DEVELOPMENT AGREEMENT WITH THE CITY OF SAN ANTONIO, TEXAS and
HLH DEVELOPMENTS, L.P., and
BOARD OF DIRECTORS OF
REINVESTMENT ZONE NUMBER TWELVE, CITY OF SAN ANTONIO, TEXAS
September 1, 2005

This Development Agreement, pursuant to Ordinance No. 101345, passed and approved on September 1, 2005, is entered into by and between the CITY OF SAN ANTONIO, a Texas municipal corporation in Bexar County, Texas (hereinafter called “CITY”); HLH DEVELOPMENTS, L.P., a Texas limited partnership (hereinafter referred to as “DEVELOPER”); and BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER TWELVE, CITY OF SAN ANTONIO, TEXAS, a tax increment reinvestment zone (hereinafter called “BOARD”);

WITNESSETH:

WHEREAS, CITY recognizes the importance of its continued role in economic development; and

WHEREAS, by Ordinance Number 95054, dated December 13, 2001, pursuant to the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code (as amended), (hereinafter called the “Act”), CITY created Reinvestment Zone Number Twelve (“Zone”) in accordance with the Act, to promote development and redevelopment of the Zone Property through the use of tax increment financing, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future and established a Board of Directors for the Zone; and

WHEREAS, Section 311.002(1) of the Act authorizes the expenditure of funds derived within a reinvestment zone, whether from bond proceeds or other funds, for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by a municipality establishing a reinvestment zone, for costs of public works or public improvements in the zone, plus other costs incidental to those expenditures and obligations, consistent with the project plan of the reinvestment zone, which expenditures and monetary obligations constitute project costs, as defined in Section 311.002(1) of the Act (“Project Costs”); and

WHEREAS, on July 26, 2005, by a Board Resolution, the BOARD adopted and approved a final Project Plan and a final Financing Plan defined hereunder and referred to herein as “Project Plan” and “Financing Plan” providing for development of Zone Property; and

WHEREAS, CITY approved the Project and Financing Plan for Zone by Ordinance Number 101345, on September 1, 2005; and

WHEREAS, pursuant to the Act and City of San Antonio Ordinance Number 95054, dated December 13, 2001, the BOARD has authority to enter into agreements as the BOARD considers necessary or convenient to implement the Project Plan and Financing Plan and to achieve the purposes of developing the Zone Property; and

WHEREAS, pursuant to said authority above, BOARD, CITY and DEVELOPER each hereby enters
into a binding agreement with the others to develop the Zone Property as specified in the Project Plan, Financing Plan and in this Agreement; and

WHEREAS, CITY, by Ordinance Number 101345, dated September 1, 2005, authorized the City Manager of the City of San Antonio or his designated representative to execute this Agreement on behalf of CITY, to bind CITY to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, CITY, BOARD, and DEVELOPER hereby agree as follows:

I. DEFINITIONS

1.1 “CITY,” “BOARD,” and “DEVELOPER” have the meanings specified above.

1.2 “Act” means the Tax Increment Financing Act, as defined above and as may be amended from time to time.

1.3 “Agreement” means this document by and among CITY, BOARD and DEVELOPER, which may be amended from time to time, pursuant to the provisions contained herein.

1.4 “Available Tax Increment Funds” for each Participating Taxing Entity means the “Tax Increment” contributed by each Participating Taxing Entity as defined in Section 311.012 (a) of the Act to the fund established and maintained by CITY for the purposes of implementing the projects of ZONE, less the initial administrative costs of each Participating Taxing Entity for organizing the Zone and the ongoing administrative costs of CITY for managing the Zone, and those annual administrative fees, if any, of the participating taxing entities.

1.5 “City Manager” means the City Manager of CITY or his designee.

1.6 “Completion” means construction of a public improvement in the Zone substantially in accordance with the Project Plan, Financing Plan and this Agreement to the extent that the particular improvement can be used and maintained for its intended purpose, as certified by an engineer or other official of CITY with responsibility for inspecting and certifying such improvements.

1.7 “Contract Progress Payment Request” (“CPPR”) means a request, prepared in accordance with the requirements of Exhibit E, attached hereto and incorporated herein for all purposes, for payment due to DEVELOPER for work completed in accordance with Section 1.6 above on a specific improvement in the Zone in accordance with the Project Plan and the timeline detailed in Exhibit B, the Construction Schedule. The CPPR shall also reflect all waivers granted through the Incentive Scorecard System.

1.8 “CPPR Approval” means a written acknowledgement from CITY to DEVELOPER that the Contract Progress Payment Request, as defined herein, was completed and submitted correctly, and that the Contract Progress Payment Request is ready for presentation to BOARD for approval and consideration for reimbursement to DEVELOPER.

1.9 “Construction Schedule” means the timetable for constructing the improvements specified in the Project Plan, Financing Plan and this Agreement, which timetable is more particularly set forth in Exhibit B, attached hereto and incorporated herein for all purposes and which timetable may be amended from time to time pursuant to the provisions of this Agreement.
1.10 "Effective Date" means the tenth (10th) day after passage by the CITY’s City Council of the Ordinance authorizing the execution of this Agreement by CITY.

1.11 "Financing Plan" means the final financing plan as defined in the Act, as approved and as may be amended from time to time by BOARD and CITY, attached hereto and incorporated herein for all purposes as Exhibit A.

1.12 "Guidelines" means the Tax Increment Financing (TIF) and Reinvestment Zone Guidelines and Criteria as passed and approved by City Council of the City of San Antonio, in effect at the time of the creation of the Zone.

1.13 "Phase" means a portion of the Project that is being constructed by DEVELOPER, normally being a set number of units and acres out of the Zone Property being constructed together during a specific timeline.

1.14 "Participating Taxing Entity" means any governmental entity recognized as such by Texas law that is participating in this Project by contributing a percentage of the tax increment derived from the ad valorem property taxes levied on Zone property by that governmental entity.

1.15 "Project" has the meaning specified in Paragraph 3.1 of this Agreement, and as more specifically detailed in the Project Plan and Financing Plan as (either or both) may be amended from to time.

1.16 "Project Costs" has the meaning specified above on page 1, as provided by Section 311.002(1) of the Act, and the Guidelines in effect at the time Zone was designated.

1.17 "Project Plan" means the final Project Plan as defined in the Act, as approved and as may be amended from time to time by BOARD and CITY, attached hereto and incorporated herein as Exhibit A.

1.18 "Public Infrastructure Improvements" includes those improvements listed in Paragraph 3.2 of this Agreement, and as more specifically detailed in Exhibit A, as may be amended from time to time.

1.19 "Quarterly Report" means a report, prepared and submitted by DEVELOPER in accordance with the requirements of Exhibit C attached hereto and incorporated herein for all purposes, which provides quarterly updates of Project construction.

1.20 "TIF Unit" means the division of CITY’s Neighborhood Action Department responsible for the management of CITY’s TIF Program.

1.21 "Zone" shall mean Reinvestment Zone Number Twelve, City of San Antonio, Texas.

1.22 "Zone Property" means the contiguous geographic area of CITY that is included in the boundaries of Zone, which are more particularly described in Exhibit A.

Singular and Plural: Words used herein in the singular, where the context so permits, also includes the plural and vice versa, unless otherwise specified.

II. REPRESENTATIONS

2.1 NO TAX INCREMENT BONDS OR NOTES: CITY, BOARD, and DEVELOPER represent
that they understand and agree that neither CITY nor BOARD shall issue any bonds or notes to cover any costs directly or indirectly related to DEVELOPER's improvement of the Zone under this Agreement.

2.2 CITY represents to DEVELOPER that as of the date hereof CITY is a home rule municipality located in Bexar County, Texas and has authority to carry out the obligations contemplated by this Agreement.

2.3 BOARD represents to DEVELOPER that as of the date hereof that the Zone is a tax increment reinvestment zone established by CITY pursuant to Ordinance Number 95054, passed and approved on December 13, 2001, and that BOARD has authority to carry on the functions and operations contemplated by this Agreement.

2.4 DEVELOPER represents to CITY and to BOARD that DEVELOPER is a limited partnership duly formed in the State of Texas; that DEVELOPER has the authority to enter into this Agreement and to perform the requirements of this Agreement; that DEVELOPER's performance under this Agreement shall not violate any applicable judgment, order, law or regulation; that DEVELOPER's performance under this Agreement shall not result in the creation of any claim against CITY for money or performance, any lien, charge, encumbrance or security interest upon any asset of CITY or BOARD; that DEVELOPER shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital; and that DEVELOPER owned the Zone Property at the time the Zone was created.

2.5 CITY, BOARD, and DEVELOPER represent each to the others that the execution, delivery, and performance of this Agreement on its part does not require consent or approval of any person that has not been obtained.

2.6 CITY and BOARD represent that DEVELOPER may rely upon the payments to be made to it out of the Available Tax Increment Funds as specified in this Agreement and that DEVELOPER may assign its rights to such payments, either in full or in trust, for the purposes of financing its obligations related to this Agreement, but DEVELOPER's right to such payments is subject to the other limitations of this Agreement. Notwithstanding the foregoing, CITY shall issue a check or other form of payment made payable only to DEVELOPER.

2.7 CITY, BOARD, and DEVELOPER represent each to the others that it shall make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires its continued cooperation.

2.8 CITY, BOARD, and DEVELOPER represent that they understand and agree that even after Zone terminates, DEVELOPER shall diligently work to successfully complete any and all required improvements that are not completed before Zone terminates. Such completion shall be at no additional cost to CITY, BOARD, or any other Participating Taxing Entity.

2.9 CITY, BOARD, and DEVELOPER represent that they understand and agree that this Agreement shall have no force or effect unless and until the Interlocal Agreements for the Project are executed between CITY, Bexar County, the Alamo Community College District and BOARD, as reflected in the Final Financing Plan dated September 1, 2005. The parties realize that the San Antonio River Authority may consent at a later date to participate in this Zone and to execute an Interlocal Agreement, but that the San Antonio River Authority participation and related execution of that
Interlocal Agreement is not essential for this agreement being effective or for the continued existence of the Zone.

2.10 DEVELOPER represents that it understands that any contributions made by DEVELOPER in anticipation of reimbursement from tax increments shall not be, nor construed to be, financial obligations of CITY, another Participating Taxing Entity, or BOARD. DEVELOPER shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of tax increment, 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 development code requirements, default by tenants, unanticipated effects covered under the legal doctrine of force majeure, refusal of a taxing entity to participate and/or other unanticipated factors.

III. THE PROJECT

3.1 The Project. The Project shall constitute and include the design, construction, assembly, installation and implementation of an urban residential development with 76 single-family homes, to be constructed by DEVELOPER on an approximately 9.82 acres out of the Zone Property, also known as the Plaza Fortuna Development Project.

3.2 The Public Infrastructure Improvements. The Public Infrastructure Improvements shall consist of the following items: site work, street & approaches, drainage, sewer, water, sidewalks, street lights, sewer impact fees, water impact fees, plating/zoning fees City Public Service utilities, and offsite sewer line to project and other public improvements authorized by the Act and the Guidelines in effect at the time Zone was created. The Public Infrastructure Improvements are more particularly set forth in the Project Plan and Finance Plan, attached hereto and incorporated herein for all purposes as Exhibit A.

3.3 Construction of Public Infrastructure Improvements. Public Infrastructure Improvements financed through Available Tax Increment Funds were publicly bid in compliance with Chapter 252 of the Local Government Code, pay prevailing wages in accordance with Ordinance No. 71312, passed and approved on March 29th, 1990, attached hereto as Exhibit D, and be constructed by or on behalf of DEVELOPER in compliance with all applicable law unless: (1) Available Tax Increment Funds go toward financing 30 percent or less of the cost for a specific public improvement, in compliance with Chapter 212 of the Local Government Code, and (2) such public improvement is not a building of any sort. In the event DEVELOPER did not publicly bid a Public Infrastructure Improvement, DEVELOPER must have obtained written approval by CITY in order to be eligible for partial reimbursement of those Project Costs not publicly bid pursuant to the regulations set forth in Chapters 252 and 212 of the Local Government Code. Reimbursements to DEVELOPER in that event shall not exceed thirty percent (30%) of the Project Costs that would otherwise have been eligible for total reimbursement had they been publicly bid.

3.4 Financing. The cost of the Public Infrastructure Improvements and all other improvement expenses associated with the Project shall be through the use of DEVELOPER’s own capital or through commercial or private construction loans/lines of credit secured solely by DEVELOPER. DEVELOPER may use any or part of the Zone Property 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 CITY for dedication. CITY and BOARD pledge to use Available Tax Increment Funds, up to the maximum amount provided herein to reimburse DEVELOPER for Project Costs it has expended. THESE AVAILABLE TAX INCREMENT FUNDS PAYMENTS TO DEVELOPER ARE NOT INTENDED TO REIMBURSE DEVELOPER FOR ALL OF ITS COSTS INCURRED IN
CONNECTION WITH PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT.

3.5 Reimbursement. The parties hereto agree that neither CITY nor BOARD can guarantee that Available Tax Increment Funds shall completely reimburse DEVELOPER, but that Available Tax Increment Funds shall constitute the total reimbursement to DEVELOPER for the Project Costs associated with the construction of the Public Infrastructure Improvements.

IV. TERM

4.1 The term of this Agreement shall commence on the Effective Date and end on the date which is the earlier to occur of the following: (i) the date DEVELOPER receives the final payment for completing the Project; or (ii) the date this Agreement is terminated as provided in Article IX; provided that all existing warranties on the Project shall survive termination of this Agreement; or (iii) the date the term of the Zone expires.

V. DUTIES AND OBLIGATIONS OF DEVELOPER

5.1 DEVELOPER shall comply with all applicable provisions of the Guidelines. In the event of a conflict between the Guidelines and this Agreement, the terms of this Agreement shall control.

5.2 Subject to Article VII. Compensation to Developer, DEVELOPER agrees to complete, or cause to be completed, the improvements described in the Project Plan, Financing Plan and in this Agreement. DEVELOPER agrees to provide, or cause to be provided, all materials, labor, and services for 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 improvements to the Zone Property.

5.3 DEVELOPER shall prepare, or cause to be prepared plans and specifications for the Public Infrastructure Improvements in a Phase prior to starting any construction in said Phase. DEVELOPER shall not commence any construction on the Project until the plans and specifications for a Phase have been approved in writing by the appropriate department of CITY. For purposes of this Section, letters of certification or acceptance issued by the CITY or an affiliated utility entity shall constitute written approval of the CITY.

5.4 DEVELOPER shall, prior to beginning construction on any Phase of 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 Infrastructure Improvements for that phase in their respective contracts. DEVELOPER shall obtain said bond in the event the general contractor or general contractors fail to procure said bond. If the improvements have been constructed and accepted by the City prior to the execution of this agreement then no such bond shall be required.

5.5 DEVELOPER agrees that it has commenced or completed, or shall supervise the construction of the Project and cause the construction to be performed substantially in accordance with the Project Plan, Financing Plan and the plans and specifications approved by the appropriate department of CITY and BOARD. DEVELOPER also agrees to provide periodic reports of such construction to CITY and to BOARD upon reasonable request.

5.6 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
5.7 DEVELOPER agrees to commence and complete the Project in accordance with the Construction Schedule. 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 deadlines set forth in the Construction Schedule shall be extended by the period of each such delay.

5.8 With respect to Public Infrastructure Improvements, DEVELOPER shall make a good faith effort to comply with CITY’s policy regarding the participation of businesses enterprises eligible as Small, Minority or Women-owned Business Enterprises in subcontracting any of the construction work required to be performed under the Project Plan, Financing Plan or this Agreement. Upon DEVELOPER’s request, CITY shall provide DEVELOPER a list of those business enterprises certified by CITY as eligible Small, Minority or Women-owned Business Enterprises. DEVELOPER shall maintain records showing (i) its contracts, supply agreements, and services agreements with and to business enterprises that are Small, Minority or Women-owned Business Enterprises, (ii) specify its efforts to identify and award contracts to business enterprises that are Small, Minority or Women-owned Business Enterprises, and (iii) provide reports of its efforts under this paragraph to CITY, in a form and manner CITY may reasonably prescribe, at least annually during construction of the Project and upon completion of the Project.

5.9 DEVELOPER shall comply with the tree preservation ordinance, City of San Antonio Ordinance No. 85262, passed and approved by the City Council of CITY on December 5, 1996, and as may be amended.

5.10 DEVELOPER shall render, or cause to be rendered, any and all residential buildings and commercial buildings to the Bexar County Appraisal District before December 31 of each year of this Agreement if the buildings were completed prior to said December 31.

5.11 DEVELOPER shall, at its own cost and expense, maintain or cause to be maintained, the Public Infrastructure Improvements and all the other public improvements until acceptance by CITY, as evidenced by written acceptance by the appropriate CITY administrator, and for one (1) year thereafter. After the expiration of one (1) year after such acceptance, maintenance of the Public Infrastructure Improvements shall be the responsibility of CITY. DEVELOPER, its agents, employees, and contractors will not interfere with reasonable use of all the Public Infrastructure Improvements by the general public, except for drainage retention improvements. DEVELOPER shall dedicate the Public Infrastructure Improvements to the appropriate Participating Taxing Entity (as determined by CITY), at no additional cost or expense to CITY or any other Participating Taxing Entity within sixty (60) days after completion and acceptance of the improvements.

5.12 DEVELOPER shall pay monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by DEVELOPER in regard to the development of the Zone Property for all areas owned by DEVELOPER during construction of the Project, and for so long as DEVELOPER owns those areas. Projects within the Zone shall be subject to Section 35.5001 et seq. of the San Antonio City Code and shall not be prohibited from applying for the benefits of any impact fee credits allowed by that Section.

5.13 DEVELOPER shall cooperate with CITY and BOARD in providing all necessary information
to CITY and to BOARD in order to assist CITY and BOARD in complying with this Agreement.

5.14 DEVELOPER shall submit written quarterly reports, submitted no later than fifteenth (15) day of each quarter throughout the fiscal year in which the Zone was created, and thereafter through the duration of the Project, on its construction progress and construction expenses to CITY and BOARD.

5.15 DEVELOPER has completed or shall diligently work to successfully complete any and all required improvements that are not completed before the Zone terminates. Such completion shall be at no additional cost to CITY, BOARD, or any other Participating Taxing Entity.

5.16 DEVELOPER shall comply or cause its contractors to comply with the City’s Universal Design Policy on all improvements installed as required by Chapter 6, Section 6-301 of the City Code of CITY. In the event DEVELOPER does not construct the houses in Zone, DEVELOPER shall cause all documents conveying title to the lots developed by DEVELOPER to reflect the buyer’s consent to comply with the City’s Universal Design Policy when constructing or causing to be constructed residential or commercial facilities on said lots in Zone.

5.17 DEVELOPER shall comply with Chapter 35-504 and Appendix F of the City of San Antonio Unified Development Code regarding the development of the Project.

5.18 DEVELOPER understands that no Available Tax Increment Funds will be paid to Developer until a master drainage plan of the Project has been received and approved by CITY. Said approval shall not be unreasonably withheld if DEVELOPER has complied with all existing CITY written and adopted rules and ordinances.

VI. DUTIES AND OBLIGATIONS OF CITY AND BOARD

6.1 Neither CITY nor BOARD shall sell or issue any bonds to pay or reimburse DEVELOPER or any third party for any improvements to the Zone Property performed under the Project Plan, Financing Plan or this Agreement.

6.2 CITY and BOARD hereby pledge all Available Tax Increment Funds as full reimbursement to DEVELOPER, up to the maximum total amount specified in this Agreement.

6.3 CITY and BOARD hereby agree that all meetings of BOARD shall be coordinated through and facilitated by the department of CITY responsible for managing the TIF Program and that all notices for meetings of BOARD shall be drafted and posted by CITY staff, in accordance with Chapter 2, Article VIII, of the City Code of CITY.

6.4 CITY and BOARD shall use their respective best efforts to cause each Participating Taxing Entity that levies real property taxes in Zone to levy and collect their ad valorem taxes due on the Zone Property and to contribute the Available Tax Increment Funds towards reimbursing DEVELOPER for the construction of the Public Infrastructure Improvements required under the Project Plan, Financing Plan and this Agreement.

6.5 CITY and BOARD shall use their respective best efforts to issue, or cause to be issued a Certificate of Completion for items satisfactorily brought to Completion by DEVELOPER in constructing this Project.
6.6 CITY and BOARD hereby agree that all reimbursement requests from DEVELOPER shall be processed in accordance with CITY’s CPPR policy, attached hereto as Exhibit E.

6.7 CITY and BOARD shall not unreasonably withhold approval on requests from DEVELOPER on matters under this Agreement.

VII. COMPENSATION TO DEVELOPER

7.1 Upon completion of Public Infrastructure Improvements in each Phase of the Project, DEVELOPER shall submit to CITY a completed Contract Progress Payment Request (hereinafter "CPPR"), as detailed in Exhibit F hereof. Upon CITY review and approval, as evidenced by a written CPPR Approval issued by CITY, said CPPR shall be presented to BOARD for review and possible approval.

7.2 Upon BOARD approval and direction, DEVELOPER shall receive up to a maximum payment of four hundred twenty-one thousand, one hundred eighty-seven dollars ($421,187.00) for infrastructure improvements, plus permitted interest on eligible project costs, if any, not to exceed two hundred eighty-one thousand two hundred eighty-five dollars ($281,285.00), up to a maximum total payment of seven hundred two thousand, four hundred seventy-two dollars ($702,472.00), as full reimbursement for designing and constructing the Public Infrastructure Improvements required under the Project Plan, Financing Plan and this Agreement.

7.3 Within twenty (20) business days following BOARD approval and direction, CITY shall issue a reimbursement check payable to DEVELOPER for the approved, available reimbursable amount from the TIRZ fund.

7.4 The sole source of the funds to reimburse DEVELOPER for Project Costs shall be the Available Tax Increment Funds levied and collected on the Zone Property and contributed by the CITY and other Participating Taxing Entities to the fund created and maintained by CITY for the purpose of implementing the public infrastructure improvements of the Project.

7.5 If Available Tax Increment Funds do not exist in an amount sufficient to make such payments in full when the payments are due to DEVELOPER under this Agreement, partial payments shall be made to DEVELOPER, and the remainder shall be paid as Available Tax Increment Funds become available. No fees, costs, expenses, or penalties shall be paid to DEVELOPER on any late payment.

7.6 If any payment to DEVELOPER is held invalid, ineligible, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the charter, codes, or ordinances of the CITY, then and in that event it is the intention of the parties hereto that such invalid, ineligible, illegal or unenforceable payment shall be repaid in full by DEVELOPER to CITY for deposit in the fund created and maintained by CITY for the purpose of implementing the public infrastructure improvements of the Project, and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable payment was never contained herein.

VIII. INSURANCE

8.1 DEVELOPER shall, prior to the commencement of any work under this Agreement, furnish an original completed Certificate(s) of Insurance to CITY’s Neighborhood Action Department and City
Clerk’s Office, and which shall be clearly labeled “Plaza Fortuna TIRZ” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed directly from the agent to CITY. CITY shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to CITY’s Neighborhood Action Department and the Clerk’s Office, and no officer or employee, other than CITY’s Risk Manager, shall have authority to waive this requirement.

8.2 CITY reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will CITY allow modification whereupon CITY may incur increased risk.

8.3 DEVELOPER’s financial integrity is of interest to CITY, therefore, subject to DEVELOPER’s right to maintain reasonable deductibles in such amounts as are approved by CITY, DEVELOPER or DEVELOPER’s Contractor, shall obtain and maintain in full force and effect during construction of all Public Infrastructure Improvements required by the Project Plan and Financing Plan, and any extension hereof, at DEVELOPER or DEVELOPER’s Contractor’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A - or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

<table>
<thead>
<tr>
<th>Type</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>(1) Worker’s Compensation &amp; Employer’s Liability</td>
<td>Statutory $500,000/$500,000/$500,000</td>
</tr>
<tr>
<td>(2) Comprehensive General Liability (Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations)</td>
<td>Combined limits of $1,000,000 per occurrence and $2,000,000 in the aggregate or its equivalent in umbrella or excess liability coverage</td>
</tr>
<tr>
<td>(3) Business Automobile Liability (any auto, including employer’s non-owned and hired auto coverage)</td>
<td>$1,000,000 combined single limit per occurrence</td>
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8.4 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, DEVELOPER or DEVELOPER’s contractor shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

8.5 DEVELOPER agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance shall contain the following required provisions:
8.5.1 Name CITY and its officers, employees, and elected representatives as additional insured as respects operations and activities of, or on behalf of, the named insured performed under agreement with CITY, with the exception of the Workers' compensation policy;

8.5.2 Provide for an endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy; and

8.5.3 Workers' compensation and employers' liability policy shall provide a waiver of subrogation in favor of CITY.

8.6 DEVELOPER shall notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to CITY at the following address:

City of San Antonio
Neighborhood Action Department
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

8.7 If DEVELOPER fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have and is not the exclusive remedy for failure of DEVELOPER to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon DEVELOPER's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order DEVELOPER to stop work hereunder, and/or to withhold any payment(s) that become due to DEVELOPER hereunder until DEVELOPER demonstrates compliance with the requirements hereof.

8.8 Nothing herein contained shall be construed as limiting in any way the extent to which DEVELOPER may be held responsible for payments of damages to persons or property resulting from DEVELOPER's or its general contractor's performance of the work covered under this Agreement.

8.9 DEVELOPER shall also indemnify CITY, BOARD, AND ALL OTHER PARTICIPATING TAXING ENTITIES and their respective officials and employees from and against any and all claims, losses, damages, causes of actions, suits and liabilities arising out of DEVELOPER's and DEVELOPER's general contractor's actions related to the construction of the Public Infrastructure Improvements.

8.10 DEVELOPER shall also require its general contractor or general contractors working on this Project, to indemnify CITY, BOARD, and all other Participating Taxing Entities and their respective officials and employees from and against any and all claims, losses, damages, causes of actions, suits and liabilities arising out of their actions related to the performance of this Agreement, utilizing the same indemnification language contained herein, in its entirety.
8.11 WORKERS COMPENSATION INSURANCE COVERAGE

8.11.9.1 Definitions for this paragraph:

8.11.1.1 "Certificate of coverage" ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a Phase of the Project for the duration of the project.

8.11.1.2 "Duration of the project" - includes the time from the beginning of the work on the Project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

8.11.1.3 "Persons providing services on the project" ("subcontractor" in §406.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

8.11.1.4 "Contractor" shall mean the general contractor or general contractors of Developer or their subcontractors.

8.11.1.5 "Governmental Entity" shall mean the City of San Antonio.

8.11.2 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44), for all employees of the Contractor providing services on the Project for the duration of the project.

8.11.3 The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

8.11.4 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Phase of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

8.11.5 The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

8.11.5.1 a certificate of coverage, prior to that person beginning work on the Phase of the Project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
8.11.5.2 no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Phase of the Project.

8.11.6 The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

8.11.7 The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

8.11.8 The Contractor shall post on the Zone Property notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered and stating how a person may verify coverage and report lack of coverage.

8.11.9 DEVELOPER shall contractually require each person with whom it contracts to provide services on the Project, to:

8.11.9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44), for all of its employees providing services on the Project for the duration of the applicable Phase of the Project;

8.11.9.2 provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the applicable Phase of the Project;

8.11.9.3 provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable Phase of the Project;

8.11.9.4 obtain from each other person with whom it contracts, and provide to the Contractor:

8.11.9.4.1 a certificate of coverage, prior to the other person beginning work on the Project; and

8.11.9.4.2 a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable Phase of the Project;

8.11.9.5 retain all required certificates of coverage on file for the duration of the applicable Phase of the Project and for one year thereafter;

8.11.9.6 notify the governmental entity in writing by certified mail or personal delivery within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

8.11.9.7 contractually require each person with whom it contracts, to perform as required by paragraphs 8.11.9.1 – 8.11.9.7, with the certificates of coverage to be provided to the person for whom they are providing services.
8.11.10 By signing this Agreement or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the applicable Phase of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

8.11.11 DEVELOPER's failure to comply with any of these provisions is a breach of contract by DEVELOPER that entitles the CITY to terminate this Agreement if DEVELOPER does not remedy the breach within ten (10) days after receipt of notice of breach from CITY.

8.12 In the event a claim for DEVELOPER's or a general contractor of DEVELOPER's failure to comply with the terms above is made upon either DEVELOPER or CITY at any time during the term of this Agreement, or any time thereafter, DEVELOPER hereby agrees that DEVELOPER shall be solely responsible for the satisfaction of said claim, and DEVELOPER hereby agrees to indemnify and hold harmless CITY from any claims made upon DEVELOPER and/or CITY under this Article.

IX. DEFAULT AND TERMINATION

9.1 Unless the Project is completed at the time this agreement is executed, in the event that DEVELOPER fails to commence construction of the Project, fails to complete construction of the Project, or fails to perform any other obligation pursuant to the terms of this Agreement, CITY and/or BOARD may terminate this Agreement if DEVELOPER does not take adequate steps to cure its failure within ninety (90) calendar days after receiving written notice from CITY and/or BOARD, requesting the failure be cured. In the event of such default and as the exclusive remedy of CITY and/or BOARD, DEVELOPER shall return any payments under this Agreement for the construction of Public Infrastructure Improvements for any Phase under development at the time of the defaulter within sixty (60) calendar days after receiving written notice from CITY and/or BOARD that DEVELOPER has defaulted on this Agreement; EXCEPT that no refund is due if DEVELOPER, with CITY's and BOARD's written consent, assigns its remaining obligations under this Agreement to a qualified party who is willing and capable of completing DEVELOPER's obligations under this Agreement, pursuant to Article XV herein.

9.2 Notwithstanding paragraph 9.1 above, in the event BOARD and/or DEVELOPER fails to furnish CITY any documentation required in Article XIII herein within thirty (30) days following the written request for same, then BOARD and/or DEVELOPER shall be in default of this Agreement.

X. INDEMNIFICATION

10.1 DEVELOPER covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, CITY (and the elected officials, employees, officers, directors, and representatives of CITY), BOARD (and the officials, employees, officers, directors, and representatives of BOARD), and all other Participating Taxing Entities (and the elected officials, employees, officers, directors, and representatives of these Entities), individually or 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, BOARD, and/or upon any of the other
Participating Taxing Entities 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, BOARD, and/or the other Participating Taxing Entities 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 parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. DEVELOPER shall promptly advise CITY, BOARD, and the other Participating Taxing Entities in writing of any claim or demand against CITY, BOARD, and any other Participating Taxing Entity 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, BOARD, and/or any other Participating Taxing Entity 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.

10.2 It is the EXPRESS INTENT of the parties to this Agreement, that the INDEMNITY provided for in this paragraph, is an INDEMNITY extended by DEVELOPER to INDEMNIFY, PROTECT and HOLD HARMLESS CITY, BOARD, and the other Participating Taxing Entities from the consequences of the CITY's OWN NEGLIGENCE, BOARD'S OWN NEGLIGENCE, and/or NEGLIGENCE of the other Participating Taxing Entities provided however, that the INDEMNITY provided for in this paragraph SHALL APPLY only when the NEGLIGENCE ACT of CITY, BOARD, or of any other Participating Taxing Entity is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of CITY, BOARD, or of any other Participating Taxing Entity is the sole cause of the resultant injury, death, or damage. DEVELOPER further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF CITY (AND IN THE NAME OF CITY), BOARD (AND IN THE NAME OF BOARD), and any other Participating Taxing Entity (and in the name of any other Participating Taxing Entity) any claim or litigation brought against CITY (and its elected officials, employees, officers, directors and representatives), BOARD (and its officials, employees, officers, directors and representatives), and/or any Participating Taxing Entity (their officials, employees, officers, directors and representatives), in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

XI. SITE INSPECTION

11.1 DEVELOPER shall allow CITY and/or BOARD reasonable access to the Zone Property owned or controlled by DEVELOPER for inspections during and upon completion of construction of the Project, and to documents and records necessary for CITY and/or BOARD to assess DEVELOPER's compliance with this Agreement.

XII. LIABILITY

12.1 As between CITY, BOARD or any Participating Taxing Entity and DEVELOPER, DEVELOPER shall be solely responsible for compensation payable to any employee or contractor of DEVELOPER, and none of DEVELOPER's employees or contractors will be deemed to be employees or contractors of CITY, BOARD or any Participating Taxing Entity as a result of the Agreement.
12.2 To the extent permitted by Texas law, no director, officer employee or agent of CITY, BOARD, or of any other Participating Taxing Entity shall be personally responsible for any liability arising under or growing out of this Agreement.

XIII. EXAMINATION OF RECORDS

13.1 CITY reserves the right to conduct examinations, during regular business hours and following notice to BOARD and DEVELOPER of the books and records related to this Agreement with CITY (including such items as contracts, paper, correspondence, copy, books, accounts, billings and other information related to the performance of BOARD and/or DEVELOPER's services hereunder) no matter where books and records are located. CITY also reserves the right to perform any and all additional audits relating to BOARD's and/or DEVELOPER's services, provided that such audits are related to those services performed by BOARD and/or DEVELOPER for CITY under this Agreement. These examinations shall be conducted at the offices maintained by BOARD and/or DEVELOPER.

13.2 All applicable records and accounts of BOARD and/or DEVELOPER, together with all supporting documentation, shall be preserved in Bexar County, Texas by BOARD and/or DEVELOPER throughout the term of this Agreement and for twelve (12) months after the termination of this Agreement, and then transferred, at no cost to CITY, to CITY for retention. During this time, CITY may require that any or all of such records and accounts be submitted for audit to CITY or to a Certified Public Accountant selected by CITY within ten (10) days following written request for same.

13.3 Should CITY discover errors in internal controls or in record keeping associated with the Project, BOARD and/or DEVELOPER shall correct such discrepancies either upon discovery or within a reasonable period of time, not to exceed sixty (60) days after discovery and notification by CITY to BOARD and/or DEVELOPER of such discrepancies. BOARD and/or DEVELOPER shall inform CITY in writing of the action taken to correct such audit discrepancies.

13.4 If it shall be determined as a result of such audit that DEVELOPER has overcharged CITY hereunder, then such overcharges shall be immediately refunded to CITY and become due and payable with interest at the maximum legal rate under applicable law from the date the CITY paid such overcharges. In addition, if the audit determined that there were overcharges of more than two percent (2%) of the greater of the budget or payments to DEVELOPER for the year the discrepancy occurred, and CITY is entitled to a refund as a result of such overcharges, then DEVELOPER shall pay the cost of such audit.

XIV. NON-WAIVER

14.1 Any provision of this Agreement may be amended or waived if done in writing and signed by CITY, through an ordinance passed and approved by its City Council, BOARD, and DEVELOPER.

14.2 No course of dealing on the part of CITY, BOARD, or DEVELOPER nor any failure or delay by CITY, BOARD, or DEVELOPER in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

XV. ASSIGNMENT

15.1 All covenants and agreements contained herein by CITY and/or BOARD shall bind their successors and assigns and shall inure to the benefit of DEVELOPER and their successors and assigns.
15.2 CITY and/or BOARD may assign their rights and obligations under this Agreement to any governmental entity without prior consent of DEVELOPER. If CITY and/or BOARD assigns their rights and obligations under this Agreement then CITY and/or BOARD shall send DEVELOPER written notice of such assignment within fifteen (15) days of such assignment.

15.3 DEVELOPER may sell or transfer its rights and obligations under this Agreement only with the written consent of CITY, as evidenced by an ordinance passed and approved by its City Council, and BOARD (with such consent not being unreasonably withheld, conditioned, or delayed) when a qualified purchaser or assignee specifically agrees to assume all of the obligations of DEVELOPER under this Agreement. This restriction on DEVELOPER’s rights to sell or transfer is subject to the right to assign as provided in Paragraph 15.6 below.

15.4 Any work or services contracted herein shall be contracted only by written-contract or agreement and, unless CITY grants specific waiver in writing, shall be subject by its terms, insofar as any obligation of CITY is concerned, to each and every provision of this Agreement. Compliance by DEVELOPER's contractors and/or subcontractors with this Agreement shall be the responsibility of DEVELOPER. Copies of those written contracts must be submitted with the CPPR in order to be considered for eligible project cost reimbursement.

15.5 CITY shall in no event be obligated to any third party, including any contractor, subcontractor or consultant of DEVELOPER, for performance of work or services under this Agreement except as set forth in Section 15.9 of this Agreement.

15.6 Any restrictions herein on the transfer or assignment of DEVELOPER’s interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to any corporation or other entity with which DEVELOPER may merge or consolidate or which may succeed to a controlling interest in the business of DEVELOPER; nor shall the foregoing apply to or prevent DEVELOPER from assigning the proceeds of this Agreement to a lending institution or other provider of capital in order to obtain financing for the Project. In no event, however, shall CITY be obligated in any way to the aforementioned financial institution or other provider of capital. This Article does not intend to require DEVELOPER to obtain consent of CITY for the sale of land to developers, or lots to builders for the construction of homes, apartments or commercial sites, pursuant to the Project Plan.

15.7 Each transfer or assignment to which there has been consent, pursuant to paragraphs 15.3 and/or 15.6 above, shall be by instrument in writing, in form reasonably satisfactory to CITY, and shall be executed by the transferee or assignee who shall agree in writing for the benefit of CITY and BOARD to be bound by and to perform the terms, covenants and conditions of this Agreement. Four (4) executed copies of such written instrument shall be delivered to CITY. Failure to first obtain, in writing, CITY's consent, or failure to comply with the provisions herein contained shall operate to prevent any such transfer or assignment from becoming effective.

15.8 In the event CITY approves the assignment or transfer of this Agreement, as provided in paragraph 15.6 above, DEVELOPER shall be released from such duties and obligations.

15.9 Except as set forth in paragraph 15.3, the receipt by CITY of services from an assignee of DEVELOPER shall not be deemed a waiver of the covenant in this Agreement against assignment or an acceptance of the assignee or a release of DEVELOPER from further observance or performance by DEVELOPER of the covenants contained in this Agreement. No provision of this Agreement shall be
deemed to have been waived by CITY unless such waiver is in writing, and approved by City Council of CITY in the form of a duly passed ordinance.

XVI. NOTICE

16.1 Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving party at the following addresses:

CITY  
City of San Antonio  
City Clerk's Office  
P.O. Box 893366  
San Antonio, Texas 78283-3966  
FAX: (210) 207-7032

DEVELOPER  
HLH Development, L.P.  
P.O. Box 1607  
Helotes, TX 78023  
FAX: (210) 372-9877

16.2 Each party may change its address by written notice in accordance with this Article. Any communication delivered by facsimile transmission shall be deemed delivered when receipt of such transmission is received if such receipt is during normal business hours or the next business day if such receipt is after normal business hours. Any communication so delivered in person shall be deemed received when received for by or actually received by an officer of the party to whom the communication is properly addressed. All notices, requests or consents under this Contract shall be (a) in writing, (b) delivered to a principal officer or managing entity of the recipient in person, by courier or mail or by facsimile, telegram, telex, cablegram or similar transmission, and (c) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the notice shall be considered to have been received on the next business day after such delivery. Whenever any notice is required to be given by applicable law or this Contract, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Each party shall have the right from time to time and at any time to change its address by giving at least 15 days' written notice to the other party.

XVII. CONFLICT OF INTEREST

17.1 BOARD and DEVELOPER each acknowledges that the Charter of CITY and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10%) percent or more of the fair market value of the business entity; or ten (10%) percent or more of the voting stock or shares of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or
subsidiary business entity.

17.2 **BOARD** and **DEVELOPER** each warrant and certify, and this Agreement is made in reliance thereon, that they, their officers, employees and agents are neither officers nor employees of **CITY** as prohibited above. **BOARD** and **DEVELOPER** each further warrant and certify that each has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY**’s Ethics Code.

XVIII. INDEPENDENT CONTRACTORS

18.1 It is expressly understood and agreed by all parties hereto that in performing their services hereunder, **BOARD** and **DEVELOPER** at no time shall be acting as agents of the **CITY** and that all consultants or contractors engaged by **BOARD** and/or **DEVELOPER** respectively shall be independent contractors of **BOARD** and/or **DEVELOPER**. The parties hereto understand and agree that **CITY** shall not be liable for any claims that may be asserted by any third party occurring in connection with services performed by **BOARD** and/or **DEVELOPER** respectively, under this Agreement unless any such claims are due to the fault of **CITY**.

18.2 The parties hereto further understand and agree that no party has authority to bind the others or to hold out to third parties that it has the authority to bind the others.

XIX. TAXES

19.1 **DEVELOPER** shall pay, on or before their respective due dates to the appropriate collecting authority all Federal, State, and local taxes and fees which are now or may hereafter be levied upon the Zone Property, or upon **DEVELOPER** or upon the business conducted on the Zone Property, or upon any of **DEVELOPER**’s property used in connection therewith, including employment taxes; and **DEVELOPER** shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by **DEVELOPER**.

19.2 **DEVELOPER** shall include in the CPPR submission evidence of payment of the taxes and fees above.

XX. COMPLIANCE WITH SBEDA AND EEO POLICIES

20.1 **BOARD** and **DEVELOPER** are each hereby advised that it is the policy of **CITY** that business enterprises eligible as Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. Except for those Public Infrastructure Improvements commenced prior to the creation of the Zone, **BOARD** and **DEVELOPER** each agrees for itself that **BOARD** and **DEVELOPER** will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. **DEVELOPER** further agrees that with respect to the remaining Public Infrastructure Improvements **DEVELOPER** will make a good faith effort to comply with the applicable terms and provisions of **CITY**’s Non-Discrimination Policy, **CITY**’s Small, Minority or Woman-owned Business Advocacy Policy and **CITY**’s Equal Opportunity Affirmative Action Policy, these policies being available in **CITY**’s Department of Economic Development, Division of Internal Review and the **CITY**’s Office of the City Clerk.

20.2 **DEVELOPER** agrees that if material deficiencies in any aspect of its Small Business Economic
Development Advocacy utilization plan are found as a result of a review or investigation conducted by CITY's Department of Economic Development, DEVELOPER will be required to submit a written report to CITY's Department of Economic Development. DEVELOPER will also be required to submit a supplemental Good Faith Effort Plan (GFEP) indicating efforts to resolve any deficiencies. If a GFEP is denied by CITY's Department of Economic Development based on reasonable and published criteria, it will constitute failure to satisfactorily resolve any deficiencies by DEVELOPER. DEVELOPER's Failure to obtain an approved GFEP within ninety (90) days of notice from CITY's Department of Economic Development to DEVELOPER that includes the specific criteria that have not been met shall constitute a default and result in a penalty on DEVELOPER of $1,000 per day as liquidated damages for the default until all deficiencies are resolved. Failure to cure all deficiencies within another ninety (90) days of the date the penalty is initially assessed constitutes a further (additional) condition of default by DEVELOPER and which can, at the option of the Director of the Department of Economic Development, result in termination of this Agreement.

XXI. WAGES

With respect to the Public Infrastructure Improvements commenced after the creation of the Zone:

21.1 BOARD and DEVELOPER shall pay wages that are not less than the minimum wages required by Federal and State statutes and CITY ordinances to persons employed in their operations hereunder, as set forth in Ordinance No. 71312, passed and approved on March 29th, 1990, attached hereto and incorporated herein for all purposes as Exhibit D.

21.2 DEVELOPER shall stipulate in all construction contracts with its general contractor or general contractors engaged in furtherance of the execution of this Agreement that said general contractor or general contractors pay not less than the prevailing wage rate for its workers, and shall attach as an exhibit to said contracts a copy of Exhibit D.

21.3 DEVELOPER or its general contractor or general contractors who pays less than the prevailing wage rate to its workers shall pay to CITY sixty dollars ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in this Agreement. DEVELOPER shall stipulate in all contracts with its general contractor or general contractors engaged by DEVELOPER in furtherance of the execution of this Agreement that contractor is subject to this $60.00 penalty if contractor fails to pay said prevailing wage rates to its workers.

21.4 In accordance with Chapter 2258, Texas Gov't Code, CITY shall be entitled to withhold payment from DEVELOPER under this Agreement to satisfy this penalty, even if the party incurring the penalty is a general contractor of DEVELOPER. If CITY withholds payment from DEVELOPER as a result of a general contractor's violation, DEVELOPER may withhold payment from the general contractor in accordance with Chapter 2258. Further, release or disbursement of funds withheld as a penalty hereunder shall be governed by Chapter 2258.

21.5 Notwithstanding the provisions above, in the event a claim for nonpayment of prevailing wages by DEVELOPER or a general contractor of DEVELOPER is made upon either DEVELOPER or CITY at any time during the term of this Agreement, or any time thereafter, DEVELOPER hereby agrees that DEVELOPER shall be solely responsible for the satisfaction of said claim, and DEVELOPER hereby agrees to indemnify and hold harmless CITY from any claims made upon DEVELOPER and/or CITY under this Article and under Article XXX herein.
XXII. CHANGES AND AMENDMENTS

22.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by CITY, BOARD and DEVELOPER and evidenced by passage of a subsequent CITY ordinance, as to CITY’s approval.

22.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable to BOARD’s and DEVELOPER’s services hereunder may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XXIII. SEVERABILITY

23.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the charter, code, or ordinances of CITY, then and in that event it is the intent of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intent of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXIV. LITIGATION EXPENSES

24.1 Under no circumstances will the Available Tax Increment 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 any other public entity.

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

24.3 BOARD and/or DEVELOPER, at CITY’s option, could be ineligible for consideration to receive any future funding while any adversarial proceedings regarding this Agreement against CITY remains unresolved if it was initiated without first engaging in good faith mediation of the dispute.

24.4 For purposes of this Article, “adversarial proceedings” include any cause of action regarding this Agreement filed by BOARD and/or 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.

XXV. LEGAL AUTHORITY

25.1 The person executing this Agreement on behalf of the CITY, BOARD or DEVELOPER, represents, warrants, assures and guarantees that he has have full legal authority to (i) execute this
Agreement on behalf of CITY, BOARD and/or DEVELOPER, respectively and (ii) to bind CITY, BOARD and/or DEVELOPER to all of the terms, conditions, provisions and obligations herein contained.

XXVI. VENUE AND GOVERNING LAW

26.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

26.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Bexar County, Texas.

XXVII. PARTIES’ REPRESENTATIONS

27.1 This Agreement has been jointly negotiated by the CITY, BOARD and DEVELOPER and shall not be construed against a party because that party may have primarily assumed responsibility for the drafting of this Agreement.

XXVIII. CAPTIONS

28.1 All captions used herein are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the parties hereto.

XXIX. ENTIRE AGREEMENT

29.1 This written Agreement embodies the final and entire agreement between the parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

29.2 The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that if there is a conflict between an exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the exhibit.

XXX. PROJECT STATUS

The above sections and articles not withstanding, CITY, DEVELOPER, and BOARD hereby acknowledge that DEVELOPER proceeded with construction of the Project prior to the completion of the Project and Financing Plans and the execution of this Agreement, and that during such time DEVELOPER has completed and conveyed the improvements required to be installed by the Project Plan and the Finance Plan. DEVELOPER has provided to CITY, and CITY has accepted as proof of compliance with the requirements of this Agreement for Insurance, Public Bidding, payment of Prevailing Wages, Workers’ Compensation and Payment and Performance Bonds the attached Indemnification and Hold Harmless Agreement (“Exhibit F”), in which Developer holds the City harmless for and fully indemnifies the City against any third party claims or any penalties that may be assessed against the City as a result of a claim which may arise from payment for work done on a public improvement on behalf of the Plaza Fortuna project.
IN WITNESS THEREOF, the parties hereto have caused this instrument to be duly executed this 1st day of October, 2005.

CITY OF SAN ANTONIO

R. Ronald Bono
CITY MANAGER

DEVELOPER
HLH Development, L.P.
a Texas Limited Partnership
By: HLH Management, L.L.C., a
Texas limited liability company, its general partner

By: HARRY HAUSMAN, President

BOARD OF DIRECTORS,
REINVESTMENT ZONE NUMBER
TWELVE

Judith Ann Gray
Presiding Officer, Board of Directors

Approved as to form:

City Attorney