

Draft ~~3-28-23~~ 3/18/23

**DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF ANGLETON, TEXAS,
AND ANCHOR HOLDINGS MP, LLC AND WILDROCK HOLDINGS, LLC**

TABLE OF CONTENTS

ARTICLE I DEFINITIONS 4

 Section 1.01 Terms.....4

 Section 1.02 Exhibits6

ARTICLE II LAND PLAN, PLATTING, AND MUNICIPAL UTILITY DISTRICT 6

 Section 2.01 Introduction.6

 Section 2.02 Municipal Utility District.....6

 Section 2.03 Expansion of ETJ.....6

 Section 2.04 Land Plan and Amendments Thereto6

 Section 2.05 Termination for Failure to Begin Development.....7

ARTICLE III DESIGN AND CONSTRUCTION STANDARDS AND APPLICABLE ORDINANCES 7

 Section 3.01 Regulatory Standards and Development Quality.....7

 Section 3.02 Water/Wastewater/Drainage Services7

 Section 3.03 Design Standards for the Utility System8

 Section 3.04 Platting8

 Section 3.05 Lot Size8

 Section 3.06 Impact Fees/Drainage Fee.....9

 Section 3.07 Parks and Recreational Facilities9

 Section 3.08 Fire Protection Services10

 Section 3.09 Other Site Dedication for City Facilities ~~11~~11

 Section 3.10 Liability of Ultimate Consumer11

 Section 3.11 Development Code Applicable11

 Section 3.12 Homeowners’ Association11

 Section 3.13 Deed Restrictions Regarding Building Regulations ~~12~~12

 Section 3.14 Signage.....12

 Section 3.15 Prohibition of Rental Communities..... ~~13~~13

ARTICLE IV ROAD FACILITY CONSTRUCTION 13

 Section 4.01 Road Facility Construction.....13

 Section 4.02 SH288 Frontage Road Improvements/Future Angleton Town Center Development.....14

ARTICLE V ANNEXATION OF THE TRACT ~~15~~15

 Section 5.01 Annexation by the City..... ~~15~~15

Section 5.02	Strategic Partnership Agreement.....	15 ¹⁵
Section 5.03	Disclosures.....	15
ARTICLE VI PROVISIONS FOR DEVELOPER		15
Section 6.01	Waiver of Actions Under Private Real Property Rights Preservation Act.....	15
Section 6.02	Developer’s Right to Continue Development.....	16 ¹⁶
Section 6.03	Uniform Treatment.....	16 ¹⁶
ARTICLE VII MATERIAL BREACH, NOTICE AND REMEDIES		16
Section 7.01	Material Breach of Agreement.....	16
Section 7.02	Notice of Developer’s Default.....	18 ¹⁸
Section 7.03	Notice of City’s Default.....	18
Section 7.04	Mediation.....	19 ¹⁹
Section 7.05	Remedies.....	19
ARTICLE VIII BINDING AGREEMENT, TERM, AMENDMENT, AND ASSIGNMENT		20
Section 8.01	Beneficiaries.....	20
Section 8.02	Term.....	20
Section 8.03	Termination.....	20 ²⁰
Section 8.04	Assignment or Sale.....	21 ²¹
Section 8.05	Transfer of Control of Developer.....	21
ARTICLE IX MISCELLANEOUS PROVISIONS		21
Section 9.01	Notice.....	21
Section 9.02	Time.....	22
Section 9.03	Severability.....	22 ²²
Section 9.04	Waiver.....	23 ²³
Section 9.05	Applicable Law and Venue.....	23 ²³
Section 9.06	Reservation of Rights.....	23 ²³
Section 9.07	Further Documents.....	23
Section 9.08	Incorporation of Exhibits and Other Documents by Reference.....	23
Section 9.09	Effect of State and Federal Laws.....	23
Section 9.10	Authority for Execution.....	23
Section 9.11	Anti-Boycott Verifications.....	25 ²⁵
Section 9.12	Iran, Sudan, and Foreign Terrorist Organizations.....	25

**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ANGLETON, TEXAS,
AND ANCHOR HOLDINGS MP, LLC AND WILDROCK HOLDINGS, LLC**

This Development Agreement (the “Agreement”) is made and entered into on _____, 2023, by the CITY OF ANGLETON, TEXAS, a home rule municipality in Brazoria County, Texas, acting by and through its governing body, the City Council of Angleton, Texas (the “City”), and ANCHOR HOLDINGS MP, LLC and WILDROCK HOLDINGS, LLC (the “Developer”), but becomes effective only upon the “Effective Date” as defined herein.

RECITALS

The City is a home rule city and municipal corporation that provides a full range of government services to its citizens.

The Developer has purchased approximately 879.9 acres of land located in the City’s extraterritorial jurisdiction (“ETJ”) the ETJ), which acreage is more particularly described in Exhibit A (the “Tract”). The City wishes to provide for the orderly development of the Tract, as provided by Chapter 212, Texas Local Government Code.

Brazoria County Municipal Utility District No. 82 (the “District”) was created over the Tract by SB2147, Texas Legislature, 83rd Regular Session, 2021 (as codified in Texas Special District Local Laws Code Chapter 8153).

The Developer intends to develop the Tract for residential uses, multi-family uses, and commercial uses. The development will occur in phases, and the Developer anticipates that each phase will be platted separately.

The Developer desires an agreement providing for long-term certainty in regulatory requirements and development standards by the City regarding the Tract.

The City and the Developer agree that the development of the Tract can best proceed pursuant to a development agreement.

It is the intent of this Agreement to establish certain restrictions and commitments imposed and made in connection with the development of the Tract. The City and the Developer are proceeding in reliance on the enforceability of this Agreement.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the City and the Developer agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.01 Terms. Unless the context requires otherwise, and in addition to the terms defined above, the following terms and phrases used in this Agreement shall have the meanings set out below:

City means the City of Angleton, Texas.

City Council means the City Council of the City or any successor governing body.

Commission means the Texas Commission on Environmental Quality and its successors.

County means Brazoria County, Texas.

Developer means Anchor Holdings MP, LLC and Wildrock Holdings, LLC or successors or assigns.

Development Code means those portions of the City's Land Development Code (Chapter 23 of the City's Code of Ordinances, and any related policies and procedures, to the extent such are applicable to development in the City's ETJ as such code, policies, and procedures exist as of the Effective Date, including the clarifications, modifications, and amplifications listed Sections 3.07 and 3.16, which modifications are hereby approved by the City. The term does not include provisions of such code that are not enforceable in the City's ETJ pursuant to law as of the Effective Date, including, without limitation lot size, density restrictions, zoning, and external building materials.

District means Brazoria County Municipal Utility District No. 82, a municipal utility district created pursuant to Chapter 8153 of the Special District Local Laws Code and whose purposes include supplying a public water supply, sanitary sewer services, drainage services, roads, and parks and recreational services to the areas within its boundaries, and also means any other property annexed into the District.

ETJ means the extraterritorial jurisdiction of the City.

Effective Date means the date of the final City Council action to approve this Agreement.

HOA means a homeowners' association for the homes within the Tract.

Land Plan means the general, conceptual master plan for development of the Tract attached hereto as **Exhibit E**, as it may be revised from time to time in accordance with this Agreement. It includes the proposed locations of land uses, streets, phasing of development, important physical features, and other applicable information for the entire area to be subdivided in accordance with the Development Code.

Non-Traditional Homes means and shall include townhouses, patio homes, single-family detached homes with shared driveways.

Person means any individual, partnership, association, firm, trust, estate, public or private corporation, or any other legal entity whatsoever.

Planning Commission means the Planning and Zoning Commission of the City.

SPA means a strategic partnership agreement between the City and the District that is authorized by Section 43.0751, Texas Local Government Code and substantially in the form attached hereto as **Exhibit J**.

Substantial Change means any change or amendment to the Land Plan or series of changes or amendments to the Land Plan that (i) would cause the total number of lots in the Development Plan to exceed 2487 lots or, (ii) any change to the Development Plan that would cause a material change in the major thoroughfares and collector streets layout, or (iii) a change to the park layout that reduces the amount of parkland in the Tract to less than what is required under the Development Code or approved modifications, or (iii) the addition of land to the Development Plan. The relocation or movement of internal streets or tract lines within the Tract shall not constitute a Substantial Change.

Formatted: Not Highlight

Commented [JE1]: The law is what the law is; redundant

Commented [RM2R1]: Agree this language has no legal import. However, it is useful to have the statements in the agreement so that staff, P&Z and Council can review this document and understand clearly what they can and can't do. It is important to us for the effective implementation of this Agreement over the long run.

Commented [JLE3]: Lot size? See Section 3.05. Doesn't this mean there could be 10% or more 45 foot lot shared driveway homes?

Commented [RM4R3]: Lot size frontage is not a relevant to this type of product. That's why it has its on category.

Commented [JLE5R3]: Developer provided prototype photos.

Commented [RM6]: This is as low as we can go in the agreement

Commented [OS7]: To include any increases in the total acreage of the district, i.e. any annexation of additional land not covered by this approved land plan.

Commented [JLE8]: Where is the city on parkland for this development?

Tract means all the land described in the attached **Exhibit A**, and land subsequently annexed into the District.

Ultimate Consumer means the purchaser of a tract or lot within the Tract who does not intend to resell, subdivide, or develop the tract or lot in the ordinary course of business. For example, a homeowner is an Ultimate Consumer.

Section 1.02 Exhibits. The following exhibits are attached to this Agreement as though fully incorporated herein:

Exhibit A	The Tract
Exhibit B	[Reserved]
Exhibit C	[Reserved]
Exhibit D	Commercial Tract
Exhibit E	Land Plan
Exhibit F	Park Land Plan
Exhibit G	[Reserved]
Exhibit H	Signage
Exhibit I	Roadway Facilities
Exhibit I-1	Pavement Facility Cross Section
Exhibit J	Form of Strategic Partnership Agreement
Exhibit K	Form of Assignment and Assumption of Development Agreement
Exhibit L	Infrastructure Permit Submittal Fee Schedule

**ARTICLE II
LAND PLAN, PLATTING, AND MUNICIPAL UTILITY DISTRICT**

Section 2.01 Introduction. The Tract is to be developed as a residential and mixed-use commercial community. [The land uses within the Tract shall be typical of a residential development with residential, commercial, multi-family, institutional, and recreational facilities in conformance with the approved Land Plan, as described in Section 2.04.]

Commented [OS9]: "in conformance with the approved Land Plan".

Section 2.02 Municipal Utility District. The City on the same date it approved this Agreement, consented to the creation of Brazoria MUD 82, and authorized the creation of additional MUDs by way of division by the District. The Developer may perform any of its obligations under this Agreement, by, with, or on behalf of the District, or any other MUD created by the District, and the District and any other MUD created by the District is entitled to develop its facilities in accordance with the terms and standards contained in this Agreement.

Section 2.03 Expansion of ETJ. The Developer filed with the City a Petition to Extend the City's ETJ over the entire Tract. City approved and adopted Ordinance 20221213-022 on December 13, 2022 expanding the ETJ to include the entire tract.

Section 2.04 Land Plan and Amendments Thereto. The City and the Developer acknowledge that the Land Plan is the [Concept Plan] for the development of the Tract. The Land Plan attached as **Exhibit E** is hereby approved by the City. This approval shall constitute approval of a "Concept Plan" or "Master Plan" pursuant to Development Code Section 23-104 and Section 23-120 for all purposes. The Parties acknowledge and agree that the Land Plan will be revised and refined by the Developer as the Developer continues its investigation of the Tract and prepares a feasible and detailed plan for the development of the Tract, provided that in no case shall the Land Plan be revised

Commented [OS10]: I prefer using the term "Conceptual or Concept Plan".

to contradict any of the requirements of this Agreement. In the event the Developer proposes a Substantial Change in the Land Plan, the Substantial Change must first be approved by the City Council in accordance with the procedural requirements of the Development Code and the substantive requirements of this Agreement. Changes to the Land Plan that are not Substantial Changes do not require City approval, and the City Manager is hereby authorized to approve changes in the Land Plan that are not Substantial Changes. The initial Land Plan does not require submission to or approval by the Planning and Zoning Commission. Any requested Substantial Change in the Land Plan will be submitted, without the lot sizes, to Planning and Zoning Commission for review and recommendation to Council.

Commented [RM11]: The intent here is that the City must have a rational basis for denying the amendment, and that rational basis cannot include consideration of items over which they don't have jurisdiction.

Commented [JLE12]: Otis thoughts on this?

Section 2.05 Termination for Failure to Begin Development. Provided the City gives Developer prior notice of such termination and Developer fails to cure within 30 days of receipt of notice; the City shall have the right to terminate this Agreement upon which action it shall be of no further force and effect if the Developer has not either: (a) issued a Notice to Proceed on a construction project within the Tract, or (b) actually commenced work, with or without a "Notice to Proceed" on such a construction project, within three (3) years from the date of this Agreement. As used in this Section 2.05, "construction project" means any work on the Tract or on rights-of-way adjacent to the Tract that is necessary to be carried out in the process of development of the Tract as a single-family community, including, without limitation, utilities installation and paving.

ARTICLE III DESIGN AND CONSTRUCTION STANDARDS AND APPLICABLE ORDINANCES

Section 3.01 Regulatory Standards and Development Quality. The City and the Developer agree that one of the primary purposes of this Agreement is to provide for quality development of the Tract and certainty as to the regulatory requirements applicable to the development of the Tract throughout the development process. Feasibility of the development of the Tract is dependent upon a predictable regulatory environment and stability in the projected land uses. In exchange for Developer's performance of the obligations under this Agreement to develop the Tract in accordance with certain standards and to provide the overall quality of development described in this Agreement, the City agrees to the extent allowed by law that it will not impose or attempt to impose any moratoriums on building or growth within the Tract.

By the terms of this Agreement, the City and the Developer intend to establish development rules and regulations which will ensure a quality, unified development, yet afford the Developer predictability of regulatory requirements throughout the term of this Agreement. The City and the Developer agree that development of the Tract shall be subject to the Development Code as defined, not including future amendments or changes, except that after twenty-five (25) years from the effective date of this Agreement, development of the Tract shall be subject to the Development Code Design Standards as amended at the time.

Commented [JLE13]: Need to hash this out.

Commented [RM14R13]: Have removed the exceptions to the development code and inserted in document as requested by Otis.

Formatted: Font color: Red

Section 3.02 Water/Wastewater/Drainage Services.

- (a) The Developer will develop the water supply, storage, and distribution system; wastewater collection and treatment system; and stormwater control and drainage system (collectively, the "Utility System") to serve the Tract.
- (b) The Developer may enter into one or more reimbursement agreement(s) with the District to seek reimbursement for the costs of the water, wastewater, and drainage facilities referenced in this Agreement, as well as, to the extent allowed by law, the park

and recreational facilities and the street and road facilities referenced in this Agreement.

- (c) Neither the District, Developer, nor the homebuilder, nor their successor and assigns, shall be obligated to apply for, pay for, or obtain from the City a Residential or Commercial Building Permit throughout the life of this Agreement.
- (d) The District shall install a wastewater treatment plant to serve the District, in phases, as needed. Prior to the District completing its installation of a wastewater treatment plant, the City acknowledges and consents to the District pumping wastewater from its sanitary sewer lines and hauling such wastewater to an off-site wastewater treatment facility if the District has obtained all necessary Commission permits.
- (e) The MUD may obtain water and wastewater service from a third-party utility provider, including a private company or partnership, as long as the MUD has the option to purchase the water and wastewater facilities prior to the City annexation and dissolution of the MUD, as provided in the Strategic Partnership Agreement, to serve the Tract with water and wastewater service.

Section 3.03 Design Standards for the Utility System.

- (a) The Developer will design and construct the Utility System in accordance with standards in the Development Code.
- (b) The Developer shall provide written certification to the City from a professional engineer registered in the State of Texas that the plans for any portion of the District's Utility System meet the design criteria in the Development Code. Subject to such certification from a registered professional engineer and approval of the plans by the City Engineer, no approval by the Planning Commission or the City Council is required for construction of the District's Utility System.

Section 3.04 Platting. The Developer will plat the land within the Tract in accordance with the Development Code.

Section 3.05 Lot Size. The Developer currently proposes land uses as shown on the Land Plan attached as **Exhibit E**. For purposes of this Agreement, the Developer can develop the Tract to any residential lot size without limitation subject to the terms of and lot sizes set out in this Agreement. The Developer agrees that it will develop traditional ~~single family~~ ~~single-family~~ lots in at least three different lot sizes. The Developer will also develop lots for Non-Traditional Homes to provide an additional mix of product types within the community. The Developer agrees that the mix of housing product at ultimate build out will meet the following :

Lot Size/Product Type	Minimum Percentage of Lots
50-54 feet	10%, provided, however, not more than 50% of the number of lots will be within this lot size band
55-59 feet	10%
60+ feet (includes 60s, 65s, 70s, 75s, 80s)	10%

- Commented [JLE15]: Thoughts Otis?
- Commented [JE16R15]: Should not limit future commercial building
- Commented [RM17R15]: Does the City have the right to require building permits on commercial in the ETI?
- Commented [RM18R15]: Resolved with the agreement on Commercial guidelines
- Commented [JLE19]: Where are commercial guidelines as mentioned in R. Muller comment for basis for no commercial building permits?
- Commented [RM20R19]: See Section 3.13
- Commented [JLE21]: Does the city agree?
- Commented [JLE22]: Check SPA; notice to city required.

Commented [JLE23]: City Agree?

- Commented [JLE24]: What are the sizes and let's put it here.
- Commented [JE25R24]: Did Developer come up with a mix of lot size council likes?
- Commented [RM26]: This is a critical provision in this Agreement

- Commented [JLE27]: I thought it was possibly 10% 60+ and another category of 10% 70+
- Commented [RM28R27]: No
- Formatted: Highlight

Non-Traditional Homes	10%
-----------------------	-----

Section 3.06 Fees and Charges. The Developer agrees to pay the City platting, plan review fee, and inspection fee or deposit against expenditures as set out in Section 30-5 of the Angleton Code of Ordinances, and Security as set out in Section 23-36, and agrees to comply with the terms set out in Sections 23-36 and 30-5 as they related to fees and charges, and as shown on Exhibit L.

The City may periodically increase fees as shown on Exhibit L as applied to development in the Tract, provided the following conditions are met:

- (a) the rates and charges are uniformly applied to all development in the ETJ and within the City limits;
- (b) the rates and charges are changed only once within any 12-month period; and
- (c) any annual rate increase will not to exceed the annual increase in the CPI for the Houston region, provided however, the City may increase rates by 50% once within the first two years of the Effective Date.

Neither the District, the Developer nor any homebuilder is required to pay impact fees, capacity fees, or connection charges to the City unless they are connecting to a City facility. This section does not apply to the payment of fees in lieu of park land.

Section 3.07 Parks and Recreational Facilities.

(a) The Developer intends to develop more than 200 acres of reserve, preservation parkland, and open space, including but not limited to active and passive parks, walking trails, recreational centers, detention and drainage facilities with recreational amenities, landscaping and trails along major thoroughfares (collectively, the "Community Park System") as shown on Exhibit F. The timing of the dedication of the Open Space will follow the development of the District and will continue throughout the development of the District.

(b) ~~The Developer in creating the Community Park System intends to meet or exceed the City's park dedication requirements set forth in Section 23-20 of the City's Development Code (the "Park Requirements").~~ The City and the Developer agree that substantive and procedural detail contained in this Section will apply to the development of park facilities for this Development:

- (i) the Developer will dedicate a minimum of ~~90~~ 250 acres of land to the MUD (which will ultimately be owned by the City after annexation) and will spend a minimum of \$5,045,000.00 ~~(which is equal to spending requirement in the Park Requirements)~~ on the development of improvements within those facilities ~~in order to satisfy the Park Requirements.~~ Any improvements within the 5-acre City Park will fully comply with the Park Requirements.
- (ii) The dedication and development of the park facilities will occur in phases to coincide with platting and development of homes, specifically: the Developer will dedicate to the MUD any land shown in the Park Master Plan as the Developer plats the land adjacent to the proposed parkland, and ~~it~~ the

Commented [JLE29]: See my comment on the definition of this term.

Commented [JLE30]: Code Section 30-5 Deposit of \$25,000.00; additional deposits of \$10,000.00. Code Section 23-36(D)(2) security and \$10,000.00 Administration Fee

Commented [OS31R30]: D.S. to confirm with finan... [1]

Commented [JLE32]: Developer needs to agree to co... [2]

Commented [RM33R32]: I don't understand this ... [3]

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Commented [RM34]: We are looking for certainty ha... [4]

Formatted: Highlight

Formatted: Highlight

Formatted: Not Highlight

Commented [JE35]: How are hook ups paid for? ... [5]

Commented [RM36R35]: Paid to the MUD

Commented [JE37]: City Engineer reviewed this?

Commented [JLE38]: Add reference to whatever par... [6]

Commented [RM39]: As you will recall, we all discus... [7]

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Commented [MM40]: When considering dedicating... [8]

Commented [MM41R40]: Must meet all minimum... [9]

Commented [MM42]: This comment concerns me... [10]

Commented [MM43R42]: Exhibit F doesn't seem... [11]

Commented [JLE44]: Community Park System need... [12]

Commented [MM45R44]: a) Prior to issuance of... [13]

Commented [JLE46]: What does this mean? Phases... [14]

Commented [MM47R46]: I. Agreed, per the ord... [15]

Commented [JLE48]: This was "exceed" previously.

Commented [MM49]: Where, I'm not seeing this in... [16]

Formatted: Not Highlight

Commented [JLE50]: Where is the ... [17]

Formatted: Not Highlight

Commented [MM51]: Where are they getting this r... [18]

Commented [JLE52]: What 5 acre city park and is it... [19]

Developer will constructed the improvements on the parkland within 1 year of the recording of the plat. As long as the Developer is dedicating parkland and making improvements in accordance with this Agreement, approval of individual plats within the development do not require contemporaneous dedication of park land development, payment of fee in lieu, or posting of a bond or other security, as the City is entitle to compel the required dedication through specific performance under this Agreement.

Commented [JLE53]: Too vague.

(iii) The City agrees that the Developer’s dedication of parkland and development of such land in accordance with this Agreement, as described above and illustrated and as shown notated on Exhibit F, is in lieu of the parkland dedication requirements in the Development Code and the City will not require any other parkland development or fees for the development of the Tract.

Commented [MM54]: We do not accept Exhibit F as it's currently designed.

Commented [MM55R54]: There is no detail or estimate of probably cost that would deem this as meeting all requirements.

(c) The City agrees that the Developer shall make provisions for public park and recreational facilities to serve the Tract to be financed, developed, and maintained by the District, to the extent authorized by state law. The Developer agrees that any such amenities may be dedicated to the District for ownership and operation and shall not be the responsibility of the City unless and until the City annexes the District, in which case the amenities owned by the District would become the property of the City. However, sites for stormwater detention systems shall be conveyed to and operated and maintained by the District. Notwithstanding the foregoing, prior to the first connection to the District’s water supply system within the Tract being made, the Developer shall enter into a contract with the HOA, or other entity acceptable to the City, but referred to as “HOA” in this subsection. Said contract shall provide that the land within the Tract shall have reserved stormwater detention capacity within the system and shall further provide that if the District is dissolved pursuant to any applicable law, the HOA, prior to the effective date of dissolution, shall accept maintenance responsibility for the landscaping of the stormwater detention system. If the City is annexing the District for a limited purpose, the District will continue to remain maintaining and operating the stormwater detention facilities. If the City annexes the District for full purposes and dissolves the District, the City will own, operate and maintain the stormwater detention system.

Formatted: Not Highlight

Commented [MM56]: If this is HOA maintained and considered private park amenities, we would like them to comply with the Credit for Private Park Amenities section of the park land dedication ordinance.

Commented [RM57R56]: I'm not sure what we are trying to achieve with this section and I think it is confusing the issue about the public park items. Should we delete or move elsewhere?

Formatted: Not Highlight

Formatted: Not Highlight

Commented [JLE58]: As population grows duplication not really a problem.

Formatted: Not Highlight

Formatted: Not Highlight

(d) Prior to commencement of design of the Recreational Center shown on Exhibit F, the City and the Developer agree to meet to discuss design elements of the Recreational Center to reduce unnecessary duplication of facilities at the City’s existing Recreational Center.

Commented [JLE59]: Can't we provide details now?

Commented [MM60R59]: Yes, 35,000-square-foot facility offering a weight room, cardio aera, fitness classes, full-court gymnasium, an indoor pool with water features, locker rooms, restrooms, outdoor plaza with concrete games, and rental rooms with a kitchen.

Commented [MM61R59]: Will this be conveyed to the City once it's annexed? If so, we may not want to absorb maintenance costs depending on the amenities included.

Commented [RM62R59]: Rec Center will be HOA, not conveyed to the City

Formatted: Not Highlight

Formatted: Not Highlight

Section 3.08 Fire Protection Services. The Developer shall dedicate at no cost to the City of Angleton, or the entity designated with responsibility for fire protection a site for a fire station within the Tract. This Fire Station Site will be no less than 1.5 acres in size, at a mutually agreeable location to the Developer and the City or fire protection entity will have off-site detention capacity available in the District’s detention facilities. The City will not provide compensation for the donation of the site but will upon request, execute an IRS Form 8283 acknowledging the fair market value of the donation.

Section 3.09 Other Site Dedication for City Facilities. The Developer will dedicate to the City (or to the MUD for further conveyance to the City) two sites, at locations to be mutually agreed upon for the following:

- (a) A parcel not less than 2 acres for a future water plant or elevated storage tank site.
- (b) A parcel not less ~~than~~ than .1-acre along SH 288 for a City of Angleton welcome sign.

The City will not provide compensation for the donation of the site but will upon request, execute an IRS Form 8283 acknowledging the fair market value of the donation.

Section 3.10 Liability of Ultimate Consumer. Ultimate Consumers shall have no liability for the failure of the Developer to comply with the terms of this Agreement and shall only be liable for their own failure to comply with the recorded declaration of restrictive covenants and land use restrictions applicable to the use of their tract or lot.

Section 3.11 City Ordinances Applicable in the Tract. As provided in Texas Local Government Code Section 212.172, the Developer and the City agree that the City's regulatory authority over the Tract will be as follow:

- (a) The Development Code as previously defined herein.
- (b) The City's Ordinances related to nuisance and noise, discharge of firearms, and use of fireworks, as amended.
- (c) Any other provisions of the City's Ordinances that are applicable by their terms and by law in the ETJ.

Section 3.12 Homeowners' Association. The Developer will create detailed Deed Restrictions and a HOA that will enforce the Deed Restrictions and be made legally responsible to maintain all common areas, private streets, recreation reserves and common amenities not otherwise dedicated to the public or the District. All land and facilities dedicated to the District shall be maintained by the District. In the event the HOA becomes insolvent or fails to maintain proper documentation and filings with the State of Texas as required and loses its authority to operate and transact business as a property owner's association in the State of Texas, then the City shall have the right to, but is not obligated to, enforce the Deed Restrictions and other matters as set forth in this Agreement and shall have all authority granted to the HOA by virtue of this document and related Property Owner's Association Bylaws, including, but not limited to, the authority to impose and collect maintenance fees and other necessary fees and assessments to further the upkeep of subdivision improvements as stipulated herein and as deemed necessary by the City.

(a) Maintenance of such open spaces shall be the responsibility of the District, subdivider, or the HOA.

(b) The articles of the HOA shall require homeowner assessments sufficient to meet the necessary annual cost of the improvements (but may account for developer subsidy in the first 10 years). Further, the articles shall provide that the HOA shall be required to expend money for the improvements and repairs to maintain all infrastructures under its jurisdiction. Further, the articles shall require that the HOA file with the City annual reports of maintenance and that the HOA shall be required to initiate all needed repairs in a timely manner.

Covenants, conditions, and restrictions for the HOA must be filed in each Phase.

Commented [RM63]: What if you don't need two acres? E.G. EST site doesn't need 2 acres. Do we have to amend this Agreement? Not sure why the language is a problem.

Commented [JLE64]: Adequate?

Commented [RM65]: Are we saying: Development Code + Modifications + any laws applicable on subject not contained in the Development Code?

Commented [RM66]: Have not see provisions like this before. Not necessarily opposed, but need to understand better City's

Commented [JLE67]: This provision inapplicable no assessments to be levied by city.

Section 3.13 Deed Restrictions Regarding Building Regulations. The Developer shall ensure the HOA and the deed restrictions over the Tract which will enforce the building regulations within the restrictive covenants for the Tract. Building regulations for the Tract shall be memorialized in a separately filed covenant that requires all single-family homes within the Tract to be developed in accordance with the following building regulations:

- (a) Primary exterior finishes are limited to brick and stone (natural, cast, or cultured-textured) and shall comprise of at least 100 percent of the front facades and 75% percent of the side facades. The area of the facade shall exclude eaves, fascia, and door and window openings.
- (b) Secondary exterior finishes shall include wood, ceramic tiles, and fiber cement siding. Use of architectural metals is limited to canopies, roof systems, and miscellaneous trim work and such use shall meet the durability standards of the development code.
- (c) The following building materials shall not be used on the exterior finish:
 - i. Vinyl siding, wood fiber hardboard siding, oriented strand board siding, plastic, or fiberglass panels.
 - ii. Smooth or untextured concrete surfaces.
 - iii. Exterior Insulated Finish Systems.
 - iv. Unfired or underfired clay, sand, or shale brick.
- (d) Front home elevation repetition restrictions.

Commented [JLE68]: 100%? This sentence does not make sense.

Formatted: Not Highlight

(e) Prior to the first construction of the first commercial building (not including schools and recreational facilities) within the Tract, the Developer shall submit a master commercial exterior building material and architectural guidelines to the City for review and comment. Thereafter, the Developer will include such architectural guidelines in its deed restrictions to be enforced by the Developer or HOA. Upon request, the HOA or Developer will certify to the City that each commercial building conforms to the Commercial Guidelines. The Commercial Guidelines will provide that commercial property developed along FM 521 will match or complement the external building materials of the schools constructed along FM 521 within the Tract.

Commented [JLE69]: ??

Commented [RM70R69]: This relates to not having the front of houses look similar to each other on the same street.

Formatted: Not Highlight

Commented [JLE71]: From Otis Spriggs: Commercial Architectural Design Pattern Guide: Developer I thought agreed that the Schools and all buildings would be consistent. This Guide I feel should be reviewed by the City and should remain valid even after annexation and when Zoning Control is afforded to the City.

Commented [RM72R71]: Commercial Restrictions will not change with annexation. They are deed restrictions.

Commented [JLE73]: Narrow this down? "no later than ___ years after effective date"?

Formatted: Highlight

Commented [RM74]: We have not agreed to give city the right to issue any kind of building permit, residential or otherwise.

Nothing herein shall be construed as requiring the Developer, or anyone else constructing within the Tract to apply for or obtain a building permit from the City.

Section 3.14 Signage. The community monument signage is illustrated on Exhibit H, and the City approves the style and materials associated for that sign. Within 45 days from the Effective Date, the Developer will submit to the City for approval a master signage plan for the Tract that includes community monument signs, wayfinding signs, commercial signs, community advertising signs on SH 288, and may include any other type of sign within the community that the City and the Developer wish to include. Once the sign master plan is approved, the City will not require a sign permit for any sign on the Tract that meets the requirements of the sign master plan, using similar design and materials shown in Exhibit H. Once approved, the Developer may construct any signs in

the approved master signage plan without a permit. Any other sign within the Tract will require a sign permit in accordance with the Development Code.

Section 3.15 Prohibition of Rental Communities. The Developer shall be prohibited from creating or allowing “rental communities” within the District. A “rental community” shall mean any phase of the development comprised of residential single-family houses, where 25.10% or more of the occupants of the houses are not owners but renters who rent owned by from corporate or business entities who own more than one house within said phase. Renters who rent from owners who are not corporations or business entities owning more than one house within the phase of the development are not included in said calculation. Developer shall enforce this prohibition by including it in the Deed Restrictions and restrictive covenants covering the development.

Formatted: Not Highlight

Section 3.16 Site Plan and Public Improvements. The following shall apply to all development in the Tract:

Formatted: Highlight

- (a) ~~The City Council shall approve~~ The parties agree that subdivisions sections of the development consisting of that have more than a minimum of 30 lots, and a maximum of but fewer than 150 lots, with a single entrance to a paved public street; provided that such a connection to an existing ~~(or being constructed contemporaneously)~~ paved public street is designed as a boulevard. ~~A boulevard shall be constructed~~ with a width sufficient on each driving lane for fire truck access and also contain, with an unbroken median length of 100 feet, unless left turn lanes and median breaks, designed to ~~ACM~~ City of Angleton LDC standards, are installed at ~~any~~ crossing streets. Connectivity to future development shall qualify as a second point of access.
- (b) Blocks shall generally not exceed a length of 1,400 feet except where property is adjacent to arterial streets, railways, waterways, drainage channels, detention ponds, parks, nature preserves, wetlands, pipelines, incompatible uses, or along overall development boundary.
- (c) Turnarounds are required for partial streets or half streets only if they exceed 150 feet in length.

Commented [RM75]: Need comments from engineer/land planner

Commented [JLE76]: Phases? Sections? What do we mean here? Undefined term.

Formatted: Strikethrough

Formatted: Strikethrough

Formatted: Strikethrough

Commented [RM77]: Proposed language "shall have" does not work in this context. We are describing situations that have a single entrance, not mandating those sections have only one entrance

Commented [JLE78]: What are ACM standards? Another undefined term. Presumably Angleton Construction Manual?

~~(d)~~ A site plan shall be required, and the Angleton Director of Building Services shall review and approve such site plan for any ~~SFA Single Family Attached residential development, or for any other type of development in the SFA district that will include:~~ 1) a private amenity or facility comprised of one or more buildings (such as a private recreation/swimming facility, clubhouse, etc.); 2) a golf course; and/or 3) a gated (restricted access) entrance into the development. In these instances, site plan submission and approval will be required for these elements (a site plan showing the entirety of the proposed subdivision is not required). Site plan submission and approval by the City of Angleton Development Services Director shall be in accordance with subsection 23-88, 28-63(d), but shall not require a public hearing as required by subsection 28-63(d)(5).

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Not Highlight

Commented [JLE79]: Wrong section; this is for special use permits.

Formatted: List Paragraph, Justified, Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

ARTICLE IV ROAD FACILITY CONSTRUCTION

Section 4.01 Road Facility Construction.

- (a) The Development Plan reflects proposed streets to be constructed by the Developer, that shall be constructed in accordance with all rules and regulations of all governmental entities having jurisdiction.
- (b) Neither the Developer nor the District will be required by the City to construct any roadway improvements outside of the boundaries of the District.
- (c) The Developer to comply with the requirements of Brazoria County and the City concerning improvements to any major thoroughfares as identified on the City or County Thoroughfare Plan. The required right-of-way dedication for such major thoroughfares shall occur at or before the time of the first plat submittal in the development.

At such time of the plat submittal for land adjacent to such major thoroughfares in the development, Developer shall construct in phases the related road improvements.

The Developer shall develop the public roadway system within the Tract as shown on **Exhibit I**, which reflects the layout of major roadways including thoroughfares and collectors. The City may only require the Developer to build the roads in accordance with the roadway detail and cross section shown on **Exhibit I-1**. Private streets for gated sections shall be allowed subject to the conditions described in the Development Code, Chapter 4, Section 113 (B). **I**

Section 4.02 SH288 Frontage Road Improvements/ and Future Angleton Town Center Development. The Developer and the City agree that the portion of the Property along SH 288 may be developed as a future mixed-use ~~town center development similar to~~ **Desford Town Center which includes** _____, which would. ~~Development of this future town center~~ requires frontage roads and access to SH 288. The Developer agrees it will not develop the portion of the Tract shown on **Exhibit D** (“Commercial Tract”) with residential development, without the City’s consent, for a period of up to four (4) years from the Start Date as follows:

- (a) The Developer will not develop the Commercial Tract as residential within the first 2 years from the Start Date if the Developer and the City secure an agreement with TxDOT and the County within that time for the development and funding of these frontage roads.
- (b) If such an agreement is approved within the 2-year period, the Developer will not develop the Commercial Tracts for residential if a contract for the construction of the frontage roads is awarded and notice to proceed issued within 2 years from the approval of the agreement described in subsection (a).

Developer shall pay for the preliminary engineering and financial plan necessary to initiate negotiations with the County and the Texas Department of Transportation (“TxDOT”). Developer shall dedicate any additional right of way for the frontage road that Developer owns without cost to TxDOT or the City. For purposes of this provision of the Agreement, “Start Date” means the date notice to proceed is issued for the first contract for public infrastructure within the Tract. **The Developer will provide a copy of this notice to proceed to the City within 7 days of its delivery to the contractor.**

Formatted: Highlight

Commented [RM80]: Will not agree to remove this. We need certainty on design standards for roadways.

Formatted: Highlight

Commented [RM81]: This is a bad reference. Where in the code governs private streets.

Commented [JLE82]: No clue what this means; let's define.

Commented [RM83R82]: Just removed it.

Formatted: Not Highlight

Commented [JLE84]: Too unclear and needs to be nailed down.

Commented [RM85R84]: I think this is a clear as it can be (you look at the date on the NTP letter), but if you want to propose alternative language, please do.

**ARTICLE V
ANNEXATION OF THE TRACT**

Section 5.01 Annexation by the City. The City agrees to annex the District into the City limits only in accordance with its consent to the creation of the District ~~of [redacted] herewith~~ and the SPA.

Section 5.02 Strategic Partnership Agreement. Section 43.0751, Tex. Local Gov't Code (the "Act"), provides for the negotiation and implementation of "strategic partnership agreements" between cities and municipal utility districts, whereby the continued existence of the district and various areas of governmental cooperation may be provided for by agreement. The Developer agrees to work with the District to enter into a strategic partnership agreement between the City and the District in a form similar to the form of agreement attached hereto as **Exhibit J**.

Section 5.03 Disclosures. Pursuant to Texas Local Government Code Section 212.172(b-1), the parties understand and agree as follows:

1. The Developer is not required to enter into this Agreement.
2. Upon execution of this Agreement, the City may annex the District pursuant to the provisions of Tex. Loc. Gov't Code Sec. 43.0751.
3. At the time of the Full Purpose Annexation Conversion Date, as defined in the Strategic Partnership Agreement attached hereto as **Exhibit J**, the land which is included within the District's boundaries shall be deemed to be annexed into the City limits without the need for further action by the City or City Council; or

Pursuant to Sec. 43.0751(h), upon request from the District, the City may terminate this Agreement and annex the District for limited or full purposes prior to the Full Purpose Annexation Conversion Date under the consent annexation procedures contained in the Texas Local Government Code Chapter 43 Subchapter C-1.

4. Upon the Full Purpose Annexation Conversion Date, the land contained in the District may be annexed without the Developer's further consent. However, the land may only be annexed prior to such date with the Developer's consent pursuant to Sec. 43.0751(h).
5. Pursuant to Tex. Loc. Gov't Code Sec. 212.172(i), the City waives immunity from suit for the purpose of adjudicating a claim for breach of this contract.

**ARTICLE VI
PROVISIONS FOR DEVELOPER**

Section 6.01 Waiver of Actions Under Private Real Property Rights Preservation Act. The Developer hereby waives its right, if any, to assert any causes of action against the City accruing under the Private Real Property Rights Preservation Act, Chapter 2007, Texas Government Code, that the City's execution or performance of this Agreement or any authorized amendment or supplements thereto may constitute, either now or in the future, a "Taking" of Developer's, Developer's grantee's, or a grantee's successor's "Private Real Property," as such terms are defined in

Commented [JLE86]: Execution date? No idea what this means.

the Act, provided, however, that this waiver does not apply to, and the Developer and Developer's grantees and successors do not waive their rights under the Act to assert a claim under the Act for any action taken by the City beyond the scope of this Agreement which otherwise may give rise to a cause of action under the Act.

Section 6.02 Developer's Right to Continue Development. The City and the Developer hereby agree that subject to any terms in this Agreement, the Developer may sell all or a portion of the Tract to one or more Persons who shall be bound by this Agreement and perform the obligations of Developer hereunder relative to the portion of the Tract acquired by such Persons.

Commented [JE87]: 7.04 wrong reference should have been 8.04 but make it broader to the agreement

Section 6.03 Uniform Treatment. Notwithstanding any provision herein to the contrary, neither the Developer nor the District shall be required to design or construct public infrastructure to a standard higher than a standard made applicable hereafter to another conservation and reclamation district or developer developing land within the City's extraterritorial jurisdiction, it being the intention and desire of the City that development of the Tract not be at a competitive disadvantage with other developments within the City's extraterritorial jurisdiction.

ARTICLE VII DEFAULT, NOTICE AND REMEDIES

Section 7.01 Event of Default. It is the intention of the parties to this Agreement that the Tract be developed in accordance with the terms of this Agreement and the Developer shall follow the development plans as set out in the Land Plan.

- (a) The parties acknowledge and agree that any material deviation from the Land Plan and the concepts of development contained therein and any material deviation by Developer from the material terms of this Agreement would frustrate the intent of this Agreement, and therefore, would be an "Event of Default" of this Agreement.
- (b) Each of the following events shall be an "Event of Default" by the Developer under this Agreement, once the applicable time to cure, if any, has expired:
 - i. The Developer shall fail to comply with any term, provision or covenant of this Agreement, and shall not cure such failure within ninety (90) calendar days after written notice thereof is given by the City to the Developer;
 - ii. The filing by Developer of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors, rights;
 - iii. The consent by Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;
 - iv. The entering of an order for relief against Developer or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Developer in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days;

Commented [RM88]: To Match City's 90 days below

- v. Any representation or warranty confirmed or made in this Agreement by the Developer was untrue as of the Effective Date.
- (c) Each of the following events shall be an Event of Default by the City under this Agreement:
- i. The City shall fail to comply in any material respect with any term, provision or covenant of this Agreement, other than the payment of money, and shall not cure such failure within ninety (90) calendar days after written notice thereof is given by the Developer to the City.
- (d) A material breach of this Agreement by Developer shall be deemed to have occurred in any of the following instances:
1. Developer's failure to develop the Tract in compliance with the approved Land Plan, as from time to time amended; or Developer's failure to secure the City's approval of any Substantial Change to the Land Plan; or
 2. Failure of the Developer to substantially comply with a provision of this Agreement or a City ordinance applicable to the Tract.
- (e) The parties acknowledge and agree that any substantial deviation by the City from the material terms of this Agreement would frustrate the intent of this Agreement and, therefore, would be a material breach of this Agreement. A material breach of this Agreement by the City shall be deemed to have occurred in any of the following instances:
1. The imposition or attempted imposition of any moratorium on building or growth on the Tract prohibited by State law or this Agreement;
 2. The imposition of a requirement to provide regionalization or oversizing of public utilities through some method substantially or materially different than the plan set forth in this Agreement;
 3. An attempt by the City to annex, in whole or in part, the property within the District prior to the occurrence of the conditions set forth in Article V of this Agreement;
 4. An attempt by the City to enforce any City ordinance within the Tract that is inconsistent with the terms and conditions of this Agreement;
 5. An attempt by the City to require modification or amendment of the Land Plan where it complies with the requirements of this Agreement; or
 6. An attempt by the City to unreasonably withhold approval of a plat of land within the Tract that complies with the requirements of this Agreement.

In the event that a party to this Agreement believes that another party has, by act or omission, committed a material breach of this Agreement, the provisions of this Article shall provide the remedies for such default.

Section 7.02 Notice of Developer's Default.

- (a) The City shall notify the Developer in writing of an alleged failure by the Developer to comply with a provision of this Agreement, which notice shall specify the alleged failure with reasonable particularity. The alleged defaulting Developer shall, within thirty (30) days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure or, in a written response to the City, either present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.
- (b) The City shall determine (i) whether a failure to comply with a provision has occurred; (ii) whether such failure is excusable; and (iii) whether such failure has been cured or will be cured by the alleged defaulting Developer. The alleged defaulting Developer shall make available to the City, if requested, any records, documents or other information necessary to make the determination.
- (c) In the event that the City determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the City, or that such failure is excusable, such determination shall conclude the investigation.
- (d) If the City determines that a failure to comply with a provision has occurred and that such failure is not excusable and has not been or will not be cured by the alleged defaulting Developer in a manner and in accordance with a schedule reasonably satisfactory to the City, then the City Council may proceed to mediation under the Agreement and subsequently exercise any other remedy.

Commented [JLE89]: Not limiting remedy to mediation

Section 7.03 Notice of City's Default.

- (a) The Developer shall notify the City in writing of an alleged failure by the City to comply with a provision of this Agreement, which notice shall specify the alleged failure with reasonable particularity. The City shall, within thirty (30) days after receipt of such notice or such longer period of time as the Developer may specify in such notice, either cure such alleged failure or, in a written response to the Developer, either present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.
- (b) The Developer shall determine (i) whether a failure to comply with a provision has occurred; (ii) whether such failure is excusable; and (iii) whether such failure has been cured or will be cured by the City. The City shall make available to the Developer, if requested, any records, documents or other information necessary to make the determination.
- (c) In the event that the Developer determines that such failure has not occurred or that such failure either has been or will be cured in a manner and in accordance with a

schedule reasonably satisfactory to the Developer, or that such failure is excusable, such determination shall conclude the investigation.

- (d) If the Developer determines that a failure to comply with a provision has occurred and that such failure is not excusable and has not been or will not be cured by the City in a manner and in accordance with a schedule reasonably satisfactory to the Developer, then the Developer may proceed to mediation under this Agreement and subsequently exercise the applicable remedy.

Section 7.04 Mediation. In the event the parties to this Agreement cannot, within a reasonable time, resolve their dispute pursuant to the procedures described in this Agreement, the parties agree prior to the filing of any legal action to submit the disputed issue to non-binding mediation. The parties shall participate in good faith, but in no event shall they be obligated to pursue mediation that does not resolve the issue within seven (7) days after the mediation is initiated or thirty (30) days after mediation is requested. The parties participating in the mediation shall share the costs of the mediation equally.

Section 7.05 Remedies.

City's Remedies.

With respect to the occurrence of an Event of Default the City may pursue the following remedies:

The City may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, damages, and termination of this Agreement. The City shall not terminate this Agreement unless it delivers to the Developer a second notice expressly providing that the City will terminate within thirty (30) additional days. Termination or non-termination of this Agreement upon a Developer Event of Default shall not prevent the City from suing the Developer for specific performance, damages, actual damages, excluding punitive, special and consequential damages, injunctive relief or other available remedies with respect to obligations that expressly survive termination. In the event the Developer fails to pay any of the expenses or amounts or perform any obligation specified in this Agreement, then to the extent such failure constitutes an Event of Default hereunder, the City may, but shall not be obligated to do so, pay any such amount or perform any such obligations and the amount so paid and the reasonable out of pocket costs incurred by the City in said performance shall be due and payable by the Developer to the City within thirty (30) days after the Developer's receipt of an itemized list of such costs.

No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity.

The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

Developer's Remedies.

Upon the occurrence of any Event of Default by the City, the Developer may pursue any legal remedy or remedies specifically including damages as set forth below, and termination of this Agreement; provided, however, that the Developer shall have no right to terminate this Agreement

unless the Developer delivers to the City a second notice which expressly provides that the Developer will terminate within thirty (30) days if the default is not addressed as herein provided.

No remedy herein conferred or reserved is intended to be inclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing.

The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

- (a) In the event of a determination by the City that the Developer has committed a material breach of this Agreement that is not resolved in mediation, the City may, subject to the provisions of this Agreement, file suit in a court of competent jurisdiction in Brazoria County, Texas, and seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act and or termination of this Agreement as to the breaching Developer.
- (b) In the event of a determination by a Developer that the City has committed a material breach of this Agreement that is not resolved in mediation, the Developer may file suit in a court of competent jurisdiction in Brazoria County, Texas, and seek any relief available, at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act to enforce compliance with or termination of this Agreement.

ARTICLE VIII BINDING AGREEMENT, TERM, AMENDMENT, AND ASSIGNMENT

Section 8.01 Beneficiaries. This Agreement shall bind and inure to the benefit of the City and the Developer, their successors and assigns. In addition to the City and the Developer, and its respective successors or assigns, shall also be deemed beneficiaries to this Agreement. The terms of this Agreement shall constitute covenants running with the land comprising the Tract and shall be binding on all future developers and owners of any portion of the Tract, other than Ultimate Consumers. Notwithstanding the foregoing statement, an Ultimate Consumer shall be bound by the Developer's submittal of the annexation petition required by Article V, to the extent allowed by law, and shall be bound by the Developer's waiver of rights described in Section 6.01. The District and any business entity that is constructing improvements within the District are third-party beneficiaries of this Agreement.

Section 8.02 Term. This Agreement shall bind the parties and continue for thirty (30) years from the Effective Date of this Agreement (the "Initial Term"), unless terminated on an earlier date pursuant to other provisions or by express written agreement executed by the City and Developer. Upon the expiration of the Initial Term, this Agreement may be extended, at the Developer's request and with City Council approval, for successive one-year periods up to a maximum total term of forty-five (45) years. The provisions of Articles II and III of this Agreement are intended to survive the termination of this Agreement.

Section 8.03 Termination. In the event this Agreement is terminated as provided in this Agreement or is terminated pursuant to other provisions, or is terminated by mutual agreement of the

Commented [RM90]: Remedies should be the same as City's?

Commented [RM91R90]: Not sure the intent here, but Developer has to have the right to specific performance.

parties, the parties shall promptly execute and file of record, in the County Clerk Official Records of Brazoria County, a document confirming the termination of this Agreement, and such other documents as may be appropriate to reflect the basis upon which such termination occurred.

(a) **Section 8.04 Assignment or Sale.** If the Developer proposes to sell substantially all of the Tract, or all of the Tract owned at such time by the Developer, the Developer shall provide notice of such sale to the City, within 30 days after the effective date of any such sale, assignment, transfer, or other conveyance, the Developer must provide written notice of same to the City;

(b) the notice must describe the extent to which any rights or benefits under this Agreement have been sold, assigned, transferred, or otherwise conveyed;

(c) the notice must state the name, mailing address, and telephone contact information of the person(s) acquiring any rights or benefits as a result of any such sale, assignment, transfer, or other conveyance;

(d) the notice must be signed by a duly authorized person representing the Developer and a duly authorized representative of the person that will acquire any rights or benefits as a result of the sale, assignment transfer or other conveyance.

. Any person who acquires the Tract or any portion of the Tract, except for an Ultimate Consumer shall take the Tract subject to the terms of this Agreement. The terms of this Agreement are binding upon Developer, its successors and assigns, as provided in Section 8.01 above. Provided, however, the Developer's assignee shall not acquire the rights and obligations of the Developer unless the Developer and assignee enter into a written assignment agreement in the form attached as **Exhibit K**. Developer shall notify any purchaser of the Tract or any portion thereof of this Agreement and its application to the development of the Tract.

Section 8.05 Transfer of Control of Developer. As set forth in Section 8.04, the Developer shall promptly notify the City of any substantial change in ownership or control of that Developer. As used herein, the words "substantial change in ownership or control" shall mean a change of more than 49% of the stock or equitable ownership of a Developer. Developer shall notify any purchaser of the Tract or any portion thereof of this Agreement and its application to the development of the Tract.

ARTICLE IX MISCELLANEOUS PROVISIONS

Section 9.01 Notice. Any Notice, or Communication or other communications ("Notice") required to be given by one party to another by this Agreement shall be in writing addressed to the party to be notified at the address set forth below for such party, (a) by delivering the same by hand delivery, (b) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; (c) by depositing the same with Federal Express or another nationally recognized courier service guaranteeing "next day delivery," addressed to the party to be notified, or (d) by sending the same by electronic transmittal with confirming copy sent by mail. Notice deposited in the United States mail in the manner herein above described shall be deemed effective from and after three (3) days after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be

Commented [JE92]: Noone faxes anymore.

notified. For the purposes of notice, the addresses of the parties, until changed as provided below, shall be as follows:

City: City of Angleton
121 S Velasco
Angleton, TX 77515
Attn: Chris Whittaker, City Manager
Email: cwhittaker@angleton.tx.us

Developers: ANCHOR HOLDINGS MP, LLC
Address: 101 Parklane Blvd., Suite 102
Address: Sugar Land, Texas 77478
Attn: Mark Janik
Email: mark@ashtongraydev.com

WILDROCK HOLDINGS, LLC
Address: 101 Parklane Blvd., Suite 102
Address: Sugar Land, Texas 77478
Attn: Mark Janik
Email: mark@ashtongraydev.com

With copy to: Richard Muller
202 Century Square Blvd Sugar Land, TX 77478
Phone: (281) 500-6050
Email: richard@mullerlawgroup.com

Designated Mortgagee: Name of Entity: Simmons Bank
Address: P. O. Box 7009
Address: Pine Bluff, AR 71611

With copy to: Anchor Holdings MP, LLC
Address: 101 Parklane Blvd., Suite 102
Address: Sugar Land, Texas 77478
Attn: Mark Janik
Email: mark@ashtongraydev.com

The parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least five (5) days written notice to the other parties. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

Section 9.02 Time. Time is of the essence in all things pertaining to the performance of this Agreement.

Section 9.03 Severability. If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties

hereto that the remainder of this Agreement shall not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid, or enforceable provision as is possible.

Section 9.04 Waiver. Any failure by a party hereto to insist upon strict performance by the other party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

Section 9.05 Applicable Law and Venue. The construction and validity of this Agreement shall be governed by the laws of the State of Texas without regard to conflicts of law principles. Venue shall be in Brazoria County, Texas.

Section 9.06 Reservation of Rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws.

Section 9.07 Further Documents. The parties agree that at any time after execution of this Agreement, they will, upon request of another party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request in order to effectuate the terms of this Agreement.

Section 9.08 Incorporation of Exhibits and Other Documents by Reference. All Exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

Section 9.09 Effect of State and Federal Laws. Notwithstanding any other provision of this Agreement, Developer, its successors or assigns, shall comply with all applicable statutes or regulations of the United States and the State of Texas

Section 9.10 Authority for Execution. The City hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the City Charter, City ordinances and the laws of the State of Texas. The Developer hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreements of such entities.

Representations of City

- (i) This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the City and constitute legal, valid and binding obligations enforceable against the City in accordance with the terms subject to principles of governmental immunity and the enforcement of equitable rights. The consummation by the City of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any of the terms of any agreement or instrument to which the City is a Party, or by which the City is bound, or of any provision of any Applicable Law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

Representations of Developer

The Developer makes the following representations, warranties and covenants for the benefit of the City:

- (ii) Due Organization and Ownership. The Developer is a Texas Limited Liability Company validly existing under the laws of the State of Texas and is duly qualified to do business in the State of Texas; and that the person executing this Agreement on behalf of it is authorized to enter into this Agreement.
- (iii) Due Authority: No Conflict. The Developer has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the Developer and constitute the Developer's legal, valid and binding obligations enforceable against the Developer in accordance with their terms. The consummation by the Developer of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any term or provision of the organizational documents of the Developer, or any of the terms of any agreement or instrument to which the Developer is a Party, or by which the Developer is bound, or of any provision of any Applicable Law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.
- (iv) Consents. No consent, approval, order or authorization of, or declaration or filing with any governmental authority is required on the part of the Developer in connection with the execution and delivery of this Agreement or for the performance of the transactions herein contemplated by the respective Parties hereto.
- (v) Litigation/Proceedings. To the best knowledge of the Developer, after reasonable inquiry, there are no pending or, to the best knowledge of the Developer, threatened, judicial, municipal or administrative proceedings, consent decree or, judgments which might affect the Developer's ability to consummate the transaction contemplated hereby, nor is there a preliminary or permanent injunction or other order, decree, or ruling issued by a governmental entity, and there is no statute, rule, regulation, or executive order promulgated or enacted by a governmental entity, that is in effect which restrains, enjoins, prohibits, or otherwise makes illegal the consummation of the transactions contemplated by this Agreement.
- (vi) Legal Proceedings. There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of the Developer, threatened against or affecting the Developer, any of the principals of the Developer and any key person or their respective Affiliates and representatives which the outcome of which would (a) adversely affect the validity or enforceability of, or the authority or ability of the Developer under, this Agreement to perform its obligations under this Agreement, or (b) have a material and adverse effect on

the consolidated financial condition or results of operations of the Developer or on the ability of the Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted.

The City and Developer both represent that they have the authority to enter into this Agreement and to perform the obligations of the respective Parties.

Section 9.11 Anti-Boycott Verifications. The Developer and Landowner hereby verifies that they and their parent companies, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer and Landowner understand 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Developer or Landowner and exists to make a profit.

Section 9.12 Iran, Sudan, and Foreign Terrorist Organizations. The Developer and Landowner represent that neither it nor any of its parent companies, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>;

<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>;

<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

or

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Developer and each of its parent companies, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Developer and Landowner understand "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Developer and Landowner and exists to make a profit.

[EXECUTION PAGES FOLLOW]

Draft ~~3-28-23~~ 3/18/23

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the ____ day of _____, 2023.

CITY OF ANGLETON, TEXAS

By: _____
Jason Perez, Mayor

ATTEST:

By: _____
Michelle Perez, City Secretary

APPROVED:

City Attorney
Randle Law Office, Ltd., L.L.P.

AGREED AND ACCEPTED as of _____, 2023.

ANCHOR HOLDINGS MP, LLC
a Texas limited liability company

By: SVAG Investments, LLC,
a Texas limited liability company

By: SVAG Asset Management, LLC,
a Texas limited liability company,
its Manager

By: _____
Sudharshan Vembutty, Manager

WILDROCK HOLDINGS, LLC
a Texas limited liability company

By: SVAG Investments, LLC, a Texas
limited liability company, its manager

By: SVAG Asset Management, LLC,
a Texas limited liability company, its
manager

By: _____
Sudharshan Vembutty, Manager

Page 9: [1] Commented [OS31R30] Otis Spriggs 2/22/2023 1:22:00 PM

D.S. to confirm with finance any large scale development fees paid to date; other invoice

Page 9: [2] Commented [JLE32] Judith Lamoreux ElMasri 4/5/2023 11:58:00 AM

Developer needs to agree to comply with all components of 23-36 and 30-5.

Page 9: [3] Commented [RM33R32] Richard Muller 4/16/2023 2:35:00 PM

I don't understand this comment as it relates to Section 23-36. JEL and RM to discuss. I don't see Section 30-5 on Municode, please provide.

Page 9: [4] Commented [RM34] Richard Muller 3/2/2023 11:52:00 AM

We are looking for certainty here. Whatever the requirement is today, lets add to the exhibit. Same comment about limit to CPI or some other agreed upon metric

Page 9: [5] Commented [JE35] Judith ElMasri 2/23/2023 8:50:00 AM

How are hook ups paid for? Homebuilder pay MUD?

Page 9: [6] Commented [JLE38] Judith Lamoreux ElMasri 1/16/2023 5:14:00 PM

Add reference to whatever paragraph park land or park fees are described.

Page 9: [7] Commented [RM39] Richard Muller 3/2/2023 11:57:00 AM

As you will recall, we all discussed and agreed that the City's parkland dedication regulations are not well suited for a large MPC that will have regional parks not directly tied to each plat. This was what we discussed as an alternative procedure.

Page 9: [8] Commented [MM40] Megan Mainer 2/21/2023 4:46:00 PM

When considering dedicating land for a park, the developer shall schedule a pre-development meeting to evaluate the suitability of the land for park land dedication or the necessary fees in lieu of land dedication.

Page 9: [9] Commented [MM41R40] Megan Mainer 2/21/2023 4:46:00 PM

Must meet all minimum requirements

Page 9: [10] Commented [MM42] Megan Mainer 2/21/2023 4:50:00 PM

This comment concerns me. Based on Exhibit F, there are various pocket parks with sidewalk connectivity. I'd like to know if sidewalks are required as part of the LDC in another section because that amenity should not count towards their financial responsibility if sidewalks are required along a road for instance. Additionally, if they are proposing a "trail" they will need to comply with our park standards manual which is 10' primary trail.

Page 9: [11] Commented [MM43R42] Megan Mainer 2/21/2023 4:51:00 PM

Exhibit F doesn't seem to convey a parcel that meets the minimum of 5 acres other than the large area which I believe are wetlands and we don't want to accept that as public park land.

Page 9: [12] Commented [JLE44] Judith Lamoreux ElMasri 1/16/2023 5:15:00 PM

Community Park System needs to be detailed and specific. City needs to explicitly tell Developer what it wants.

Page 9: [13] Commented [MM45R44] Megan Mainer 2/21/2023 4:51:00 PM

- a) Prior to issuance of a development permit and final plat recordation, civil plans prepared by a Texas Licensed Landscape Architect, or a properly licensed design specialist approved by the City including park land dedication and park improvement specifications, must be reviewed and approved by the City Engineer, Parks and Recreation Director, Planning and Zoning Commission, and City Council.

Page 9: [14] Commented [JLE46] Judith Lamoreux ElMasri 1/16/2023 5:16:00 PM

What does this mean? Phases? Needs to be detailed and spelled out.

Page 9: [15] Commented [MM47R46] Megan Mainer 2/21/2023 4:43:00 PM

1. Agreed, per the ordinance, For a phased development the entire park shall be platted concurrently with the plat of the first phase of the development. If it is intended to phase the park dedication or park improvements to coincide with the development phasing, the developer may provide the City with financial security against the future dedication by providing a bond, irrevocable letter of credit, or other alternative financial guarantee such as a cash deposit in the amount equal to the number of acres of park land required, and in a form acceptable to the City. The amount of the financial guarantee shall be the amount of the fee in lieu of land dedication as set forth in Appendix "A" plus an additional amount equivalent to ten percent (10%) contingency. The financial guarantee will be released to the developer, without interest, when the required park land has been properly dedicated. The developer or depositor must request such refund within one year of entitlement, in writing, or such right shall be barred and the financial guarantee will not be refunded. If the full land dedication does not occur within five years of completion of the initial phase of the overall development, the financial guarantee (escrowed funds) plus interest shall be forfeited by the depositor or developer, and the funds shall become the property of the City.

Page 9: [16] Commented [MM49] Megan Mainer 2/21/2023 4:55:00 PM

Where, I'm not seeing this in their plan. Also, are they planning on conveying facilities as well? If so, that's an added maintenance cost the city may not want to absorb.

Page 9: [17] Commented [JLE50] Judith Lamoreux ElMasri 1/16/2023 5:18:00 PM

Where is the quantification/itemization; again City provide detail.

Page 9: [18] Commented [MM51] Megan Mainer 2/21/2023 4:57:00 PM

Where are they getting this number? An independent appraisal of the cost per acre of land has to be addressed to come up with this figure. I have not seen an independent appraisal; they shouldn't be the one hiring a firm to complete an appraisal.

Page 9: [19] Commented [JLE52] Judith Lamoreux ElMasri 4/5/2023 1:50:00 PM

What 5 acre city park and is it set out on the Exhibit F?