

SETTLEMENT AGREEMENT

This Settlement Agreement (this “**Agreement**”) is made, entered into, and effective, as of the ____ day of _____, 2025 (the “**Effective Date**”) by and between the City of San Marcos, Texas, a Texas home-rule municipality (the “**City**”), and Qualico Developments (U.S.), Inc., a Delaware corporation (“**Owner**”). The City and the Owner are sometimes referred to herein collectively as the “**Parties**” or individually as a “**Party**.” The Parties hereby contract, covenant and agree as follows.

Recitals

Owner is the owner of the real property located in Hays County, Texas (the “**County**”) consisting of approximately 306.490 acres described in the attached **Exhibit “A”** (the “**Property**”). The Property is located outside of the City’s corporate limits and extraterritorial jurisdiction (“**ETJ**”), having been released from the City’s ETJ by approved Release of ETJ (RETJ-23-54), and not within the ETJ or corporate limits of any other municipality.

Owner, or its successors, plans to develop the Property as a mixed-use development project.

The City holds a Certificate of Convenience and Necessity for water service issued by the Texas Commission on Environmental Quality (the “**TCEQ**”) or a predecessor agency, reflecting the City’s right to provide retail water service to the area in which the Property is located.

On May 15, 2024, Owner filed a formal complaint (the “**Complaint**”) against the City of San Marcos regarding its alleged failure to provide water service to the Property. The Complaint was filed under 16 Texas Administrative Code (TAC)§ 22.242.

It is the intent of the Parties that this Agreement be used to resolve all claims set forth in the Complaint and to establish the right of Owner to receive water and wastewater service to the Property from the City.

This Agreement is entered into pursuant to the provisions of the City’s Charter and applicable Texas law including, without limitation, City of San Marcos Ordinance No. 2024-20.

Article I.

Incorporation of Recitals

1.01. Recitals Incorporated. The above and foregoing recitals are incorporated herein and made a part of this Agreement for all purposes.

Article II.
Project, Consideration, Term and Termination

2.01. Project. The Property is proposed for development as a single-family and mixed-use commercial subdivision (the “**Project**”).

2.02. Consideration. The Parties enter this Agreement for the mutual consideration received, the sufficiency of which is acknowledged, including the following:

- a. Dismissal of the Complaint with prejudice by Owner concurrently with the execution of this Agreement; and
- b. The Agreement of the City to serve the Property with water and wastewater utilities under the terms and conditions established in State and local laws and regulations governing City of San Marcos utility services provided to customers inside its CCN.

2.03. Term of Agreement; Termination. The term of this Agreement shall be 45 years from the Effective Date Upon the expiration of this Agreement any and all rights pursuant to this Agreement shall expire.

Article III.
Annexation

3.01. Recognition of ETJ Removal. The City acknowledges removal of the Property from the City’s ETJ by approved Release of ETJ (RETJ-23-54) as being in accordance with Section 42.101 of the Texas Local Government Code. Except as otherwise provided herein and notwithstanding the outcome of any legal challenge to Section 42.101 of the Texas Local Government Code, the City will continue to recognize and honor the removal of the Property from the ETJ.

3.02. Annexation and Dissolution. The City agrees not to annex the Property into its extraterritorial jurisdiction (“**ETJ**”) or its corporate limits or to dissolve the District, in whole or in part for a period of forty (40) years from the Effective Date, at which time the City may annex the Property.

3.03 Owner’s Consent to Future Annexation. On behalf of itself and all future owners of the Property, Owner consents to the future annexation of the Property into the ETJ and corporate city limits of the City without the necessity of any future act or consent on behalf of the Owner or future owners of the Property. This Section 3.03 of the Agreement shall be binding on Owner, its successors and assigns and all future owners of the Property, regardless of division of the Property into lots or parts.

Article IV.
Development of the Property

4.01. Applicable Rules.

The Parties acknowledge that the City will service the Project with water and wastewater and will require water and wastewater infrastructure to be built in accordance with City rules, including, but not limited to, those “Applicable Rules” identified below, which shall be applied in the City’s review and approval of construction plans for the infrastructure:

City of San Marcos Water Design Criteria Manual
City of San Marcos Wastewater Design Guide

4.02. Design and Construction. Owner will finance (if applicable), design, construct and install all required on-site and off-site water and wastewater facilities, streets, drainage facilities and other amenities and improvements required to develop the Property and to serve the Property (collectively the “**Subdivision Improvements**”) at Owner’s sole cost and expense. Owner shall design and construct and install the Subdivision Improvements in compliance with this Agreement, the Applicable Rules, the plans and specifications approved by the City, and good engineering practices.

4.03. Other Agreements Regarding Utility Service. Owner and the City anticipate that there may be additional agreements entered into between the Parties that specifically address the terms and conditions under which water and wastewater service is provided to the Property including, without limitation, the Regional Wastewater Services and Facilities Cost Sharing Agreement and one or more non-standard service agreements. The Parties agree that, if such agreements are entered into by the Parties, the provisions of such agreements will control in the event of a conflict with this Agreement.

4.04. Owner Assignment of Agreement. Owner’s rights and obligations under this Agreement may be assigned in whole or in part by Owner to one (1) or more purchasers of all or part of the Property or to the District; provided, the City must be notified of any assignment of rights or obligations under this Agreement within thirty (30) days after the effective date of the assignment.

4.05. Recording. This Agreement shall be recorded by the Owner in the Official Public Records of Hays County, Texas within sixty (60) days after the Effective Date. If Owner fails to record this Agreement within sixty (60) days after the Effective Date, such failure shall be a default by Owner.

4.06. Not Binding on End Users. Except for the provisions of Section 3.03, this Agreement is not binding on, and does not create any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property.

Article V.
Default; Reservation of Rights; Attorney's Fees; Waiver

5.01. Default. 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 ("**Cure Period**"). Upon the passage of the Cure Period without cure of the default, such Party shall be deemed to have defaulted for purposes of this Agreement; provided that, if the nature of the default is such that it cannot reasonably be cured within the Cure Period, the Party receiving the notice of default may during such Cure Period give the other Party written notice that it has commenced cure within the Cure Period and will diligently and continuously prosecute the cure to completion as reasonably soon as possible, and such written notice together with diligent and continuous prosecution of the cure shall extend the Cure Period for up to an additional thirty (30) calendar days so long as the cure is being diligently and continuously pursued during such time; and provided further that, if the cure cannot be reasonably accomplished within the additional thirty (30) calendar day period but the applicable facts, circumstances and progress establish that a cure will be obtained within a reasonable period of time following the expiration of the thirty (30) calendar day period, the time for cure will be extended for an additional period of time as mutually agreed by the Parties (such agreement not to be unreasonably withheld); provided, further, that if a default is not cured within the applicable Cure Period, or, as applicable, written notice having been given and cure being commenced and diligently and continuously prosecuted, within the additional thirty (30) calendar days after the giving of the written notice, or, as otherwise applicable, within the time mutually agreed by the Parties due to the defaulting Party not being able to obtain a cure within the additional thirty (30) calendar days after the defaulting Party gives written notice that it is commencing cure, then the non-defaulting Party may pursue the remedies set forth in this Agreement.

5.02. Default and Termination. If the either Party defaults in the performance of a duty or obligation of the defaulting Party provided in this Agreement, and such default is not timely cured after notice and expiration of the Cure Period, the non-defaulting Party may seek to specifically enforce the obligations of the defaulting Party under this Agreement or seek other available remedy at law or equity.

5.03. Reservation of Rights; Limited Immunity Waiver.

(a) Each Party reserves all rights, privileges, and immunities under applicable laws, and neither Party waives any legal right or defense available under law or in equity. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either the City or its officers and employees, and neither the City, nor its officers and employees waive, modify or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.

5.05. Waiver. Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement will not, regardless of length of time during which that failure continues, be deemed a waiver of that Party's right to insist upon strict compliance with all terms of this Agreement. In order to be effective as to a Party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

5.06. Remedies Cumulative. The remedies described in this Article are in addition to and not in replacement of any other remedies at law or in equity that a Party may have as a result of any breach.

Article VI. Force Majeure

6.01. Definition. The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority; insurrections; riots; epidemic; landslides; lightning, earthquakes; fires, hurricanes; storms, floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the Party claiming such inability.

6.02. Notice of Default. If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such Party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the Party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the Party shall endeavor to remove or overcome such inability with all reasonable dispatch.

6.03. Settlements and Strikes. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the Party having the difficulty.

Article VII Notices

7.01. Method of Notice. Any notice to be given hereunder by a Party to another Party shall be in writing and may be effected by personal delivery or by sending said notices by registered or

certified mail, return receipt requested, to the addresses set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed:

City of San Marcos
Attn: Stephanie Reyes, City Manager
630 E Hopkins
San Marcos, Texas 78666
Telephone: (512)-393-8000
Facsimile: (855)-246-9100
Email: sreyes@sanmarcostx.gov

With copy to:

City of San Marcos
Attn: Same Aguirre, City Attorney
630 E Hopkins
San Marcos, Texas 78666
Telephone: (512) 393-8154
Facsimile: (855)-246-9100
Email: saguirre@sanmarcostx.gov

Any notice mailed to Owner shall be addressed:

Qualico Communities
Attn: Kevin Fleming, Vice President
14400 The Lakes Blvd.
Building C, Suite 200
Pflugerville, Texas 78660
Telephone: (512) 703-9466
Email: Kevin.Fleming@Qualico.com

With copy to:

McLean & Howard, LLP
Attn: Bill McLean
4301 Bull Creek Road, Ste 150
Austin, Texas 78731
Telephone: (512) 328-2008
Facsimile: (512) 328-2409
Email: bmclean@mcleanhowardlaw.com

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

Article VIII. Waiver and Release

8.01. Waiver of Alternative Benefits. The Parties acknowledge the mutual promises and obligations of the Parties expressed herein are good, valuable and sufficient consideration for this Agreement. Owner specifically releases any equitable or legal claim that it may have against the City regarding, or with respect to the Complaint. The foregoing notwithstanding, the Parties specifically do not waive or release any claim or cause of action that either Party may have as a result of the other Party's breach of its agreements hereunder.

Article IX. Entire Agreement

9.01. Agreement and Amendment. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties and may not be amended except by a writing approved by the City Council of the City that is signed by all Parties and dated subsequent to the date hereof.

Article X. General Provisions

10.01. No Joint Venture. The terms of this Agreement 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, do not assume any responsibilities or liabilities to any third party in connection with the development of the Property. The City enters into this Agreement in the exercise of its public duties and authority to provide for development of property within the City's ETJ pursuant to its police powers and for the benefit and protection of the public health, safety, and welfare.

10.02. No Third Party Beneficiary. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a party, unless expressly provided otherwise herein, or in a written instrument executed by both the City and the third party. Absent a written agreement between the City and third party providing otherwise, if a default occurs with respect to an obligation of the City under this Agreement, any notice of default or action seeking a remedy for such default must be made by the Owner.

10.03. Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application thereof to any person or circumstance, shall ever be held by any court of competent jurisdiction to be invalid

or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall be not be affected thereby.

10.04. Effective Date. The Effective Date of this Agreement is the defined date set forth in the first paragraph.

10.05. Texas Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Hays County, Texas. Venue shall lie exclusively in the State District Courts of Hays County, Texas.

10.06. Timely Performance. It is acknowledged and agreed by the Parties that time is of the essence in the performance of this Agreement.

10.07. Exhibits. The following Exhibits to this Agreement are incorporated herein by reference for all purposes:

Exhibit A Property

[Signature pages follow]

EXECUTED in multiple originals, and in full force and effect as of the Effective Date.

CITY:

City of San Marcos, Texas,
a Texas home-rule municipality

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §

COUNTY OF _____ §

 This instrument was acknowledged before me on this ____ day of _____, 2024,
by _____, as _____ of the City of San Marcos, Texas, a
Texas home-rule municipality, on behalf of the City.

(SEAL)

Notary Public, State of Texas

OWNER:

Qualico Developments (U.S.), Inc.,
a Delaware corporation

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §

COUNTY OF _____ §

 This instrument was acknowledged before me on this ____ day of _____, 2024,
by _____, as _____ of Qualico Developments (U.S.),
Inc., a Delaware corporation, on behalf of said corporation.

(SEAL)

Notary Public, State of Texas

EXHIBIT A

Property