson County, Texas, at the southwest corner of the said 0.59 acre tract, same being a southeast corner of the said 96.99 acre tract, for a southeast corner of the tract described herein;

THENCE N 82°23'05" W, with the north line of the said 2.47 acre tract, with a south line of the said 96.99 acre tract, with a south line of the tract described herein, a distance of 242.61 feet to a 3/8-inch iron rod found at the northwest corner of the said 2.47 acre tract, at the northeast corner of Block 4, Hutto and Metcalfe Addition, a subdivision according to the plat of record in Book 66, Page 148, Deed Records of Williamson County, Texas, and as shown on the Revised Map of City of Hutto of record in Cabinet A, Slide 221, Plat Records of Williamson County, Texas, for a re-entrant corner of the tract described herein;

THENCE S 07°38'01" W, with the west line of the said 2.47 acre tract and an east line of the said 96.99 acre tract, with the east line of said Block 4 and Block 3, said Hutto and Metcalfe Addition, with an east line of the tract described herein, a distance of 298.64 feet to a ½-inch iron rod found at the southeast corner of said Block 3, Hutto and Metcalfe Addition, and the northeast corner of a certain called 0.659 acre tract described in the deed to Dennis O. Johnson and Nadine C. Johnson of record in Document No. 2001074832, Official Public Records of Williamson County, Texas, for the southerly southeast corner of the tract described herein;

THENCE S 77°34'56" W, crossing the said 96.99 acre tract, with the north line of the said 0.659 acre tract, with the south line of the tract described herein, a distance of 253.79 feet to a ¼-inch iron rod found at the northwest corner of the said 0.659 acre tract, and the northeast corner of Lot 2, Block 2, said Hutto and Metcalfe Addition, for an angle point in the south line of the tract described herein,

THENCE S 77°37'39" W, continuing across the said 96.99 acre tract, with the north line of said Lot 2, Block 2, Hutto and Metcalfe Addition, with the south line of the tract described herein, a distance of 91.78 feet to a concrete monument found in a west line of the said 96.99 acre tract, at the intersection of the south line of an alley and the east right-of-way line of East Street, a 60-foot right-of-way, as shown on the said Hutto and Metcalfe Addition subdivision plat, at the northwest corner of said Lot 2, Block 2, Hutto and Metcalfe Addition, for the southerly southwest corner of the tract described herein;

THENCE N 12°28'30" W, with the east right-of-way line of said East Street, the west line of the said 96.99 acre tract, with the west line of Lot 6, Block 2, and the west line of Block 5, said Hutto and Metcalfe Addition, with a west line of the tract described herein, a distance of 439.34 feet to a ½-inch iron rod with a plastic cap stamped "RJ Survey" found at the northeast terminus of said East Street, at the northwest corner of said Block 5, said Hutto and Metcalfe Addition, for an angle point in the south line of the tract described herein;

THENCE N 82°21'12" W, with the south line of the said 96.99 acre tract, with the north terminus of said East Street, with the northeast terminus of Capitol Street, a 50-foot right-of-way, as shown on the said Hutto and Metcalfe Addition subdivision plat, with the south line of the tract describe herein, a distance of 220.17 feet to a ½-inch iron rod with a plastic cap stamped "RJ Survey" found at an angle point in the north right-of-way line of said Capitol Street, at the east corner of Block 9, said Hutto and Metcalfe Addition, for an angle point in the south line of the tract described herein;

THENCE S 76°41'29" W, with the south line of the said 96.99 acre tract, with the north right-of-way line of said Capitol Street, with the south line of Block 9 and Block 13, said Hutto and Metcalfe Addition, a distance of 350.53 feet to a ½-inch iron rod with a plastic cap stamped "RJ Survey" found in the east line of Lot 4, Block F, Hutto Square Section 1, a subdivision according to the plat of record in Cabinet W, Slides 263-267, Plat Records of Williamson County, Texas, at a southwest corner of the said 96.99 acre tract, for a southwest corner of the tract described herein;

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Williamson County, Texas
J. Shelton Survey, Abstract No. 560
E. Thomason Survey, Abstract No. 844
W.J. Brown Survey, Abstract No. 105

94.560 Acres
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THENCE with the west line of the said 96.99 acre tract, the east line of said Hutto Square Section 1, the east line of Hutto Square Section 2, a subdivision according to the plat of record in Cabinet Y, Slides 154-157, Plat Records of Williamson County, Texas, with the east line of Hutto Square Section 3, a subdivision according to the plat of record in Cabinet CC, Slides 138-139, Plat Records of Williamson County, Texas, with the west line of the tract described herein, the following four (4) courses and distances:

1. N 07°40'21" E, a distance of 55.89 feet to a ½-inch iron rod with a plastic cap stamped "4391" found at the north corner of Lot 4, the east corner of Lot 5, southeast corner of Lot 39, and the south corner of Lot 40, Block F, said Hutto Square Section 1, for an angle point of the tract described herein,
2. N 07°38'18" E, a distance of 655.93 feet to a ½-inch iron rod with a plastic cap stamped "RJ Survey" found in the east line of Lot 48, Block F, said Hutto Square Section 2, for an angle point of the tract described herein,
3. N 07°46'41" E, a distance of 230.55 feet to a ½-inch iron rod with a plastic cap stamped "RPLS 4391" found at the northeast corner of Lot 51 and the southeast corner of Lot 52, Block F, said Hutto Square Section 2, for an angle point of the tract described herein, and
4. N 07°46'30" E, a distance of 2,059.60 feet to a concrete monument found in the east line of Lot 91, Block F, said Hutto Square Section 3, at the northwest corner of the said 96.99 acre tract, same being a re-entrant corner of the said 201.06 acre tract, for the northwest corner of the tract described herein;

THENCE S 82°15'43" E, with the north line of the said 96.99 acre tract and a south line of the said 201.06 acre tract, with the north line of the tract described herein, a distance of 1,222.52 feet to the **POINT OF BEGINNING** and containing 94.560 acres of land, more or less.

BEARING BASIS: Texas Coordinate System, Central Zone, NAD83, Grid.

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS

That I, Ernesto Navarrete, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the parcel of land described herein is based upon a survey performed upon the ground under my direct supervision during the month of April, 2019.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this 03rd day of May 2019 A.D.

LANDDEV CONSULTING, LLC
5508 Highway 290 West, Suite 150
Austin, Texas 78735


Ernesto Navarrete
Registered Professional Land Surveyor
No. 6642 – State of Texas



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TBPE Firm No. 16384 | TBPLS Firm No. 10194101

"EXHIBIT _"

DESCRIPTION OF 10.554 ACRES OF LAND IN THE E. THOMASON SURVEY, ABSTRACT NO. 844, AND THE CANUTILLO COLONY DITCH COMPANY SURVEY, ABSTRACT NO. 693, WILLIAMSON COUNTY, TEXAS; BEING A PORTION OF A CERTAIN CALLED 11.10 ACRE TRACT DESIGNATED AS TRACT TWO AND DESCRIBED IN THE DEED TO JERRY E. ROZNOVAK AND WIFE, HILDA ROZNOVAK OF RECORD IN VOLUME 443, PAGE 472, DEED RECORDS OF WILLIAMSON COUNTY, TEXAS; SAID 10.554 ACRES OF LAND, AS SURVEYED BY LANDDEV CONSULTING, LLC, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a ½-inch iron rod with a plastic cap stamped "RJ Survey" (Grid Coordinates: N= 10,177,139.20, E= 3,174,174.80) found in the west right-of-way line of F.M. 1660, a variable-width right-of-way, in the north line of a certain called 96.99 acre tract designated as Tract One and described in said deed to Jerry E. Roznovak and wife, Hilda Roznovak of record in Volume 443, Page 472, Deed Records of Williamson County, Texas, at the easterly southeast corner of a certain called 201.06 acre tract described in the deed to Billie B. Davenport of record in Volume 1079, Page 938, Deed Records of Williamson County, Texas, same being the southwest corner of a certain called 4.758 acre tract described in the deed to the State of Texas of record in Volume 476, Page 605, Deed Records of Williamson County, Texas, and the northwest corner of a certain called 3.722 acre tract described in the deed to the State of Texas of record in Volume 476, Page 607, Deed Records of Williamson County, Texas, from which a concrete monument found in the east line of Lot 91, Block F, said Hutto Square Section 3, a subdivision according to the plat of record in Cabinet CC, Slides 138 and 139, Plat Records of Williamson County, Texas, at the northwest corner of the said 96.99 acre tract, same being a re-entrant corner of the said 201.06 acre tract bears N 82°15'43" W, a distance of 1,222.52 feet;

THENCE S 82°15'43" E, crossing the said F.M. 1660 right-of-way, a distance of 97.80 feet to a ½-inch iron rod with a plastic cap stamped "LANDDEV" set in the east right-of-way line of said F.M. 1660, in the north line of the said 11.10 acre tract, at the northeast corner of the said 3.722 acre tract and the southeast corner of a certain called 1.529 acre tract described in the deed to the State of Texas of record in Volume 476, Page 603, Deed Records of Williamson County, Texas, in the south line of a certain called 135 acre tract described in the deed to Janet Lynn Barnard, Trustee for the Janet Lynn Barnard Family 1984 Trust of record in Volume 1126, Page 800, Deed Records of Williamson County, Texas, same being the southwest corner of a certain called 65.234 acre tract conveyed to CMSAL-2 L.L.C. of record in Document No. 2011084930, Official Public Records of Williamson County, Texas, and described in Document No. 1999014821, Official Public Records of Williamson County, Texas, for the northwest corner and **POINT OF BEGINNING** of the tract described herein, from which a Texas Department of Transportation (TXDOT) Type-1 concrete right-of-way monument found in the east right-of-way line of said F.M. 1660, in the east line of the said 1.529 acre tract, and the west line of a certain called 28.449 acre tract described in the deed to North Town Commons, LLC of record in Document No. 2007062953, Official Public Records of Williamson County, Texas, bears N 03°15'10" W, a distance of 192.32 feet, and from which a ½-inch iron rod found bears N 02°00'51" W, a distance of 10.60 feet;

THENCE S 82°15'43" E, with the north line of the said 11.10 acre tract and the south line of the said 135 acre tract, with the south line of the said 65.234 acre tract, with the north line of the tract described herein, a distance of 498.95 feet to a ½-inch iron rod with a plastic cap stamped "LANDDEV" set for the northeast corner of the said 11.10 acre tract, at a re-entrant corner of the said 135 acre tract, in the south line of the said 65.234 acre tract, for the northeast corner of the tract described herein;

THENCE S 07°38'01" W, with the east line of the said 11.10 acre tract and the west line of the said 135 acre tract, with the east line of the tract described herein, at a distance of 9.91 feet, passing a ½-inch iron rod with a plastic cap stamped "PAPE DAWSON" found, and continuing for a total distance of 17.36 feet to a calculated point for a southeast corner of the tract described herein, from which a ½-inch iron rod found bears N 74°00'05" E, a distance of 0.23 feet;

THENCE leaving the west line of the said 135 acre tract, crossing the said 11.10 acre tract, with a south, east, and north line of the tract described herein, the following three (3) courses and distances:

1. N 82°21'59" W, a distance of 50.00 feet to a ½-inch iron rod with a plastic cap stamped "LANDDEV" set for a re-entrant corner,
2. S 07°38'01" W, a distance of 50.00 feet to a ½-inch iron rod with a plastic cap stamped "LANDDEV" set for a re-entrant corner, and
3. S 82°21'59" E, a distance of 50.00 feet to a calculated point in the east line of the said 11.10 acre tract and west line of a certain called 72.025 acre tract described in the deed to Mager Meadows, LP of record in Document No. 2004018146, Official Public Records of Williamson County, Texas, for a northeast corner of the tract described herein, from which a ½-inch iron rod found bears S 61°01'59" E, a distance of 0.33 feet;

THENCE S 07°38'01" W, with the east line of the said 11.10 acre tract and the west line of the said 72.025 acre tract, with the east line of the tract described herein, a distance of 1,292.44 feet to a ½-inch iron rod found in the north line of a certain called

Williamson County, Texas
E. Thomason Survey, Abstract No. 844
Canutillo Colony Ditch Company Survey, Abstract No. 693

10.554 Acres
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9.862 acre tract described in the deed to Herbert L. Prewitt and wife, Connie E. Prewitt of record in Volume 876, Page 655, Deed Records of Williamson County, Texas, at the southwest corner of the said 72.025 acre tract and the southeast corner of the said 11.10 acre tract, for the southeast corner of the tract described herein;

THENCE N 82°26'32" W, with the south line of the said 11.10 acre tract and the north line of the said 9.862 acre tract, with the south line of the tract described herein, at a distance of 2.07 feet, passing a concrete monument found 0.12 feet north of the line, and continuing for a total distance of 285.57 feet to a 5/8-inch iron rod found in the east right-of-way line of said F.M. 1660, and the south line of the said 11.10 acre tract, at a southeast corner of the said 3.722 acre tract and the northeast corner of a certain called 0.311 acre tract described in the deed to the State of Texas of record in Volume 476, Page 612, Deed Records of Williamson County, Texas, at the northwest corner of the said 9.862 acre tract, for the southwest corner of the tract described herein;

THENCE crossing the said 11.10 acre tract, with the east right-of-way line of said F.M. 1660, with the east line of the said 3.722 acre tract, with the west line of the tract described herein, the following four (4) courses and distances:

1. N 07°21'46" E, a distance of 421.34 feet to a destroyed Texas Department of Transportation (TXDOT) Type-I concrete right-of-way monument found at an angle point,
2. N 07°33'54" E, a distance of 324.41 feet to a destroyed Texas Department of Transportation (TXDOT) Type-I concrete right-of-way monument found at an angle point,
3. N 13°27'20" W, a distance of 513.66 feet to a destroyed Texas Department of Transportation (TXDOT) Type-I concrete right-of-way monument found at an angle point, and
4. N 03°15'10" W, a distance of 138.59 feet to the **POINT OF BEGINNING** and containing 10.554 acres of land, more or less.

BEARING BASIS: Texas Coordinate System, Central Zone, NAD83, Grid.

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS

That I, Ernesto Navarrete, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the parcel of land described herein is based upon a survey performed upon the ground under my direct supervision during the month of April and May, 2019.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this 20th day of May 2019 A.D.

LANDDEV CONSULTING, LLC
5508 Highway 290 West, Suite 150
Austin, Texas 78735


Ernesto Navarrete
Registered Professional Land Surveyor
No. 6642 -- State of Texas



LandDev Consulting, LLC • 5508 Highway 290 West, Suite 150, Austin, TX 78735 • (512) 872-6696
TBPE Firm No. 16384 | TBPLS Firm No. 10194101

EXHIBIT B
Concept Plan



SEC Planning, LLC
Land Planning • Landscape Architecture • Community Development
11000 E. 11th Ave., Suite 100
Denver, CO 80231
303.755.1100
www.secplanning.com

LOTING PLAN I
DURANGO FARMS
HUTTO, TEXAS

North
Scale: 1" = 100'
Date: February 19, 2020

USE MAP FOR INFORMATION ONLY. THIS MAP IS NOT A LEGAL DOCUMENT. IT IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN INFORMATIONAL. IT IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN INFORMATIONAL. IT IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN INFORMATIONAL.

EXHIBIT C Waterline Extension

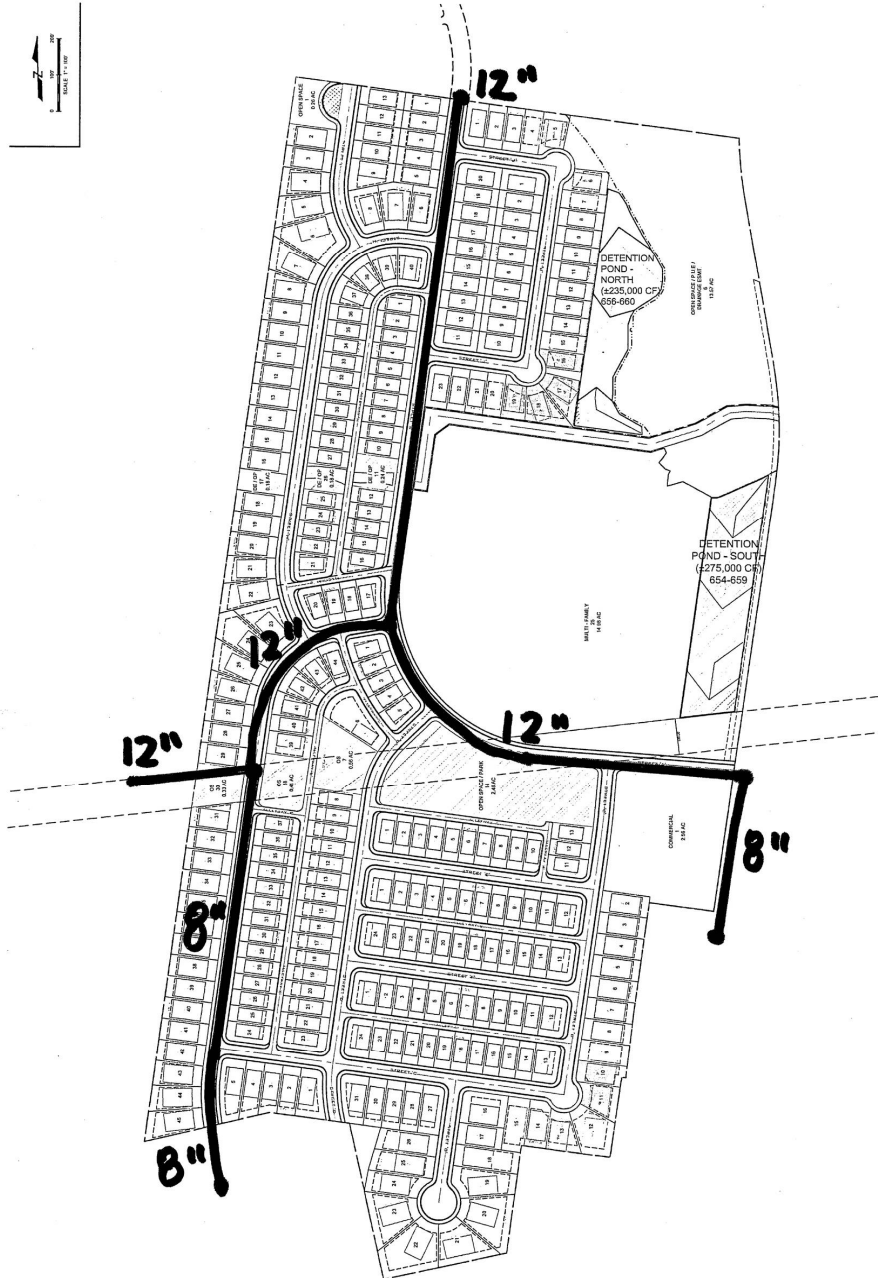


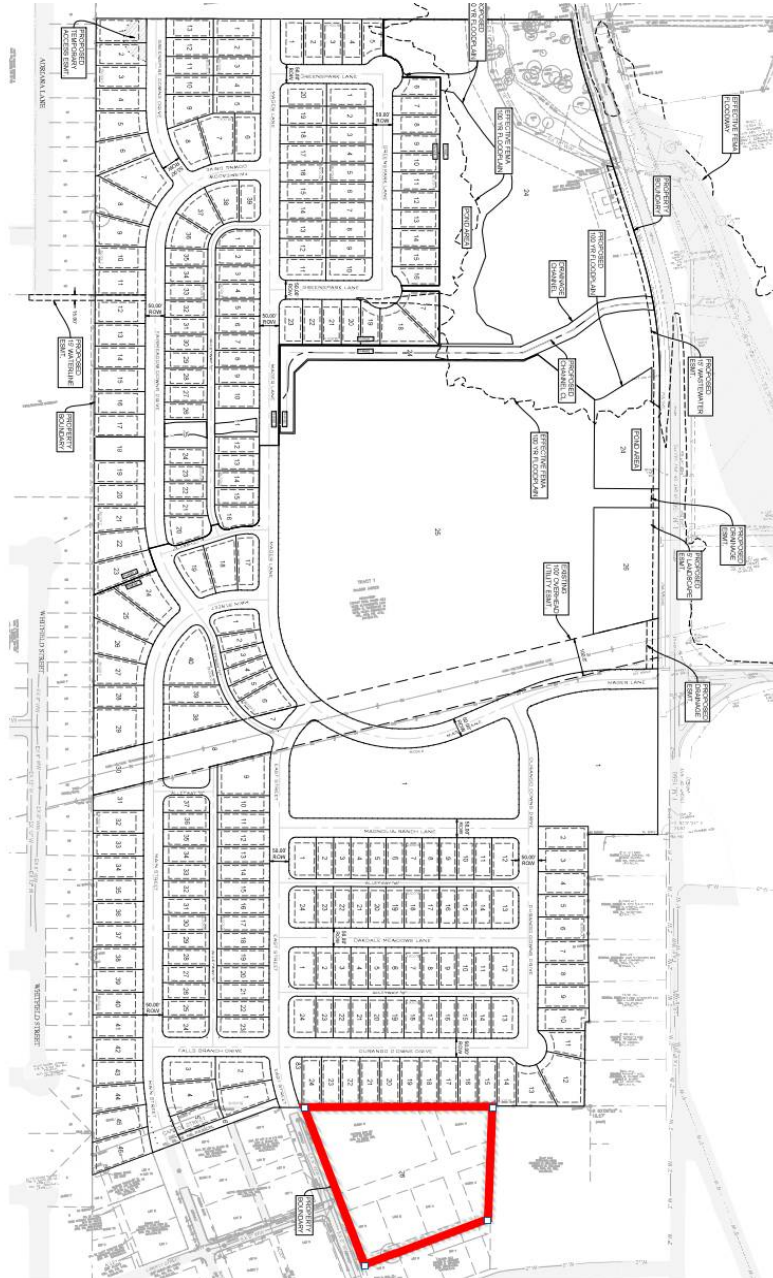
EXHIBIT D
Alternative Road and Trench

Street Classification	Subgrade Material	Hot Mix Asphaltic Concrete, in	Crushed Limestone Base, in	Lime Stabilized Subgrade, in
Residential Local	Subgrade PI greater than 20	2.0	9	8
Residential Collector	Subgrade PI greater than 20	2.0	14	8
Neighborhood Collector	Subgrade PI greater than 20	2.5	17	8

Notes:

1. The surface clay must first be tested for sulfate reaction and a mix design should be completed to determine the proper lime content, lime type, mixing procedure and curing conditions required.
2. We have determined that chemical stabilizers may be used in lieu of lime. The subgrade may be stabilized using EMC Squared and EMS products in accordance with the manufacture Subgrade Specification (Section 02335). Compaction of the treated material shall be 95 percent of TxDOT TEX-114-E. Compaction should be performed with the moisture content of the soil adjusted to within 2 percent of optimum moisture content. This method has proven to be successful in similar soil conditions in the area of this project.
3. The subgrade improvement should be extended 3 feet beyond the back of the curb line.
4. Trenches should be strategically backfilled with on-site material in accordance with the current City of Georgetown's Construction Specifications and Standards G4.05 E. Backfilling Operation Item 2.
5. These pavement thickness designs are intended to transfer the load from the anticipated traffic conditions.
6. The responsibility of assigning street classification to the streets in this project is left to the civil engineer.
7. If pavement designs other than those listed above are desired, please contact MLA Geotechnical.

Exhibit E
Dedicated Parkland



Document comparison by Workshare 9 on Friday, August 14, 2020 12:10:24 PM

Input:	
Document 1 ID	file:///G:/Client/MA Partners.SCM/Durango Downs (Farms)/Development Agreement/First Amended and Restated DA/Hutto Durango Farms Amended and Restated Final 8 4 20 (002) (003).docx
Description	Hutto Durango Farms Amended and Restated Final 8 4 20 (002) (003)
Document 2 ID	G:/Client/MA Partners.SCM/Durango Downs (Farms)/Development Agreement/First Amended and Restated DA/Hutto Durango Farms Amended and Restated Final 8.17.20.docx
Description	G:/Client/MA Partners.SCM/Durango Downs (Farms)/Development Agreement/First Amended and Restated DA/Hutto Durango Farms Amended and Restated Final 8.17.20.docx
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	9
Deletions	10

Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	19

FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT

This First Amended and Restated Development Agreement ("Agreement") is entered into to be effective as of the ____ day of _____, 2020 (the "Effective Date"), by and between the City of Hutto, Texas (the "City"), a home rule city organized under the laws of the State of Texas, and Jerry Wayne Roznovak and Nadine Carole Johnson (collectively the "Owner"). The City and the Owner are, collectively, the "Parties" to this Agreement.

This Agreement amends, restates, and replaces in full the Development Agreement between the City and the Owner dated October 3, 2019, which remains the Effective Date of the Agreement.

RECITALS

WHEREAS, Owner owns that certain tract of land containing approximately 105.60 acres currently in the City (the "Property") as described and shown on Exhibit A; and

WHEREAS, Owner intends to develop the Property into a high-quality mixed-use development that includes single-family residential, multi-family residential and commercial developments (the "Project"), that will serve present and future residents of the City; and

WHEREAS, the Project is anticipated to add significant property tax base and increased property tax revenues in the City; and

WHEREAS, the Owner has advised the City that one or more agreements with the City would be necessary to defray a portion of the costs to be incurred by the Owner as a consequence of developing and constructing the Project; and

WHEREAS, the City may use its discretion to create a Public Improvement District ("PID") to provide utility, roadway, drainage, parks and related infrastructure to support the Project in a financially feasible manner in accordance with Chapter 372 of the Texas Local Government Code, the City's PID Policy and all other applicable state law; and

WHEREAS, the City and the Owner desire to set forth in this Agreement certain terms and conditions for the planning, design, construction, development, and financing of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I PURPOSE AND INTERPRETATION

1.1 **Objectives.** The Owner is proposing to develop a residential subdivision, including multi-family and commercial, near downtown Hutto. Hutto continues to have a need for quality, residential development that complements the economic and strategic goals of the City. The City believes that the development of the Project will provide needed, high quality housing for existing and future residents.

1.2 **Concept and Structure.** Development of the Property will be substantially similar to the Concept Plan attached hereto as **Exhibit B**. The Owner will be responsible for the development and construction of the Project, except as set forth herein. The City will provide financing and economic incentive agreements that are generally described in Article VI.

1.3 **Interpretation.** In this Agreement, unless a clear contrary intention appears;

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Party includes such Party's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Party in a particular capacity excludes such Party in any other capacity or individually;
- (c) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
- (d) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular article, section or other provision thereof;
- (e) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and
- (f) reference to any constitutional, statutory or regulatory provision means such provision as it exists on the Effective Date and any amendatory provision thereof or supplemental provision thereto.

1.4 **Legal Representation of the Parties.** This Agreement was negotiated by the Parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply.

ARTICLE II DEFINITIONS

2.1 **Definitions.** All capitalized terms used in this Agreement shall have the meanings ascribed to them in this Article II, or as otherwise provided herein.

"**Agreement**" means this Development Agreement by and between the City and the Owner.

"**City**" means the City of Hutto, Texas.

"**City Council**" means the City Council of the City of Hutto.

"**Concept Plan**" means the concept plan attached hereto as Exhibit B, as such concept plan may be modified and changed from time to time as set forth in this Agreement. The Parties acknowledge and agree that the Concept Plan is for illustrative purposes only and is only a general representation of the design.

"**Effective Date**" means the date set forth in the opening paragraph on page 1. "Parties" means the City and the Owner.

"**Owner**" means Jerry Wayne Roznovak and Nadine Carole Johnson, and their successors and assigns that specifically assume the rights and obligations of this Agreement.

"Party" means the City or the Owner.

"Project" means the Project as described in **Article IV**.

"Property" means the real property described and shown on **Exhibit A**.

"Public Improvements" has the meaning ascribed to it in **Section 5.2**

"State" means the State of Texas.

ARTICLE III ANNEXATION and ZONING

3.1 **Annexation.** As of the Effective Date, the Property has been annexed into the City.

3.2 **Chapter 245 Permit.** This Agreement shall constitute the first (Permit) in a series of applications for the purpose of vesting as contemplated in Chapter 245 of the Texas Local Government Code (subject to the exemptions as set forth therein), as authorized by Section 212.172(g) of the Texas Local Government Code. All aesthetic requirements of the zoning district, as outlined in the Unified Development Code or Planned Unit Development, as adopted and amended, shall be provided for in accordance with Article IV, 4.5 and 4.6.

ARTICLE IV THE PROJECT

4.1 **General Description.** The Project will be planned, developed and constructed on the Property by the Owner in phases as determined by Owner in accordance with market conditions and otherwise in accordance with any permits and approvals from any applicable governmental authorities.

4.2 **Development.** The Owner intends to construct improvements to real property and additions to personal property within the Property as contemplated by the Concept Plan. However, the parties agree and acknowledge that the actual construction shall be dictated by the ultimate zoning of the Property, platting of the Property, site development permits issued for the Property, submittal of a Traffic Impact Analysis for the Property and associated fees, and other development permits issued for the Property. The Project will be permitted and constructed in accordance with City ordinances and regulations, except as may be specifically set forth in this Agreement.

4.3 **Owner Additional Contributions to Project.** The Owner agrees to perform or allow the following:

- (a) Pay to the City the amount of **TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00)**, herein defined as the "Owner Contribution", on a pro-rata basis as PID Bonds are requested by Owner and issued by the City, and such payments shall be made within 10 calendar days of receipt of funds of the PID Proceeds from the Trustee, as defined in the PID Financing Agreement. As described herein, "PID Bonds" shall mean bonds issued by the City, for the purposes of funding Public Improvements within the Project. For example, if the total amount of net PID Proceeds is equal to \$8,000,000.00,

if Owner were to draw down \$2,000,000.00 of the PID Proceeds, Owner shall pay to the City \$500,000.00 within 10 calendar days of receipt of funds until Owner has drawn down the full \$8,000,000.00 and paid the full amount of the Owner Contribution. If all PID Proceeds are not drawn down by Owner by December 1, 2022, Owner shall pay whatever outstanding amount of the Owner Contribution remains unpaid. Such payment by Owner shall not release City from its obligation to disburse PID Proceeds.

- (b) As part of the construction of the Project, install (including design and approval) at its expense (including with PID Proceeds) a traffic signal (in compliance with City codes and TXDOT regulations) at the intersection of Mager Lane and FM 1660. If the traffic signal does not meet warrants during construction of the Project, then Owner and City can agree upon a fixed amount for Owner to pay to City at such time, which amount will satisfy Owner's requirement herein, and then City agrees to use such funds to construct the traffic signal at such time as it meets warrants.
- (c) As part of the construction of the Project, install at Owner's expense (including with PID Proceeds) a 12" and 8" waterline extension of the City's existing waterline as shown in the attached **Exhibit C**.
- (d) As part of the construction of the Project, install at Owner's expense (including with PID Proceeds) up graded streetlights within the Project.
- (e) As part of the construction of the Project, install at Owner's expense (including with PID Proceeds) open space, trails, and other amenities as may be finally approved and permitted by the City within the Project;
- (f) To facilitate the Project, at Owner's expense, conduct a Traffic Impact Analysis for the Property and pay any associated fees with conducting such analysis.
- (g) On the later of the final plat of the Project, or 30 days following the first issuance of the PID Bonds, Owner shall dedicate to the City, or to a designee of the City, approximately 3.4 acres of parkland described on Exhibit E attached hereto. Maintenance of the parkland shall be the responsibility of the City or City's designee that the parkland is dedicated to. Owner reserves the right to retain access easements and/or utility easements located within any dedicated parkland. Owner further reserves the right to retain, in order to build necessary infrastructure for the Project, a six-month construction easement, commencing upon the date of dedication.:

4.4 **City Incentives to Project.** The City incentives to the Project shall include only the following

- (a) The Owner may use the Alternative Road and Trench Method for construction of the Project, as shown in the attached Exhibit D, as approved by City Engineer.
- (b) The City may use its discretion to create a Public Improvement District ("PID"), in accordance with the City's PID Policy on the Property, as more fully set forth below in Article VI.

- (c) The City shall facilitate the financing of the Public Improvements, as more fully set forth below in Article VI.
- (d) The Owner shall enter into a license agreement with the City to allow Owner to maintain monument signage, other subdivision entry features, and landscaping in the City right-of-way in accordance with the approved site plan. The license agreement may provide that the license agreement shall be assigned to the homeowners' association for the Project.
- (e) The City agrees to enter into a mutually agreeable license agreement to allow Owner to maintain the detention pond and flood area (as such may be finally approved in the site plan), and to allow the license agreement to be assigned to the homeowners' association for the Project. The license agreement will further provide the City with a right of entry and enforcement to enforce its regulations and requirements with respect to maintaining the detention and flood areas.

4.5 **Building Material Deed Restrictions.** The Owner agrees to execute, on behalf of all properties within the Project, a deed restriction requiring compliance with all building material restrictions outlined in Section 3.3 of the Durango Farms Planned Unit Development, approved in Ordinance O-19-10-17-10C (“PUD”) for the Project.

4.6 **Homeowners Association.** The Owner agrees that the Project shall include one or more homeowner's associations. Owner agrees to require the homeowner's association to actively enforce the deed restriction described in Section 4.5 above.

ARTICLE V PUBLIC IMPROVEMENTS

5.1 **General.** The Parties agree that the Project will require extension and improvements to the transportation and utility facilities, and the installation of Public Improvements, to adequately serve and develop the Project. Owner or Owner's contractor will construct all Public Improvements and other infrastructure necessary to serve the Project in accordance with the Unified Development Code, (UDC), City ordinances and regulations, except as set forth herein. City will accept such Public Improvements in accordance with the UDC, City ordinances and regulations.

5.2 **Public Improvements.** The term “Public Improvements” shall mean those certain infrastructure improvements required for the Project as finally approved and permitted, including any improvements or facility together with its associated public site, right-of-way or easement necessary to provide transportation, drainage, public utilities, or similar essential public services and facilities, for which the City will ultimately assume the responsibility for maintenance and operation of ownership, or both. This term also includes the following: drainage facilities, streets and other rights-of-way, potable water systems, reuse water system, sanitary sewage system, survey monuments, illumination including street lights, traffic control signs and traffic signalization, fire hydrants, sidewalks and curb ramps, street name signs, traffic control signs, street pavement markings, and open space improvements.

5.3 **Water and Wastewater.** The City holds the water and wastewater Certificates of Convenience and Necessity (CCN) to provide water and wastewater service to the Property. The

City acknowledges that it has capacity to serve the full development of the Property (based on the Concept Plan) with continuous and adequate water and wastewater service. In the event the City is unable or unwilling at any time to provide continuous and adequate water and wastewater service for the development of the Property contemplated by this Agreement, the City agrees that the Property may obtain water and wastewater service from an alternative provider.

ARTICLE VI ECONOMIC INCENTIVES

6.1 **Public Improvement District.** Upon receipt of a petition to create a PID, the City shall use its best efforts to initiate and approve all necessary documents and ordinances required to effectuate this Agreement, to create the PID, and to levy assessments to finance the costs of all or a portion of the Public Improvements. If the City approves a Service and Assessment Plan (“SAP”) providing for the levy of the assessments on the Property, the City will levy special PID assessments against the Property with an Assessment Ordinance based on the approved SAP. The final terms of the PID, SAP, levy, and all other required documents are subject to the approval of both the City and the Owner, if applicable. To the extent that that the City is in a non-recourse position on any debt, the City will support the creation of the Public Improvement District (PID) in accordance with the City’s PID Policy for the purposes of paying for public infrastructure to support the Project. However, in no way will the City be responsible for the debt of the Owner. The City will reimburse eligible Project Costs as defined in the Texas Local Government Code, Chapter 372, Section 372.003, which are deemed substantially complete by the City Engineer for public improvement infrastructure, with funds received by the City from the initiation of a PID assessment. Such reimbursement shall be outlined in a future Reimbursement Agreement between the Parties to reflect specific reimbursement amounts. Any municipal bonds issued for the PID must comply with the City’s PID Policy and are subject to all applicable laws. The City, other than as described in the applicable PID Bond ordinance, is in no way responsible for repayment of debt on such bonds. If the City issues PID bonds, the City is only responsible for payments for costs of Public Improvements from revenues to be generated by the levy and collection of assessments within the PID.

6.2 **Financing and PID Bond Issuance.** In accordance with the PID Policy, the City will consider the issuance of PID Bonds for the purposes of acquiring or constructing authorized Public Improvements within the Project (and including those items set forth in 4.3 hereof.) The Owner will prepare and the City will consider the approval of the PID Financing Agreement (“PFA”). As used herein, “PID Proceeds” shall mean proceeds generated from payment of the PID assessments, or bond proceeds generated from the sale of PID Bonds. The PID Proceeds shall be used to fund construction or acquisition of authorized Public Improvements in accordance with applicable law. The PFA, all conditions of financing, and all other required documents are subject to the approval of both the City and the Owner, as applicable.

6.3 Owner agrees to pay to the City the Owner Contribution as set forth in Section 4.3.

ARTICLE VII INSURANCE, CLAIMS, INDEMNIFICATION, PERFORMANCE, PAYMENT AND MAINTENANCE BONDS

7.1 **Insurance.**

- (a) **General.** General. Owner and all contractors, subcontractors, engineers, and consultants shall carry and maintain throughout the term of this Agreement (except as specifically noted below) the following insurance policies:
- (i) Workers' Compensation and Employers' Liability Insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act and minimum policy limits for employers' liability of \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee. City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund. The insurance required by this subsection shall be in effect commencing not later than the commencement of construction of any portion of the Infrastructure as defined in Paragraph 10.
 - (ii) Automobile Liability Insurance for all owned, non-owned, and hired motor vehicles used, with respect to the Property or the Project in a minimum amount of \$1,000,000, combined single limit.
 - (iii) Commercial General Liability policy with a minimum limit of \$1,000,000 per occurrence for bodily injury and/or property damage, with a minimum aggregate of \$1,000,000 and blanket contractual coverage, independent contractors' coverage and explosion, collapse, and underground (X, C & U) coverage.
 - (iv) For contractors/subcontractors providing professional engineering, architectural or design services under this Agreement, Engineers' Professional Liability Insurance or other errors and omissions insurance coverage for the non-engineer professionals with a minimum limit of \$1,000,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured. The insurance required by this subsection shall be in effect commencing not later than the commencement of submission to City for approval of permits for construction of any phase of the Project. The insurance will be renewed or extended as necessary to remain in force as for claims made for two (2) years after final acceptance of the Project by the City.
 - (v) For work that involves asbestos or any Hazardous Materials or risk of air, water or soil pollution, the following will be in addition to the other insurance required hereunder:

- a. Asbestos abatement endorsement or pollution coverage to the Commercial General Liability policy with minimum bodily injury and Property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy cannot exclude asbestos or any Hazardous Materials or pollution and shall provide “occurrence” coverage without a sunset clause.
 - b. Pollution coverage in accordance with Title 49 C.F.R. § 171.8 requiring an MCS 90 endorsement with a \$5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy that provides coverage for bodily injury and Property damage arising out of the transportation of asbestos or other Hazardous Materials. The endorsement must, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous propellies of airborne asbestos arising from fire, wind, hail, lightning, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.
- (b) The insurance required under this subsection 7.1(a)(v) will only be required for the entity that is actually performing work involving asbestos or any Hazardous Materials or risk of air, water or soil pollution. For example, if Owner’s contractor (instead of Owner) is performing such work, the contractor, not Owner, will be required to carry such insurance. The insurance required by this subsection shall be in effect commencing not later than the commencement of each phase of construction if that phase will include work involving asbestos or any Hazardous Materials or risk of air, water or soil pollution.
- (c) **Certificates of Insurance and Insurance Policy Documents.** Certificates of Insurance will not be accepted as substitutes for copies of Insurance Policy Documents. The term “Insurance Policy Documents” means true and correct copies of the relevant policy of insurance including all declarations, definitions, schedules, endorsements, exclusions, exceptions, riders, waivers, jackets, modifications, notices, descriptions of deductibles and of self-insured retentions and all other instruments and other documents governing insurance coverage under such policy.
- (d) **Special Requirements.** Owner shall not cause or permit any insurance required hereunder to be canceled or lapse during the term of this Amendment. With respect to subsections 11.1(a)(i), (ii) and (iii), insurance coverage is to be written by companies duly authorized to do the business of insurance in the State of Texas at the time the policies are issued and will be written by companies with an A.M. Best rating of A-VII or better or otherwise approved in writing by the City. Additionally, with respect to subsections 11.1(a)(i), (ii) and (iii), all policies will contain a provision in favor of the City waiving subrogation and other rights of recovery against the City, and will be endorsed to provide the City with a 30-day advance

notice of cancellation or change in coverage The City will be an additional insured as its interests may appear on the Commercial General and Automobile Liability policies. All policies will provide primary coverage as applicable, with any insurance maintained by the City being excess and non-contributing. Owner shall submit copies of all insurance policies to the City providing evidence of insurance coverage required by this Amendment on or before the commencement of the Project except that asbestos, Hazardous Waste, pollution, and professional engineers and other errors and omissions policy documents need not be provided until those covered by such insurance commence work on the Project or as otherwise provided in this Amendment. The production of copies of all policies to be promptly supplemented with delivery to the City of copies of any and all changed or new Insurance Policy Documents. Owner will be responsible for (i) overseeing its contractors with respect to such contractors' obtaining and maintaining the insurance required hereunder and (ii) obtaining and keeping copies of such Insurance Policy Documents evidencing the insurance coverages required hereunder.

- (e) **Additional Insured.** All endorsements, waivers, and notices of cancellation as well as the policies of commercial general liability and automobile insurance shall provide that City is an additional insured and will be delivered to the City as provided in the Notices Section of this Amendment or such other address as the City may notify Owner in writing.
- (f) **Cost.** Owner shall be responsible for paying premiums, deductibles and self-insured retentions, if any, stated in the insurance policies to be carried hereunder by Owner (not by its contractors and any subcontractors). All deductibles or self-insured retentions shall be disclosed on the Insurance Policy Documents. The insurance coverages required under this Agreement are required minimums and are not intended to limit or otherwise establish the responsibility or liability of Owner under this Agreement.

7.2 INDEMNIFICATION AND HOLD HARMLESS

OWNER HEREBY COVENANTS AND AGREES TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY CITY, AND THE CURRENT AND FUTURE OFFICERS, AGENTS, SERVANTS AND EMPLOYEES THEREOF, FROM AND AGAINST ALL THIRD-PARTY CLAIMS, SUITS, JUDGMENTS, DAMAGES, AND DEMANDS (TOGETHER, “THIRD PARTY CLAIMS” OR “TPC”) AGAINST THE CITY, WHETHER THREATENED, ANTICIPATED, OR ASSERTED, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEY'S FEES, RELATED EXPENSES, EXPERT WITNESS FEES, CONSULTANT FEES, AND OTHER COSTS, ARISING OUT OF THE NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF OWNER, INCLUDING THE NEGLIGENCE OF OWNER'S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, MATERIALMEN, AND AGENTS OCCURRING DURING THE CONSTRUCTION OF ANY PORTION OF THE INFRASTRUCTURE OR PERFORMANCE OF THE PROJECT; AND IT IS EXPRESSLY UNDERSTOOD THAT SUCH TPC SHALL, EXCEPT AS MODIFIED BELOW, INCLUDE TPC EVEN IF CAUSED BY THE CITY'S OWN CONCURRENT (BUT NOT GROSS) NEGLIGENCE. OWNER SHALL NOT, HOWEVER, BE REQUIRED TO INDEMNIFY THE CITY AGAINST TPC CAUSED BY THE CITY'S SOLE NEGLIGENCE. IF THE CITY INCURS TPC THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE OF OWNER AND THE CITY, THE

OWNER'S INDEMNITY OBLIGATION WILL BE LIMITED TO A FRACTION OF THE TOTAL TPC AND EXPENSES EQUIVALENT TO OWNER'S OWN PERCENTAGE OF RESPONSIBILITY. THE OBLIGATIONS UNDER THIS SECTION 11.2 SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

7.3 Claims and Release.

7.3.1 **Claims.** If the City notifies Owner of any Claim, Owner shall assume on behalf of the City and conduct with due diligence and in good faith the investigation and defense thereof and the response thereto with counsel selected by Owner but reasonably satisfactory to the City; provided, that City has the right to be represented by advisory counsel of their own selection and at their own expense; and provided further, that if any such Claim involves Owner and the City and the City has been advised in writing by counsel that there may be legal defenses available to it which are inconsistent with those available to Owner, then City has the right to select separate counsel to participate in the investigation and defense of and response to such Claim on City's own behalf, and Owner shall pay or reimburse the City for all reasonable legal fees and costs incurred by the City because of the selection of such separate counsel.

7.3.2 **Release.** Other than to the extent caused by a City Event of Default, Owner hereby releases the City with respect to all Claims regarding any alleged, established or admitted negligent or wrongful act or omission of the City, the Corporation or any agents, contractors, representatives or employees of the City, INCLUDING ALL CLAIMS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF THE CITY but excluding Claims to the extent caused by the gross negligence or willful misconduct of the City. The provisions of this Section will survive the expiration or earlier termination of this Agreement.

7.4 **Performance, Payment and Maintenance Bonds.** Owner or Owner's contractor shall obtain performance and payment bonds as required by Chapter 2253, Public Work Performance and Payment Bonds, of the Texas Government Code. After inspection and prior to acceptance of public improvements by the City that benefit the Project, Owner or Owner's contractor shall provide a two (2) year maintenance bond.

**ARTICLE VIII
MISCELLANEOUS**

8.1 **Mutual Assistance.** The City and the Owner will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions in order to put each other in the same economic condition contemplated by this Agreement regardless of any changes in public policy, the law, or taxes or assessments attributable to the Property.

8.2 Default; Remedies.

(a) No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (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 determined based on the nature of the alleged failure, but in no event more than ten (10) business days for a monetary default, or (b) less than 30 days or more than 90 days after written notice of the alleged failure has been given for a non-monetary default. In addition, no Party shall be in default under this Agreement if, within the applicable cure period for a non-monetary default, the Party to whom the notice was given, or another Party begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured.

(b) If a Party is in default beyond any applicable notice and cure period, 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 Judgement Act, specific performance, mandamus, and injunctive relief. Notwithstanding the foregoing, however, no default under this Agreement shall:

- (i) entitle the aggrieved Party to terminate this Agreement (except as specifically set forth in this Agreement); or
- (ii) adversely affect or impair the current or future obligations of the City to provide water or wastewater service or any other service to the Property; or
- (iii) entitle the aggrieved Party to seek or recover consequential monetary damages of any kind; or
- (iv) reduce the term of this Agreement (except as specifically set forth in this Agreement).

(c) In the event any legal action or proceeding is commenced between the Parties to enforce provisions of this Agreement and recover damages for breach, each party in such legal action shall pay its own attorneys' fees and expenses incurred by reason of such action..

8.3 Undocumented Workers. The Owner certifies that it does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the term of this Agreement, the Owner is convicted of a violation under 8 U.S.C. § 1324a(f), the Owner shall repay the amount of the public subsidy provided under this Agreement as required by law. Pursuant to Section 2264.101, Texas Government Code, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

8.4 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns.

8.5 Assignment.

(a) This Agreement and the rights and obligations of Owner hereunder may be assigned by Owner upon fifteen (15) days prior written notice to City to MA Partners, LLC or any entity which is:

- (i) the successor by merger or otherwise to all or substantially all of Owner's assets and liabilities including, but not limited to, any merger or acquisition pursuant to any

public offering or reorganization to obtain financing and/or growth capital; or

(ii) any entity which may have acquired all of the outstanding stock or ownership of assets of Owner without the consent of the City, provided that the assignee assumes all of the obligations of Owner hereunder.

(b) For assignments not covered by (a) above, Owner may assign this Agreement from time to time to any party that:

(i) does not owe delinquent taxes or fees to the City,

(ii) is not in material default (beyond any applicable notice and cure period) under any development or financing agreement with the City and

(iii) has the experience, expertise and the financial capacity and ability to perform the duties or obligations so assigned under this Agreement. Owner shall provide the City thirty (30) days prior written notice of any such assignment. If the City has objections to such assignment satisfying the requirements described above, the City shall provide written notice of such objections to the Owner within ten (10) days of receiving the assignment notice from Owner. Owner will not be released from its obligations under this Agreement if the City objects to the assignment as described above and such objections are not resolved by and between Owner and the City; provided, however, the City shall not unreasonably withhold Owner's release from its obligations under this Agreement.

(c) Upon any such assignment, Owner shall be deemed to be automatically released of any obligations under this Agreement.

(d) Any assignment must be in writing, set forth the assigned rights and obligations and be executed by the proposed assignee. A copy of the assignment document must be delivered to the City.

8.6 Amendment. This Agreement may be amended only by the mutual written agreement of the Parties. As the Parties continue work on the pre-development activities contemplated herein and prepare the various agreements referenced herein in connection with the design, development, and financing of the Project, the parties will amend this Agreement to incorporate additional details, terms and conditions and the various agreements referenced above shall be appended as exhibits to this Agreement. Amendments to this Agreement may be approved administratively by the City. A successor of portions of the Property (such as a purchaser of a lot within the subdivision) does not make such successor a "Party." Owner's rights under this Agreement must be specifically assigned to a successor in order for such successor to be a "Party."

8.7 Entire Agreement. All Parties mutually agreed to the terms of this Agreement. The Agreement shall not be construed in favor of or against one Party. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement. This Agreement contains the entire agreement between the Parties; there are no other terms, promises, conditions, or obligations other than those contained herein. This Agreement shall supersede all previous communications, representations or agreements, either oral or written.

8.8 Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, by electronic mail, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate

party at the following addresses:

If to City: City of Hutto
Attn: City Manager
500 W. Live Oak St.
Hutto, TX 78634
Phone: (512) 759-4030

With required copy to: Alan Bojorquez,
Bojorquez Law Firm, PC
11675 Jollyville Road, Suite 300
Austin, Texas 78759
Phone: (512) 250-0411
Email: Alan@texasmunicipallawyers.com

If to Owner: Jerry Wayne Roznovak
3051 CR 101
Hutto, TX 78634

Nadine Carole Johnson
P. O. Box 194
Hutto, Texas 78634

With a required copy to: MA Partners, LLC
230 Klattenhoff Lane, Ste. 102
Hutto, Texas 78634
Attn: Wyatt Henderson and Bob Wunsch
Phone: 972-715-6450
Email: whenderson@madev.com; bob@waterstonedevelopment.com

With required copy to: Alan M. McGraw, PC
211 Round Rock Ave.
Round Rock, Texas 78664
Attn: Alan McGraw
Phone: (512) 246-1986
Email: alan@alanmcgraw.com

Any Party may designate a different address at any time upon written notice to the other Parties.

8.9 **Interpretation.** Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

8.10 **Applicable Law.** This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.

8.11 **Severability.** In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected. It is also the intention of the Parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

8.12 **Waiver.** The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions. Either City or Owner shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the Party for whose benefit such requirement is intended.

8.13 **Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

8.14 **No Personal liability of public officials or the City.** To the extent permitted by State law, neither the City, any City agent or representative, nor any public official or employee shall be personally responsible for any liability arising under or related to this Agreement. Owner is to be compensated, reimbursed, and paid any damages solely from special assessments or bond funds. This Agreement imposes no personal liability upon the City, any of its officers, employees, or agents.

8.15 **Approval by the parties.** Whenever this Agreement requires or permits approval or consent to be hereafter given by either of the Parties, the Parties agree that such approval or consent shall not be unreasonably withheld or delayed.

8.16 **Time.** Time is of the essence of this Agreement. In computing the number of days in a time period all days will be counted excluding the day of the event that triggers the period, including Saturdays, Sundays and Legal Holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or Legal Holiday.

8.17 **No Third-Party Beneficiaries.** This Agreement is not intended to confer any rights, privileges or causes of action upon any non-party other than as to insurance, indemnity, defense, and hold harmless.

8.18 **Survival.** In addition to any provisions for survival of provisions of and obligations under this Agreement elsewhere in this Agreement, the following sections and provisions survive any expiration, termination, or rescission of this Agreement.

Indemnity

Insurance coverage for covered risks during the Term of this Agreement.

Coverage of any bonds, letters of credit, and third-party guarantees issued in accordance with this Agreement

Representations and warranties of the parties.

8.19 **No Boycott of Israel.** If applicable, if the contractor employs 10 or more full-time employees and the contract has a value of \$100,000 or more, contractor shall comply with the provisions of Section 2270.001(2), Government Code that the contractor does not boycott Israel or that during the term of the contract will not boycott Israel.

8.20 **HB 1295 Compliance.** Section 2252.908 of the Texas Government Code requires that for certain types of contracts, you must fill out a conflict of interest form ("Disclosure of Interested Parties") at the time you submit your signed contract to the District. For further information please go to the Texas Ethics Commission website via the following link. https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. The City has no obligation under this Agreement until such form is accurately completed and properly submitted, and any City obligation is conditioned on such proper completion and submission.

8.21 **Further Acts.** In addition to the acts and deeds recited in this Agreement and contemplated to be performed, executed, and/or delivered by the parties, the City and Owner agree to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered at such time or times as may be necessary or appropriate under this Agreement any and all further lawful acts, deeds, and assurances as are reasonably necessary or appropriate to consummate and implement the transactions and agreements reasonably contemplated hereby.

8.22 **Reservation of Rights.** To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

8.23 **Force Majeure.** Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (an "Event of Force Majeure"). An Event of Force Majeure for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm, pandemics or similar occurrences; orders or acts of military or civil authority; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay; unusual weather events; a recession; and unusual delays in obtaining City approvals of plats, permits, or other development approvals required to construct and operate the Project. For purpose of this provision, a "recession" shall mean a recession consisting of two (2) consecutive quarters of negative economic growth as measured by the gross domestic product for the Dallas-Fort Worth metropolitan area according to the U.S. Department of Commerce, Bureau of Economic Analysis. Except as otherwise expressly provided herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any Event of Force Majeure.

8.24 **No Joint Venture.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

8.25 **Additional Compliance.** Pursuant to Section 2252.152, Texas Government Code,

neither the Owner nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Owner is a company currently listed by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

8.26 **Term.** This Agreement shall become enforceable upon its Effective Date and shall expire 35 years after the date the City has issued the last Certificates of Occupancy for the Project, unless the Parties agree to terminate it sooner.

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

8.28 **Titles and Headings.** All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated.

8.29- **Exhibits.** The following exhibits are attached and incorporated by reference for all purposes:

- Exhibit A:** Property Description and Depiction
- Exhibit B:** Concept Plan
- Exhibit C:** Waterline Extension
- Exhibit D:** Alternative Road and Trench
- Exhibit E:** Dedicated Parkland

EXECUTED to be effective as of the Effective Date

**[REMAINDER OF PAGE INTENTIONALLY BLANK]
[SIGNATURES PROVIDED ON NEXT PAGE]**

CITY OF HUTTO, TEXAS,
a home rule city and municipal corporation

By: _____
Charles Daniels
Interim City Manager
Date: _____

ATTEST:

By: _____
Holly Nagy
City Secretary for the City of Hutto

Date: _____

OWNER:

Jerry Wayne Roznovak

Nadine Carole Johnson

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me, the undersigned authority, this ____ day of _____, 2020, by Nadine Carole Johnson.

[Seal]

Notary Public ★ State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me, the undersigned authority, this ____ day of _____, 2020, by Jerry Wayne Roznovak.

[Seal]

Notary Public ★ State of Texas

EXHIBIT A
Property Description and Depiction

Williamson County, Texas
J. Shelton Survey, Abstract No. 560
E. Thomason Survey, Abstract No. 844
W.J. Brown Survey, Abstract No. 105

94.560 Acres
Page 1 of 3

"EXHIBIT —"

DESCRIPTION OF 94.560 ACRES OF LAND IN THE J. SHELTON SURVEY, ABSTRACT NO. 560, THE E. THOMASON SURVEY, ABSTRACT NO. 844, AND THE W.J. BROWN SURVEY, ABSTRACT NO. 105, WILLIAMSON COUNTY, TEXAS; BEING A PORTION OF A CERTAIN CALLED 96.99 ACRE TRACT DESIGNATED AS TRACT ONE AND DESCRIBED IN THE DEED TO JERRY E. ROZNOVAK AND WIFE, HILDA ROZNOVAK OF RECORD IN VOLUME 443, PAGE 472, DEED RECORDS OF WILLIAMSON COUNTY, TEXAS; SAID 94.560 ACRES OF LAND, AS SURVEYED BY LANDDEV CONSULTING, LLC, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½-inch iron rod with a plastic cap stamped "RJ Survey" (Grid Coordinates: N= 10,177,139.20, E= 3,174,174.80) found in the west right-of-way line of F.M. 1660, a variable-width right-of-way, in the north line of the said 96.99 acre tract, at the easterly southeast corner of a certain called 201.06 acre tract described in the deed to Billie B. Davenport of record in Volume 1079, Page 938, Deed Records of Williamson County, Texas, same being the southwest corner of a certain called 4.758 acre tract described in the deed to the State of Texas of record in Volume 476, Page 605, Deed Records of Williamson County, Texas, same being the northwest corner of a certain called 3.722 acre tract described in the deed to the State of Texas of record in Volume 476, Page 607, Deed Records of Williamson County, Texas, for the northeast corner and **POINT OF BEGINNING** of the tract described herein;

THENCE leaving the easterly southeast corner of the said 201.06 acre tract, crossing the said 96.99 acre tract, with the west right-of-way line of said F.M. 1660, and the west line of the said 3.722 acre tract, with the east line of the tract described herein, the following five (5) courses and distances:

1. with the arc of a curve to the left, having a radius of 1,186.28 feet, an arc distance of 167.73 feet, and a chord which bears S 05°38'19" E, a distance of 167.59 feet to a calculated point-of-tangency, from which a destroyed Texas Department of Transportation (TXDOT) Type-1 concrete right-of-way monument found bears S 84°08'53" W, a distance of 0.45 feet,
2. S 09°45'32" E, a distance of 467.63 feet to a Texas Department of Transportation (TXDOT) Type-1 concrete right-of-way monument found at a point-of-curvature,
3. with the arc of a curve to the right, having a radius of 1,106.28 feet, an arc distance of 335.98 feet, and a chord which bears S 01°06'29" E, a distance of 334.69 feet to a Texas Department of Transportation (TXDOT) Type-1 concrete right-of-way monument found at a point-of-tangency,
4. S 07°51'42" W, a distance of 790.50 feet to a ¾-inch iron rod found at an angle point, and
5. S 07°39'43" W, a distance of 421.01 feet to a ½-inch iron rod with a plastic cap stamped "RJ Survey" found in the west line of the said 3.722 acre tract, in the north line of a certain called 0.51 acre tract described in the deed to Nadine Carole Johnson and Dennis Johnson of record in Document No. 2006083936, Official Public Records of Williamson County, Texas, for a southeast corner of the tract described herein, from which a ½-inch iron rod with a plastic cap stamped "RPLS 1433" found in the west right-of-way line of said F.M. 1660 at the northeast corner of the said 0.51 acre tract bears S 82°31'24" E, a distance of 21.83 feet;

THENCE N 82°16'34" W, leaving the west right-of-way line of said F.M. 1660, and the west line of the said 3.722 acre tract, crossing the said 96.99 acre tract, with the north line of the said 0.51 acre tract, and with a south line of the tract described herein, a distance of 179.38 feet to a 1/2-inch iron rod with a plastic cap stamped "RJ Survey" found at the northwest corner of the said 0.51 acre tract, for a re-entrant corner of the tract described herein;

THENCE S 07°29'25" W, continuing across the said 96.99 acre tract, with the west line of the said 0.51 acre tract, with the east line of the tract described herein, a distance of 114.42 feet to a ½-inch iron rod with a plastic cap stamped "RPLS 1433" found at a re-entrant corner of the said 96.99 acre tract, at the southwest corner of the said 0.51 acre tract, same being the northwest corner of a certain called 4/5ths of an acre described in the special warranty deed with life estate to Robert W. Kaderka and wife, Bonnie Kaderka of record in Document No. 2015074295, Official Public Records of Williamson County, Texas, for an angle point in the east line of the tract described herein;

THENCE S 07°42'22" W, with the east line of the said 96.99 acre tract, with the west line of the said 4/5ths of an acre tract, and with the west line of a certain called 0.51 acre tract described in the deed to Bruce Craig Cunningham of record in Volume 1954, Page 227, Official Public Records of Williamson County, Texas, with the east line of the tract described herein, a distance of 180.55 feet to a ½-inch iron rod with a plastic cap stamped "RJ Survey" found at an angle point;

LandDev Consulting, LLC • 5508 Highway 290 West, Suite 150, Austin, TX 78735 • (512) 872-6696
TBPE Firm No. 16384 | TBPLS Firm No. 10194101

Williamson County, Texas
J. Shelton Survey, Abstract No. 560
E. Thomason Survey, Abstract No. 844
W.J. Brown Survey, Abstract No. 105

94.560 Acres
Page 2 of 3

THENCE S 06°40'19" W, with the east line of the said 96.99 acre tract, with the west line of the said 0.51 acre tract, and with the west line of a certain called 0.484 acre tract described in the deed to Marla Dawn Burns of record in Document No. 9722814, Official Public Records of Williamson County, Texas, with the east line of the tract described herein, a distance of 200.68 feet to a ½-inch iron rod found in the north line of a certain called 0.480 acre tract described in the deed to John A. Drummond, Sr. of record in Document No. 9662944, Official Public Records of Williamson County, Texas, at the southwest corner of the said 0.484 acre tract, same being a southeast corner of the said 96.99 acre tract, for a southeast corner of the tract described herein;

THENCE N 81°53'59" W, with the north line of the said 0.480 acre tract and a south line of the said 96.99 acre tract, with a south line of the tract described herein, a distance of 10.57 feet to a fence corner post found at a re-entrant corner;

THENCE S 08°03'45" W, with the west line of the said 0.480 acre tract and the west line of a certain called 0.59 acre tract described in the deed to Jonathan M. Wagner and Marci H. Wagner of record in Document No. 2016117309, Official Public Records of Williamson County, Texas, with the east line of the said 96.99 acre tract, with the east line of the tract described herein, a distance of 223.01 feet to a concrete monument found in the north line of a certain called 2.47 acre tract described in the deed to Charles E. Holland and Deborah D. Holland of record in Volume 868, Page 561, Deed Records of Williamson County, Texas, at the southwest corner of the said 0.59 acre tract, same being a southeast corner of the said 96.99 acre tract, for a southeast corner of the tract described herein;

THENCE N 82°23'05" W, with the north line of the said 2.47 acre tract, with a south line of the said 96.99 acre tract, with a south line of the tract described herein, a distance of 242.61 feet to a 3/8-inch iron rod found at the northwest corner of the said 2.47 acre tract, at the northeast corner of Block 4, Hutto and Metcalfe Addition, a subdivision according to the plat of record in Book 66, Page 148, Deed Records of Williamson County, Texas, and as shown on the Revised Map of City of Hutto of record in Cabinet A, Slide 221, Plat Records of Williamson County, Texas, for a re-entrant corner of the tract described herein;

THENCE S 07°38'01" W, with the west line of the said 2.47 acre tract and an east line of the said 96.99 acre tract, with the east line of said Block 4 and Block 3, said Hutto and Metcalfe Addition, with an east line of the tract described herein, a distance of 298.64 feet to a ½-inch iron rod found at the southeast corner of said Block 3, Hutto and Metcalfe Addition, and the northeast corner of a certain called 0.659 acre tract described in the deed to Dennis O. Johnson and Nadine C. Johnson of record in Document No. 2001074832, Official Public Records of Williamson County, Texas, for the southerly southeast corner of the tract described herein;

THENCE S 77°34'56" W, crossing the said 96.99 acre tract, with the north line of the said 0.659 acre tract, with the south line of the tract described herein, a distance of 253.79 feet to a ¼-inch iron rod found at the northwest corner of the said 0.659 acre tract, and the northeast corner of Lot 2, Block 2, said Hutto and Metcalfe Addition, for an angle point in the south line of the tract described herein,

THENCE S 77°37'39" W, continuing across the said 96.99 acre tract, with the north line of said Lot 2, Block 2, Hutto and Metcalfe Addition, with the south line of the tract described herein, a distance of 91.78 feet to a concrete monument found in a west line of the said 96.99 acre tract, at the intersection of the south line of an alley and the east right-of-way line of East Street, a 60-foot right-of-way, as shown on the said Hutto and Metcalfe Addition subdivision plat, at the northwest corner of said Lot 2, Block 2, Hutto and Metcalfe Addition, for the southerly southwest corner of the tract described herein;

THENCE N 12°28'30" W, with the east right-of-way line of said East Street, the west line of the said 96.99 acre tract, with the west line of Lot 6, Block 2, and the west line of Block 5, said Hutto and Metcalfe Addition, with a west line of the tract described herein, a distance of 439.34 feet to a ½-inch iron rod with a plastic cap stamped "RJ Survey" found at the northeast terminus of said East Street, at the northwest corner of said Block 5, said Hutto and Metcalfe Addition, for an angle point in the south line of the tract described herein;

THENCE N 82°21'12" W, with the south line of the said 96.99 acre tract, with the north terminus of said East Street, with the northeast terminus of Capitol Street, a 50-foot right-of-way, as shown on the said Hutto and Metcalfe Addition subdivision plat, with the south line of the tract describe herein, a distance of 220.17 feet to a ½-inch iron rod with a plastic cap stamped "RJ Survey" found at an angle point in the north right-of-way line of said Capitol Street, at the east corner of Block 9, said Hutto and Metcalfe Addition, for an angle point in the south line of the tract described herein;

THENCE S 76°41'29" W, with the south line of the said 96.99 acre tract, with the north right-of-way line of said Capitol Street, with the south line of Block 9 and Block 13, said Hutto and Metcalfe Addition, a distance of 350.53 feet to a ½-inch iron rod with a plastic cap stamped "RJ Survey" found in the east line of Lot 4, Block F, Hutto Square Section 1, a subdivision according to the plat of record in Cabinet W, Slides 263-267, Plat Records of Williamson County, Texas, at a southwest corner of the said 96.99 acre tract, for a southwest corner of the tract described herein;

LandDev Consulting, LLC ▪ 5508 Highway 290 West, Suite 150, Austin, TX 78735 ▪ (512) 872-6696
TBPE Firm No. 16384 | TBPLS Firm No. 10194101

Williamson County, Texas
J. Shelton Survey, Abstract No. 560
E. Thomason Survey, Abstract No. 844
W.J. Brown Survey, Abstract No. 105

94.560 Acres
Page 3 of 3

THENCE with the west line of the said 96.99 acre tract, the east line of said Hutto Square Section 1, the east line of Hutto Square Section 2, a subdivision according to the plat of record in Cabinet Y, Slides 154-157, Plat Records of Williamson County, Texas, with the east line of Hutto Square Section 3, a subdivision according to the plat of record in Cabinet CC, Slides 138-139, Plat Records of Williamson County, Texas, with the west line of the tract described herein, the following four (4) courses and distances:

1. N 07°40'21" E, a distance of 55.89 feet to a ½-inch iron rod with a plastic cap stamped "4391" found at the north corner of Lot 4, the east corner of Lot 5, southeast corner of Lot 39, and the south corner of Lot 40, Block F, said Hutto Square Section 1, for an angle point of the tract described herein,
2. N 07°38'18" E, a distance of 655.93 feet to a ½-inch iron rod with a plastic cap stamped "RJ Survey" found in the east line of Lot 48, Block F, said Hutto Square Section 2, for an angle point of the tract described herein,
3. N 07°46'41" E, a distance of 230.55 feet to a ½-inch iron rod with a plastic cap stamped "RPLS 4391" found at the northeast corner of Lot 51 and the southeast corner of Lot 52, Block F, said Hutto Square Section 2, for an angle point of the tract described herein, and
4. N 07°46'30" E, a distance of 2,059.60 feet to a concrete monument found in the east line of Lot 91, Block F, said Hutto Square Section 3, at the northwest corner of the said 96.99 acre tract, same being a re-entrant corner of the said 201.06 acre tract, for the northwest corner of the tract described herein;

THENCE S 82°15'43" E, with the north line of the said 96.99 acre tract and a south line of the said 201.06 acre tract, with the north line of the tract described herein, a distance of 1,222.52 feet to the **POINT OF BEGINNING** and containing 94.560 acres of land, more or less.

BEARING BASIS: Texas Coordinate System, Central Zone, NAD83, Grid.

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

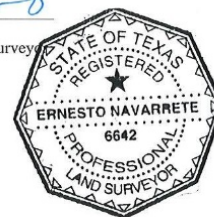
COUNTY OF TRAVIS

That I, Ernesto Navarrete, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the parcel of land described herein is based upon a survey performed upon the ground under my direct supervision during the month of April, 2019.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this 03rd day of May 2019 A.D.

LANDDEV CONSULTING, LLC
5508 Highway 290 West, Suite 150
Austin, Texas 78735


Ernesto Navarrete
Registered Professional Land Surveyor
No. 6642 – State of Texas



LandDev Consulting, LLC • 5508 Highway 290 West, Suite 150, Austin, TX 78735 • (512) 872-6696
TBPE Firm No. 16384 | TBPLS Firm No. 10194101

"EXHIBIT _"

DESCRIPTION OF 10.554 ACRES OF LAND IN THE E. THOMASON SURVEY, ABSTRACT NO. 844, AND THE CANUTILLO COLONY DITCH COMPANY SURVEY, ABSTRACT NO. 693, WILLIAMSON COUNTY, TEXAS; BEING A PORTION OF A CERTAIN CALLED 11.10 ACRE TRACT DESIGNATED AS TRACT TWO AND DESCRIBED IN THE DEED TO JERRY E. ROZNOVAK AND WIFE, HILDA ROZNOVAK OF RECORD IN VOLUME 443, PAGE 472, DEED RECORDS OF WILLIAMSON COUNTY, TEXAS; SAID 10.554 ACRES OF LAND, AS SURVEYED BY LANDDEV CONSULTING, LLC, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a ½-inch iron rod with a plastic cap stamped "RJ Survey" (Grid Coordinates: N= 10,177,139.20, E= 3,174,174.80) found in the west right-of-way line of F.M. 1660, a variable-width right-of-way, in the north line of a certain called 96.99 acre tract designated as Tract One and described in said deed to Jerry E. Roznovak and wife, Hilda Roznovak of record in Volume 443, Page 472, Deed Records of Williamson County, Texas, at the easterly southeast corner of a certain called 201.06 acre tract described in the deed to Billie B. Davenport of record in Volume 1079, Page 938, Deed Records of Williamson County, Texas, same being the southwest corner of a certain called 4.758 acre tract described in the deed to the State of Texas of record in Volume 476, Page 605, Deed Records of Williamson County, Texas, and the northwest corner of a certain called 3.722 acre tract described in the deed to the State of Texas of record in Volume 476, Page 607, Deed Records of Williamson County, Texas, from which a concrete monument found in the east line of Lot 91, Block F, said Hutto Square Section 3, a subdivision according to the plat of record in Cabinet CC, Slides 138 and 139, Plat Records of Williamson County, Texas, at the northwest corner of the said 96.99 acre tract, same being a re-entrant corner of the said 201.06 acre tract bears N 82°15'43" W, a distance of 1,222.52 feet;

THENCE S 82°15'43" E, crossing the said F.M. 1660 right-of-way, a distance of 97.80 feet to a ½-inch iron rod with a plastic cap stamped "LANDDEV" set in the east right-of-way line of said F.M. 1660, in the north line of the said 11.10 acre tract, at the northeast corner of the said 3.722 acre tract and the southeast corner of a certain called 1.529 acre tract described in the deed to the State of Texas of record in Volume 476, Page 603, Deed Records of Williamson County, Texas, in the south line of a certain called 135 acre tract described in the deed to Janet Lynn Barnard, Trustee for the Janet Lynn Barnard Family 1984 Trust of record in Volume 1126, Page 800, Deed Records of Williamson County, Texas, same being the southwest corner of a certain called 65.234 acre tract conveyed to CMSAL-2 L.L.C. of record in Document No. 2011084930, Official Public Records of Williamson County, Texas, and described in Document No. 1999014821, Official Public Records of Williamson County, Texas, for the northwest corner and **POINT OF BEGINNING** of the tract described herein, from which a Texas Department of Transportation (TXDOT) Type-1 concrete right-of-way monument found in the east right-of-way line of said F.M. 1660, in the east line of the said 1.529 acre tract, and the west line of a certain called 28.449 acre tract described in the deed to North Town Commons, LLC of record in Document No. 2007062953, Official Public Records of Williamson County, Texas, bears N 03°15'10" W, a distance of 192.32 feet, and from which a ½-inch iron rod found bears N 02°00'51" W, a distance of 10.60 feet;

THENCE S 82°15'43" E, with the north line of the said 11.10 acre tract and the south line of the said 135 acre tract, with the south line of the said 65.234 acre tract, with the north line of the tract described herein, a distance of 498.95 feet to a ½-inch iron rod with a plastic cap stamped "LANDDEV" set for the northeast corner of the said 11.10 acre tract, at a re-entrant corner of the said 135 acre tract, in the south line of the said 65.234 acre tract, for the northeast corner of the tract described herein;

THENCE S 07°38'01" W, with the east line of the said 11.10 acre tract and the west line of the said 135 acre tract, with the east line of the tract described herein, at a distance of 9.91 feet, passing a ½-inch iron rod with a plastic cap stamped "PAPE DAWSON" found, and continuing for a total distance of 17.36 feet to a calculated point for a southeast corner of the tract described herein, from which a ½-inch iron rod found bears N 74°00'05" E, a distance of 0.23 feet;

THENCE leaving the west line of the said 135 acre tract, crossing the said 11.10 acre tract, with a south, east, and north line of the tract described herein, the following three (3) courses and distances:

1. N 82°21'59" W, a distance of 50.00 feet to a ½-inch iron rod with a plastic cap stamped "LANDDEV" set for a re-entrant corner,
2. S 07°38'01" W, a distance of 50.00 feet to a ½-inch iron rod with a plastic cap stamped "LANDDEV" set for a re-entrant corner, and
3. S 82°21'59" E, a distance of 50.00 feet to a calculated point in the east line of the said 11.10 acre tract and west line of a certain called 72.025 acre tract described in the deed to Mager Meadows, LP of record in Document No. 2004018146, Official Public Records of Williamson County, Texas, for a northeast corner of the tract described herein, from which a ½-inch iron rod found bears S 61°01'59" E, a distance of 0.33 feet;

THENCE S 07°38'01" W, with the east line of the said 11.10 acre tract and the west line of the said 72.025 acre tract, with the east line of the tract described herein, a distance of 1,292.44 feet to a ½-inch iron rod found in the north line of a certain called

Williamson County, Texas
E. Thomason Survey, Abstract No. 844
Canutillo Colony Ditch Company Survey, Abstract No. 693

10.554 Acres
Page 2 of 2

9.862 acre tract described in the deed to Herbert L. Prewitt and wife, Connie E. Prewitt of record in Volume 876, Page 655, Deed Records of Williamson County, Texas, at the southwest corner of the said 72.025 acre tract and the southeast corner of the said 11.10 acre tract, for the southeast corner of the tract described herein;

THENCE N 82°26'32" W, with the south line of the said 11.10 acre tract and the north line of the said 9.862 acre tract, with the south line of the tract described herein, at a distance of 2.07 feet, passing a concrete monument found 0.12 feet north of the line, and continuing for a total distance of 285.57 feet to a 5/8-inch iron rod found in the east right-of-way line of said F.M. 1660, and the south line of the said 11.10 acre tract, at a southeast corner of the said 3.722 acre tract and the northeast corner of a certain called 0.311 acre tract described in the deed to the State of Texas of record in Volume 476, Page 612, Deed Records of Williamson County, Texas, at the northwest corner of the said 9.862 acre tract, for the southwest corner of the tract described herein;

THENCE crossing the said 11.10 acre tract, with the east right-of-way line of said F.M. 1660, with the east line of the said 3.722 acre tract, with the west line of the tract described herein, the following four (4) courses and distances:

1. N 07°21'46" E, a distance of 421.34 feet to a destroyed Texas Department of Transportation (TXDOT) Type-I concrete right-of-way monument found at an angle point,
2. N 07°33'54" E, a distance of 324.41 feet to a destroyed Texas Department of Transportation (TXDOT) Type-I concrete right-of-way monument found at an angle point,
3. N 13°27'20" W, a distance of 513.66 feet to a destroyed Texas Department of Transportation (TXDOT) Type-I concrete right-of-way monument found at an angle point, and
4. N 03°15'10" W, a distance of 138.59 feet to the **POINT OF BEGINNING** and containing 10.554 acres of land, more or less.

BEARING BASIS: Texas Coordinate System, Central Zone, NAD83, Grid.

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS

That I, Ernesto Navarrete, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the parcel of land described herein is based upon a survey performed upon the ground under my direct supervision during the month of April and May, 2019.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this 20th day of May 2019 A.D.

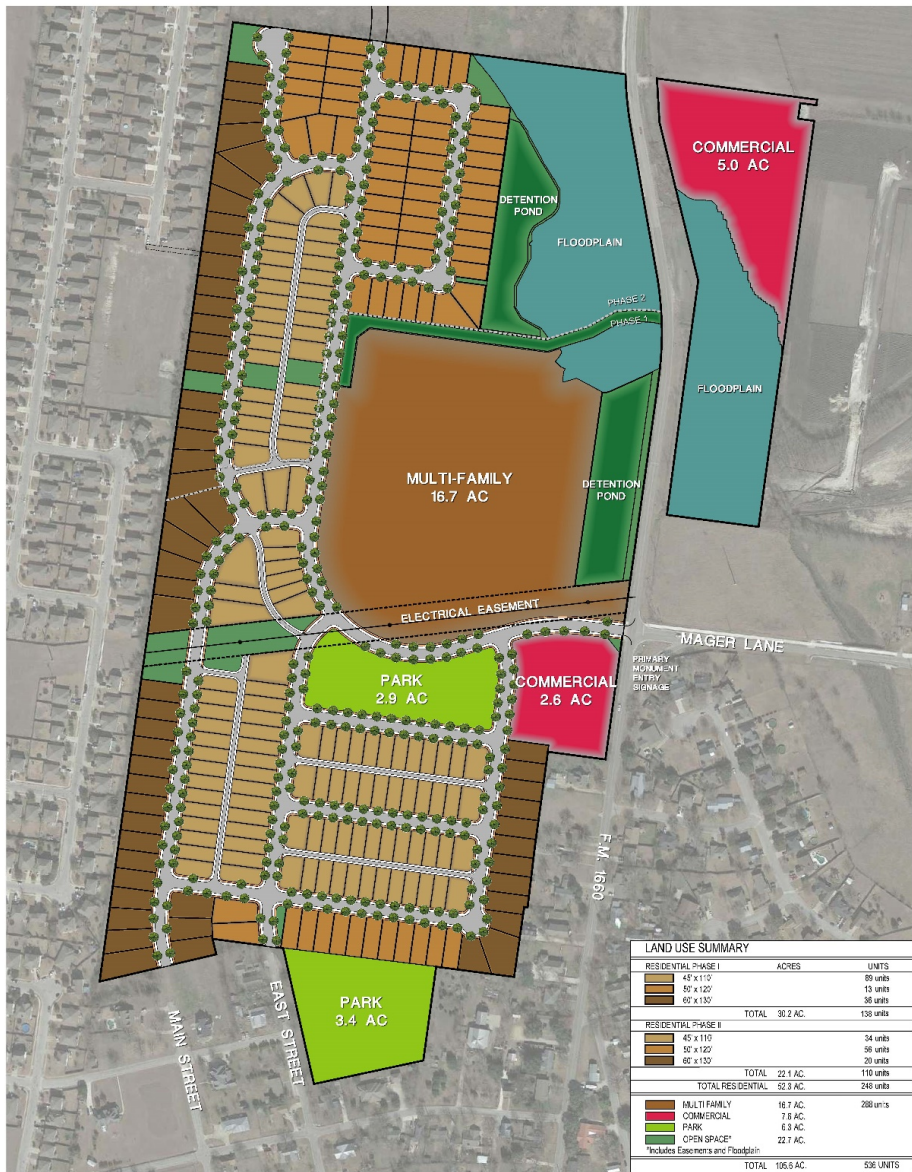
LANDDEV CONSULTING, LLC
5508 Highway 290 West, Suite 150
Austin, Texas 78735


Ernesto Navarrete
Registered Professional Land Surveyor
No. 6642 -- State of Texas



LandDev Consulting, LLC • 5508 Highway 290 West, Suite 150, Austin, TX 78735 • (512) 872-6696
TBPE Firm No. 16384 | TBPLS Firm No. 10194101

EXHIBIT B
Concept Plan



SEC Planning, LLC
Land Planning • Landmarks/Architecture • Community Building
5100 BLISS
HOUSTON, TEXAS 77056
www.secplanning.com

LOTGING PLAN I
DURANGO FARMS
HUTTO, TEXAS

North
Scale: 1" = 100'
Date: February 19, 2020

THIS PLAN IS A CONCEPTUAL PLAN. THE INFORMATION HEREON IS FOR ILLUSTRATIVE PURPOSES ONLY AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE. THE INFORMATION HEREON IS NOT A GUARANTEE OF ANY KIND AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE INFORMATION HEREON IS NOT A GUARANTEE OF ANY KIND AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.

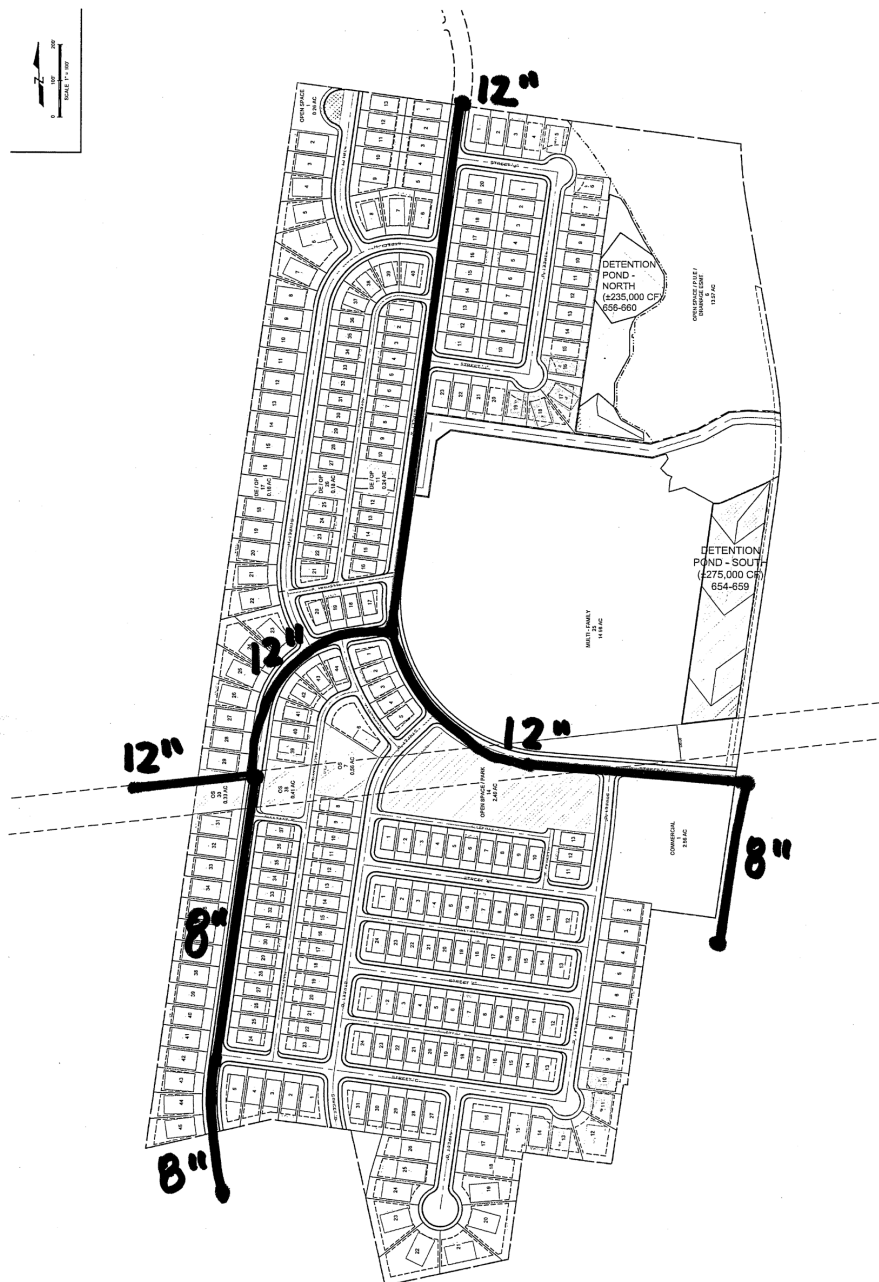


EXHIBIT D
Alternative Road and Trench

Street Classification	Subgrade Material	Hot Mix Asphaltic Concrete, in	Crushed Limestone Base, in	Lime Stabilized Subgrade, in
Residential Local	Subgrade PI greater than 20	2.0	9	8
Residential Collector	Subgrade PI greater than 20	2.0	14	8
Neighborhood Collector	Subgrade PI greater than 20	2.5	17	8

Notes:

1. The surface clay must first be tested for sulfate reaction and a mix design should be completed to determine the proper lime content, lime type, mixing procedure and curing conditions required.
2. We have determined that chemical stabilizers may be used in lieu of lime. The subgrade may be stabilized using EMC Squared and EMS products in accordance with the manufacture Subgrade Specification (Section 02335). Compaction of the treated material shall be 95 percent of TxDOT TEX-114-E. Compaction should be performed with the moisture content of the soil adjusted to within 2 percent of optimum moisture content. This method has proven to be successful in similar soil conditions in the area of this project.
3. The subgrade improvement should be extended 3 feet beyond the back of the curb line.
4. Trenches should be strategically backfilled with on-site material in accordance with the current City of Georgetown's Construction Specifications and Standards G4.05 E. Backfilling Operation Item 2.
5. These pavement thickness designs are intended to transfer the load from the anticipated traffic conditions.
6. The responsibility of assigning street classification to the streets in this project is left to the civil engineer.
7. If pavement designs other than those listed above are desired, please contact MLA Geotechnical.

Exhibit E

Dedicated Parkland

