

RECITALS

WHEREAS, the Developer owns two (2) independent parcels of real property located within the Old Town Helotes Special District in the City of Helotes, Texas. Collectively, the total acreage of the two (2) parcels constitutes approximately 5.26 acres of real property, being more fully described in Exhibit “A” (“Property” and/or “Properties”); and

WHEREAS, in conjunction with the EDC, the City Council of the City created the Old Town Helotes Special District on January 26, 2006 to create a more attractive, cohesive, and safe environment; to safeguard the City’s heritage by preventing the spoliation of areas that reflect important elements of the City’s cultural, natural, historic, and economic fabric; to create favorable impressions of the City that provide enrichment for the citizens of the City and visitors thereto; and to enhance the creation of jobs and the expansion of the local sales and property tax base within the City; and

WHEREAS, the Developer intends to develop the Properties, generally, as shopping centers or areas consisting of mixed-use retail, office space, and restaurant buildings, more specifically described as the following:

- “Shops at Old Town Helotes” - 14743 E. Bandera Road, Helotes, Texas 78023 - Mixed-use retail, office space, and restaurant buildings, including, but not limited to, the renovation of existing buildings and the construction of restrooms, parking areas, sidewalks, plazas, and associated utilities; and
- “Bluffs at Old Town Helotes” - 14391 Riggs Road, Helotes, Texas 78023 - Approximately 3,000 additional square feet of mixed-use retail, office, and restaurant space and the installation of a six foot (6’) wide concrete interconnected sidewalk servicing all mixed-use retail, office, and restaurant buildings present on site as of the Effective Date; and

WHEREAS, Article III, Section 52-a of the Texas Constitution gives the Texas Legislature the authority to provide for loans and grants of public money for the development and diversification of the State’s economy and the elimination of unemployment or underemployment; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code (“Chapter 380”), the City may establish and provide for the administration of an economic development program to advance economic growth, while also stimulating business and commercial activity within the municipality; and

WHEREAS, pursuant to the Development Corporation Act, Article 5190.6 Tex. Rev. Civ. Stat. (“Act”), the City has created the EDC to implement programs for promoting economic development; and

WHEREAS, the EDC’s mission is to promote, encourage, and enhance the creation of jobs, the expansion of the local tax base, and our quality of life for Helotes’ residents through projects that assist in the retention and expansion of existing employers, and which attract new employers and aid in economic development and growth; and

WHEREAS, the EDC has determined, as described in Exhibit “B,” that making an economic development grant to the Developer in accordance with this Agreement constitutes a permissible “Program” within the terms of the Act and will promote new and expanded business development, pursuant to Section 505.158 of the Texas Local Government Code, within the City and which is declared and expressly found to be in the public interest; and

WHEREAS, in addition to the six and a quarter percent (6.25%) sales and use tax imposed by the State, the City imposes a one percent (1.00%) sales and use tax, as authorized by Section 321.101 of the Texas Tax Code, and the EDC imposes a one-half percent (0.50%) sales and use tax; and

WHEREAS, the City currently imposes a property tax rate of .350000 cents per one hundred dollars (\$100.00) property valuation; and

WHEREAS, the EDC intends, and in connection with such intention, has adopted a Resolution, as described in Exhibit “B,” to refund fifty percent (50%) of the annual sales and use tax proceeds generated by retail businesses located within the Properties, up to and including Two Million Dollars (\$2,000,000.00), for actual Hard and Soft Costs and Actual Cost of Funds associated with Public Improvements (“Maximum Grant Amount”), the City’s sales and use tax and property tax proceeds withstanding, to the Developer for the purpose of encouraging business expansion and the creation of new jobs in the City; and

WHEREAS, the City Council of the City of Helotes, Texas intends, and in connection with such intention, has adopted an Ordinance, as described in Exhibit “C,” to refund fifty percent (50%) of the annual sales and use tax proceeds and fifty percent (50%) of the annual increased property tax revenues generated by retail businesses located within and on the Properties, up to and including the Maximum Grant Amount, the EDC’s sales and use tax proceeds withstanding, to the Developer for the purpose of encouraging business expansion and the creation of new jobs in the City.

NOW, THEREFORE, in consideration of the foregoing and on the terms and conditions hereinafter set forth and for other good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer agree as follows:

I.

AUTHORITY AND TERM

1.1 Authority.

The City’s execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and constitutes a valid and binding obligation of the City. The City acknowledges that Developer is acting in reliance upon the City’s performance of its obligations under this Agreement in making the decision to commit substantial resources and money to the establishment of new businesses within the “Project,” hereinafter established.

1.2 Term.

This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date, hereinafter established, or until the Maximum Grant Amount has been reached, unless terminated sooner or extended by mutual agreement of the Parties in the manner provided for herein.

II.

DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

“Actual Cost of Funds” shall mean the interest rate paid by the Developer on funds used to construct the Public Improvements. The Developer shall provide the City, annually during the term of this Agreement as applicable, supporting documentation detailing the Developer’s Actual Cost of Funds. The Parties agree that the Actual Cost of Funds may be adjusted up or down in the event that the Developer refinances fund debt. Further, the Parties agree that if such refinancing results in a lower rate, the Developer shall reduce the Actual Cost of Funds accordingly.

“Adversarial Proceedings” include any cause of action regarding this Agreement filed by the Developer in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration or mediation.

“Assessed Taxable Value” shall mean property tax values for the Properties set annually by the Bexar County Appraisal District (“BCAD”) for real property and improvements; however, the term does not include on-site business personal property.

“Base Tax Year” shall mean the property tax year beginning January 1, 2014.

“Code” shall mean the City of Helotes Code of Ordinances.

“Consummated” shall have the meaning assigned by the Texas Tax Code, Section 321.203.

“Contract Progress Payment Request” (“CPPR”) shall mean a request for payment due to Developer for successfully completed work to substantiate Hard Costs, Soft Costs, and Actual Cost of Funds for Public Improvements, accompanied by customary documentation, including the name and address of the entity that performed the work, a description of the contract pursuant to which the payment is made, proof of payment or satisfaction, the amount of such payment, the original contract amount, total payments made to date on such contract, an estimate of remaining work to be completed on the specific improvement, the cost of such work, and any customary lien and / or subcontractor releases.

“Detailed Confidentiality Report” shall mean a report, attached hereto as Exhibit “F”, provided by the State to the City, in accordance with Texas Tax Code, Section 321.3022, which

lists the amount of Sales and Use Tax paid (including any refunds, credits, or adjustments) by the Retailers and received by the City from the State for the sale of Taxable Items by the Retailers Consummated within the Properties for specified periods which are to be used to justify the Developer's CPPR, together with such supporting documentation required herein and as the City may request.

"Effective Date" shall mean the last date of Agreement execution by all Parties.

"Expiration Date" shall mean the earlier of:

1. The City and EDC's reimbursement of the Maximum Grant Amount to the Developer for all Hard and Soft Costs and Actual Cost of Funds associated with the Public Improvements; or
2. Fifteen (15) years from the Effective Date of this Agreement; or
3. Uncured default by the Developer.

"Fiscal Year" shall mean October 1st of any given calendar year through September 30th of any given following calendar year.

Gender: The gender of the wording throughout this Agreement shall always be interpreted to mean either sex, and, where the context requires, the plural of any word shall include the singular.

"Grant(s)" shall collectively mean sales and use tax proceeds and property tax proceeds payments, pursuant to an CPPR, made from the City and the EDC to the Developer.

"Hard Costs" shall mean the actual, substantiated costs of construction, labor, and materials incurred by the Developer for Public Improvements.

"Increased Property Tax Revenues" shall mean, for any given calendar year, the difference between the City's actual Property Tax revenue for the Properties, based on the Properties' current Assessed Taxable Value, minus the Property Tax revenue collected by the City for the Properties during the Base Tax Year, as described in Exhibit "D."

"Maximum Grant Amount" shall mean the total Hard and Soft Costs and Actual Cost of Funds for the Public Improvements in an amount not to exceed Two Million Dollars (\$2,000,000.00).

"Project" shall mean the aforementioned development of the Shops at Old Town Helotes and the construction of a six foot (6') concrete sidewalk and a three thousand square foot, more or less, mixed-use retail, office space, and restaurant facility within the Bluffs at Old Town Helotes and associated Public Improvements within the Properties. The Project shall consist of office, mixed-use retail, and restaurant developments, as well as other ancillary facilities, such as areas developed for parking, drainage, landscaping, and open space. The development of the Shops at Old Town Helotes shall comply, in substantial shape and form and consist of, at a minimum, ten (10) of the proposed buildings, with the Conceptual Land Use Plans, attached hereto as Exhibit "H."

“Property” and/or “Properties”, used interchangeably, shall mean the real property described in Exhibit “A” upon which the Project, authorized by this Agreement, shall be constructed.

“Property Tax” shall mean the ad valorem tax imposed by the City on real property and improvements located within the corporate City limits.

“Property Tax Receipts” shall mean fifty percent (50%) of the City’s Increased Property Tax Revenues received for the Properties and its improvements during any tax year for which this Agreement is in effect, it being expressly understood that the real property taxes are being used only as a measurement for City participation through the use of its general fund or other lawful source of payment.

“Public Improvements” shall collectively mean the improvements more particularly described in Exhibit “E.”

“Retailers” shall mean the owners and tenants within the Properties and each and every person and/or entity required by the State of Texas to collect Sales and Use Tax on the sale of Taxable Items Consummated within the Properties. The MarketPlace at Old Town Helotes vendors, or similar vendors at private events, are expressly not included within the definition of retailers.

“Sales and Use Tax” shall mean the one and one-half percent (1.50%) sales and use tax imposed by the City and EDC on the sale of Taxable Items Consummated in the City by the Retailers, it being expressly understood that the Sales and Use Tax receipts are being used only as a measurement for City and EDC participation through the use of their general fund or other lawful source of payment.

“Sales Tax Payment Period” shall mean a full quarter of the City’s Fiscal Year, except that the first Payment Period shall be from the Effective Date through and including the last date of the first full quarter of the City’s Fiscal Year following the Effective Date.

“Sales Tax Receipts” shall mean fifty percent (50%) of the City and EDC’s receipts from the Retailers’ collection of the one and one-half percent (1.50%) Sales and Use Tax as a result of the sale of Taxable Items by the Retailers for the applicable Sales Tax Payment Period Consummated within the Properties.

“Subcontractor” shall mean an individual, firm, or corporation having a direct contract with the Developer or with any other Subcontractor in the performance of a part of the Project.

“Soft Costs” shall mean the costs incurred by the Developer for engineering, design, fiscal security, insurance, permits, project management (including contractor general condition expenses), and all other costs associated with the construction of Public Improvements which are not included in Hard Costs or Actual Cost of Funds.

“Taxable Items” shall mean both “taxable items” and “taxable services,” defined by Chapter 151, Texas Tax Code, as amended.

III.

ECONOMIC DEVELOPMENT GRANTS

3.1 Grants.

The City and EDC agree to reimburse the Developer through Economic Development Grants (“**GRANTS**”) not to exceed the Maximum Grant Amount for all Hard and Soft Costs and Actual Cost of Funds associated with the approved construction of all Public Improvements.

3.2 Grant Payments.

3.2.1 Sales Tax Payments.

The City and EDC shall remit to Developer Sales Tax Receipts Consummated within the Properties for the Sales Tax Payment Period requested by the Developer for actual Hard and Soft Costs and Actual Cost of Funds incurred by the Developer in its substantial completion of Public Improvements within the Properties and associated with the Project. The **GRANT** to the Developer will be paid to the Developer within sixty (60) days following the City and EDC’s receipt of a properly completed CPPR from the Developer following the end of each City Fiscal Year Quarter beginning with the first full City Fiscal Year Quarter following the Effective Date, and shall continue until the full payment of the Maximum Grant Amount or other method of termination of this Agreement. The Parties agree that the payment of Sales Tax Receipts to the Developer is subject to the City and EDC’s actual collection of Sales Tax Receipts. In the event the Sales Tax Receipts are insufficient during the term of this Agreement to pay the **GRANTS**, the City and EDC shall not be obligated to pay the **GRANTS** from any other source of funds or required to pay such deficit to the Developer. Notwithstanding any provision contained herein to the contrary, the Developer shall have the right to receive Sales Tax Receipt payments beginning with the first full City Fiscal Year Quarter following the Effective Date and continuing until the full payment of the Maximum Grant Amount or the Agreement is terminated by other means, as listed in Article VII.

3.2.2 Property Tax Payments.

The City shall remit to Developer Property Tax Receipts from the Properties for the Payment Period requested by the Developer for actual Hard and Soft Costs and Actual Cost of Funds incurred by the Developer in its substantial completion of Public Improvements within the Properties and associated with the Project. The **GRANT** to the Developer shall be paid to the Developer annually within sixty (60) days following February 1st of each calendar year, beginning with the first calendar year following the Effective Date, and shall continue until the full payment of the Maximum Grant Amount or other method of termination of this Agreement. The Parties agree that the payment of Property Tax Receipts to the Developer is subject to the City’s actual collection of Property Tax Receipts. In the event the Property Tax Receipts are insufficient during the term of this Agreement to pay the **GRANTS**, the City shall not be obligated to pay the **GRANTS** from any other source of funds or be required to pay such deficit to the Developer. Notwithstanding any provision contained herein to the contrary, the Developer shall have the right to receive Property Tax Receipt payments annually within sixty (60) days following February 1st of each calendar year, beginning with the first calendar year following the Effective Date, and shall continue until the full payment of the Maximum Grant Amount or other method of termination of this Agreement, as listed in Article VII.

3.3 Grant Limitations.

The City and EDC shall not be obligated to pay any monies beyond the Maximum Grant Amount, unless otherwise agreed by the Parties and are only obligated to make **GRANTS** for Sales Tax Receipts and Property Tax Receipts actually received by the City or EDC. Developer represents that it understands that any contributions by the Developer in anticipation of reimbursement from **GRANTS** shall never be obligations of the general funds of the City or EDC, but are only obligations of the **GRANTS** fund, and are subject to the extent of the Project's capacity to reimburse the Developer.

3.4 Grant Funds.

GRANTS to be provided herein shall be paid solely from lawful, available funds to the City and EDC. Under no circumstances shall any **GRANTS** include any receipts from the City and EDC's imposition and collection of Sales and Use Tax for the sale of Taxable Items at any location, business, establishment, or entity Consummated within the City other than from the sale of Taxable Items by the Retailers Consummated within the Properties, nor shall any **GRANTS** include any Property Tax Receipts received for real property or improvements not located within or on the Properties.

3.4.1 No Bonds or Notes.

The City, EDC, and Developer represent that they understand and agree that neither the City nor the EDC shall issue any bonds or notes to cover any Project Costs directly or indirectly related to the Developer's improvements in the Properties under this Agreement. The City and EDC understand that Developer may choose to issue notes utilizing **GRANT** reimbursements for eligible costs directly or indirectly related to Public Improvements made by the Developer in the Properties under this Agreement. The City and the EDC will not be parties to the Developer's notes.

3.5 Confidentiality.

The City and EDC agree, to the extent allowed by law, to keep all information and documentation received from the State of Texas, pursuant to this Agreement hereof ("Confidential Tax Information"), confidential. The City and EDC will use the Confidential Tax Information solely for the purposes of determining the Developer's entitlement to **GRANT** funds.

IV.

CONDITIONS TO ECONOMIC DEVELOPMENT GRANTS

The obligation of the City and EDC to pay **GRANTS** shall be conditioned upon the Developer's continued compliance with and satisfaction of each of the conditions set forth in this Agreement.

4.1 CPPR.

Developer shall, as a condition precedent to the payment of any **GRANT**, provide the City and EDC with a CPPR in suitable form for the applicable **GRANT** period.

Detailed Confidentiality Report.

As a condition to the payment of any Sales Tax Receipts hereunder, the City and EDC shall receive a Detailed Confidentiality Report for the applicable Sales Tax Payment Period for which payment of a Grant is requested. The City and EDC shall have no duty to calculate Sales Tax Receipts, determine the Developer's entitlement to any Grant, or pay any Grant during the term of this Agreement until such time as the City and EDC have been provided with a Detailed Confidentiality Report for the applicable Sales Tax Payment Period. At the request of the City or EDC, the Developer shall provide such additional documentation as may be requested by the City or EDC to evidence, support, and establish the Sales and Use Tax paid and collected (including Sales and Use Tax paid directly to the State pursuant to a direct payment permit) by the Retailers for the sale of Taxable Items by Retailers Consummated within the Properties and received by the City and EDC from the State. The Detailed Confidentiality Report shall, at a minimum, contain, include, or be accompanied by the following:

- (a) A schedule detailing the amount of Sales and Use Tax proceeds collected by the Retailers and paid to the State as a result of the sale of Taxable Items Consummated in the City within the Properties for the previous City Fiscal Year Quarter; and
- (b) Information concerning any refund or credit of Sales and Use Tax received by the Retailers (including any Sales and Use Tax paid directly to the State pursuant to a direct payment permit) which have previously been reported by the Retailers as Sales and Use Tax paid or collected.

4.2 Retailers' Report.

During the term of this Agreement beginning with the Effective Date, the Developer shall provide the City and EDC and maintain during the term of this Agreement a list of each Retailer that occupies or occupied the Properties during the applicable Sales Tax Payment Period, including the taxpayer identification number, taxpayer outlet number (as shown on the Texas Sales Tax Permit), taxpayer name, taxpayer location as reported to the State of Texas, and any other information required by the State of Texas to generate and provide the City with the Comptroller's Detailed Confidentiality Report for the applicable Sales Tax Payment Period. During any Sales Tax Payment Period, the City and EDC shall only remit Grants that appear on the Detailed Confidentiality Report that contracted with Developer to lease or own property within the Properties during the Sales Tax Payment Period in which the City and EDC were notified by the Developer of the Retailers' occupancy status and who appear on the Sales Tax Certificate.

4.3 Sales Tax Disclosure.

Developer covenants and agrees to include, as a condition, language which requires Developer, Retailers, and their successors and assigns to sign or cause to be signed any documentation necessary to authorize the State Comptroller's Office to release and disclose to the City and EDC, for the term of this Agreement, any and all Sales and Use Tax information relating to any Retailer generating Sales and Use Tax proceeds within the Properties, including, as necessary, a form in materially the same format as that attached hereto as Exhibit "F".

4.5 Audit.

Developer shall, upon reasonable prior written notice to the City Secretary and during normal business hours, have the right to audit and inspect the City and EDC's records, books, and all other relevant records related to this Agreement. The City and EDC shall, upon

reasonable prior written notice to the Developer and during normal business hours, have the right to audit and inspect the Developer's records, books, and all other relevant records related to this Agreement. The Parties agree to maintain the appropriate confidentiality of such records, unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, State Law, municipal ordinance, or at the direction of the Office of the Texas Attorney General.

4.6 Recapture.

In the event of default, the City shall, after providing Developer notice and an opportunity to cure, have the right to recapture all **GRANTS** provided to Developer for the Public Improvements constructed by Developer pursuant to this Agreement. The recapture of any **GRANTS** from Developer shall be in like manner and subject to the same penalties as provided by Section 9.17 hereof.

4.7 Guidelines for Submission.

The City Administrator shall develop guidelines setting forth the specific details and procedural requirements for the timely submission of CPPR(s) and the disbursement of grants pursuant to this Agreement, including appropriate penalties for late, deficient, or untimely submissions. Such guidelines shall be implemented by written order signed by the City Administrator.

V.

COVENANTS AND DUTIES

5.1 Developer's Covenants and Duties.

Developer makes the covenants and warranties to the City and EDC and agrees to timely and fully perform the obligations and duties contained in Article V of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Developer.

5.1.1 Developer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement.

5.1.2 The execution of this Agreement has been duly authorized by Developer's general partner, and the individual signing this Agreement is the manager or the general partner, empowered to execute such Agreement and bind the partnership. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Developer's partnership agreement, by-laws, or of any agreement or instrument to which Developer is a party to or by which it may be bound.

5.1.3 The Developer is not a party to any bankruptcy proceedings currently pending or contemplated, and Developer has not been informed of any potential involuntary bankruptcy proceedings.

5.1.4 To its current, actual knowledge, Developer has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.

5.1.5 The funds herein granted shall be used solely for the purpose of constructing Public Improvements within the Properties and associated with the Project, including all Hard Costs, Soft Costs, and Actual Cost of Funds.

5.1.6 Developer shall timely and fully comply with all of the terms and conditions of this Agreement.

5.1.7 Developer agrees to substantially complete, or cause to be completed, the Project, Public Improvements, and the Conceptual Land Use Plan. Developer agrees to provide, or cause to be provided, all materials, labor, and services for substantially completing the Project. Developer also agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of Public Improvements to the Properties.

5.1.8 Developer shall prepare, or cause to be prepared, plans and specifications for the Public Improvements prior to starting any construction.

5.1.9 Developer agrees to supervise the construction of the Project and cause the construction to be performed substantially in accordance with the Public Improvements and Conceptual Land Use Plan approved by the City. Developer also agrees to provide bi-annual reports of such construction upon the reasonable request of the City.

5.1.10 Developer shall be responsible for paying, or causing to be paid, to City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project. Developer agrees to comply with all City ordinances in effect at the time this Agreement is executed.

5.1.11 Unless the Developer acts as the general contractor, the Developer shall, in accordance with Chapter 2253 of the Texas Government Code, prior to beginning construction on the Project, cause its general contractor or general contractors to obtain a payment and performance bond in an amount sufficient to cover completion of the Public Improvements for that phase in their respective contracts. Unless the Developer acts as the general contractor, the Developer shall submit evidence of payment and performance bonds as a condition of eligibility for reimbursement pursuant to the requirements of the CPPR. Unless the Developer acts as the general contractor, the Developer shall submit the original payment and performance bonds to the City for inspection immediately upon obtaining them, and shall attach copies of the bonds as a condition of eligibility for reimbursement pursuant to the requirements of the CPPR.

5.1.12 Developer agrees to supervise the construction of the Project and cause the construction to be performed substantially in accordance with federal, state, and local laws and ordinances and this Agreement. Developer agrees to develop the Project in accordance with the ordinances, rules, and regulations of the City in effect on the date the Project was designated, unless specified otherwise in this Agreement. Developer, in its sole discretion, may choose to comply with any or all City rules promulgated after the Effective Date of this Agreement.

5.1.13 Developer agrees to commence and substantially complete the Project in accordance with the Public Improvements and Conceptual Land Use Plan. If substantial completion of the Project is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, fire or other casualty, court injunction, necessary condemnation proceedings, interference by third parties, or any circumstances reasonably

beyond Developer's control, then at City's reasonable discretion, the estimated date for completion of construction shall be extended by the period of such delay.

5.1.14 Developer shall, at its own cost and expense, maintain or cause to be maintained, the Public Improvements and all the other public improvements identified within "Exhibit E."

5.1.15 Developer shall cooperate with City in providing all necessary information to assist City in complying with this Agreement.

5.1.16 Developer shall submit written annual reports, starting no later than thirty (30) days following the end of the fiscal year in which the Project was created, and thereafter through the duration of the Project, on its construction progress and construction expenses to City.

5.1.17 Developer shall diligently work to complete, subject to the requirements contained within the definition of "Project" hereof, successfully any and all required Public Improvements that are not completed before the Project terminates. Such completion shall be at no additional cost to City.

5.1.18 Developer shall be responsible for paying, or causing to be paid, to the City and all other governmental agencies the cost of all applicable permit fees and licenses which have not been waived and are required for construction of the Project.

5.1.19 Developer shall pay, or cause to be paid, monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by the Developer in regard to the development of the Project, the Properties for all areas owned by the Developer during construction of the Project, and for so long as the Developer owns those areas.

5.1.20 With respect to Public Improvements, Developer shall make a good faith effort to contract with or hire local qualified workers, companies, and Historically Underutilized Businesses in the manner prescribed by State Law in subcontracting any of the construction work required to be performed under the Public Improvements, Conceptual Land Use Plan, or this Agreement.

5.1.21 The Developer, in the execution of this Agreement, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. The Developer shall not engage in employment practices that have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation.

5.1.22 Developer Bears Risk of Reimbursement. The Developer represents that it understands that any contributions made by the Developer in anticipation of reimbursement from Grant funds shall not be, nor shall be construed to be, financial obligations of the City or the EDC. The Developer shall bear all risks associated with reimbursement, including, but not limited to: pre-development agreement costs, incorrect estimates of Grant funds, changes in tax rates or tax collections, changes in state law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, default by tenants, unanticipated effects covered under legal doctrine of force majeure, and/or other unanticipated factors.

5.1.23 Financing. The cost of the Public Improvements and all other improvement expenses associated with the Project shall be funded through the use of Developer's own capital or through credit secured solely by the Developer. The Developer may use any or part of the Properties as collateral for the construction loan or loans as required for the financing of the Project; however, no property with a lien still attached may be offered to the City for dedication. The City will use available Grant funds, up to the Maximum Grant Amount provided herein, to reimburse the Developer for eligible Hard Costs, Soft Costs, and Actual Cost of Funds it has expended. These Grant fund reimbursements made to the Developer are not intended to reimburse the Developer for all its costs incurred in connection with performing its obligations under this Agreement.

5.2 City and EDC's Covenants and Duties.

The City and EDC are obligated to pay the Developer an amount not to exceed the Maximum Grant Amount from sources contemplated by this Agreement over a period not to exceed fifteen (15) years, subject to Developer's timely and full satisfaction of all applicable duties and terms within this Agreement. Further, City and EDC's obligations to pay the Developer shall cease upon the earlier of: (1) payment in full of the Maximum Grant Amount; (2) reaching the Agreement's Expiration Date; or (3) Default by the Developer.

5.3 Substantial Compliance and Default.

Subject to the conditions outlined in Section VIII hereof, failure by either Party to timely and substantially comply with any performance requirement, duty, or covenant shall be considered an act of Default if uncured within sixty (60) days of receiving written notice from the other Party. Failure of the Developer to timely and substantially cure a default will give the City and EDC the right to terminate this Agreement.

VI.

DESIGN CRITERIA / DEVELOPMENT STANDARDS

6.1 Hill Country Theme.

Developer contracts and agrees that the Project shall be the substantial development of the Shops at Old Town Helotes and the construction of a six foot (6') concrete sidewalk and a three thousand square foot, more or less, mixed-use retail, office space, and restaurant facility within the Bluffs at Old Town Helotes, all to be constructed with a Texas Hill Country theme. Developer shall make a reasonable effort to ensure that the Project meets or exceeds the design, lighting, landscaping, and site improvement criteria and standards set forth in the attached Exhibit "G." Approval of the Project's storm water management, design, landscaping, signage, and site improvements shall be made by the City Administrator at the time of issuance of applicable permits for construction. Review and approval of applicable fire protection and building construction Code requirements shall be made by the Fire Chief and Building Inspector, respectively. In the event of a conflict between the design criteria set forth in Exhibit "G" and the Conceptual Land Use Plan set forth in Exhibit "H", the Conceptual Land Use Plan shall control. In any event of a conflict between any requirements of this Agreement, all Exhibits hereto, and any applicable Code requirement, the more stringent requirement shall control. For any issues not covered by this Agreement, the more stringent of the applicable Code section(s) or State law shall control.

6.2 Conceptual Land Use Plan.

The Project shall be developed in accordance with the Conceptual Land Use Plan set forth in Exhibit “H”. Developer may submit an updated Conceptual Land Use Plan up to eighteen (18) months after the Effective Date of this Agreement, provided, however, that the amended Conceptual Land Use Plan is approved by the City Council of the City of Helotes.

VII.

TERMINATION

7.1 Termination.

This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

- (a) The written agreement of the Parties;
- (b) The Agreement’s Expiration Date;
- (c) Default by the Developer; or
- (d) The Payment of the Maximum Grant Amount.

7.2 Termination by Maximum Grant Amount.

If the Agreement is terminated by reaching the Maximum Grant Amount, the City is required to issue a letter to the Developer stating that the Maximum Grant Amount has been reached.

7.3 Extension Beyond Term and Reimbursement.

In recognition of the fact that Grants are, by necessity, calculated and paid after taxes have been levied and paid to the City and EDC and, therefore, will always be paid in arrears, the Expiration Date of this Agreement will be extended until any and all Grants relating to applicable Sales Tax Receipts and Property Tax Receipts during the effective term of the Agreement have been paid in full by the City and EDC to the Developer. Notwithstanding the above, the Design Criteria/Development Standards set forth in Section VI of this Agreement and all other substantive requirements imposed upon Developer shall be perpetual and shall not terminate unless specified otherwise in this Agreement. The Parties hereto agree that neither the City nor the EDC can guarantee that Grant Funds shall completely reimburse the Developer, but that the Grant Funds paid to Developer during the effective term hereof shall constitute the total reimbursement to the Developer for the construction of the Public Improvements regardless of the actual cost thereof.

VIII.

DISPUTE RESOLUTION

8.1 Mediation.

If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, Dallas, Texas, before resorting to

arbitration, litigation, or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. Notwithstanding the foregoing, any Party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such Party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. All costs of negotiation, mediation, and arbitration collectively known as alternate dispute resolution (“ADR”) shall be assessed equally between the City and Contractor with each party bearing their own costs for attorney’s fees, experts, and other costs of ADR and any ensuing litigation.

8.2 During the term of this Agreement, if Developer files and / or pursues an adversarial proceeding against the City regarding this Agreement without first engaging in good faith mediation of the dispute, then, at the City’s option, all access to the Grants provided for hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest bearing account until the resolution of such adversarial proceeding.

8.3 Under no circumstances will the Grant funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against City or EDC.

IX.
MISCELLANEOUS

9.1 Binding Agreement.

The terms and conditions of this Agreement shall be binding on and inure to the benefit of the City, EDC, Developer, and their respective successors and assigns. The City Administrator shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the City Council of the City of Helotes, Texas, on behalf of the City related thereto.

9.2 Mutual Assistance.

City, EDC, and Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

9.3 Representations and Warranties.

City and EDC represent and warrant to the Developer that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Developer represents and warrants to the City and EDC that it has the requisite authority to enter into this Agreement.

9.4 Assignment.

Developer shall have the right to assign all of its rights, duties, and obligations under this Agreement to a duly qualified third party with prior written approval of the City Council of the City of Helotes, Texas; provided, however, that any assignment provided for herein shall not serve to enlarge or diminish the obligations and requirements of this Agreement, nor shall they relieve Developer of any liability to the City or EDC including any required indemnity in the event that any Assignee hereof shall at any time be in default of the terms of this Agreement.

The City may demand and receive adequate assurance of performance including the deposit or provision of financial security by any proposed Assignee prior to its approval of an assignment.

9.5 Independent Contractors.

9.5.1 It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Developer at no time will be acting as an agent of the City or EDC and that all consultants or contractors engaged by Developer respectively will be independent contractors of Developer. The Parties hereto understand and agree that City or EDC will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by Developer respectively under this Agreement, unless any such claims are due to the fault of the City or EDC.

9.5.2 By entering into this Agreement, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the City or EDC with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.

9.6 Notice.

Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, facsimile with receipt confirmation, or by depositing the same in the United States Mail, postage prepaid and certified with return receipt requested, addressed to the Party at the address set forth below:

If intended for City or EDC:

City of Helotes
City of Helotes EDC
12951 Bandera Road (Physical)
P.O. Box 507 (Mailing)
Helotes, TX 78023

With a required copy to:

Steven M. Pena
Davidson & Troilo
7550 West IH-10, Ste. 800
San Antonio, Texas 78229

If intended for Developer:

Shops at Old Town Helotes, Inc. and
Bluff at Old Town Helotes LLC
14203 Circle A Trail
Helotes, Texas 78023

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

Governing Law.The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement shall be in Bexar County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

9.8 Amendment.

This Agreement may be amended by mutual written agreement of the Parties, as approved by the City Council of the City of Helotes, Texas.

9.9 Legal Construction.

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

9.10 Interpretation.

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

9.11 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the City Council of the City of Helotes, Texas.

9.12 Recitals.

The recitals to this Agreement are incorporated herein as findings of fact.

9.13 Paragraph Headings.

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

9.14 Counterparts.

This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

9.15 Exhibits.

Any Exhibits attached hereto are incorporated by reference for all purposes.

9.16 Survival of Covenants.

Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

9.17 Employment of Undocumented Workers.

During the term of this Agreement, the Developer agrees to not knowingly employ any undocumented workers, and, if convicted of a violation under 8 U.S.C.

Section 1324a(1), the Developer shall be in Default and repay the amount of the Grants and any other funds received by the Developer from the City and EDC as of the date of such violation within one hundred twenty (120) days after the date the Developer is notified by the City of such violation, plus interest at the rate of six percent (6.00%) compounded annually from the date of the violation until paid in full. The Developer is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of the Developer or by a person with whom the Developer contracts provided however that identical federal law requirements provided for herein shall be included as part of any agreement or contract which Developer enters into with any subsidiary, assignee, affiliate, or franchisee for which Grants provided herein will be used.

9.18 Indemnification.

DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY AND EDC (AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY OR EDC DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER'S NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF DEVELOPER, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY AND/OR EDC, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND EDC AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. DEVELOPER SHALL PROMPTLY ADVISE CITY AND EDC, IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY AND/OR EDC, RELATED TO OR ARISING OUT OF DEVELOPER'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DEVELOPER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY AND/OR EDC SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

THE DEVELOPER SHALL ALSO INDEMNIFY THE CITY, AND/OR EDC AND THEIR RESPECTIVE OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTIONS, SUITS

AND LIABILITIES ARISING OUT OF THE DEVELOPER'S AND THE DEVELOPER'S GENERAL CONTRACTOR'S ACTIONS RELATED TO THE CONSTRUCTION OF THE PUBLIC IMPROVEMENTS.

9.19 Insurances; Subcontractors.

9.19.1 The Developer shall maintain, at its own cost and expense, such usual, customary, and appropriate insurance as will protect Developer, City, and EDC from all claims for damages to persons and to property which may arise from any operations under this Agreement, or any of its amendments. Such policies shall include a waiver of subrogation as to the City and EDC.

9.19.2 The failure of the Developer at anytime to provide the required insurance required by Section 9.19 shall be considered a material breach of this Agreement for which the City and EDC shall be entitled to damages, including termination of the Agreement for uncured violations.

9.20 Additional Instruments.

City and Developer agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

Executed on this 30th day of July 2014.

CITY OF HELOTES, TEXAS

By: Thomas A. Schoolcraft
Thomas A. Schoolcraft, Mayor

ATTEST:

By: Grace Tamez
Grace Tamez, City Secretary

APPROVED AS TO FORM:

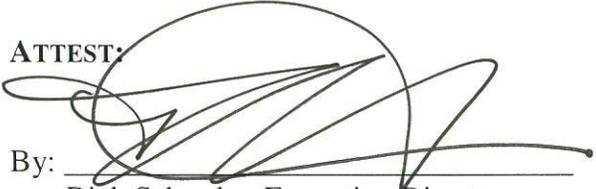
By: _____
Steven M. Peña, City Attorney



Executed on this 30th day of July 2014.

CITY OF HELOTES ECONOMIC DEVELOPMENT CORPORATION

By: Drue Helms
Drue Helms, Vice President

ATTEST:

By: _____
Rick Schroder, Executive Director

APPROVED AS TO FORM:
By: _____
Steven M. Peña, EDC Attorney

Executed on this 30th day of July, 2014.

DEVELOPER:
Kenneth Dempsey
By: Bluff at Old Town Helotes, LLC and Shops at Old Town Helotes, Inc.

By: Kenneth Dempsey
Name: KENNETH DEMPSEY
Title: PRESIDENT/MEMBER

APPROVED AS TO FORM:
By: N/A (KO), Attorney
Bluff at Old Town Helotes, LLC
Shops at Old Town Helotes, Inc.

EXHIBITS

Exhibit “A”	Legal Description of the Property and/or Properties
Exhibit “B”	EDC Resolution of Support
Exhibit “C”	City Ordinance
Exhibit “D”	Base Tax Year Collections
Exhibit “E”	Public Improvements
Exhibit “F”	Sample State Comptroller Detailed Confidentiality Report
Exhibit “G”	Design Standards
Exhibit “H”	Conceptual Land Use Plan