

STATE OF TEXAS
COUNTY OF HAYS

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FIRST AMENDED AND RESTATED
DEVELOPMENT AGREEMENT

This FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the _____ day of _____, 2018⁴ (the "Effective Date"), by and between the **CITY OF SAN MARCOS, TEXAS**, a Texas home-rule municipal corporation (the "City") and LASALLE HOLDINGS, LTD, ~~FM 158 Land LTD, Kyle Three Partners LLC and Cedar Stump Limited~~ ("Owner") and TACK DEVELOPMENT LP ("Owners"). The City and OwnerOwners are sometimes hereinafter referred to individually as "Party", and collectively as the "Parties". The Parties agree as follows:

PURPOSES AND CONSIDERATIONS

WHEREAS, OwnerOwners currently owns approximately 12,747.48050 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, OwnerOwners hases created over a portion of the property five (5) Municipal Utility Districts known as LaSalle Municipal Utility Districts Nos. 1-5 (the "District(s)"); and

WHEREAS, as a condition of the City's consent to the establishment of the Districts, the Developer is required to enter into a Development Agreement that conforms to the requirements established in the Consent Agreements; and

WHEREAS, OwnerOwners desires to zone all of the Property as a SmartCode District pursuant to Subpart C of the City of San Marcos Code of Ordinances, as that code exists on the effective date of the is Original Development Agreement dated October 6th, 2014, and generally in accordance with the Conceptual Land Use Plan, as more particularly described in **Exhibit "B"** attached hereto; and

WHEREAS, FM 158 Land LTD, Kyle Three Partners LLC and Cedar Stump Limited have each opted out of the original Development Agreement that was entered into on October 6, 2014 ("Original Development Agreement"); and

WHEREAS, on or about March 2, 2018, LaSalle Holdings, LTD sold to TACK Development, LP approximately 257 acres of land from the Property and assigned rights to the Original Development Agreement dated October 6, 2014 as it relates to the approximate 257 acres; and

WHEREAS, Owners wish to conduct or have conducted temporary industrial activities on the Property prior to residential or commercial development; and

WHEREAS, the Parties mutually desire to amend the Original Development Agreement to reflect these and other changes; and

WHEREAS, the City is authorized to make and enter into this Agreement with ~~Owner~~Owners in accordance with SUBCHAPTER G, CHAPTER 212, LOCAL GOVERNMENT CODE and Chapter 2 of the City's Land Development Code ("LDC") and the Consent Agreements, to accomplish the following purposes:

- A. Extend the City's planning authority in accordance with the Conceptual 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 SmartCode and the LDC, 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. Authorize enforcement by the City of land use and development regulations as set by SmartCode and the Regulating Plan that will be adopted pursuant to SmartCode; and
- D. Provide for a minimum density of ~~7,700~~12,000 residential units in the area on the Conceptual Land Use Plan designated as Residential plus a minimum of approximately 250 acres of commercial/retail, multi-family, townhome, casita, office, spa, hotel or other uses or for density or density set pursuant to SmartCode; and
- E. 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~~Owners 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 Conceptual Land Use Plan

The City hereby approves the general use and development of the Property in accordance with the Conceptual Land Use Plan, which is incorporated herein as **Exhibit “B”**. The Conceptual Land Use Plan shall constitute the land use plan under Section 1.4.2.4(g) of the LDC. The Conceptual Land Use Plan may be amended from time to time in accordance with the processes and procedures outlined in Section 1.4.2.6(c) of the LDC or as stated in Section 2.04 below. Development applications for the Property shall be consistent with the Conceptual Land Use Plan.

1.02 Proposed Schedule of Development and Phasing

~~Owner~~Owners plans to develop the property in accordance with the Phasing Concept attached as **Exhibit “C”**.

1.03 Base Zoning District(s)

Development will follow SmartCode standards, as SmartCode exists on the effective date of the the Original Development~~is~~ Agreement dated October 6, 2014.

1.04 Development Standards:

A. Permitted Uses: The following uses shall be permitted:

1. ~~Owner~~Owners will develop a Regulating Plan pursuant to SmartCode for each phase of the development. For purposes of this Agreement, and to be discussed in more detail in the Regulating Plan, for areas designated as Residential in the Conceptual Land Use Plan, the uses may include single-family residences, duplex residential units, casita units and other similar units. The parties recognize and agree that due to the size of the project, market conditions, based on builder and buyer acceptability, might dictate smaller lots or larger lots, differing block lengths, etc. In that event, ~~Owner~~Owners may pursue a warrant or a variance as provided in SmartCode Section 1.5.

B. Project Density: The density shall be a minimum of ~~7,742,000~~ residential units in the area on the Conceptual Land Use Plan marked as Residential. In addition, there will be a minimum ~~minimum of~~ 250 acres of commercial/retail, multi-family, townhome, casita, office, spa, hotel, entertainment venues, or other uses including schools or governmental.

C. Dimensional and Development Standards: The Property shall be developed in compliance with SmartCode as it exists on the effective date of the the Original Development~~is~~ Agreement dated October 6, 2014 and the Regulating Plan developed and adopted thereunder;

D. Architectural Design Standards

~~Owner~~Owners will provide Architectural Design Standards as part of the Regulating Plan developed and adopted pursuant to SmartCode. ~~Owner~~Owners agrees to adopt architectural designs that will produce a cohesive visual framework in the community. ~~Owner~~Owners ~~are~~is committed to a high quality of architectural design for this Project. This will require the following:

1. Variety of lot and dwelling types within the project and individual neighborhoods;
2. Landscape standards such as drought tolerant and/or native landscape materials;
3. Deed restrictions and other measures such as Covenants, Conditions and Restrictions, shall be incorporated as necessary or desirable.
4. An Architectural pattern book that contains designs, illustrations and standards with the: (1) overall plan for the development; (2) the image of typical urban/planned development spaces within that plan; and (3) the individual buildings with their architectural details.
 - a. At a minimum, the "Building Design" section of the multifamily design standards will be incorporated into the pattern book for multi-family development. This shall include Facades, Materials, Building Variation, Balconies and Stairwells, Quality Building Amenities, Building Entries, and Windows and Transparency.

1.05 Application Procedures

A. Development of the Property shall be governed by the following:

1. The Regulating Plan developed and adopted pursuant to SmartCode as it exist~~eds~~ on the effective date of the Original Development~~is~~ Agreement dated October 6, 2014 and the Conceptual Land Use Plan and this Agreement.
2. The City of San Marcos Code of Ordinances, as applicable.
3. Construction plans and final plats for all or any portion of the Property that are approved from time to time by the City (collectively, the "Approved Plats").
4. ~~Owner~~Owners will provide a Traffic Impact Analysis ("TIA") with each Regulating Plan. Such an analysis will be on a phased basis with each analysis taking into consideration the cumulative impacts of each previous phase.
5. Roadways within the development will adhere to the City's Adopted Complete Streets Ordinance, unless modified pursuant to Section 1.06 below.
6. ~~Owner~~Owners will provide a Stormwater Pollution Prevention Plan as

provided in Section C below.

7. Applicable provisions of the Texas Local Government Code, and other state and federal laws ("Other Laws").
8. Watershed Protection Plan Phase 1 prepared prior to approval of the following development applications: Utility Extension, Development Transfer Petition, Subdivision Concept Plan, Preliminary Subdivision Plat, Preliminary Development Plat or Cluster Development Plat.
9. A Watershed Protection Plan Phase 2 prepared prior to approval of the following development applications: Construction Plans, Site Preparation Permit, Final Subdivision Plat, Final Development Plat.
 - a. With each Phase 2 Watershed Protection Plan a Water Balance Analysis will be conducted and provided to the City to ensure viability of the water features. The analysis must indicate that no potable water will be utilized for the water features.
10. All applicable requirements and standards of the Texas Commission on Environmental Quality (TCEQ) will be met.

B. Plat Approval: The Parties agree that the approved land uses in each final plat of portions of the Property shall be consistent with the Conceptual Land Use Plan, as may be amended from time to time and the Regulating Plan.

C. Environmental, Water Quality & Detention Standards

~~Owner~~Owners shall obtain authorization from and comply with the rules and regulations established by federal, state and local governmental entities regarding watershed protection if any are relevant or impacted and any geologic assessments required by various governmental entities. ~~Owner~~Owners shall also prepare and implement a stormwater pollution prevention plan in compliance with the TCEQ's Texas Pollution Discharge Elimination System stormwater general permit, or the National Pollution Discharge Elimination System general permit, for construction related stormwater discharges. Finally, ~~Owner~~Owners will seek to ensure that the Project will not jeopardize the continued existence of listed endangered species or destroy or adversely modify their critical habitat in accordance with the federal Endangered Species Act, if any.

Development of the property shall be governed by the following:

1. Chapter 5 of the San Marcos Land Development Code for environmental regulations as adopted on March 4, 2014.
2. San Marcos Storm Water Technical Manual, as adopted on March 4, 2014
 - a. Including the San Marcos Green Infrastructure Low Impact Development (LID) Guidance Manual.
 - b. Provided, however; ~~Owner~~Owners ~~are~~is not required to comply with Sections 5.1.1.2(e), (f) and (g).

3. The parties recognize that the Project is not located within the Edwards Aquifer Recharge or Contributing Zone and Sections 1 and 2 above shall not apply if the requirements exceed TCEQ Edwards Aquifer Standards.

The development will comply with all drought restrictions within the City of Kyle Code of Ordinances.

D. Third Party Inspections:

- a. Environmental & Erosion Control: All erosion and sedimentation controls shall be monitored and maintained at all times during the construction process, and shall be inspected on an appropriate frequency by a qualified, third-party engineering inspector, as approved by the City, and results shall be provided to the City following each inspection.
- b. Building Inspections: Unless an alternative is mutually agreed upon by the City and owner, the plan review and building inspections conducted during the permitting process and through receipt of certificate of occupancy shall be conducted by a qualified, third-party inspection service, as approved by the City, and results shall be provided in the MyPermitNow system to the City following each inspection.

1.06 Special Standards

The Parties agree that the development shall be governed by the standards developed and adopted in the Regulating Plan pursuant to SmartCode and Land Development Code, as applicable, as these codes exist on the effective date of the Original Development Agreement dated October 6, 2014.

1.07 Financing and Schedule for Public Infrastructure Improvements

Owners will obtain~~The City of Kyle will furnish~~ water, wastewater and reclaimed water service to the Project from a third party source, or a combination of third party sources, such as the City of Kyle and/or Maxwell Water Supply Corporation. ~~Owner~~Owners and the Third Party Source(s)~~City of Kyle~~ will have separate Water and Wastewater Agreements, which will provide the schedule for extension of those services. Impact Fees will be paid to the proper Third Party Source~~City of Kyle~~. These Agreements will be submitted to the City of San Marcos per the Consent Agreement.

LaSalle MUDs Nos. 1-5 will finance the extension of the Third Party Source's ~~Kyle's~~ systems to the Project.

~~Owner plans to petition the MUDs, as necessary to annex property that is included in the Conceptual Land Plan but that are not currently included in the existing MUDs so that they may be served by the City of Kyle.~~ By approving this

Agreement, the City consents to ~~thesuch~~ annexation of the Road Property that is shown in the Conceptual Land Plan by the MUD(s) under the following conditions:

- A. That the annexation occurs within 5 years of the execution of this Agreement;
- B. That the property annexed is limited to the property included on the Conceptual Land Use Plan attached to this Agreement; and
- C. That the annexation is consistent with Chapter 70 of the City's Code of Ordinance as it relates to the creation of MUDs, except as where modified by the Consent Agreements for MUDs 1-5.

1.08 Annexation

~~The City and the District will enter into an agreement for annexation for limited purposes pursuant to a Strategic Partnership Agreement under Chapter 43 of the Texas Local Government Code.~~

After 25 years, of the effective date of this agreement, the city shall have the right to annex any of the Districts if all supporting infrastructure has been completed to serve the developable acreage being annexed and

1 ~~Owner~~Owners ~~have~~s been reimbursed for the facilities serving the developable acreage within the district that is subject to annexation in accordance with rules and standards of TCEQ or successor agency and Office of the Attorney General; and/or

2. The City assumes all obligations, debts and liabilities of the district as provided by Chapter 43 of the Texas Local Government Code.

Upon review and satisfaction of these conditions to annexation, the City may, but will not be required to, annex that District. The City agrees that the submission of a request for annexation will not be required in connection with the subdivision of any property located within a District.

Notwithstanding the annexation status of any portion of the property, all phases of the development shall have physical addresses assigned by the City of San Marcos, if allowed by the United States Postal Service. Additionally, all project branding and marketing efforts shall reference and acknowledge the location of the project within the City of San Marcos or the City of San Marcos Extraterritorial Jurisdiction.

Contemporaneously with the annexation of land located within a District, the City

will zone any undeveloped property within that District consistently with the land uses shown on the Conceptual Land Use Plan and/or the Regulating Plan, and will zone all developed property consistently with the land uses in existence on the date of the annexation.

Notwithstanding the City's agreement to delay annexation of the District hereinabove, the City may annex any District if the City's consent is withdrawn pursuant to Section 2.04 of the Consent Agreement or the District is dissolved.

1.09 Parkland and Open Space Dedication

~~Owner~~Owners agrees to prepare a Master Parks & Open Space Plan ("MP & OS Plan") that is consistent with the Regulating Plan, governing all parkland and open space within the Project. ~~Owner~~Owners shall submit to the City a MP & OS Plan within 12 months of developing and adopting a Regulating Plan.

1.10 Creation of Homeowner's Association

~~Owner~~Owners will include in the Regulating Plan provisions for establishing one or more Homeowners Association(s) (HOA) or other entity or entities as may be necessary and convenient for the Project.

1.11 Temporary Industrial Activity

Owners may conduct temporary industrial activities on the property as necessary or desired to extract, process, sell and/or manufacture minerals and mineral products on the Property, provided that such operations are conducted in ~~on~~ compliance with State of Texas permits, regulations and/or standards. The temporary industrial activity shall cease when residential development, as that term is defined in the relevant Regulating Plan, occurs within 1,000 feet of the industrial activity.

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 may be extended for another fifteen (15) year period by ~~Owner~~Owners, with City's approval, by delivering written notice of such election to the City on or before the expiration of the then-current term. Following expiration of the second 15 year term, the Agreement may be extended for up to three successive five (5) year periods by ~~Owner~~Owners, with

City's approval, by delivering written notice of such election to the City on or before the expiration of the then-current term.

This Agreement will terminate if the Consent Agreement for the MUD creation expires or the MUD is dissolved.

2.02 Enforcement and Default and Remedies for Default

The Parties agree that the City shall be entitled to enforce SmartCode as SmartCode exists on the effective date of this Agreement, as modified by the Regulating Plan or Plans adopted pursuant to the [Original Development Agreement dated October 6th, 2014](#). 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.

In consideration of ~~Owner~~Owners's agreements hereunder, the City agrees that, during the term of this Agreement, it will not impose or attempt to impose: (a) any moratorium on building or development within the Projector (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plans, final plats, site plans, building permits, certificates of occupancy or other necessary approvals, within the Project. No City-imposed moratorium, growth restriction, or other limitation affecting the rate, timing or sequencing of development or construction of all or any part of the Project will apply to the Land if such moratorium, restriction or other limitation conflicts with this Agreement or would have the effect of increasing ~~Owner~~Owners's obligations or decreasing ~~Owner~~Owners's rights and benefits under this Agreement. This Agreement on the part of the City will not apply to temporary moratoriums uniformly imposed throughout the City and ETJ due to an emergency constituting an imminent threat to the public health or safety, provided that the temporary moratorium continues only during the duration of the emergency or a moratorium authorized by Subchapter E, Chapter 212 of the Texas Local Government Code. However, the parties recognize that the City is not providing any essential public facilities such as water, sewer or roadways.

2.04 Exhibits/Amendment

All exhibits attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. 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.

Due to the fact that the Project comprises a significant land area and its development will occur in phases over a number of years, modifications to the Conceptual Plan and other attachments to this agreement may become necessary due to changes in market conditions or other factors. In order to provide flexibility with respect to certain details of the development of the Project, ~~Owner~~Ownerss may make minor changes to the attachments of this agreement with approval by the City Planning Director. A minor change may be approved if it does not materially affect or change this agreement by more than 10% for factors such as, but not limited to: building materials in the pattern book and the repurposing of water bodies to recreational areas. Other changes shall be deemed a Major Change as determined by the Planning Director. The ~~Owner~~Owners may appeal this determination to the City Manager within 10 days of the date of notification of the decision.

All major changes 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 Land Development Code. Major changes shall consist of changes that do not fall within the definition of a minor change and shall consist of, but are not limited to: the addition of land area, density beyond what is permitted in SmartCode, changes in roadway alignments more than what is necessary to accommodate tree preservation or the protection of KARST features and a change in the base zoning. All other changes shall be considered Minor.

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.

~~Owner~~Ownerss agree that all restrictive covenants for the Project shall reinforce this Agreement and shall not be inconsistent with the requirements herein. ~~Owner~~Ownerss further agree to memorialize the terms of this Agreement through inclusion in the plat notes. The Agreement shall be recorded in the Hays County land records to place subsequent purchasers on notice at ~~Owner~~Ownerss' expense and ~~Owner~~Ownerss shall provide a copy of all such restrictive covenants to the City prior to filing.

2.06 Assignment and Binding Effect Upon Successors

~~Owner~~Owners hereunder, may assign this Agreement, and the rights and obligations of ~~Owner~~Owners 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.

2.07 Cooperation

The City and ~~Owner~~Owners each agree to execute such further documents or instruments as may be necessary to evidence their agreements hereunder.

The City acknowledges that the District(s) may in the future seek State or federal grant matching funds to finance certain Public Park, recreational and environmental facilities within the Project. The City may support these efforts to obtain grant funding including entering into joint use agreements with the District, if the City Council determines in its sole discretion that the proposed facilities further the City's goal of making additional park, environmental and recreational facilities available to the area; provided, however, the City will have no financial obligation associated with this activity or the operation and maintenance of such facilities.

2.08 Miscellaneous

Force Majeure The term "force majeure" as used 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, epidemics, landslides, lightning, earthquake, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, devil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals, or other causes not reasonably within the control of the party claiming such inability.

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, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.

Incorporated Agreements The Consent Agreements creating MUDs 1-5, adopted April 16, 2013 and March 2014 are specifically incorporated into this Agreement by reference, together with any exhibits attached hereto and to the Consent Agreements.

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.

Parties If any of the ownership entities fail or refuse to sign this Agreement or choose to opt out of this Agreement, those entities and their property shall be excluded. The Conceptual Land Plan will be amended to reflect the change and will automatically become part of this Agreement. Further, the county deed records will be amended by the ~~Owner~~Owners to reflect the change and evidence of the recordation will be provided to the City.

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 Attorney
630 East Hopkins Street
San Marcos, Tx 78666

If to the ~~Owner~~Owners: LaSalle Holdings

Ltd.

Attn: Mike Schroeder
110 San Antonio Street
#31113101 Westlake
Drive, #3
Austin, TX 78701

TACK Development
Attn: Tim Timmerman
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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~~Jared Miller~~, City
Manager

LaSalle Holdings, Ltd.

By: _____
Mike Schroeder
Manager, LaSalle Holdings, Ltd.

TACK Development, LP

By: _____

Tim Timmerman

Acknowledgements

Notary Public, State of Texas