AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF SAN ANTONIO, TEXAS, SOUTHSTAR MISSION DEL LAGO HOLDINGS, L.P. AND THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER SIX, CITY OF SAN ANTONIO, TEXAS

This Amended and Restated Development Agreement ("Agreement") pursuant to Ordinance No. 2019-_____-_____-_____, passed and approved on the _____ day of _____, 2019 amends and restates the initial Development Agreement pursuant to Ordinance No. 2006-06-29-0801, passed and approved on the 29th day of June 2006, and the First Amendment pursuant to Ordinance No. 2014-05-01-0286, passed and approved on the 1st day of May 2014, is hereby entered into by and among the City of San Antonio, a Texas, a municipal corporation in Bexar County, Texas (hereinafter the "City"); SouthStar Mission Del Lago Holdings, L.P., a Florida limited partnership (the "Developer"), and the Board of Directors for Reinvestment Zone Number Six, City of San Antonio, Texas, a tax increment reinvestment zone (the "Board");

WHEREAS, City recognizes the importance of its continued role in economic development, community development, planning, and urban design; and

WHEREAS, by Ordinance No. 90312, dated August 19, 1999, pursuant to the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code (as amended, hereinafter called the "Act"), City created Tax Increment Reinvestment Zone Number Six (TIRZ) in accordance with the Act, to promote development and redevelopment of the TIRZ 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 TIRZ; 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 TIRZ, 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, in accordance with the Tax Increment Financing Act, Texas Tax Code, Chapter 311 (the "Act"), the City created the Board and authorized the Board to exercise all the rights, powers, and duties as provided to such Boards under the Act; and

WHEREAS, on August 24, 1999, by a Board Resolution, Board adopted and approved a final Project Plan and a final Finance Plan defined hereunder and referred to herein as "Project Plan" and "Finance Plan" (together, the "1999 Plans") providing for development of the TIRZ Property; and

WHEREAS, the 1999 Plans were amended at a Board Meeting in May, 2006 and approved by the City Council on June 29, 2006 (together the "2006 Plans"); and

WHEREAS, the 2006 Plans were amended at a Board Meeting on April 15, 2014 and approved by City Council on May 1, 2014 (together the "2014 Plans"); and

WHEREAS, the City approved the Final Project Plan and 1999 Final Finance Plan for the TIRZ by Ordinance Number 90383 on August 26, 1999, and amended the Plans by Ordinance Number 2006-06-29-0801, on June 29, 2006 and authorized the City Manager of the City of San Antonio or her designated representative to execute the initial Agreement on behalf of the City, and to bind the City to the terms and conditions of that Agreement; and the City approved that certain Settlement and Release Agreement further amending the 2006 Plans by Ordinance Number 2014-05-01-6286 on May 1, 2014; and then amended the plan by Ordinance on [date], 2019; and

WHEREAS, in March, 2014, the initial developer entered into an "Agreement for Purchase and Sale" with SouthStar Development Partners ("SouthStar") for the purchase of initial developer's assets and an "Operating Agreement" delegating authority to SouthStar to serve as its "Operating Agent" and on January 18, 2018, the City approved an assignment of the Development Agreement to the Developer, an affiliate of SouthStar; and

WHEREAS, Pursuant to the Act (as amended) and City of San Antonio Ordinance Number 90312, dated August 19, 1999, the Board has authority to enter into agreements that the Board considers necessary or convenient to implement the Plans and to achieve the purposes of developing the TIRZ Property within the scope of those Plans; and

WHEREAS, pursuant to said authority above, the Board, the City and the Developer each hereby enters into this binding amended and restated agreement with the others to develop and/or redevelop the TIRZ Property as specified in the attached 2019 Project Plan, 2019 Finance Plan, and this Agreement; and

NOW, **THEREFORE**, in consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, the City, the Board, and the Developer hereby agree as follows:

I. DEFINITIONS

1.1 The "City," the "Board" and the "Developer" shall 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 the City, the Board and the 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 the City for the purposes of implementing the projects of the TIRZ, less the initial administrative costs of each

Participating Taxing Entity for organizing the TIRZ and the ongoing administrative costs of each Participating Tax Entity for managing the TIRZ, and those annual administrative fees, if any, of the Participating Tax Entities.

1.5 "Captured Taxable Value" means the captured taxable values of the TIRZ, as defined in Section 311.012 (b) of the Act (as maybe amended from time to time).

1.6 "City Manager'' means the City Manager of the City or his designee.

1.7 "Completion" means construction of a public improvement in the TIRZ in accordance with the Project Plan, Finance Plan and this Agreement to the extent that the particular improvement can be used and maintained for its intended purpose, as certified complete by an engineer or other official of the City with responsibility for inspecting and certifying such improvements.

1.8 "Contract Progress Payment Request" ("CPPR") means a request, prepared in accordance with the requirements of Exhibit A, attached hereto and incorporated herein for all purposes, for reimbursement due to the Developer for work completed in accordance with Section 1.6 above on a specific improvement in the TIRZ in accordance with the public improvements in the Project Plan and the timeline detailed in Exhibit A, the Public Improvements and Construction Schedule. The CPPR shall also reflect all waivers granted through the Incentive Scorecard System.

1.9 "CPPR Approval" means a written acknowledgement from the City to the 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 the Board for approval and consideration for reimbursement to the Developer.

1.10 "Construction Schedule" means the timetable for constructing the improvements specified in the Project Plan, Finance Plan and this Agreement, which timetable is more particularly set forth in Exhibit A, 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.

1.11 "Developer'' means SouthStar Mission Del Lago Holdings, L.P., Florida limited partnership.

1.12 "Effective Date" means the date that the last party signs the Agreement.

1.13 "Finance Plan" means the final Finance Plan as defined in the Act, as approved and as may be amended from time to time by the Board and the City, which plan is hereby incorporated into this document by reference for all purposes, as if set out in its entirety. Together, the Project Plan and Finance Plan are the "Plans".

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

1.15 "Participating Taxing Entity" means any governmental entity recognized as such by Texas law that is participating in this Project by contributing a percentage.

1.16 "Phase" means a portion of the Project that is being constructed by the Developer, normally being a set number of units and acres of the TIRZ Property being constructed together during a specific timeline.

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

1.18 "Project Costs" has the meaning provided by Section 311.002(1) of the Act.

1.19 "Project Plan" means the final Project Plan as defined in the Act, as approved and as may be amended from time to time by the Board and the City, which plan is hereby incorporated by reference into this document as if set out in its entirety, for all purposes. Together, the Project Plan and Finance Plan are the "Plans".

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

1.21 "Public Improvements" include those improvements that provide a public benefit and that are listed in the Plans. When an improvement has both private and public benefits, only that portion which is dedicated to the public may be reimbursed to the Developer, such as, but not limited to grading and environmental studies.

1.22 "TIF Unit" means the division of the City's Neighborhood Services Department responsible for the management of the City's TIF Program.

1.23 "Zone" means Tax Increment Reinvestment Zone Number Six, City of San Antonio, Texas.

1.24 "TIRZ Property" means the real property in the contiguous geographic area of the City that is included in the boundaries of the TIRZ, which are more particularly described in the Project and Finance Plans.

1.25 "Street Reconstruction Project" means certain street repairs to Unit 8 of the subdivision funded by a City tax note pursuant to a Settlement and Release Agreement by and between the City and Mission Del Lago Ltd.

1.26 "Developer Participation Contract" means that certain agreement for the Street Reconstruction Project made pursuant to a Settlement and Release Agreement by and between the City and Mission Del Lago Ltd.

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**. The City, the Board, and the Developer represent that they understand and agree that neither the City nor the Board shall issue any

bonds or notes to cover any costs directly or indirectly related to the Developer's improvement of the TIRZ under this Agreement. Notwithstanding the foregoing, in accordance with the Settlement and Release Agreement by and between the City and the initial developer, the City issued a note to finance street reconstruction, which note is repaid from the City's tax increment applicable to the TIRZ.

2.2 **City**. The City represents to the Developer that the 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**. The Board represents to the Developer that the TIRZ is a Tax Increment Reinvestment Zone established by the City pursuant to Ordinance Number 90312, passed and approved on August 19, 1999, and that the City and the Board have authority to carry on the functions and operations contemplated by this Agreement.

2.4 **Developer**. The Developer represents to the City and to the Board that the Developer is a limited partnership duly formed in the State of Florida; that the Developer has the authority to enter into this Agreement and to perform the requirements of this Agreement; that the Developer's performance under this Agreement shall not violate any applicable judgment, order, law or regulation; that the Developer's performance under this Agreement shall not result in the creation of any claim against the City for money or performance, any lien, charge, encumbrance or security interest upon any asset of the City or the Board, except that this Agreement shall constitute a claim against the TIF Fund only for Available Tax Increment Funds to the extent provided herein; and that the Developer shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital.

2.5 **Consent**. The City, the Board, and the 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 **Payments**. The City, the Board, and the 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 the 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 the Developer's right to such payments is subject to the other limitations of this Agreement. Notwithstanding the forgoing, the City shall issue a check or other form of payment made payable only to the Developer.

2.7 **Cooperation**. The City, the Board, and the 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 **Project Completion**. The City, the Board, and the Developer represent each to the others that they understand and agree that even after the TIRZ terminates, the 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 the City and/or the Board.

2.9 **Interlocal Agreements**. The City, the Board, and the Developer represent each to the others that they understand and agree that this Agreement shall have no force or effect unless and until all applicable Interlocal Agreements for the Project are executed between City, Bexar County, Southside Independent School District, and University Health System (UHS). The Developer represents that it understands that any contributions made by the Developer in anticipation of reimbursement from tax increments shall never be obligations of the general funds of the City, but are only obligations of the TIF Fund, and are subject to the extent of the available TIRZ fund to reimburse the Developer.

2.10 **Developer Risk**. The Developer represents that it understands that any contributions made by the Developer in anticipation of reimbursement from tax increments shall not be, nor shall construed to be, financial obligations of the City, another Participating Taxing Entity, or the Board. The 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 legal doctrine of force majeure, and/or other unanticipated factors.

III. THE PROJECT

3.1 **The Project**. The Project shall consist of the following public improvements and related capital costs including: streets and approaches, sidewalks, drainage, water, sewer, utilities, street lights, on-site sewer outfall, Del Lago Parkway, gas, park improvements, land and ROW clearing, contingency, Project Management, offsite sewer and water, landscaping ROW, land, Developer formation, legal costs, platting fees, drainage fees, sewer impact fees, engineering/surveying fees, performance of the "Street Reconstruction Project" in accordance with the terms of the Developer Participation Contract, to be constructed by the Developer on approximately 812.132 acres out of the Mission Del Lago Subdivision, as set forth in the Plans.

3.2 **Competitive Bidding and Prevailing Wages**. Contracts for the construction of Public Improvements financed through Available Tax Increment Funds shall be publicly bid in compliance with Chapter 252 of the Local Government Code, pay prevailing wages in accordance with the prevailing wage chart adopted by the City, attached hereto as Exhibit D, and be constructed by or on behalf of the Developer, in compliance with all applicable law unless: (1) Available Tax Increment Funds go toward financing thirty percent (30%) 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. Should the Developer not publicly bid a Public Infrastructure Improvement, the Developer must obtain written approval by the 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. Partial reimbursements to the Developer in that event shall not exceed thirty percent (30%) of the Project Costs that would otherwise have been eligible for total reimbursements had they been publicly bid.

3.3 **Private Financing**. The cost of the Public Improvements and all other improvement expenses associated with the Project shall be through the use of the Developer's own

capital or through commercial or private construction loans/lines of credit secured solely by the Developer. The Developer may use any or part of the TIRZ 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 the City for dedication. The City and the Board pledge to use Available Tax Increment Funds, up to the maximum amount provided herein, to reimburse the Developer for eligible Project Costs it has expended. **THESE AVAILABLE TAX INCREMENT FUND REIMBURSEMENTS MADE TO THE DEVELOPER ARE NOT INTENDED TO REIMBURSE THE DEVELOPER FOR ALL OF ITS COSTS INCURRED IN CONNECTION WITH PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT.**

3.4 **Reimbursement**. The parties hereto agree that neither the City nor the Board can guarantee that those Available Tax Increment Funds shall completely reimburse the Developer, but that those Available Tax Increment Funds shall constitute the total reimbursement to the Developer for the construction of the Public 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 the Developer receives the final reimbursement for completing the Project; or (ii) the date this Agreement is terminated as provided in Article X, or as provided in the Finance Plan; provided that all existing warranties on the Project shall survive termination of this Agreement; or (iii) one calendar year after the date that the TIRZ expires.

V. DUTIES AND OBLIGATIONS OF DEVELOPER

5.1 **Discretionary Program**. Developer agrees that the TIF program is a discretionary program and that the City and the Board have no obligation to extend TIF to Developer. Developer agrees that it has no vested rights under any regulations, ordinances or laws, and waives any claim to be exempt from applicable provisions of the current and future City Charter, City Code, City Ordinances, and City Unified Development Code, state or federal laws and regulations.

5.2 **Duty to Complete**. Developer agrees to complete, or cause to be completed, the improvements described in Section 3.1 above. 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 the City and/or all other governmental agencies having jurisdiction over the construction of improvements.

5.3 **Commencement of Construction**. The Developer shall not commence any construction on any Phase of the Project until the plans and specifications for a Phase have been approved in writing by the appropriate department of the City. For purposes of this Section, letters of certification or acceptance issued by the City shall constitute written approval of the City.

5.4 **Payment and Performance Bonds**. In accordance with Chapter 2253 of the Texas Government Code, the Developer shall, prior to beginning construction on all or any part

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 Improvements for that phase in their respective contracts. The Developer shall submit evidence of payment and performance bonds as a condition of eligibility for reimbursement pursuant to the requirements of the CPPR. For all purposes, the Developer is the prime contractor, and this Development Agreement is the Public Works Contract which is the subject of the Payment and Performance bonds under Chapter 2253 of the Government Code. 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. The City's Risk Management Department and the City Attorney's Office shall determine the acceptability of the bonds. Without limiting other material breaches, failure of the Developer to comply with this section or Chapter 2253 of the Texas Government Code is a material breach of this contract, and the City may terminate the TIRZ and exercise of the full range of legal remedies available to the City.

5.5 **Supervision of Construction**. The Developer agrees to retain and exercise supervision over the construction of the Project and all improvements and cause the construction and all improvements to be performed, at a minimum, in accordance with federal, state and local laws and ordinances, the TIF Guidelines, the 2019 Plans, and the plans and specifications approved by the appropriate department of the City and the Board; except that to the extent that compliance with the current TIF guidelines is impossible due to the existence of already completed development or construction, the UDC in existence at the time the TIRZ was created shall apply. The Developer shall comply with the UDC in effect as of the effective date of this Agreement in all future construction of the Project. The Developer also agrees to provide periodic reports of such construction to the City and to the Board and upon the reasonable request of the City and/or the Board, as further described in Section 5.12. Without limiting other material breaches, failure of the Developer to comply with this section is a material breach of this contract, and the City may terminate the TIRZ and exercise of the full range of legal remedies available to the City.

5.6 **Compliance with Discretionary Program**. The Developer agrees that the TIF program is a discretionary program and that the City has no obligation to extend TIF to the Developer. In exchange for receiving TIF, the Developer agrees to develop the Mission del Lago Project in accordance with the ordinances, rules and regulations of the City in effect on the date the TIRZ was designated, unless specified otherwise in this Agreement.

5.7 **Payment of Applicable Fees**. The 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.

5.8 **Delays.** Developer shall construct or cause the construction of the Project. The Project shall be completed no later than December 31, 2032. If the commencement or completion of the Project is delayed by reason beyond the Developer's control, then at the reasonable discretion of the Director of the City's Neighborhood & Housing Services (or successor) Department, the commencement or completion deadlines set forth in this

Agreement may be extended by no more than six (6) months. In the event that Developer does not complete the Project substantially in accordance with the Construction Schedule (or extended schedule), then, in accordance with Article XXII. Changes and Amendments of this Agreement, the Parties may extend the deadlines in the Construction Schedule, but not past the expiration of the TIRZ. If the parties cannot reach an agreement on the extension of the Construction Schedule, or if Developer fails to complete the Project in compliance with the revised Construction Schedule, then the City and/or the Board may exercise its authority to terminate this Agreement

5.9 **Litigation**. Developer acknowledges that Developer is aware that the City's policy on litigation is that, except to the extent prohibited by law, persons who are engaged in litigation against the City are ineligible to obtain the use of TIF as principals, participants for the duration of the litigation. A principal or participant includes the TIF applicant, developer, sponsor, development team member, or an employee, affiliate, agent, relative of the first degree of consanguinity or representative of the above. Accordingly, the City shall not consider a project proposing the use of TIF, designate a TIRZ, enter into any TIF contracts or agreements with, or authorize or make any payments to persons engaged in litigation with the City. Ineligible persons shall be excluded from participating as either participants or principals in all TIF projects during the term of their litigation. "Person" includes an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. This TIRZ may be terminated for a present or future violation of this policy.

5.10 **Infrastructure Maintenance**. Developer shall, at its own expense, maintain or cause to be maintained all Public Improvements, not dedicated to the City until acceptance by the City as evidenced by written acceptance required by Section 3.6 above and for one (1) year after Completion. Upon acceptance of a street or drainage improvement for maintenance by the City, Developer shall deliver to the City a one (1) year extended warranty bond, naming the City as the obligee, in conformity with Chapter 35, the City's Unified Development Code. The cost of repair, replacement, reconstruction and maintenance for defects discovered during the first year after Completion shall be paid by Developer or the bond company and shall not be paid out of the TIRZ fund. After the expiration of the one (1) year extended warranty bond, the cost of the repair, replacement, reconstruction and maintenance of Public Improvements dedicated to the City shall be the responsibility of the City.

(a) Developer, its agents, employees, and contractors will not interfere with reasonable use of all the Public Improvements by the general public, except for drainage retention improvements. In accordance with the Construction Schedule, Developer shall use its best efforts to dedicate (or grant a public easement) Public Improvements where applicable to the appropriate taxing entity (as determined by the City), at no additional expense to the City or TIRZ.

(b) The requirements of this Agreement cannot be waived or modified in any way by an engineer, employee, or City official or its subordinate agency with responsibility for inspecting or certifying public infrastructure. The actions of a city employee or agent do not work an estoppel against the City under this contract or the Unified Development Code.

5.11 **Quarterly Status and Compliance Reports**. Upon the commencement and throughout the duration of the construction of this Project, Developer shall submit to the City's TIF Unit Project Status Reports (Exhibit C), on a quarterly basis or, as requested by the City, in accordance with the requirements of this Agreement and of the Status Report Form, attached hereto as Exhibit C. If Project Status Reports are not submitted on the assigned dates, the Developer understands that no available tax increment reinvestment zone funds will be reimbursed to the Developer until after the reports are provided.

5.12 **Requests for Reimbursement**. Developer shall initiate reimbursement requests of eligible Project Costs by submitting to the City's TIF Unit applicable invoices and a Contract Progress Payment Request Form (CPPR), as detailed in attached Exhibit A.

5.13 **Tree Preservation**. In accordance with Section 5.5 and Section 5.6 above, the Developer shall comply and shall cause its subcontractors to comply with the tree preservation ordinance, City of San Antonio Ordinance No. 85262, passed and approved by the City Council of the City on December 5, 1996, and as amended by Ordinance No. 97332, passed and approved by the City Council on March 13, 2003, and as may be amended from time to time.

5.14 **Bexar County Appraisal District**. The 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 December 31 of that year.

5.15 **Completion**. The Developer shall, at its own cost and expense, maintain or cause to be maintained, all the other public improvements until acceptance by the City, as evidenced by written acceptance by the appropriate City administrator, and for one (1) year after the Completion of construction. Developer shall obtain a one-year road maintenance bond in conformity with Chapter 35 of the City's Unified Development Code. After the expiration of one (1) year after Completion, maintenance of the Public Improvements shall be the responsibility of the City. The Developer, its agents, employees, and contractors will not interfere with reasonable use of all the Public Improvements by the general public, except for drainage retention improvements. In accordance with the Construction Schedule, the Developer shall use its best efforts to dedicate (or grant a public easement) to the Public Improvements where appropriate to the appropriate Participating Taxing Entity (as determined by the City), at no additional cost or expense to the City or any other Participating Taxing Entity within sixty (60) days after completion and acceptance of the improvements.

5.16 **Utilities**. The 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 TIRZ Property for all areas owned by the Developer during construction of the Project, and for so long as the Developer owns those areas. Projects within the TIRZ shall be subject to Section 35.501 et seq. of the San Antonio City Code and the Developer shall not be prohibited from applying for the benefits of any impact fee credits allowed by that section.

5.17 **Assistance**. The Developer shall cooperate with the City and the Board in providing all necessary information to the City and to the Board in order to assist the City and the Board in complying with this Agreement.

5.18 **Design**. The Developer shall include requirements in its contracts requiring its contractors, future purchasers, successors, and permitted assigns to comply with the City's Universal Design Policy on all improvements installed as required by City Code, Chapter 6, and Article XII. All such contracts shall contain provisions that require all future building permits and plans for single-family residences to be compliant with the City's Universal Design Policy and be clearly stamped or printed "Universal Design" by the builder and its architect. In addition, in accordance with the Settlement Agreement, Developer has executed a Restrictive Covenant requiring Developer, Developer's purchasers, successors, and permitted assigns to comply with the City's Universal Design Policy. Notwithstanding the foregoing, certain units in Phases 3, 4, 5, 6, 7A, 7B, and 8 do not comply with the City's Universal Design Policy. In accordance with the Settlement and Release Agreement, the City agreed to waive compliance with the Universal Design Policy only as to those units. If other units in the Project are found not to be constructed in compliance with the Universal Design requirements, the City may exercise all its legal options, including but not limited to terminating the TIRZ, enforcing the Restrictive Covenant in a court of competent jurisdiction, and/or removing any non-compliant parcels and their tax accounts from the boundaries of the TIRZ and the list of accounts generating revenue for the TIF Fund, which will then be reflected in an amended Finance Plan.

5.19 **Annual Reports**. The Developer shall submit written annual reports through the duration of the Project, on its construction progress and construction expenses to the City and the Board.

5.20 **Unified Development Code**. The Developer shall comply and shall cause all subcontractors to comply with the City of San Antonio Unified Development Code where applicable regarding the development of the Project.

5.21 **Stormwater Management Plan**. The Developer understands that the City has agreed that the Developer may submit a Stormwater Management Plan with each plat submitted to the City for approval. Developer further understands that no Available Tax Increment Funds will be reimbursed to the Developer for any eligible project costs associated with each plat until the Stormwater Management Plan has been approved.

VI. DUTIES AND OBLIGATIONS OF CITY AND BOARD

6.1 **No Bonds**. Neither the City nor the Board shall sell or issue any bonds to pay or reimburse the Developer or any third party for any improvements to the TIRZ Property performed under the Plans or this Agreement. Notwithstanding the foregoing, in accordance with the Settlement and Release Agreement by and between the City and the initial developer, the City issued a note to finance street reconstruction, which note is repaid from the City's tax increment applicable to the TIRZ.

6.2 **Developer Reimbursement**. The City and the Board hereby pledge all Available Tax Increment Funds as full reimbursement to the Developer, up to the maximum total amount

specified in this Agreement, including those collected one calendar year after the expiration the Agreement, but that were due during the life of the TIRZ.

6.3 **Board Meetings**. The City and the Board hereby agree that all meetings of the Board shall be coordinated through and facilitated by the department of the City responsible for managing the TIF Program, and that all notices for meetings of the Board shall be drafted and posted by City staff, in accordance with Chapter 2, Article IX, of the City Code of City. City will post and facilitate the holding of at least one Board meeting per year and as otherwise needed.

6.4 **Participating Taxing Entities**. The City and the Board shall use their respective best efforts to cause each Participating Taxing Entity which levies real property taxes in the TIRZ to levy and collect their ad valorem taxes due on the TIRZ Property and to contribute the Available Tax Increment Funds towards reimbursing the Developer for the construction of the Public Improvements required under the Plans and this Agreement.

6.5 **Certificate of Completion**. The City and the 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 the Developer in constructing this Project.

6.6 **Reimbursement Requests**. The City and the Board hereby agree that all reimbursement requests from the Developer shall be processed in accordance with the City's CPPR policy, attached hereto as Exhibit A.

VII. COMPENSATION TO DEVELOPER

7.1 **Deposit Dates**. The City's obligation to contribute its Tax Increment Payment to the Tax Increment Fund shall accrue as the City collects its Tax Increment. The City agrees to deposit its Tax Increment Payment to the Tax Increment Fund on or before April 15 and September 15 (or the first business day thereafter) of each year.

7.2 **CPPR Approval**. Upon completion of public infrastructure and public improvements related to the Project, Developer may submit to the TIF Unit a completed CPPR. Should there be discrepancies in the CPPR or if more information is required, Developer will have thirty (30) calendar days upon notice by the City and/the Board to correct any discrepancy or submit additional information requested. Failure to timely submit the additional information requested by the City may result in delay of Developer's requested expense reimbursement.

7.3 **Maximum Reimbursement Amount**. Following the Board's authorizations, the Developer shall receive, in accordance with the Plans, total reimbursements for Public Improvements of a maximum of Fifty Nine Million, Three Hundred and Sixty Nine Thousand, Two Hundred and Sixty-Seven dollars and no cents ($59,369,267.00) for public improvements, and a maximum of Fifteen Million, Six Hundred and Eighty Four Thousand, and Forty-Nine dollars and no cents ($15,684,049.00) for interest on eligible project costs, if any, as full reimbursement for designing and constructing the Public Improvements required under the Plans and this Agreement.

7.4 **Reimbursement Period**. Board-authorized reimbursements of Available Tax Increment Funds shall be made to the Developer by the City within thirty (30) days after the deposit of its Tax Increment Payment to the Tax Increment Fund.

7.5 **Available Tax Increment Funds**. The sole source of the funds to reimburse the Developer for Project Costs shall be the Available Tax Increment Funds levied and collected on the TIRZ Property and contributed by the Participating Taxing Entities participating in the TIRZ to the fund created and maintained by the City for the purpose of implementing the Public Improvements of the Project.

7.6 **Priority of Payment.** The Parties agree that the TIRZ fund will reimburse Developer for Projects Costs in the order of priority of payment for the TIRZ.

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

7.8 **Invalid Reimbursements**. If any reimbursement to the 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 the Developer to the City for deposit into the fund created and maintained by the City for the purpose of implementing the Public Improvements of the Project, and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable reimbursement was never contained herein.

VIII. INSURANCE

8.1 Developer shall require that the insurance requirements contained in this Article be included in all of its contracts or agreements for construction of Public Improvements where Developer seeks payment under this Agreement, unless specifically exempted in writing by the City and/or the Board.

8.2 **Proof of Insurance.** Prior to commencement of any work under this Agreement, Developer shall furnish copies of all required endorsements and Certificate(s) of Insurance to the City's TIF Unit, which shall be clearly labeled **"Mission del Lago"** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent authorized to bind coverage on its behalf. The City shall not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, including the signer's company affiliation, title and phone number, and be mailed with copies of all applicable endorsements, directly from the insurer's authorized representative to the City at the same addresses listed in Section 17.1 of this Agreement. The City shall have no duty to pay/perform under the Agreement until such certificate(s) and their endorsements has been received and approved by the City. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement for the City.

8.3 **Required Types and Amounts.** Developer's financial integrity is of the interest to the City and the Board, therefore, subject to the Developer's right to maintain reasonable deductibles in such amounts as approved by the City, Developer and/or Developer's contractor, shall maintain in full force and effect during the construction of all Public Improvements required and any extension hereof, at the Developer's or the 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 with an A.M. Best's rating of no less than A– or better by the A.M. Best Company and/or otherwise acceptable to the City, in the following types and for an amount not less than the amounted listed:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employee Liability	$1,000,000 / $1,000,000 / $1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal/Advertising Injury e. Contractual Liability f. Explosion, Collapse, Underground g. Environmental Impairment/Impact sufficiently broad to cover disposable liability h. Damage to property rented	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/lease vehicles b. Non-owned vehicles c. Hired vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. *Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	$1,000,000.00 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
*If Applicable	

8.4 **Right to Review**. The City reserves the right to review the insurance requirements during the effective period of this Agreement and to modify insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance shall the City allow modification whereupon the City may incur increased risk.

8.5 **Requests for Changes.** The City shall be entitled, upon request and without expense to receive copies of the policies, declaration page and all endorsements as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy term, condition, limitation, or exclusion (except where policy provisions are established by law or regulation binding upon either of the Parties, or the underwrite of any such policies). Developer and/or Developer's contractor shall comply with any such request and shall submit a copy of the replacement certificate of insurance to City within ten (10) days of the requested change. Developer and/or Developer's contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to the City and the Board at the addresses listed under Section 17.1 of this Agreement.

8.6 **Required Provisions and Endorsements.** Developer agrees that with respect to the above required insurance, all insurance contract policies, and Certificate(s) of Insurance will contain the following provisions:

(a) Name the City and its officers, officials, employees, volunteers, and elected representative as additional insureds as respects operations and activities of, or on behalf of, the named insured subject to this Agreement, with the exception of the workers' compensation and professional liability policies;

(b) Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio if the City is an additional insured shown on the policy;

(c) Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and,

(d) Provide thirty (30) calendar days advance written notice directly to City at the same addresses listed in this Article of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for non-payment of premium.

8.7 **Cancellations and Non-Renewal.** Within five (5) calendar days of a suspension, cancellation, non-renewal, or material change in coverage, Developer and or Developer's contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City at the same address listed in Section 17.1 of this Article. City shall have the option to suspend Developer or Developer's contractor'(s) performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a breach of this Agreement and the City may exercise any and all available legal remedies.

8.8 **City's Remedies.** In addition to any other remedies the City may have upon Developer and/or Developer's contractor for the failure to provide and maintain insurance or policy

endorsements to the extent and within the time required, the City shall have the right to order Developer to stop work, and/or withhold any payment(s), which become due until Developer and/or Developer's contractor demonstrates compliance with the requirements.

8.9 **Responsibility for Damages.** Nothing in the Agreement shall be construed as limiting in any way the extent to which Developer and/or Developer's contactor may be held responsible for payments of damages to persons or property resulting from Developer's or its subcontractors' performance of the work covered under this Agreement.

8.10 **Primary Insurance.** Developer's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising under this Agreement.

8.11 **Developer's Obligation.** Developer agrees to obtain all insurance coverage with minimum limits of not less than the limits delineated under Section 8.3 of this Article from each subcontractor to Developer and Certificate of Insurance and Endorsements that names the Developer and the City as an additional insured. It is understood and agreed that the insurance required is in addition to and separate from any other obligation in the Agreement. Developer and any subcontractors are responsible for all damages to their own equipment and/or property. Developer must provide City current proof of insurance for all projects and applicable contracts and agreements executed pursuant to this Agreement.

8.12 **"All Risk".** At all times during the performance of construction, Developer and it's contractor shall maintain in full force and effect builder's "All Risk" insurance policies covering such construction. The Builder's Risk Policies shall be written on an occurrence basis and on a replacement cost basis, insuring 100% of the insurable value of construction improvements.

IX. WORKERS COMPENSATION INSURANCE COVERAGE

9.1 This Article is applicable only to construction of Public Improvements, the costs for which the Developer is seeking reimbursement from the City and the Board, and is not intended to apply to the private improvements made by the Developer.

9.2 **Definitions**.

(a) *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.

(b) *Duration of the project* - includes the time from the beginning of the work on the Phase of the Project until the Developer's/person's work on the project has been completed and accepted by the City.

(c) *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 Developer has undertaken to perform on the Project, regardless of whether that person contracted directly with the Developer 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.

9.3 Developer 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 Developer providing services on the Project, for the duration of the Project.

9.4 Developer must provide a certificate of coverage to the City prior to being awarded the contract.

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

9.6 Developer shall obtain from each person providing services on a project, and shall provide to the City:

(a) certificate of coverage, prior to that person beginning work on the Phase of the Project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

(b) no later than seven (7) days after receipt by Developer, 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.

9.7 Developer shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

9.8 Developer shall notify the City in writing by certified mail or personal delivery, within ten (10) days after the Developer knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

9.9 Developer shall post on the TIRZ property a 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.

9.10 Developer shall contractually require each person with whom it contracts to provide services on a Project, to:

(a) 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;

(b) provide to the Developer, 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;

(c) provide the Developer, 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;

(1) obtain from each other person with whom it contracts, and provide to the Developer:

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

(d) 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;

(e) retain all required certificates of coverage on file for the duration of the applicable Phase of the Project and for one (1) year thereafter;

(f) notify the City in writing by certified mail or personal delivery, within ten (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,

(g) perform as required by this Section 10.10 with the certificates of coverage to be provided to the person for whom they are providing services.

9.11 By signing this Agreement or providing or causing to be provided a certificate of coverage, Developer is representing to the City that all employees of Developer 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 Developer to administrative penalties, criminal penalties, civil penalties, or other civil actions.

9.12 Developer's failure to comply with any of these provisions is a breach of this Agreement by the Developer which entitles the City and/or Board to declare the Agreement void and exercise all legal remedies if the Developer does not remedy the breach within ten (10) days after receipt of notice of breach from the City without necessity of the sixty (60) day cure period as set forth in Section 11.3.2 of this Agreement.

X. TERMINATION AND RECAPTURE

10.1 **Termination**. For purposes of this Agreement, termination shall mean the expiration of the term as provided by Article II. Section 2.1 Term, herein. The City and/or the Board may also terminate this Agreement, (1) Termination without Cause, (2) Termination for Cause, and (3) Termination by law.

10.2 **Termination Without Cause.** This Agreement may also be terminated by mutual consent and a written agreement of the Parties. In such case, the Parties shall agree upon the reason(s) of such termination, the termination conditions, any proposed pay-back plan of disbursed funds, and the proposed effective date of such termination.

10.3 **Termination for Cause/Default.** Upon written Notice, which shall be provided in accordance with Article XVII. Notice of this Agreement, the City and/or the Board shall have the right to terminate this Agreement for cause in whole or in part for cause if Developer fails to: (1) comply with any material term or and condition of this Agreement, which shall be deemed a default; and, (2) cure such default.

10.4 **Notice of Default.** After sending a written Notice of Default, the City shall not distribute TIRZ funds to Developer until the default is cured.

10.5 **Cure**. Upon written Notice of Default resulting from a breach of this Agreement, such default shall be cured within sixty (60) calendar days from the date of the Notice of Default. In the case of default, which cannot with due diligence be cured within such Cure Period, at the reasonable discretion of the Director of the City's Neighborhood & Housing Services (or successor) Department, the Cure Period may be extended provided that Developer shall immediately upon receipt of Notice of Default advises the City and the Board of Developer's intent to cure such default within the extended period granted.

10.6 **Failure to Cure**. In the event Developer fails to cure any default of this Agreement within the Cure Period (or extended period), the City and the Board may, upon issuance to Developer of a written Notice of Termination, terminate this Agreement in whole or in part. Such notification shall include the reasons for such termination, the effective date of such termination; and, in the case of partial termination, the portion of the Agreement to be terminated.

10.7 **Remedies upon Default.** The Parties shall have the right to seek any remedy in law to which they may be entitled, in addition to termination and repayment of funds, if a Party defaults under the material terms of this Agreement. The City and Board shall have the right to recapture all the disbursed funds pursuant to this Agreement and the Developer shall repay all disbursed funds to the TIRZ fund.

10.8 **Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

10.9 **Recapture**. Upon Notice of Termination in accordance with Article XVII. Notice, of this Agreement, the City and/or the Board, shall have the right to recapture all disbursed funds

made under this Agreement and Developer shall repay disbursed funds as requested by the City and/or the Board in the said Notice of Termination within sixty (60) days from the effective date of the Notice of Termination. All recaptured funds made under this Agreement shall be deposited into the TIRZ fund of the Mission del Lago TIRZ.

10.10 **Clo**se **Out**. Regardless of how this Agreement is terminated, Developer shall effect an orderly transfer to City or to such person or entity as the City may designate, at no additional cost to the City, all completed or partially completed documents, records, or reports, produced as a result of or pertaining to this Agreement, regardless of storage medium, if so requested by the City, or shall otherwise be retained by Developer in accordance with Article XIV. Records, of this Agreement. Reimbursements due to Developer will be conditioned upon delivery of all such documents, records, or reports, if requested by the City. Within ninety (90) calendar days of the effective date of completion, or termination or expiration of this Agreement, Developer shall submit to City and/or the Board all requests for reimbursements in accordance with Section 6.12 above through the effective date of termination. Failure by Developer to submit requests for reimbursements within said ninety (90) calendar days shall constitute a Waiver by Developer of any right or claim to collect Available Tax Increment that Developer may be otherwise eligible for pursuant to this Agreement.

XI. INDEMNIFICATION

11.1 DEVELOPER covenants and agrees TO FULLY INDEMNIFY AND HOLD HARMLESS, the CITY (and the elected officials, employees, officers, directors, and representatives of the CITY), and the BOARD (and the officials, employees, officers, directors, and representatives of the BOARD), 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 the CITY, and/or upon the BOARD, directly or indirectly arising out of, resulting from or related to DEVELOPER, any agent, officer, director, representative, employee, consultant or subcontractor of DEVELOPER, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY and/or the BOARD, under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.

11.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by DEVELOPER to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY, and the BOARD, from the consequences of the CITY'S and/or the Board's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the

NEGLIGENT ACT of the City and/or Board is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City and/or the Board is the sole cause of the resultant injury, death, or damage. DEVELOPER further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND/OR THE BOARD AND IN THE NAME OF THE CITY AND IN THE NAME OF THE BOARD, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

XII. SITE INSPECTION

12.1 **Access**. The Developer shall allow the City and/or the Board reasonable access to the Project Property owned or controlled by the Developer for inspections during and upon completion of construction of the Project, and to documents and records necessary for the City and/or the Board to assess the Developer's compliance with this Agreement.

XIII. LIABILITY

13.1 **Developer**. As between the City, the Board, any Participating Taxing Entity, and Developer, Developer shall be solely responsible for compensation payable to any employee, contractor, or subcontractor of the Developer, and none of Developer's employees, contractors, or subcontractors will be deemed to be employees, contractors, or subcontractors of the City, the Board, or any Participating Taxing Entity as a result of the Agreement.

13.2 **City and Board.** To the extent permitted by Texas law, no director, officer, employee or agent of the City, the Board, or any other Participating Taxing Entity shall be personally responsible for any liability arising under or growing out of this Agreement.

XIV. RECORDS

14.1 **Right to Review.** Following notice to the Developer, the City reserves the right to conduct, at its own expense, examinations, during regular business hours, the books and records related to this Agreement including such items as contracts, paper, correspondence, copy, books, accounts, billings and other information related to the performance of the Developer's services hereunder. The City also reserves the right to perform any additional audits relating to Developer's services, provided that such audits are related to those services performed by Developer under this Agreement. These examinations shall be conducted at the offices maintained by Developer.

14.2 **Preservation of Records.** All applicable records and accounts of the Developer relating to this Agreement, together with all supporting documentation, shall be preserved and made available in Bexar County, Texas by the Developer throughout the term of this Agreement and for twelve (12) months after the termination of this Agreement, and then transferred for retention to the City at no cost to the City upon request. During this time, at Developer's own expense, may require that any or all of such records and accounts be submitted for audit to the City or to a Certified Public Accountant selected by the City within thirty (30) days following written request.

14.3 **Discrepancies.** Should the City discover errors in the internal controls or in the record keeping associated with the Project, Developer shall be notified of such errors and the Parties shall consult on what steps may be necessary to correct such discrepancies within a reasonable period of time, not to exceed sixty (60) days after discovery. The Board shall be informed of the action taken to correct such discrepancies.

14.4 **Overcharges.** If it is determined as a result of such audit that Developer has overcharged for the cost of the Public Improvements, then such overcharges shall be immediately returned to the TIRZ fund 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 (2) percent of the greater of the budget or payments to Developer for the year in which the discrepancy occurred, and the TIRZ fund is entitled to a refund as a result of such overcharges, then Developer shall pay the cost of such audit.

XV. NON-WAIVER

15.1 **Actions or Inactions.** No course of dealing on the part of the City, the Board, or the Developer nor any failure or delay by the City, the Board, or the 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.

15.2 **Receipt of Services.** The receipt by the City of services from an assignee of the Developer shall not be deemed a waiver of the covenant(s) in this Agreement against assignment or an acceptance of the assignee or a release of the Developer from further performance by Developer of the covenant(s) contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such waiver is in writing, and approved by the City through an ordinance passed and approved by its City Council.

XVI. ASSIGNMENT

16.1 **Assignment by City.** The City and/or Board may assign their rights and obligations under this Agreement to any governmental entity the City creates without prior consent of Developer. If the City and/or Board assign their rights and obligations under this Agreement then the City and/or the Board shall provide Developer written notice of assignment within thirty (30) days of such assignment.

16.2 **Assignment by Developer.** Developer may sell or transfer its rights and obligations under this Agreement only upon approval and written consent by the Board, as evidenced by Board Resolution, when a qualified purchaser or assignee specifically agrees to assume all of the obligations of the Developer under this Agreement.

16.3 **Work Subject to Agreement.** Any work or services referenced herein shall be by written contract or agreement and, unless the City grants specific waiver in writing, such written contract or agreement shall be subject by its terms, insofar as any obligation of the City is concerned, to each and every provision of this Agreement. Compliance by Developer's contractor and/or subcontractors with this Agreement shall be the responsibility of Developer.

16.4 **No Third Party Obligation.** The City and/or the Board shall in no event be obligated to any third party, including any contractor, subcontractor, or consultant of the Developer, for performance of work or services under this Agreement.

16.5 **Lending Institutions.** Any restrictions in this Agreement on the transfer or assignment of the Developer's interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to a lending institution or other provider of capital in order to obtain financing for the Project. Developer shall notify the City of all such assignments to a lending or other provider of capital. In no event, shall the City and/or the Board be obligated in any way to the aforementioned financial institution or other provider of capital. The City shall only issue a check or other form of reimbursement to Developer.

16.6 **Written Instrument.** Each transfer or assignment to which there has been consent, pursuant to Section 16.2 above, shall be by instrument in writing, in form reasonably satisfactory to the Board, and shall be executed by the transferee or assignee who shall agree in writing, for the benefit of the City and the 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 the TIF Unit. Failure to obtain, the Board's consent by resolution, or failure to comply with the provisions herein first, shall prevent any such transfer or assignment from becoming effective. In the event the Board approves the assignment or transfer of this Agreement, Developer shall be released from such duties and obligations.

16.7 **No Waiver.** Except as set forth in Section 16.3 of this Agreement, the receipt by the City of services from an assignee of the Developer shall not be deemed a waiver of the covenants in this Agreement against assignment or an acceptance of the assignee or a release of further observance or performance by Developer of the covenants contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such waiver is in writing, and approved by City Council in the form of a duly passed ordinance.

16.8 **Binding Effect of Agreement**. All covenants and agreements contained herein by the City and/or the Board shall bind their successors and assigns and shall inure to the benefit of the Developer and their successors and assigns. Obligated in any way to the aforementioned financial institution or other provider of capital.

16.9 **Consent Required**. Each transfer or assignment to which there has been consent, pursuant to Section 16.3 above, shall be by instrument in writing, in form reasonably satisfactory to the City, and shall be executed by the transferee or assignee who shall agree in writing for the benefit of the City and the 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 the City. Failure to first obtain, in writing, the City's consent, or failure to comply with the provisions herein contained shall operate to prevent any such transfer or assignment from becoming effective.

16.10 **City Approval**. In the event the City approves the assignment or transfer of this Agreement, as provided in Section 16.3 above, the Developer shall be released from such duties and obligations.

16.11 **No Waiver**. Except as set forth in Section 16.3, the receipt by the City of services from an assignee of the 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 the Developer from further observance or performance by the Developer of the covenants contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such waiver is in writing, and approved by the City Council of the City in the form of a duly passed ordinance.

XVII. NOTICE

17.1 **Address.** 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 with notice to Board Chair at the following addresses:

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

DEVELOPER
SouthStar Mission Del Lago Holdings L.P.
c/o SouthStar Communities
ATTN: Thad Rutherford, President
1114 Lost Creek Blvd, Ste. 270
Austin, Texas 78746

BOARD
Board of Directors, Tax Increment
Reinvestment Zone Number Six,
City of P.O.
San Antonio, Texas
c/o Neighborhood and Housing Services
Department
ATTN: Director
City of San Antonio
1400 S. Flores
FAX: (210) 207-7914

17.2 **Notice Requirements**. 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 receipted 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 Agreement 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 received on the next business day after such delivery. Whenever any notice is required to be given by applicable law or this Agreement, 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 fifteen (15) days' written notice to the other party.

XVIII. CONFLICT OF INTEREST

18.1 **Charter and Ethics Code Prohibitions.** The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the 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) a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;

(b) an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) ten (10) percent or more of the voting stock or shares of the entity, or (ii) ten (10) percent or more of the fair market value of the entity; or

(c) an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

18.2 **Certification**. Pursuant to the subsection above, Developer warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Consultant does not cause a City employee or officer to have a prohibited financial interest in the Contract. Developer further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIX. INDEPENDENT CONTRACTORS

19.1 **No Agency.** All Parties expressly agree that in performing their services, the Board and Developer at no time shall be acting as agents of the City and that all consultants or contractors engaged by the Board and/or Developer respectively shall be independent contractors of the Board and/or the Developer. The Parties hereto understand and agree that the City and the Board shall not be liable for any claim that may be asserted by any third party occurring in connection with services performed by Developer, under this Agreement unless any such claim is due to the fault of the City.

19.2 **No Authority.** The Parties 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.

XX. TAXES

20.1 **Duty to Pay.** Developer shall pay, on or before the respective due dates, to the appropriate collecting authority all applicable Federal, State, and local taxes and fees which are now or may be levied upon the TIRZ Property, the Developer or upon the Developer's business conducted on the TIRZ Property or upon any of the Developer's property used in connection therewith, including employment taxes. Developer shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Developer. The Developer shall include in the CPPR submission evidence of payment of the taxes and fees above.

XXI. PREVAILING WAGES

21.1 The TIF Program is a discretionary program, and it is the policy of the City that the requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to TIF Development Agreements. Developer agrees that the Developer will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

21.2 In accordance with Chapter 2258, Texas Government Code, and Ordinance No. 2008-11-20-1045, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this Agreement is included as **Exhibit D**, and made a part of this Agreement. Developer is required, and shall require its subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the Developer calls for bids for construction of a given phase.

21.3 Developer is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the Developer's general contractor and all subcontractors for construction of each Phase. The Developer shall forfeit as a penalty to the City $60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by Developer or any subcontractor under the Developer. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the Developer from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.

XXII. CHANGES AND AMENDMENTS

22.1 **Ordinance and Order Required.** 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 the Presiding Officer of the Mission del Lago TIRZ Board of Directors, the Developer, and City, by and through its TIF Economic Development Manager or NHSD, or successor department, assistant director, and the Developer. However, any alterations, additions, or deletions to the terms hereof that result in a change to the funding level or the deliverables shall be by amendment in writing executed by the City, the Board and the Developer and evidenced by passage of a subsequent City ordinance.

22.2 **Construction Schedule.** Notwithstanding the above, the Construction Schedule may be amended, as evidenced by approval of the Director of the City's Neighborhood & Housing Services (or successor) Department. In the event an amendment to the Construction Schedule will result in a material change to this Agreement, then such amendment shall comply with the requirements of Section 22.1, above. No change under this section may result in an increase in the maximum contribution of the City or any other Participating Taxing Entity. Developer may rely on the determination of the Director of the City's Neighborhood & Housing Services (or successor) Department, whether a

change in the Construction Schedule would result in a material change to the overall Project requirements.

22.3 **Automatic Incorporation of Laws.** Changes in local, state and federal rules, regulations or laws applicable to the Board's and the Developer's services under this Agreement may occur during the term of this Agreement and any such changes shall be automatically incorporated into this Agreement without written amendment to this Agreement, and shall become a part as of the effective date of the rule, regulation or law.

XXIII. COMPLIANCE WITH SBEDA AND EEO POLICIES

23.1 **No Discrimination**. The Board and the Developer are each hereby advised that it is the policy of the 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 Improvements commenced prior to the creation of the TIRZ, the Board and the Developer each understands and agrees for itself to comply with the Non-Discrimination Policy of the City contained in Chapter 2, Article X of the City Code and further shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, veteran status, gender identity, age or disability, unless exempted by State or federal law. The Developer further agrees that with respect to the remaining Public Improvements the Developer will make a good faith effort to comply with the applicable terms and provisions of the City's Non-Discrimination Policy, the City's Small, Minority or Woman-owned Business Advocacy Policy and the City's Equal Opportunity Affirmative Action Policy, these policies being available in the City's Department of Economic Development, Division of Internal Review and the City's Office of the City Clerk.

23.2 **Utilization Plan**. The 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 the City's Department of Economic Development, the Developer will be required to submit a written report to the City's Department of Economic Development. The Developer will also be required to submit a supplemental Good Faith Effort Plan (GFEP) indicating efforts to resolve any deficiencies. If the City's Department of Economic Development denies a GFEP based on reasonable and published criteria, said denial will constitute failure to satisfactorily resolve any deficiencies by the Developer. Within ninety (90) days following receipt of notice from the City's Department of Economic Development, the Developer's failure to obtain an approved GFEP that includes the specific criteria not previously met shall constitute a default and result in a penalty on the Developer of One Thousand Dollars ($1,000) per day as liquidated damages for the default until all deficiencies are resolved. The Developer's 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 the Developer and which can, at the option of the Director of the Department of Economic Development, result in termination of this Agreement.

XXIV. CHANGES AND AMENDMENTS

24.1 **Ordinance and Order Required.** 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 the Presiding Officer of the Mission del Lago TIRZ Board of Directors, the Developer, and City, by and through its TIF Economic Development Manager or NHSD, or successor department, assistant director, and the Developer. However, any alterations, additions, or deletions to the terms hereof that result in a change to the funding level or the deliverables shall be by amendment in writing executed by the City, the Board and the Developer and evidenced by passage of a subsequent City ordinance.

24.2 **Construction Schedule.** Notwithstanding the above, the Construction Schedule may be amended, as evidenced by approval of the Director of the City's Neighborhood & Housing Services (or successor) Department. In the event an amendment to the Construction Schedule will result in a material change to this Agreement, then such amendment shall comply with the requirements of Section 22.1, above. No change under this section may result in an increase in the maximum contribution of the City or any other Participating Taxing Entity. Developer may rely on the determination of the Director of the City's Neighborhood & Housing Services (or successor) Department, whether a change in the Construction Schedule would result in a material change to the overall Project requirements.

24.3 **Automatic Incorporation of Laws.** Changes in local, state and federal rules, regulations or laws applicable to the Board's and the Developer's services under this Agreement may occur during the term of this Agreement and any such changes shall be automatically incorporated into this Agreement without written amendment to this Agreement, and shall become a part as of the effective date of the rule, regulation or law.

XXV. SEVERABILITY

25.1 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 the 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.

XXVI. LITIGATION EXPENSES

26.1 City policy on litigation is that, except to the extent prohibited by law, persons who are engaged in litigation or adversarial proceedings related to TIF against the City are ineligible to obtain or continue the use of TIF as principals or participants for the duration of the litigation. A principal or participant includes the TIF applicants and the TIF

applicant's developers, partners, affiliates, sponsors, payroll employees, or relatives of the first degree of consanguinity. Accordingly, the City shall not consider a project proposing the use of TIF, designate a TIRZ, enter into any TIF contracts or agreements with, or authorize or make any TIRZ payment to persons engaged in litigation or adversarial proceedings related to TIF with the City. Ineligible persons shall be excluded from participating as either participants or principals in all TIF projects during the term of their litigation.

26.2 During the term of this Agreement, if Developer files or pursues an adversarial proceeding regarding this Agreement against the City and /or the Board, without first engaging in good faith mediation of the dispute, then all access to funding provided hereunder shall withheld and Developer will be ineligible for consideration to receive any future tax increment reinvestment zone funding while any adversarial proceedings remains unresolved.

26.3 Under no circumstances will the Available Tax Increment received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City, the Board or any other public entity. Nothing contained in this Article shall effect or otherwise affect the indemnity provisions contained in Article XII. above.

XXVII. LEGAL AUTHORITY

27.1 Each person executing this Agreement on behalf of the City, the Board or the Developer, represents, warrants, assures and guarantees that he has full legal authority to (i) execute this Agreement on behalf of the City, the Board and/or the Developer, respectively and (ii) to bind the City, the Board and/or the Developer to all of the terms, conditions, provisions and obligations herein contained.

XXVIII. VENUE AND GOVERNING LAW

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

28.2 Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas. 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.

XXIX. PARTIES' REPRESENTATIONS

29.1 This Agreement has been jointly negotiated by the City, the Board and the Developer and shall not be construed against a party because that party may have primarily assumed responsibility for the drafting of this Agreement.

XXX. CAPTIONS

30.1 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.

XXXI. LICENSES/CERTIFICATIONS

31.1 Developer warrants and certifies that to its knowledge, any person providing services hereunder has the requisite training, license, and/or certification to provide said services and meets the competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXXII. NONDISCRIMINATION AND SECTARIAN ACTIVITY

32.1 Developer understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code, and further shall use reasonable efforts to ensure that no person shall, on the ground of race, color, national origin, religion, sex, age, gender (to include transgender), sexual orientation, veteran status or disability, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part under Agreement.

XXXIII. ENTIRE AGREEMENT

33.1 **No Contradictions.** 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.

33.2 **Incorporation of Exhibits.** Each exhibit referenced below shall be incorporated herein for all purposes as an essential part of this Agreement, which governs the rights and duties of the parties, 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.

EXHIBIT A: Contract Progress Payment Request Form

EXHIBIT B: Project Site

EXHIBIT C: Project Status Report Form

EXHIBIT D: Prevailing Wages

IN WITNESS THEREOF, the parties hereto have caused this instrument to be signed on the date of the each signature below. In accordance with Section 1.11 above, this Agreement will become effective on the date of the last signature below:

CITY OF SAN ANTONIO

_____

Erik Walsh
City Manager
City of San Antonio

Date:_____

DEVELOPER

_____

SouthStar Mission Del Lago Holdings, L.P.
By: Thad Rutherford , President

Date:_____

BOARD OF DIRECTORS

Tax Increment Reinvestment Zone Number Six

_____

Name:_____
Title: Chairman, Board of Directors
Address:_____
Date:_____

Approved as to form:_____
City Attorney