DEVELOPMENT AGREEMENT BETWEEN
THE **CITY OF ANGLETON, TEXAS AND BOBBY A. WEAVER**

This Development Agreement (this "Agreement") is made and entered into by the City of Angleton, Texas (the "City"), a home-rule municipality in Brazoria County, Texas, acting by and through its governing body, the City Council of the City of Angleton, Texas, and Bobby A. Weaver, an Individual owner and developer, ("Developer").

WHEREAS, Developer is the owner of certain Property containing approximately 4.8764 acres of land located within the corporate boundaries of the City, and more particularly describedin **Exhibit "A"** attached and incorporated herein by reference (the "Property"); and

WHEREAS, Developer plans to develop the Property into a residential subdivision to be known as Anderson Place, which subdivision will consist of 16 (sixteen) lots (the "Project") as depicted on the Final Plat of Anderson Place attached hereto as **Exhibit "B"** and incorporated herein by reference (the "Plat"); and

WHEREAS, the Property is zoned SF-7.2 district; and

WHEREAS, the Developer, and the City desire to enter into this Agreement and it is the intent of this Agreement to establish certain restrictions and commitments imposed and made in connection with the development of the Property, the City and the Developer are proceeding in reliance on the enforceability of this Agreement; and

WHEREAS, the City is authorized by the Constitution and laws of the State of Texas to enter into this Agreement, including Section 212.172 of the Texas Local Government Code,

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

Definitions

The terms *"Agreement", "City", "Developer", "Anderson Place", "Project"* shall have the meanings provided in the recitals above, however "Property" is further defined as a residential subdivision which will consist of ten (10) lots developed on 4.8764 acres of land described in **Exhibit "A".** Except as may be otherwise defined, or the context clearly requires otherwise, the following terms and phrases used in this Agreement shall have the meanings as follows:

Capacity Acquisition Fee means the fee that is a one-time charge to Developer by the City and is a fee based on the roughly proportional fair share guidelines and standards set forth in Ordinance Number 20190528-021 adopting a Capacity Acquisition Fee, and LDC Sec. 23-32 per Equivalent Single-family Connection ("ESFC") platted to cover the capital costs incurred by the City and asrelated to the provision of water supply and sewage treatment.

Development Ordinances means those regulations adopted by ordinance by the City of Angleton, in Chapter 23 *Land Development Code* ("LDC"), and Chapter 28 *Zoning,* Code of Ordinances of the City of Angleton, Texas, and not including any future amendments or changes, except future amendments or changes exempted from Chapter 245, Local Government Code, Section 245.004; provided, however, that Developer may elect to have such future amendments or changes apply to the development of the Property.

HOA means the homeowners association(s) for the homes within the Property.

Utility Improvements means all infrastructure, public developments including but not limited to water, wastewater drainage system, and sanitary sewer utilities for the Project.

Effective Date means the date of mutual execution by all necessary parties on this Agreement.

ARTICLE I

Covenants

1.01 **Permitted Uses.** Uses in the Project shall be those permitted by the SF-7.2 zoning district or its successors.

1.02 **Height Restrictions.** No dwellings built at the Project shall exceed a maximum height of thirty-five feet (35') or be more than two and one-half (2.5) stories tall.

1.03 **Lot Dimensions.** The lots shall be constructed in accordance with and shall be of the size depicted on the Plat.

1.04 **Compliance with Additional City Ordinances.** In addition to those ordinances applicable to the Project by virtue of its zoning as a Section 28-45 SF-7.2, and as otherwise set forth in the Ordinance, the Project shall also comply with the Development Ordinances.

1.05 **Fees-in-Lieu.** The Developer agrees to pay City fees in lieu of dedication of park acres in the amount of five thousand seven hundred fifty and No/100 Dollars ($5,750.00). The fee is calculated at the rate of ten residential lots at Five Hundred Seventy-Five and No/100 Dollars ($575.00) per lot for all ten (10) residential lots prior to recording of any final plat of the Project, as set forth in Sec. 23-20 of the Angleton Code of Ordinances.

1.06 **CAF Fees.** Developer agrees to pay CAF fees. The CAF fees shall be in the amount set forth in the Capacity Acquisition Fee Memo attached hereto as **Exhibit "C" CAF Fees.** Developer agrees to pay CAF fees. The CAF fees shall be in the amount set forth in the Capacity Acquisition Fee Memo attached hereto as **Exhibit "C"**. Out of the 18 lots on the Recorded "Final Plat Anderson Place Subdivision" 4 Lots had previously been platted as show in **Exhibit "E"** Pecan Park Terrace in June 1962 and there are two existing homes located at 1015 S. Anderson Street and 1055 S. Anderson Streets. The Capacity Acquisition Fee will be calculated for 12 Lots at a rate of $2,890.05 per lot for a total of $$34,680.60. City and the Developer agree to a credit to the CAF fee for the amount shown on **Exhibit "D"**. The credit is for replacement of an existing 12" sanitary sewer main located on the property that is utilized for regional service. The credit amount is for $28,350.00 The total due CAF fee collected before a building permit will be issued is $6,330.60.

1.07 Fencing. Developer is not required to install perimeter fencing within this development.. All fencing installed on individual lots shall remain in accordance with Chapter 28, Zoning, Section 2-104, Fencing, walls and screening requirements.

1.08 **Heritage Tree.** The Heritage Plan as shown on Exhibit "F" shall remain in

force as approved. All 16 lots shall comply with the approved Heritage Tree Preservation Plan with required minimum lot setback requirements.

1.09 **Conflict.** Notwithstanding the foregoing provisions of this section: (i) in the event of a conflict with Agreement and the Development Ordinances, the Development Ordinances shall prevail.

1.10 **Homeowner's Association.** Developer will not a create a Homeowner's Association, but will file and record Exhibit G: Declaration of Covenants, Conditions and Restrictions for Anderson Place Subdivision and will enforce the restrictions set forth herein.

1.11 **Design Standards for Public Improvements.** The Developer shall provide streets, drainage, utilities, parks and recreational facilities according to the Development Plan at Developer's sole cost. All facilities shall comply with the City's design criteria set forth in the Development Ordinances for such streets, paving, drainage, water, and wastewater,; and, shall be subject to the approval of the City Engineer, Planning Commission and City Council as provided in the Development Ordinance.

1.12 **Notification.** The City shall notify the Developer in writing of any alleged failure by the Developer to comply with a provision of this Agreement, which notice shall specify the alleged failure with reasonable particularity. The 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.

ARTICLE II

PROVISIONS FOR DESIGNATED MORTGAGEE

2.01 Notice to Designated Mortgagee. Pursuant to Section 4.03, any Designated Mortgagee shall be entitled to simultaneous notice any time that a provision of this Agreement requires notice to Developer.

2.02 Right of Designated Mortgagee to Cure Default. Any Designated Mortgagee shall have the right, but not the obligation, to cure any default in accordance with the provisions of Section 2.03 and Article II.

2.03 Designated Mortgagee. At any time after execution and recordation in the Real Property Records of Brazoria County, Texas, of any mortgage, deed of trust, or security agreement encumbering the Tract or any portion thereof, the Developer (a) shall notify the City

in writing that the mortgage, deed of trust, or security agreement has been given and executed by the Developer, and (b) may change the Developer's address for notice pursuant to Section 5.05 to include the address of the Designated Mortgagee to which it desires copies of notice to be provided.

(a) At such time as a full and final release of any such lien is filed in the Real Property Records of Brazoria County, Texas, and the Developer gives notice of such release to the City as provided herein, all rights and obligations of the City with respect to the Designated Mortgagee under this Agreement shall terminate.

(b) The City agrees that it may not exercise any remedies of default hereunder unless and until the Designated Mortgagee has been given thirty (30) days written notice and opportunity to cure (or commences to cure and thereafter continues in good faith and with due diligence to complete the cure) the default complained of. Whenever consent is required to amend a particular provision of this Agreement or to terminate this Agreement, the City and the Developer agree that this Agreement may not be so amended or terminated without the consent of such Designated Mortgagee; provided, however, consent of a Designated Mortgagee shall only be required to the extent the lands mortgaged to such Designated Mortgagee would be affected by such amendment or termination.

(c) Upon foreclosure (or deed in lieu of foreclosure) by a Designated Mortgagee of its security instrument executed by the Developer encumbering the Tract, such Designated Mortgagee (and its affiliates) and their successors and assigns shall not be liable under this Agreement for any defaults that are in existence at the time of such foreclosure (or deed in lieu of foreclosure). Furthermore, so long as such Designated Mortgagee (or its affiliates) is only maintaining the Tract and marketing it for sale and is not actively involved in the development of the Tract, such Designated Mortgagee (and its affiliates) shall not be liable under this Agreement. Upon foreclosure (or deed in lieu of foreclosure) by a Designated Mortgagee, any development of the property shall be in accordance with this Agreement.

(d) If the Designated Mortgagee or any of its affiliates and their respective successors and assigns, undertakes development activity, the Designated Mortgagee shall be bound by the terms of this Agreement. However, under no circumstances shall such Designated Mortgagee ever have liability for matters arising either prior to, or subsequent to, its actual period of ownership of the Tract, or a portion thereof, acquired through foreclosure (or deed in lieu of foreclosure).

ARTICLE III

PROVISIONS FOR DEVELOPER

3.01 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 (the "Act"), 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 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.

3.02 Developer's Right to Continue Development. The City and the Developer hereby agree that, subject to Section 5.04 of 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, provided that the Developer shall retain ultimate responsibility for complying with the terms of this Agreement unless the City agrees in writing that the purchaser shall be responsible for and perform the Developer's obligations, which such consent shall not be unreasonably delayed, conditioned, or withheld.

ARTICLE IV

MATERIAL BREACH, NOTICE AND REMEDIES

4.01 Material Breach of Agreement. It is the intention of the parties to this Agreementthat the Property be developed in accordance with the terms of this Agreement.

(a) The parties acknowledge and agree that any material deviation 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 Developer shall be deemed to have occurred upon the failure of the Developer to substantially comply with a provision of this Agreement or the Development Ordinances applicable to the Property.

(b) The parties agree that nothing in this Agreement can compel the Developer to proceed or continue to develop the Property within any time period.

(c) 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 bedeemed to have occurred in any of the following instances:

1. The imposition or attempted imposition of any moratorium on building or growth on the Property prohibited by State law or that treats development authorized under this Agreement differently than other development occurring throughout the City's regulatory jurisdiction;

2. The imposition of a requirement to provide regionalization or oversizing of public utilities through some method substantially or materially different than as set forth in this Agreement;

3. An attempt by the City to enforce any City ordinance within the Property that is inconsistent with the terms and conditions of this Agreement, unless such ordinance is required by state or federal law; or

4. An attempt by the City to unreasonably withhold approval of a plat of landwithin the Property 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 Agreement shall provide the remedies for such default.

4.02 Notice of Developer's Default

(a) The City shall notify the Developer and any mortgagee of all or any part of the Property designated by Developer to receive such notices (a "Designated Mortgagee") 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 exercise good faith to 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 or a Designated Mortgagee. 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 or a Designated Mortgagee in a manner and in accordance with a schedule reasonably satisfactory to the City, then the City Council may proceed to mediation under Section 4.04 and subsequently exercise the applicable remedy under Section 4.05.

4.03 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 exercise good faith to 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 Section 4.04 and subsequently exercise the applicable remedy under Section 4.05.

4.04 **Mediation.** In the event the parties to this Agreement cannot, within a reasonable time, resolve their dispute pursuant to the procedures described in Sections 4.02 or 4.03, the parties agree 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 fourteen (14) days after the mediation is initiated or thirty (30) days after mediation is requested, whichever is later. The parties participating in the mediation shall share the costs of the mediation equally.

4.05 Remedies.

(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 pursuant to Section 4.04, the City 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 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 pursuant to Section 4.04, the Developer may, without expanding City's liability beyond the statutory limits of the Texas Tort Claims Act or under other law; and, without the City waiving or demising its immunity beyond the scope of that allowed by the Texas Tort Claims Act or other law, and without the City ever being liable for Developer's consequential, special, indirect or incidental losses or damages, file suit in a court of competent jurisdiction in Brazoria County, Texas, for the limited remedy of seeking City's specific performance of its obligations under this Agreement.

ARTICLE V
ADDITIONAL TERMS

5.01 This Agreement shall be effective upon the mutual execution of this Agreement (the "Effective Date") and shall terminate 15 years from the date of execution.

5.02 Any person who acquires the Property or any portion of the Property shall take the Property subject to the terms of this Agreement. The terms of this Agreement are binding upon Developer, its successors and assigns, as provided herein; provided, however, notwithstanding anything to the contrary herein, the Developer's assignee shall not acquire the rights and obligations of Developer unless Developer expressly states in the deed of conveyance or by separate instrument placed of record that said assign is to become the Developer for purposes of this Agreement and notice is sent by the Developer to the City. Any contract, agreement to sell land, or instrument of conveyance

of land which is a part of the Property shall recite and incorporate this Agreement as binding on any purchaser or assignee. Notwithstanding the above if developer sells the lots to its own or other builders the subject and terms of this agreement shall automatically pass with the lot to said builder who shall retain the rights and obligations of this agreement which shall be set out in a separate recorded document.

5.03 This Agreement may be amended only upon written amendment executed by the City and Developer. In the event Developer sells any portion of the Property, the Developer may assign to such purchaser the right to amend this Agreement as to such purchased property by written assignment and notice thereof to the City. Such assignment shall not grant such purchaser the authority to amend this Agreement as to any other portions of the Property.

5.04 The Developer shall notify the City within fifteen (15) business days after any substantial change in ownership or control of the 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 the Developer. Any contract or agreement for the sale, transfer, or assignment of control or ownership of the Developer shall recite and incorporate this Agreement as binding on any purchaser, transferee, or assignee.

5.05 The parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications ("Notice") required to be given by one party to another by this Agreement shall be given in writing addressed to the party to be notified at the address set forth below for such party, (a) by delivering the same in person, (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 telefax with confirming copy sent by mail.

City: City of Angleton
Chris Whittaker
City Manager
121 S. Velasco
Angleton, Texas 77515
Attn: City Secretary

Developer: Bobby A. Weaver
307 Creekside Lane
Lake Jackson, Texas 77566

With copy to: J. Grady Randle
Randle Law Office LTD, LLP
820 Gessner, Suite 1570
Houston, Texas 77024

5.06 Time is of the essence in all things pertaining to the performance of the provisions of this Agreement.

5.07 **INDEMNIFICATION.** DEVELOPER HEREBY BINDS ITSELF, ITS

SUCCESSORS, ASSIGNS, AGENTS, CONTRACTORS, OFFICERS AND DIRECTORS TO INDEMNIFY AND HOLD HARMLESS THE CITY FROM AND AGAINST ANY CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, LIABILITIES, COSTS, LOSSES, EXPENSES AND DAMAGES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS) ASSOCIATED WITH ANY PERSONAL INJURY OR PROPERTY DAMAGE ARISING OUT OF OR IN ANYWAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT BY DEVELOPER UNLESS SUCH DAMAGE IS CAUSED BY THE INTENTIONAL OR WILLFUL MISCONDUCT OF THE CITY.

5.08 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.

5.09 Any failure by a party hereto to insist upon strict performance by the other party of any 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, unless otherwise expressly provided herein or in a writing signed by the Party alleged to be waiving any such right.

5.10 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.

5.11 To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws, including sovereign immunity, except to enforce any rights and remedies under this Agreement.

5.12 The Agreement is not intended to, and shall not be construed to, create any joint enterprise between or among the Parties. The City has exclusive control over and under the public highways, streets, and alleys of the City.

5.13 This Agreement is public information. To the extent, if any, that any provision of this Agreement is in conflict with Texas Government Code Chapter 552 et seq., as amended (the "Texas Public Information Act"), such provision shall be void and have no force or effect.

5.14 This Agreement is entered solely by and between and may be enforced only by and among the parties hereto. Except as set forth herein, this Agreement shall not be deemed to create any rights in, or obligations to, any third parties.

5.15 The parties expressly acknowledge that the City's authority to indemnify and hold harmless any third party is governed by Article XI, Section 7 of the Texas Constitution, and any provision that purports to require indemnification by the City is invalid. Nothing in this Agreement requires that either the City incur debt, assess, or collect funds, or create a sinking fund.

5.16 THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY ANY PARTY OF ANY IMMUNITY FROM SUIT OR LIABILITY THAT A PARTY MAY HAVE BY OPERATION OF LAW. THE CITY RETAINS ALL

GOVERNMENTAL IMMUNITIES.

5.17 This Agreement shall not be assigned by either Party without the express written consent of the other Parties.

5.18 **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.

5.19 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.

5.20 **Effect of State and Federal Laws.** Notwithstanding any other provisions 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, as well as any City ordinances not in conflict with this Agreement, and any rules implementing such statutes or regulations.

5.21 **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 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 of such entity.

5.22 **Non-Waiver.** No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein or in a writing signed by the Party alleged to be waiving any such right.

5.23 **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement to be effective as of the Effective Date.

[Signature Page Immediately Follows]

CITY OF ANGLETON, TEXAS

By: _____

John Wright, Mayor

Date: _____

ATTEST

By: _____

Michelle Perez, City Secretary

Date: _____

THE STATE OF TEXAS

COUNTY OF BRAZORIA

This instrument was acknowledged before me on _____ , 2024

By John Wright, Mayor of the City Angleton, Texas.

_____

Notary Public, State of Texas

DEVELOPER and OWNER

Bobby A. Weaver

_____

Date: _____

THE STATE OF TEXAS

COUNTY OF BRAZORIA

This instrument was acknowledged before me, the undersigned authority, this _____ day of _____ by Bobby A. Weaver.

_____

_____

Notary Public, State of Texas