

This **DEVELOPMENT AGREEMENT** (this "**Agreement**") is made and entered into as of the _____ day of _____, 2021 (the "Effective Date"), by and between the **CITY OF SAN MARCOS, TEXAS**, a Texas home-rule municipal corporation (the "**City**") and **CASATA SAN MARCOS, LLC**, a Texas limited liability company ("**Owner**"). The **City** and **Owner** are sometimes hereinafter referred to individually as "**Party**", and collectively as the "**Parties**". The Parties agree as follows:

PURPOSES AND CONSIDERATIONS

WHEREAS, Owner currently owns or is acquiring approximately 31.77 acres, more or less, ("the Property") located in the Extraterritorial Jurisdiction ("ETJ") of the City, Hays County, Texas, and more particularly described by metes and bounds in **Exhibit "A"**, which is attached hereto and incorporated herein for all purposes; and

WHEREAS, Owner desires to connect to City utilities; and

WHEREAS, as a condition of the City's consent to connection of utilities requires consent to annexation; and

WHEREAS, Owner desires to zone all of the Property as a CD-4 District pursuant to Subpart B of the City of San Marcos Code of Ordinances, as that code exists on the effective date of this Agreement, and in accordance with the Site Plan, as more particularly described in **Exhibit "B"** attached hereto; and

WHEREAS, the City is authorized to make and enter into this Agreement with Owner in accordance with SUBCHAPTER G, CHAPTER 212, LOCAL GOVERNMENT CODE and Chapter 2 of the San Marcos Development Code ("SMDC"), to accomplish the following purposes:

- A. Extend the City's planning authority in accordance with the Land Use Plan and the development regulations contained herein under which certain uses and development of the Property is authorized; and
- B. Authorize enforcement by the City of municipal land use and development regulations, as required and/or authorized by SMDC, as applicable, to the extent the same are consistent with the development regulations contained herein and in the same manner the applicable regulations are enforced within the City's municipal boundaries; and

- C. Provide for an estimated maximum density of 206 residential units across the approximately 31.77 acres; and
- D. This Agreement runs with the land, and thus shall be notarized, then filed in and among the land records of Hays County, and is binding on subsequent purchasers of the Property, or any portions thereof.

NOW THEREFORE, the City and Owner in consideration of the premises, the mutual covenants and agreements of the Parties hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, agree as follows:

SECTION 1: GENERAL TERMS AND CONDITIONS

1.01 Concept Plan

The City hereby approves the general use and development of the Property in accordance with the Concept Plan, which is incorporated herein as **Exhibit "B"**. The Concept Plan shall constitute the land use plan under Section 2.4.3.3 of the SMDC. The Concept Plan may only be amended to increase conformance with the SMDC or as stated in Section 2.04 below. Development applications for the Property shall be consistent with the Concept Plan.

1.02 Proposed Schedule of Development and Phasing

Owner plans to develop the property in phases beginning with the Micro Home Community followed by the Townhome Community as indicated on **Exhibit C**

1.03 Base Zoning District(s)

Development will follow development standards for the CD-4 District, as those standards exist on the effective date of this Agreement.

1.04 Development Standards:

- A. Permitted Uses: All permitted uses allowed in the Residential Uses in Table 5.1 Land Use Matrix of Section 5.1.1.2 Land Use Matrix of the SMDC.
- B. Project Density: 6.48 units per acre
- C. Dimensional and Development Standards: The Property shall be developed in compliance with the SMDC as it exists on the effective date of this Agreement.

- D. Architectural Design Standards: The architectural standards will comply with the City of San Marcos Development Code and International Building Code as appropriate for the use and type of structures in the proposed development.
- E. Additional Landscape Standards: The landscape standards will comply with the SMDC as appropriate for the use and type of structures in the proposed community.
- F. Owner requests the following variations to the San Marcos Development Code.
 - No variations from the development code are requested.

1.05 Application Procedures

- A. Development of the Property shall follow the standard development process identified in the SMDC.

1.06 Special Standards: there are no additional, special standards that apply to this development.

1.07 Public Infrastructure Improvements

- A. An Out of City Utility Connection / Extension application will not be required for the development of this Property provided that the terms of this Agreement are met.
- B. Owner shall connect to City wastewater.
- C. Maxwell Water Supply Company shall provide water services.
- D. Pedernales Electric Cooperative shall provide electrical services.

1.08 Annexation

- A. Upon submission of a final subdivision plat application, the Owner or Developer shall submit complete applications for annexation and zoning for the portion of the Property being platted. Said zoning district(s) shall be consistent with the terms and conditions of this Agreement. The City hereby guarantees the continuing ETJ status of the remainder of the Property not subject to a recorded final plat until such time that a final plat is recorded for all or any portion of such remainder of the Property. The Parties hereby agree that all applicable regulations and planning authority of the SMDC in effect on the date hereof (as modified herein) shall be enforced on the Property.

SECTION 2: MISCELLANEOUS PROVISIONS

2.01 Term

The term of this Agreement will commence on the Effective Date and continue for fifteen (15) years thereafter ("Initial Term"), unless sooner terminated under this Agreement. After the Initial Term, the Agreement shall be automatically renewed for two successive fifteen (15) year periods. This Agreement may be terminated before the expiration of any renewal period, however, if the Owner submits a written request to the City to allow uses than those outlined in section 1.04(A), and the City approves such request. If the City approves the request, then this Agreement shall automatically terminate upon such approval

2.02 Enforcement and Default and Remedies for Default

The Parties agree that the City shall be entitled to enforce the SMDC as the SMDC exists on the effective date of this Agreement, as modified by Plans adopted pursuant to this Agreement. If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period. The City may issue Stop Work Orders for violations arising under this Agreement or the City of San Marcos Code of Ordinances, as applicable.

If either Party defaults under this Agreement and fails to cure the default within the applicable cure period, the non-defaulting Party will have all rights and remedies available under this Agreement or applicable law, including the right to institute legal action to cure any default, to enjoin any threatened or attempted violation of this Agreement or to enforce the defaulting Party's obligations under this Agreement by specific performance or writ of mandamus, or to terminate this Agreement or other enforcement remedies the City may possess under its municipal regulatory authority.

Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of ten (10) business days after receipt by such party of notice of default from the other party. Upon the passage of ten (10) working days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement.

2.03 Authority, Applicable Rules and Right to Continue Development

This Agreement is entered under the statutory authority of Sections 42.042 and 212.172 of the Texas Local Government Code. The Parties intend that this Agreement guarantee the continuation of the extraterritorial status of portions of the Land as provided in this Agreement; authorize certain land uses and development on the Land; provide for the uniform review and approval of plats and development plans for the Land; provide exceptions to certain ordinances; and provide other terms and consideration, including the continuation of land uses and zoning upon annexation of any portion of the Land to the City.

Execution of this agreement, under Section 212.172 of the Texas Local Government Code, constitutes a permit under Chapter 245.

2.04 Exhibits/Amendment

All exhibits attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The detailed layout and location of buildings, parking, etc. illustrated for the Micro Home Community in Exhibit C may be modified at the time of detailed site planning so long as the number of units does not increase, and the number of parking spaces does not decrease. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and *vice-versa*. Each of the Parties has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in interpreting this Agreement or its exhibits. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the Parties.

All changes to this agreement shall be presented to the City Council for review and final approval as an amendment to this agreement in accordance with the procedures established in the City's Development Code.

2.05 Recordation

Pursuant to the requirements of Section 212.172(f), Texas Local Government Code, this Agreement shall be recorded in the official public records of Hays County, Texas. The terms of this Agreement shall be binding upon: (a) the Parties; (b) the Parties' successors and assigns; (c) the Property; and (d) future owners of all or any portion of the Property.

2.06 Assignment and Binding Effect Upon Successors

Owner hereunder, may assign this Agreement, and the rights and obligations of Owner to a subsequent purchaser of all or a portion of the undeveloped property within the Project provided that the assignee assumes all of the obligations hereunder. Any assignment must be in writing, specifically describe the property in question, 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 and recorded in the real property records as may be required by applicable law. Upon any such assignment, the assignor will be released of any further obligations under this Agreement as to the property sold and obligations assigned.

The provisions of this Agreement will be binding upon, and inure to the benefit of the Parties, and their respective successors and assigns. This Agreement will not, however, be binding upon, or create any encumbrance to title as to, any ultimate consumer who purchases a fully developed and improved lot within the Project.

2.08 Miscellaneous

Governing Law, Jurisdiction and Venue This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The parties acknowledge that this Agreement is performable in Hays County, Texas and hereby submit to the jurisdiction of the courts of that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.

Severability If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.

Notices All notices, demands and requests required hereunder shall be in writing and shall be deemed to have been properly delivered and received (i) as of the date of delivery to the addresses set forth below if personally delivered or delivered by facsimile machine, with confirmation of delivery (in the event a facsimile is sent after 5:00 p.m. local San Marcos, Texas time, it shall be deemed to have been received on the next day), or email (as indicated below); (ii) three (3) business days after deposit in a regularly maintained receptacle for the United States mail, certified mail, return receipt requested and postage prepaid; or (iii) one (1) business day after deposit with Federal Express or comparable overnight delivery system for overnight delivery with all costs prepaid. All notices, demands and requests hereunder shall be addressed as follows:

If to City: City of San Marcos
 Attn: City Manager
 630 East Hopkins Street
 San Marcos, Texas 78666

With a copy to:

City of San Marcos
Attn: City Attorney
630 East Hopkins Street
San Marcos, Tx 78666

If to the Owner: Casata San Marcos, LLC
 PO Box 90638
 Austin, Texas 78709

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this Section.

GOVERNMENTAL FUNCTION; IMMUNITY

The City's execution of and performance under this Agreement will not act as a waiver of any immunity of the City to suit or liability under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

EXECUTED to be effective as of the Effective Date first stated above.

CITY OF SAN MARCOS, TEXAS

By: Bert Lumbreras, City Manager

STATE OF TEXAS §

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COUNTY OF HAYS §

This instrument was acknowledged before me on the__ day of_____2014, by Bert Lumbreras, City Manager of the City of San Marcos, in such capacity, on behalf of said entity.

Notary Public, State of Texas

Casata San Marcos, LLC

By: _____

Aaron Levy, CEO

Acknowledgements

STATE OF TEXAS §

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COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____ 2020,
by _____, in his capacity as owner.

Notary Public, State of Texas

**Exhibit A Metes
and Bounds**

Exhibit B Concept Plan

Exhibit C Illustrative Site and Phasing Plan