

Memo



TO: La Cima City Council Committee Members
FROM: Shannon Mattingly, Director of Planning and Development
DATE: 6/11/2021
SUBJECT: Request to Amend the La Cima Development Agreement. Case #PDA-21-03

The purpose of this memo is to notify the La Cima Council Committee of an application to amend the La Cima Development Agreement and to briefly explain the history as well as the proposed amendment.

History

2/5/2013 City Council approved Lazy Oaks Development Agreement via Resolution 2013-131.

9/16/2014 City Council approved an amendment to the development agreement via Resolution 2014-131 to provide for the future annexation of 2,031 acres.

5/15/2018 City Council approved a second amendment to the agreement via Resolution 2018-075 to increase the acreage and total number of dwelling units from 2,400 to 2,800.

8/18/2020 City Council approved a third amendment to the agreement via Resolution 2020-179 to include an additional 129.38 acres and to change the maximum amount of multi-family allowed to be based off the number of units instead of acres. This amendment changed the maximum from 30 acres to 720 units.

5/14/2021 Staff received an application requesting a fourth amendment to the development agreement to change the number of units authorized for construction within the first phase to be based off 360 units instead of 15 acres.

Current Request

The purpose of this amendment is to facilitate development of a multi-family project conceptualized as a 20-acre development with density of approximately 18 units/acre and to correct an inaccurate reference to the Development Code. At this time, the applicant is requesting a change to *Section 1.04.D* of the development agreement as follows:

Section 1.04.D. A phasing plan shall be submitted with a Subdivision Concept Plat to ensure orderly development of the Project. Any portion of the Property developed as MF-24, Multiple-Family Residential District in accordance with Section 1.04.A.3 above shall be developed in a minimum of two phases with the first phase to be no more than ~~15 acres~~ 360 units and any subsequent phases shall be deferred until after such first phase is complete and at least 75% occupied and at least 200 single-family homes have been completed and occupied.

The proposed amendment aligns *Section 1.04.D* with *Section 1.04.A.3* which was amended with Resolution 2020-179 to regulate multifamily by number of units instead of number of acres.

This **FOURTH AMENDED AND RESTATED DEVELOPMENT AGREEMENT** (this "**Agreement**") is made and entered into as of the _____ day of _____, 2020 (the "**Effective Date**"), by and between the **CITY OF SAN MARCOS, TEXAS**, a Texas municipal corporation (the "**City**"), Hays County, Texas (the "**County**"), and **LAZY OAKS RANCH, LP**, a Texas Limited Partnership ("**LOR**"), LCSM Ph. 1-1, LLC, a Texas limited liability company as partial assignee of LOR ("**LCSM Ph.1-1**"), LCSM Ph. 1-2, LLC, a Texas limited liability company as partial assignee of LOR ("**LCSM Ph.1-2**"), LCSM Ph. 2, LLC, a Texas limited liability company as partial assignee of LOR ("**LCSM Ph. 2**"), LCSM Ph. 3, LLC, a Texas limited liability company as partial assignee of LOR ("**LCSM Ph. 3**"), La Cima Commercial, LP a Texas partnership as a partial assignee of LOR ("**La Cima Commercial**"), LCSM WW, LLC, a Texas limited liability company as a partial assignee of LOR ("**LCSM WW**"), and LCSM West, LP, a Texas limited partnership ("**LCSM West**" and, together with LOR, LCSM Ph.1-1, LCSM Ph. 1-2, LCSM Ph. 2, LCSM Ph. 3, La Cima Commercial, and LCSM WW, the "**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, the City and LOR entered into that certain Second Amended and Restated Development Agreement dated May 22, 2018, approved by Resolution 2018-75R and recorded under Document Number 18018461 in the Official Public Records of Hays County, Texas (the "Existing Development Agreement"), related to that certain 2,422.996 acre, more or less, parcel of land (the "Existing Property") located in the Extraterritorial Jurisdiction ("ETJ") of the City, Hays County, Texas, and more particularly described in **Exhibit "A", Exhibit "A-1", Exhibit "A-2", and Exhibit "A-3"** attached hereto and incorporated herein for all purposes (with the land in Exhibit "A-1" and Exhibit "A-2" collectively, the "La Cima Outparcels");

WHEREAS, Owner owns that certain 5 acre tract described as the "Save and Except: Tract 1: 5 Acres" described on pages 2 3 of Exhibit "A" to the Development Agreement ("**Save and Except Tract 1**") and desires to add such Save and Except Tract 1 to this Development Agreement;

WHEREAS, Owner intends to acquire an adjoining 101.66 acre, more or less, parcel of land located in the ETJ of the City, Hays County, Texas, and more particularly described in **Exhibit "A-4"** attached and incorporated herein for all purposes (the "Additional 101 Acre Tract"), and an adjoining 22.723 acre, more or less, parcel of land located in the ETJ of the City, Hays County, Texas, and more particularly described in **Exhibit "A-4"** attached and incorporated herein for all purposes (the "Additional 22 Acre Tract" and, together with the Additional 101 Acre Tract, the "Additional Property");

WHEREAS, Owner desires to develop the Existing Property, the Save and Except Tract 1 and the Additional Property (collectively, the "Property") totaling 2,552.379 acres of land as a single family residential, limited nonresidential and conservation, preservation and open space development generally to foster a walkable and bikeable community in accordance with the **Conceptual Land Use Plan**, as more particularly described in **Exhibit "B"** attached hereto and incorporated herein for all purposes and under the name La Cima San Marcos (the "Project");

WHEREAS, the Property is appraised for ad valorem tax purposes as land for agricultural or wildlife management use or timber land under Chapter 23, Texas Tax Code;

WHEREAS, the City is authorized by Section 43.035 of the Texas Local Government Code to offer to make a development agreement with the owner of land appraised for such purposes pursuant to Section 212.172 of the Texas Local Government Code to defer the annexation of the property until the land owner files a subdivision plat or other development application for any portion of the property;

WHEREAS, by entering into this Agreement, Owner has accepted the City's offer to enter into a

development agreement pursuant to both Section 43.035 and Section 212.172 of the Texas Local Government Code with the mutual understanding that this Agreement shall constitute a permit for the purposes of Chapter 245 of the Texas Local Government Code;

WHEREAS, an area adjacent or contiguous to an area that is subject of development agreement entered into under Section 43.035 and Section 212.172 of the Texas Local Government Code is considered to be adjacent or contiguous to the municipality; and

WHEREAS, the City is authorized to amend the Existing Development Agreement and to make and enter into this Agreement with Owner in accordance with Subchapter G, Chapter 212, Local Government Code and Chapters 1 and 2 of the City's Land Development Code ("LDC"), 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 applicable; and
- C. Authorize enforcement by the City of land use and development regulations other than those that apply within the City's boundaries, as may be agreed to by the Parties and included in this Agreement; and
- D. Specify the uses and development of the Property before and after annexation; and
- E. Provide for infrastructure including, but not limited to, stormwater drainage and water, wastewater and other utility systems; and
- F. Include such other lawful terms and considerations the Parties consider appropriate.

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, hereby amend and restate the Existing Development Agreement and 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"**. **Exhibit "C"** separately shows the proposed Open Space that is part of the Conceptual Land Use Plan. 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 City's LDC. Development applications for the Property shall be consistent with the Conceptual Land Use Plan.

1.02 Annexation

Upon approval of this Agreement, Owner agrees to the full purpose annexation of the Property at the time the corporate limits of the City becomes adjacent to the Property. Provided, however, that the City hereby agrees to phase the annexation of the Property as follows: At the time the City's corporate limits become adjacent to the Property, the City may initiate the full purpose annexation of all or any portion of the Property on which a final subdivision plat has been recorded. Upon annexation of all or any portions of the Property, the applicant shall initiate a zoning change for said annexed portions to establish a zoning district(s) that is (are) 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 final recorded 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 City's LDC may be enforced on the Property. The limitations on the City's annexation authority shall apply only during the term of this Agreement.

1.03 Governing Development Regulations

- A. Development of the Property shall be governed by the following:
 - 1. The Conceptual Land Use Plan and this Agreement; and
 - 2. The applicable provisions of the City's LDC and Ordinances;
 - 3. The applicable provisions of the Development Regulations of Hays County; and
 - 4. 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").
 - 5. The Parties acknowledge that prior to or concurrent with the submittal of the first plat application for development on the Property or any portion thereof, a Traffic Impact Analysis (the "TIA") will be required. At the time of submittal of the TIA, the traffic impacts shall be evaluated based on the full build-out development of the entire project (as defined in Section 1.04, below) and not on the individual plat.
 - 6. Applicable provisions of the Texas Local Government Code, and other state and federal laws ("Other Laws").
 - 7. In the event of a conflict between the City's and/or County's development regulations and the Owner's rights under this Agreement, this Agreement shall control.
- B. The Conceptual Land Use Plan, this Agreement, the LDC, the Approved Plats, the Required Studies and Other Laws shall hereinafter be referred to collectively as the "Governing Regulations."
- C. Plat Approval: Owner and the City 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.
- D. Enforcement: The Parties agree that the City and County shall be entitled to enforce all applicable municipal land use and development regulations for the Property and the Governing Regulations.
- E. No Contractual Enlargement of Exemption from City Standards: Notwithstanding any other provision in this Agreement, including references to such things as the "Governing Regulations" or the "Time of Submittal", this Agreement shall in no manner be construed to create any exemption from applicable ordinances or laws, entitlement or vesting of rights beyond what is expressly provided in Chapter 245. Owner specifically acknowledges that development of the Property shall be subject to the City's ordinances, regulations, and policies regarding water and sewer utility connections, including those that address development over the Edwards Aquifer Recharge Zone, as amended from time to time.
- F. The Governing Regulations shall be applicable to control the development of the Property. Unless otherwise specifically authorized by the City, the Property may not be developed to a lesser standard than that required by the Governing Regulations.
- G. Third Party Inspection Services: Unless an alternative is mutually agreed upon by the Parties, any 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 plan review and inspection service, mutually agreed upon by the Parties, and results shall be provided in the City's permitting system.

1.04 Permitted Uses, Project Density and Dimensional and Development Standards

Owner envisions the development of the Property as a predominantly single family residential development with limited nonresidential development, open space, conservation and preservation areas in accordance with the Conceptual Land Use Plan. The existing topography and natural areas on the Property provide for opportunities to develop the Property as a conservation development where pods of smaller lot sizes may be clustered to provide for preservation of existing natural features and open space. The Property may be developed as a conservation

development, a conventional development or a combination thereof. In order to achieve the maximum development flexibility possible within the Project, this Agreement establishes a variety of uses and lot types and sizes that may be developed on the Property.

A. Permitted Uses: The following uses shall be permitted on the Property in accordance with the City's zoning districts as defined on the Effective Date:

1. Residential: All permitted uses identified in the SF-R, Single Family Rural Residential District, SF-11, Single Family District, SF-6, Single Family District, SF-4.5, Single Family District, TH, Townhouse Residential District and the PH-ZL, Patio Home Zero Lot Line Residential District.
2. Nonresidential: All permitted uses identified in the NC, Neighborhood Commercial District shall be permitted within the 3 unit per acre portion of the Property depicted on the Conceptual Land Use Plan. All permitted uses identified in the CC, Community Commercial District shall be permitted within the Property depicted as Community Commercial on the Conceptual Land Use Plan up to a maximum of 200 acres. Nonresidential uses, if developed, are intended to be located at appropriate locations, such as along thoroughfare corridors or at the intersections of major thoroughfares, within the development.
3. Multi-Family: All permitted uses identified in the MF-24, Multiple-Family Residential District shall be permitted within any portion of the Property depicted as Community Commercial on the Conceptual Land Use Plan (but excluding the La Cima Outparcels and the Additional 22 Acre Tract) up to a maximum of 720 units; provided, however, that Purpose Built Student Housing (as established by City Ordinance NO. 2016-24) shall be prohibited.
4. Condominium Residential: A development type allowed in any district containing multiple individually owned dwelling units and jointly owned and shared common areas and facilities on a common lot shall be permitted in any portion of the Property in connection with a Conditional Use Permit approved by the City Council.
5. School Site. The Parties acknowledge that the Project is located within the San Marcos Consolidated Independent School District (the "District"). Owner shall dedicate up to a 12 acre site for a future elementary school to the District at the time of platting of such school site with a maximum impervious cover allocation equal to the greater of 55% of such site or 6.6 acres. The actual terms, size, timing, and location of the school site will be determined by Owner and the District.
6. Fire/Police/EMS Station; Transit Stops. Owner has transferred to the City a 3.505 acre site, located no more than one-third mile driving distance from the intersection of Old Ranch Road 12 and Wonder World Drive, for a future fire station and/or police or EMS station. Such site shall have a maximum impervious cover allocation equal to 2.1 acres. Transit stop locations will be determined by Owner and City at the time of platting of such locations.
7. Conditional uses authorized in the above residential and nonresidential base districts shall only be permitted if approved by the City in accordance with the procedures and requirements of the City's LDC. Any proposed use, other than a Corporate Campus or other office use, within a nonresidential area with a single tenant greater than 80,000 square feet in size shall require a Conditional Use Permit in accordance with the City's Land Development Code subject to a recommendations by the Planning and Zoning Commission and final approval by City Council.
8. Notwithstanding anything in this Agreement or in the City's LDC or ordinances to the contrary, no extraction of or exploration for surface or sub-surface mineral resources or natural resources may be conducted on the Property, including but not limited to quarries, borrow pits, sand or gravel operations, oil or gas exploration or extraction activities, and mining operations. This prohibition shall not be interpreted to prohibit excavation of soil in connection with the development of the Property consistent with this Agreement.

B. Project Density: The Project shall be restricted to a maximum of 2,800 dwelling units for an overall project density of 1.10 units per acre ("UPA"). Project density shall be further restricted as follows:

1. approximately 706.59 acres of the Property located east of Purgatory Creek as illustrated on the Conceptual Land Use Plan shall be restricted to a maximum of 3 units per acre and all lot types provided for in Section 1.04.C of this Agreement are permitted, provided, however, that any portion of the Property depicted as Community Commercial on the Conceptual Land Use Plan as permitted in Section 1.04.A.2. of this Agreement not developed for nonresidential may also be developed for residential uses in accordance with these density and lot type restrictions;
 2. the approximately 712.75 acres of the Property located west of Purgatory Creek shall be restricted to a maximum of 2 units per acre and all lot types provided for in Section 1.04.C of this Agreement are permitted; and
 3. Project density may be distributed evenly or may be clustered utilizing a conservation or clustered development plan provided that the maximum density for each of the designated areas above does not exceed the applicable the maximum density for such designated area and subject to the applicable use, lot type and size restrictions for such designated area, all as described herein and depicted on the Conceptual Land Use Plan.
- C. Dimensional and Development Standards: The Property shall be developed in compliance with the following lot sizes, dimensions and development regulations:
1. Single Family Residential Estate Lots
 - Lot Area, Minimum: 43,560 sq. ft
 - Lot Width, Minimum: 150 feet
 - Lot Depth, Minimum: 200 feet
 - Lot Frontage, Minimum: 100 feet
 - Front Yard Setback, Minimum: 20 feet
 - Side Yard Setback, Interior, Minimum: 10 feet
 - Side Yard Setback, Corner, Minimum: 20 feet
 - Rear Yard Setback, Minimum: 20 feet
 - Building Height, Maximum: 2.5 stories
 - Impervious Cover, Maximum: 40%
 2. Single-Family Residential Rural Lots
 - Lot Area, Minimum: 11,000 sq. ft.
 - Lot Width, Minimum: 80 feet
 - Lot Depth, Minimum: 100 feet
 - Lot Frontage, Minimum: 60 feet
 - Front Yard Setback, Minimum: 10 feet
 - Side Yard Setback, Interior, Minimum: 10 feet
 - Side Yard Setback, Corner, Minimum: 10 feet
 - Rear Yard Setback, Minimum: 10 feet
 - Building Height, Maximum: 2.5 stories
 - Impervious Cover, Maximum: 50%
 3. Single Family Residential Manor Lots
 - Lot Area, Minimum: 6,000 sq. ft.
 - Lot Width, Minimum: 50 feet
 - Lot Depth, Minimum: 100 feet
 - Lot Frontage, Minimum: 35 feet
 - Front Yard Setback, Minimum: 10 feet
 - Side Yard Setback, Interior, Minimum: 5 feet
 - Side Yard Setback, Corner, Minimum: 10 feet
 - Rear Yard Setback, Minimum: 10 feet
 - Building Height, Maximum: 2 stories
 - Impervious Cover, Maximum: 60%
 4. Single Family Residential Cottage Lots

Lot Area, Minimum: 4,500 sq. ft.
 Lot Width, Minimum: 40 feet
 Lot Depth, Minimum: 100 feet
 Lot Frontage, Minimum: 35 feet
 Front Yard Setback, Minimum: 10 feet
 Side Yard Setback, Interior, Minimum: 5 feet
 Side Yard Setback, Corner, Minimum: 10 feet
 Rear Yard Setback, Minimum: 10 feet
 Building Height, Maximum: 2 stories
 Impervious Cover, Maximum: 60%

5. Garden/Patio Home/Zero Lot Line Homes

Lot Area, Minimum: 2,700 sq. ft.
 Lot Width, Minimum: 28 feet
 Lot Depth, Minimum: 90 feet
 Lot Frontage, Minimum: 25 feet
 Front Yard Setback, Minimum: 10 feet
 Side Yard Setback, Interior, Minimum: 0/5 feet*
 Side Yard Setback, Corner, Minimum: 10 feet*
 Rear Yard Setback, Minimum: 5 feet
 Garage Side Yard Setback Opposite House: 0 feet
 Garage Setback from Front of House: 10 feet
 Building Height, Maximum: 2 stories
 Impervious Cover, Maximum: 75%

* The primary structure/dwelling may be constructed with a 0 side yard on one side, and a side yard of not less than 5 feet on the other side. A detached accessory structure such as a garage or storage building may have a 0 side yard on the 5 foot side provided, however, the structure is located behind the rear façade of the primary building on the lot. On the 0 side, the structure may be set back a maximum of 1 foot. A 5 foot wide maintenance, drainage, and roof overhang easement extending the full depth of the lot shall be designated along the side property line which abuts the zero side yard on an adjacent lot, and shall be indicated on the Final Plat. In all cases, there shall be at least a 10 foot side yard on corner lots where adjacent to a street right-of-way or alley.

** To help achieve the flexibility envisioned and the goals for the development of the Project, the exceptions to the Lot Width to Depth ratio provided in Section 6.7.2.1(j)3.6.3.1.B.3.b of the City's LDC shall include and be applicable to Garden/Patio Home/Zero Lot Line lots.

6. Townhouse Residential Lots

Lot Area, Minimum: 2,500 sq. ft.
 Lot Width, Minimum: 25 feet
 Lot Depth, Minimum: 90 feet
 Lot Frontage, Minimum: 25 feet
 Front Yard Setback, Minimum: 10 feet
 Side Yard Setback, Interior, Minimum: 0 feet attached walls / 5 feet end walls
 Side Yard Setback, Corner, Minimum: 10 feet
 Rear Yard Setback, Minimum: 10 feet
 Building Height, Maximum: 2 stories
 Impervious Cover, Maximum: 75%

7. Multi-Family Residential M-24 Areas.

Lot Area, Minimum: 12,000 square feet
 Units/Acre (Maximum/Gross Acre): 24.0

Lot Width, Minimum:	60
Lot Depth, Minimum:	100
Lot Frontage, Minimum:	60
Front Yard Setback, Minimum:	10
Side Yard Setback, Interior, Minimum:	10
Side Yard Setback, Corner, Minimum:	15
Rear Yard Setback, Minimum:	10
Building Height, Maximum:	4 stories
Impervious Cover, Maximum:	75%

8. Nonresidential

Lot Area, Minimum:	6,000 sq. ft.
Lot Width, Minimum:	50 feet
Lot Depth, Minimum:	100 feet
Lot Frontage, Minimum:	50 feet
Front Yard Setback, Minimum:	10 feet
Side Yard Setback, Interior, Minimum:	5 feet
Side Yard Setback, Corner, Minimum:	10 feet
Rear Yard Setback, Minimum:	5 feet
Building Height, Maximum:	N/A
Impervious Cover, Maximum:	80%

9. Cluster/Conservation Development

To encourage cluster development within the Project, the following limitations on the location of the above residential lot types shall be applicable:

Slope Limitations	
Slope Gradient	Lot Types Permitted
0% to 15%	Single Family Residential Estate Lots Single Family Residential Rural Lots Single Family Residential Manor Lots Single Family Residential Cottage Lots Garden/Patio Home/Zero Lot Line Homes Townhouse Residential Lots
15% to 25%	Single Family Residential Rural Lots Single Family Residential Manor Lots Single Family Residential Cottage Lots Garden/Patio Home/Zero Lot Line Homes
Over 25%	Single Family Residential Estate Lots Single Family Residential Rural Lots Open Space and Conservation Areas

D. Phasing: A phasing plan shall be submitted with a Subdivision Concept Plat to ensure orderly development of the Project. Any portion of the Property developed as MF-24, Multiple-Family Residential District in accordance with Section 1.04.A.3 above shall be developed in a minimum of two phases with the first phase to be no more than 360 units ~~45 acres~~ and any subsequent phases shall be deferred until after such first phase is complete and at least 75% occupied and at least 200 single-family homes have been completed and occupied.

E. Architectural Design Standards: Architecture and the built environment are important elements to the development of the Project. Due to the importance of these elements, all architectural styles should produce a cohesive visual framework while maintaining architectural variety. All architecture should reflect high quality and craftsmanship, both in design and construction. The use of unusual shapes, colors, and other characteristics that cause disharmony should be

avoided. A Texas Hill Country style should be reflected through the use of natural materials and textures.

Achieving a high quality of architectural design for all buildings within the Development is considered a principal goal of these design standards. A variety of lot and dwelling types within the neighborhood should be encouraged. Careful design of a neighborhood can mix different housing types and price ranges. Reflecting the vision of the Project, these development standards call for exterior materials that express the natural environment and range of natural materials found in Central Texas.

The Owner shall record deed restrictions regulating the development of the Property which deed restrictions shall incorporate the standards and requirements of this section E. The deed restrictions shall be enforceable by a homeowner's association created by the Owner and shall be subject to the provisions of Section 1.09.

1. Project Residential Architectural Design Standards

- a. A minimum of 100% of each residence on a Single Family Residential Estate lot in accordance with Section 1.04.C.1, excluding doors, windows, fascia, trim, handrails, guardrails, decks, columns, etc., shall be masonry consisting of brick, stone, stucco or a combination thereof.
- b. A minimum of 80% of each residence on the lots identified in Section 1.04.C.2 – 1.04.C.6, excluding doors, windows, fascia, trim, handrails, guardrails, decks, columns, etc., shall be masonry consisting of brick, stone, stucco or a combination thereof.
- c. The number of primary exterior materials shall be limited to three (3) excluding architectural accent features, roof materials, and windows or doors.
- d. Exterior facades shall have a variety of earth tone colors including, but not limited to, reds, browns, light tans, natural and warm whites (stark whites shall be prohibited), buffs, beiges, creams and regionally quarried stone colors.
- e. All facades of a building shall be of consistent design and treatment unless the building facade is not visible from public view.
- f. The use of window awnings, overhangs and shutters is encouraged. Materials and colors shall be the same or complimentary to the exterior of the building.
- g. All single family detached dwellings are encouraged to have front porches or porticos.
- h. Detached garages are permitted and encouraged.
- i. Detached garages with second level dwelling units are permitted provided, however, that second level dwelling units and the primary structure shall be on a single service meter and the occupancy restrictions of the City's LDC prohibiting occupancy by more than more than two unrelated persons will apply.
- j. Corner dwelling units shall present a façade that is consistent in design and architecture to both streets.
- k. Corner dwelling units are encouraged to have wrap around porches.
- l. Corner lots shall have landscaping that is consistent in design and treatment on both street frontages.
- m. Pool and HVAC equipment on corner lots shall be located on the interior side or rear property line.
- n. Trash and waste containers shall be located in an area that is screened from public view.
- o. These standards shall apply equally to additions and/or alterations to existing structures as well as to new structures. All accessory structures shall be constructed in such a manner so as to be compatible in look, style and materials as the primary structures on the project site.
- p. Alternative design standards for all structures may be utilized upon review and approval by the Director of Development Services at the time of site planning. Any decision of the Director of Development Services may be appealed to the Planning and Zoning Commission.

2. **Project Nonresidential Architectural Design Standards**
 - a. All facades shall use one or more of four native limestone colors: Lueders, Cordova Cream, Sandstone, and Shell Stone, or a similar matching manufactured stone. Comparable materials in color, finish, durability, and quality may be substituted for the referenced materials upon review and approval by the Director of Development Services, appealable to the Planning and Zoning Commission.
 - b. Architectural façades that clearly define a base, middle and cap are required. These materials should be responsive to climate, adjacent context, site orientation and building usage.
 - c. All buildings within the Project shall be designed with a high level of detail, with careful attention to the combination of and interface between materials. Materials chosen shall be appropriate for the theme and scale of the building, compatible with its location within the development, and expressive of the community's desired character and image. Details and materials shall be consistent on all sides of buildings.
 - d. A minimum of 80% of each building, excluding doors and windows, shall be masonry consisting of brick, stone, stucco, split face concrete units, or faux stone or brick.
 - e. Front facades shall be oriented towards the street right-of-way as appropriate.
 - f. Building entrances shall be recessed from the front façade or located under a shade device such as an awning or portico.
 - g. Off-street parking areas shall be shielded from view from the right-of-way through the use of landscape plantings, landscape berms or a combination thereof.
 - h. These standards shall apply equally to additions and/or alterations to existing structures as well as to new structures. All accessory structures shall be constructed in such a manner so as to be compatible in look, style and materials as the primary structures on the project site.
 - i. Alternative design standards for all structures may be utilized upon review and approval by the Director of Development Services at the time of site planning. Any decision of the Director of Development Services may be appealed to the Planning and Zoning Commission.
 3. **Project Multi-Family Architectural Design Standards.** Any portion of the Property developed as MF-24, Multiple-Family Residential District in accordance with Section 1.04.A.3 above shall be developed in accordance with the permitted uses and development standards for the MF-24, Multi-Family Residential District (including the multifamily residential design standards set forth in Ordinance 2014-35). Upon submittal of deed restrictions required in Section 1.09 below, the Owner shall meet or exceed the Building Design Section of such multifamily residential design standards. Any deviations from such multifamily residential design standards shall require approval of the City Council.
- F. **Additional Landscape Standards:** In addition to the requirements of the City's LDC, the following landscape standards shall be applicable to the development of the Project:
1. The use of drought tolerant, native landscape materials, xeriscaping, active or passive rainwater collection, or a combination thereof, is strongly encouraged for all portions of the Project.
 2. Where feasible, native vegetation shall be preserved and remain undisturbed and shall be maintained consistent with any installed landscaping.
 3. Where possible, trees that are intended for removal should be relocated utilizing accepted transplanting or relocation practices. Any trees that are relocated may be counted towards any required tree preservation credits.
 4. A minimum of 25% of the total lot area of a NC, Neighborhood Commercial lot and 10% of the total lot area of a CC, Community Commercial lot shall be dedicated to landscaping. The Corporate Campus shall have a minimum of 15% of the total lot area dedicated to landscaping. All landscape areas on nonresidential lots shall be provided with an irrigation system designed by a Texas Licensed Irrigator consisting of one of, or a combination of, an automatic underground spray or drip irrigation system or a hose attachment. No irrigation

shall be required for undisturbed natural areas or undisturbed existing trees.

5. Where a solid ground cover or lawn is proposed for the front yard of a residential lot, the use of an automatic spray or drip irrigation system is strongly encouraged. At a minimum, a hose attachment shall be required within 100 feet of all front yard landscaping to ensure proper hand watering/irrigation.
6. A minimum 100 foot wide tree preservation/open space landscape buffer setback shall be provided adjacent to the existing Fox Ridge single family residential subdivision along the northwest property line and along the portion of Purgatory Creek that borders the existing Settlement subdivision. The Conceptual Land Use Plan illustrates the location of this tree preservation/open space landscape buffer and provides GIS coordinates at various points along the buffer for reference. This tree preservation/open space landscape buffer is intended to serve as a buffer from the adjacent lots in the Fox Ridge and Settlement Subdivisions. The tree preservation/open space landscape buffer setback will be privately owned and maintained by the Property Owner. Unless otherwise approved through a Site Development Permit, there shall be no clearing, grading or public access within the tree preservation/open space landscape buffer setback area except as may be necessary to allow for the construction of a fence along a property line. The tree preservation/open space landscape buffer setback area shall be maintained free of all, trash, rubbish, debris or other similar nuisances and fire hazards in accordance with this agreement and the requirements of the City of San Marcos Code of Ordinances.
7. The boundary between the Residential 2 U/A area and southeastern most portion of the "Conservation or Open Space or Proposed Habitat (RHCP) Preserve" as illustrated on the Conceptual Land Use Plan and generally located between the existing Fox Ridge/Settlement subdivisions and the Residential 2 U/A area within the Project, south of Purgatory Creek, has been delineated with GIS coordinates as provided on the Conceptual Land Use Plan.

1.05 Public Infrastructure Improvements

- A. The City hereby agrees to allow the extension, improvements of, and connections to City water and wastewater facilities to provide service to the Project up to a maximum of 4,000 service units equivalent. Owner anticipates that the Project will require 4,000 service units of water and wastewater from the City. At the time of execution of this Agreement, City anticipates that it will have sufficient water and wastewater capacity to serve the Project. City further acknowledges that its approval of any subdivision plat of property within the Project shall constitute a representation by the City that it has sufficient water and wastewater capacity available to serve the platted lots at the time of plat approval.
- B. All water and wastewater infrastructure required to serve the Project shall be designed and built to the City's construction standards and in conformance with all rules, regulations and ordinances related to the construction and extension of water and wastewater utilities in effect at the time of submittal of construction plans and shall be subject to review and inspection by the City prior to acceptance.
- C. The property owner/developer shall be responsible for the payment of all costs associated with the extension and improvements of infrastructure required to properly serve the development of the Property, which costs may be financed through the PID described in Section 1.05.B below. Prior to the acquisition of any off-site easements or rights-of-way the proposed utility alignments shall be approved by the City. The Owner is responsible for the acquisition of all necessary easements to serve the proposed development. In the event the Owner is unable to acquire an easement through reasonable commercial efforts the Owner may request the assistance of the City. Within 30 days of the receipt of a written request from the Owner, the City will commence an effort, exercising all powers available to the City as a Home Rule municipality, to acquire the necessary easements. The City will direct the work of an acquisition team, acceptable to the City and the Owner, contracted and paid by the Owner, in order to acquire the necessary easements.
- D. Notwithstanding the foregoing, nothing herein shall be construed to prohibit the parties and/or adjacent developments or subdivisions from mutually agreeing to cost participate or oversize

reimbursement on specifically defined infrastructure in accordance with applicable City and State requirements for such participation or reimbursement.

- E. To ensure a high quality, attractive development, where feasible, all utility infrastructure, including but not limited to water, wastewater and electrical infrastructure, for the Project shall be placed underground. All utility appurtenances that are required to be above ground may be placed above ground as necessary to serve the development of the Property. All extensions shall be made in a public utility easement or public right-of-way (ROW).
- F. The Owner hereby requests and supports the City expanding its water and wastewater Certificate of Convenience and Necessity areas as necessary to serve the development of the Project.
- G. The City hereby acknowledges that the County authorized the creation of a Public Improvement District ("PID") on approximately 2,029 acres of the Property (the "Existing PID") on September 23, 2014, pursuant to a County Resolution adopted pursuant to Chapter 372 of the Local Government Code (the "Existing PID Resolution"). If the Owner submits a petition to the County requesting that all or any portion of the remainder of the Property be added to the Existing PID or that a new PID be created for such portion of the remainder of the Property, the City hereby agrees to not oppose such petition.
- H. The City hereby recognizes and acknowledges that oversizing of infrastructure improvements may be necessary to accommodate future growth and development of adjacent properties. In the event that oversizing is determined to be appropriate, the City shall enter into an agreement with the Owner in accordance with Section 7.1.3.1 of the Land Development Code.
- I. The City and the County are willing to consider Chapter 380 and Chapter 381 economic development incentive agreements for the commercial portions of the Project. The terms, conditions, and amount of any incentive agreements shall be determined by separate agreement of the City, County, Owner, and/or applicable third parties.
- J. Street Standards. All streets and roads within the Property shall be designed and constructed in conformance with the design guidelines and cross sections adopted by the City of San Marcos in accordance with Context Sensitive Street Design Standards. Alternative street design standards and cross sections for all streets may be utilized upon review and approval by the City and County Directors of Development Services at the time of detailed engineering and platting. Any decision of the City and County Directors of Development Services may be appealed to the Planning and Zoning Commission and the County Commissioners Court.

1.06 Impervious Cover

The maximum allowable impervious cover for the Property ("Permitted Maximum Allowable Property Impervious Cover") shall be 19% of the 2,552.379 acres of the gross area of the Property (which gross area expressly includes the 700.2 acres of gross area of the Conservation Habitat (RHCP) Preserve, and the 91.5 acres of additional Purgatory Creek Open Space shown on the Conceptual Land Use Plan attached hereto as **Exhibit "B"**, regardless of whether Owner conveys a perpetual conservation or other easement or fee simple title to any portion of such areas to the City, the County, or any other governmental entity or conservation organization). The total Permitted Maximum Allowable Property Impervious Cover may be distributed throughout the Property or may be clustered as necessary provided that the total impervious cover on the 2,552.379 acres of the gross area of the Property does not exceed the Permitted Maximum Allowable Property Impervious Cover. If any portion of the Property is used for the right-of-way for Centerpoint Road, then the gross area of such portion of the Property and any impervious cover placed on such portion of the Property shall be excluded from all impervious cover calculations with respect to the remainder of the Property.

Clustering Incentives in accordance with Section 5.2.8 of the City's LDC may be utilized within the Property subject to the City's approval of a Qualified Watershed Protection Plan Phase 1 and shall be subject to review and approval of all applicable City of San Marcos permits including Watershed Protection Plans, Site Preparation Permits and Environmental and Geologic Assessments and shall be subject to all City of San Marcos and TCEQ regulations for buffering and protection of sensitive features, if any such features are identified on the Property.

1.07 Environmental, Water Quality & Detention Standards

The development of the Property shall comply with Chapter 5 of the Land Development Code as amended on March 4, 2014 and the associated City of San Marcos Storm Water Technical Manual; provided, however, that development of the Additional Property shall comply with Chapter 6 of the Land Development Code as amended on April 17, 2018 and the associated City of San Marcos Storm Water Technical Manual. No portion of the Project shall contain concrete storm water detention boxes. Development of the Property will adhere to a standard for removal of a minimum of 85% of the increase in Total Suspended Solids (TSS) after full development of the Property over the baseline existing conditions before development of the Property. The 85% TSS removal may be accomplished utilizing traditional best management practices (BMP's), approved low-impact development (LID) practices, or a combination thereof. All BMP's shall be designed and maintained by the Owner to achieve the performance standard of 85% TSS removal. BMP's for treatment and detention of stormwater proposed for development of this Property may include, but shall not be limited to traditional BMP's such as detention ponds, grass-lined swales, rain gardens, bioswales, biofiltration ponds and native drought-tolerant plants for landscaping or non-traditional, innovative BMP's. The technical design of traditional BMP's shall be in accordance with the City of San Marcos Storm Water Technical Manual. The use of innovative or non-traditional BMP's shall be approved by the City and used within the Property when accompanied by supporting documentation (i.e. product research / testing or acceptance from other jurisdictions) illustrating the effectiveness of the BMP's in achieving treatment standards identified herein. The technical design of innovative or non-traditional BMP's shall be in accordance with supplied supporting documentation. Approved vegetative buffers and filters shall not include invasive species.

Low Impact Development (LID) techniques allow for greater development potential with less environmental impacts through the use of smarter designs and advanced technologies that achieve a better balance between conservation, growth, ecosystem protection, public health, and quality of life. Where feasible and practical to achieve maximum water quality standards, the development within the Property may incorporate various LID techniques, in one form or another, that work in conjunction with traditional BMP's to achieve 85% TSS removal.

Development of the Property may incorporate pervious paving materials such as pervious pavers, pervious concrete (grasscrete or ecocrete) or other pervious paving materials where appropriate. For pervious paving materials used, technical documentation demonstrating the pervious nature of the specific system or systems as installed shall be provided and approved by the City. In the event that City approved pervious paving materials are utilized, the development of the Property shall receive credit towards the Permitted Maximum Allowable Impervious Cover.

During the construction process, stabilization and protection measures shall be utilized to limit site disturbance to the construction perimeter (the limits of construction). The type and adequacy of the erosion and sedimentation controls shall be subject to approval of the Director of Development Services prior to installation. All erosion and sedimentation controls shall be monitored and maintained at all times during the construction process. A combination of various approved erosion and sedimentation control measures will be implemented where appropriate.

Discharge of sediment from the construction site shall be minimized and controlled as per applicable City, State and Federal requirements. It shall be the responsibility of the Owner and its contractors to clean up any discharge of sedimentation from the Property. No construction shall begin until all required City Plans are approved and a stormwater pollution prevention plan (SWPPP) is produced by the Owner and approved by the City. An erosion and sedimentation control program shall include construction sequencing and sedimentation/erosion control measures to be implemented during construction. The type and adequacy of the erosion and sedimentation controls shall be subject to City approval prior to installation. 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, as specified in the SWPPP, and results shall be available

for inspection by the City at all times.

A full Water Pollution Abatement Plan (WPAP) including a geologic assessment and geotechnical report, prepared by a licensed third-party engineer and/or professional geologist selected by the Owner and approved by the City of San Marcos Director of Engineering and Capital Improvements, shall be provided by the Owner and approved by the City, prior to the approval of any final plat on the Property or any portion thereof. The WPAP documents shall include construction sequencing and detailed means and methods for drainage and sedimentation/erosion control measures to be implemented during construction. The type and adequacy of the erosion and sedimentation controls shall be subject to City approval prior to installation. 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 (as specified in the approved WPAP) by a qualified, third-party engineering inspector, and results shall be provided to the City following each inspection.

A maintenance agreement for the permanent BMPs on the Property written according to Sections 5.1.1.7 and 5.1.1.8 of the LDC shall be submitted. The maintenance agreement shall include provisions for testing and monitoring BMPs to make sure required volumes and other characteristics are still intact as originally designed. An easement for inspection and monitoring purposes in favor of an in a form acceptable to the City must be provided by the property owner.

1.08 Parkland and Open Space Dedication

- A. In the event the Property is fully built out (i.e., the maximum 2,800 units under Section 1.04B is achieved across the entire property), the maximum total required parkland dedication shall be 35.64 acres. The development of the Property will meet or exceed all applicable parkland dedication requirements of the City. Except as may otherwise be permitted by the City, dedication of all or any portion of the required parkland shall occur in conjunction with the final plat on all or any portion of the Property.
- B. All parkland, open space, sidewalks and trails, and designated amenities that are not owned and maintained by the Homeowners Association shall be open and available to the public, subject to any applicable rules and regulations of the U.S. Fish and Wildlife Service and the RHCP. Access to the parkland and open space shall be provided at the time of subdivision platting.
- C. In addition to the required public parkland dedication amount indicated above, a variety of private active and passive recreational facilities ranging from small neighborhood pocket parks to larger improved common areas or parks are envisioned. These facilities shall be connected through a pedestrian network consisting of sidewalks and/or trails. The Project's network of trails will be approximately 10-14 miles and provide connectivity to the Purgatory Creek Natural Area with a small parking area at such time and in such location as determined by Owner and City.
 1. The minimum width for a sidewalk shall be six feet (6').
 2. Sidewalks shall be constructed of concrete or asphalt.
 3. Sidewalks may be located adjacent to the street right-of-way and incorporated into an appropriate street cross-section.
 4. The minimum width for a trail shall be eight feet (8').
 5. Trails may be constructed of concrete, asphalt, crushed granite, or other material common in trail construction.
 6. Trails may be located adjacent to the street right-of-way and be incorporated as part of an alternative street cross-section upon the approval by the Director of Development Services or may be constructed in open space areas or improved common areas.
 7. The location of sidewalks and trails shall be determined at the time of preliminary platting and development of infrastructure construction plans and shall be included as part of a Subdivision Improvement Agreement.

1.09 Deed Restrictions and Creation of Homeowner's Association

The Owner shall create a homeowner's association responsible for, among other things,

enforcement of deed restrictions required under this Agreement. The homeowner's association shall be created and deed restrictions recorded before commencement of any development on all or any portion of the Property. The deed restrictions shall be submitted to the City for review to determine consistency with this Agreement before recording. The homeowner's association shall be duly authorized, under applicable laws, to enforce the deed restrictions against all owners and developers of land within the Property. Any deed restrictions, and amendments thereto, regulating development of the Property shall be recorded in the Official Public Records of Hays County, Texas. Any deed restrictions regulating development of the Property, and any amendments thereto, shall be subject to this Agreement. Such deed restrictions shall further include a statement that they are subject to this Agreement and that, in the event of a conflict between the deed restrictions and this Agreement, this Agreement shall govern.

1.10 Hays County Regional Habitat Conservation Plan & Endangered Species Act

Prior to any development activity as defined in the City's LDC, the Owner shall comply with the Endangered Species Act, specifically related to the golden-cheeked warbler or black-capped vireo, by either obtaining approvals from the U.S. Fish and Wildlife Service or through voluntary participation in the Hays County Regional Habitat Conservation Plan ("RHCP").

SECTION 2: MISCELLANEOUS PROVISIONS

2.01 Term

- A. This Agreement shall commence and bind the Parties on the Effective Date and continue until all of the Property has been annexed for full purposes by the City (the "Term"), unless sooner terminated as provided in Section 2.01.C below. If, however, no progress toward completion of the Project, as defined under Section 245.005 of the Texas Local Government Code, is made within five (5) years of the date of this Agreement, this Agreement shall expire and Owner hereby agrees that any development of the Property shall comply with the ordinances in effect at the time the first plat application for any portion of the property is filed. This written Agreement may be extended for additional terms as allowed by law upon mutual written agreement of the parties.
- B. After the expiration or termination of this Agreement, this Agreement will be of no further force and effect.
- C. This Agreement may be terminated or amended as to all or any portion of the Property at any time by mutual written agreement between the City and Owner.
- D. The Parties acknowledge that Owner does not own the Additional Property as of the Effective Date. The Parties hereby agree that the Additional Property shall be included in the Property, and shall be subject to the terms, conditions, obligations, entitlements and benefits of this Development Agreement, subject to the condition precedent that the Owner acquires the Additional Property on or before June 30, 2021 and provides the City with written notice of such acquisition on or before June 30, 2021. If the Owner fails to provide the City written notice that the Owner has acquired the Additional Property on or before June 30, 2021, then this Agreement shall be considered automatically amended with no further action required by the Parties to:
 - a. Exclude the Additional Property from this Agreement and the Conceptual Land Use Plan for all purposes with the effect that the Additional Property shall not be subject to the terms, conditions, obligations, entitlements and benefits of this Development Agreement. The gross area of the Property shall then be lowered to 2,427.996 acres.
 - b. Adjust the overall project density in Section 1.04(B) from 1.10 units per acre to 1.15 units per acre.
 - c. Adjust the calculation of the Permitted Maximum Allowable Property Impervious Cover for purposes of Section 1.06 to equal 20% of the 2,427.996 acres of the gross area of the Property.

All other terms and conditions of the Fourth Amended and Restated Development Agreement shall survive and continue in full force and effect.

2.02 Authority

This Agreement is entered into, in part, under the statutory authority of Section 212.172 of the Texas Local Government Code and the applicable provisions of the Texas Constitution and the laws of the State of Texas. By virtue of this Agreement, Owner agrees to authorize the full purpose annexation of the Property by the City subject to applicable provisions of Chapter 43 of the Texas Local Government Code and in accordance with the terms and conditions set forth in this Agreement.

2.03 Equivalent Substitute Obligation

If any Party is unable to meet an obligation under this Agreement due to a court order invalidating all or a portion of this Agreement, preemptive state or federal law, an imminent and bona fide threat to public safety that prevents performance or requires different performance, changed circumstances or subsequent conditions that would legally excuse performance under this Agreement, or any other reason beyond the Party's reasonable and practical control, the Parties will cooperate to revise this Agreement to provide for an equivalent substitute right or obligation as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid and enforceable, or other additional or modified rights or obligations that will most nearly preserve each Party's overall contractual benefit under this Agreement.

2.04 Cooperation

The Parties agree to execute and deliver all such other and further documents or instruments and undertake such other and further actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

2.05 Litigation

In the event of any third-party lawsuit or other claim relating to the validity of this Agreement or any action taken by the Parties hereunder, Owner and the City agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement, but only to the extent each party determines, in its sole discretion, that its interests are aligned or not in conflict with the other party's interests. The filing of any third-party lawsuit relating to this Agreement or the development of the Property will not delay, stop, or otherwise affect the development of the Property or the City's processing or issuance of any approvals for the development of the Property, unless otherwise required by a court of competent jurisdiction. The City agrees not to stipulate or agree to the issuance of any court order that would impede or delay the City's processing or issuance of approvals for the development of the Property.

2.06 Default

Notwithstanding anything herein to the contrary, no Party shall be deemed to be in default hereunder until the passage of thirty (30) business days after receipt by such party of notice of default from the other Party. Upon the passage of thirty (30) business days without cure of the default, such Party shall be deemed to have defaulted for all purposes of this Agreement. In the event of a non-cured default, the non-defaulting Party shall have all the rights and remedies available under 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. Nothing herein shall prevent the Parties from extending the above specified time frames for default and/or cure by mutual written agreement.

2.07 Governmental Powers; Waiver of Immunity

It is understood that by execution of this Agreement the City does not waive or surrender any of its governmental powers, immunities or rights.

2.08 Governing Law and Venue

The City and Owner agree that this Agreement has been made under the laws of the State of Texas in effect on this date, and that any interpretation of this Agreement at a future date shall be made under the laws of the State of Texas. The City and the Owner further agree that all actions to be performed under this Agreement are performable in Hays County, Texas.

2.09 Attorney's Fees

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees from the other Party. The amount of fees recoverable under this paragraph may be set by the court in the trial of the underlying action or may be enforced in a separate action brought for that purpose, and any fees recovered shall be in addition to any other relief that may be awarded.

2.10 Entire Agreement

This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous written or oral understandings or representations of the Parties with respect to this Agreement, including superseding the Existing Development Agreement.

2.11 Exhibits/Amendment

All exhibits attached to this Agreement are incorporated by reference and expressly made part of this Agreement as if copied verbatim. This Agreement may be amended only by mutual agreement of the Parties and in accordance with the applicable procedures outlined in Section 1.4.2.6(c) the City's LDC.

2.12 Severability

If any section, subsection, sentence, clause, phrase, paragraph, part or provision of this Agreement be declared by a court of competent jurisdiction to be invalid, illegal, unconstitutional or unenforceable in any respect, such unenforceability, unconstitutionality, illegality or invalidity shall not affect any of the remaining sections, subsections, sentences, clauses, phrases, paragraphs, parts or provisions of this Agreement as a whole, or in any part, since the same would have been enacted by the City Council without the incorporation in this Agreement of any such invalid, illegal, unconstitutional or unenforceable section, subsection, sentence, clause, phrase, paragraph, part or provision.

2.13 Interpretation

Wherever required by the context, the singular shall include the plural, and the plural shall include the singular.

2.14 Notice

Any notice, request or other communication required or permitted by this Agreement shall be in writing and may be affected by overnight courier or hand delivery, or by sending said notice by registered or certified mail, postage prepaid, return receipt requested, and addressed to the Parties as 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 to:

City Manager
City of San Marcos

630 E. Hopkins Street
San Marcos, Texas 78666

Any notice mailed to the County shall be addressed to:

Director of Development Services
Hays County
2171 Yarrington Road
San Marcos, TX 78666

Any notice mailed to LOR, LCSM Ph. 1-1, LCSM Ph.1-2, LSCM Ph. 2, LCSM Ph. 3, La Cima Commercial, LCSM WW or LCSM West shall be addressed to:

c/o Dubois, Bryant & Campbell, LLP
Attn: Mr. Bryan W. Lee, Manager
303 Colorado, Suite 2300
Austin, Texas 78701

2.15 Force Majeure

Owner and the City agree that the obligations of each party shall be subject to force majeure events such as natural calamity, fire or strike.

2.16 Assignment

As of the Effective Date, Owner owns the Property. Owner may assign its rights and obligations under this Agreement to any third party (ies) only after providing written notice of assignment to the City. The terms of this Agreement shall be covenants running with the land and binding on successors and assigns.

2.17 Signatures

The City represents that this Agreement has been approved and duly adopted by the City Council of the City in accordance with all applicable public meeting and public notice requirements including, but not limited to, notices required by the Texas Open Meetings Act, and that the individual executing this Agreement on behalf of the City has been authorized to do so. Owner represents and warrants that this Agreement has been approved by appropriate action of Owner and that the individual executing this Agreement on behalf of Owner has been authorized to do so.

2.18 Successors and Assigns and Recordation

The terms of this Agreement shall be covenants running with the land and binding on successors and assigns. Pursuant to the requirements of Section 212.172(f), 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. Notwithstanding the foregoing, however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property except for land use and development regulations within this Agreement that apply to specific lots, including architectural, environmental and water quality, landscaping and setback and dimensional standards, and impervious cover limits, together with applicable rights of enforcement in this Agreement as to such land use and development regulations.

2.19 Counterpart Originals

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

[Signature Page Follows]

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

CITY OF SAN MARCOS, TEXAS

By: _____
Name:
Title:

HAYS COUNTY, TEXAS

By: _____
Name:
Title:

LAZY OAKS RANCH, LP, a Texas Limited Partnership

By: Lazy Oaks GP, LLC, its general partner

By: _____
Bryan W. Lee
Its: Manager

LCSM PH. 1-1, LLC, a Texas Limited Liability Company

By: _____
Name: Bryan W. Lee
Title: Manager

LCSM PH. 1-2, LLC, a Texas Limited Liability Company

By: _____
Name: Bryan W. Lee
Title: Manager

LCSM PH. 2, LLC, a Texas Limited Liability Company

By: _____
Name: Bryan W. Lee
Title: Manager

LCSM PH. 3, LLC, a Texas Limited Liability Company

By: _____

Name: Bryan W. Lee

Title: Manager

LA CIMA COMMERCIAL, LP, a Texas Limited Partnership

By: La Commercial GP, LLC, its general partner

By: _____

Name: Bryan W. Lee

Title: Manager

LCSM WW, LLC, a Texas Limited Liability Company

By: _____

Name: Bryan W. Lee

Title: Manager

LCSM WEST, LP, a Texas Limited Partnership

By: LCSM West GP, LLC, its general partner

By: _____

Name: Bryan W. Lee

Title: Manager

Acknowledgements

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 2020, by Bryan W. Lee, Manager, of Lazy Oaks GP, LLC, general partner of Lazy Oaks Ranch, L.P., a Texas Limited Partnership, in such capacity, on behalf of said entities.

Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 2020, by Bryan W. Lee, Manager, of LCSM Ph. 1-1, LLC, a Texas Limited Liability Company, in such capacity, on behalf of said entities.

Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 2020, by Bryan W. Lee, Manager, of LCSM Ph. 1-2, LLC, a Texas Limited Liability Company, in such capacity, on behalf of said entities.

Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 2020, by Bryan W. Lee, Manager, of LCSM Ph. 2, LLC, a Texas Limited Liability Company, in such capacity, on behalf of said entities.

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, _____, by Bryan W. Lee, Manager, of LCSM Ph. 3, LLC, a Texas Limited Liability Company, in such capacity, on behalf of said entities.

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, _____, by Bryan W. Lee, Manager, of La Cima Commercial GP, LLC, general partner of La Cima Commercial, LP, a Texas Limited Partnership, in such capacity, on behalf of said entities.

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 2020, by Bryan W. Lee, Manager, of LCSM WW, LLC, a Texas Limited Liability Company, in such capacity, on behalf of said entities.

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 2020, by Bryan W. Lee, Manager, of LCSM West GP, LLC, general partner of LCSM West, LP, a Texas Limited Partnership, in such capacity, on behalf of said entities.

Notary Public, State of Texas

STATE OF TEXAS §

§

COUNTY OF HAYS §

This instrument was acknowledged before me on _____, 2020, by _____, City Manager of the City of San Marcos, in such capacity, on behalf of said entity.

Notary Public, State of Texas

STATE OF TEXAS §

§

COUNTY OF HAYS §

This instrument was acknowledged before me on _____, 2020, by _____, _____ of Hays County, in such capacity, on behalf of said entity.

Notary Public, State of Texas