

MWSW

Draft

August 7, 2023

**PLANNED DEVELOPMENT DISTRICT NO. { }:
BURLESON CROSSING EAST**

Planned Development District Agreement

between the

City of Bastrop, Texas

&

BRP EAST, L.P., a Texas limited partnership

Approved by the Planning & Zoning Commission on:

_____, 2023.

Approved by the City Council on:

_____, 2023.

THIS PLANNED DEVELOPMENT DISTRICT AGREEMENT (this “Agreement” or the “PDD Agreement”) is entered into between the City of Bastrop, Texas, a Home-Rule municipality (“City”), and BRP EAST, L.P., a Texas limited partnership (“Owner”), pursuant to City of Bastrop Code of Ordinances, Article __.__, and Planned Development Districts Ordinance, Section __.__(the “PDD Ordinance”), pertaining to the Property defined below.

RECITALS

WHEREAS, the Owner is the owner of certain real property consisting of approximately 19 acres, commonly known as Burluson Crossing East, located within the city limits of the City of Bastrop, in Bastrop County, Texas, and as more particularly identified and described in *Exhibit A* (the “Property”) to *Attachment “A”*; and

WHEREAS, an affiliate of Owner developed the adjacent Burluson Crossing Shopping Center and continues to own the Burluson Crossing Shopping Center; and

WHEREAS, the Owner intends to develop an integrated, innovative, planned development consisting of a retail shopping center as described herein which will complement the existing Burluson Crossing Shopping Center; and

WHEREAS, the Property is currently zoned P5 Core pursuant to Ordinance No. 2022-15 (the “Original Zoning Ordinance”), which ordinance also grants the Property various warrants set forth therein which are also attached hereto as *Exhibit D* to *Attachment “A”* (the “Warrants”); and

WHEREAS, at the time of approval of the Original Zoning Ordinance, the PDD Ordinance was not in place, which made it difficult to properly address development of large shopping center developments located on freeways; and

WHEREAS, the Parties believe it is in the best interest of the Project to amend and replace the Original Zoning Ordinance with this PDD Agreement; and

WHEREAS, the Property will be developed by Owner, its affiliates or their successors and assigns, for construction and use in general accordance with the PD Master Plan submitted to the City shown as *Exhibit B* to *Attachment “A”*; and

WHEREAS, the City of Bastrop Code of Ordinances, the PDD Ordinance, the PDD {#} Ordinance, and this Agreement set forth the Development Standards that will be applicable to the Property, and which, with the PD Master Plan, will control development of the Property; and

WHEREAS, subject to public notices and public hearings, the City’s Planning and Zoning Commission reviewed and recommended approval of this Agreement; and

WHEREAS, the City Council reviewed this Agreement and the proposed PD Master Plan and

determined that it promotes the health, safety, and general welfare of the citizens of Bastrop and complies with the intent of the PDD Ordinance.

NOW, THEREFORE, BY THIS AGREEMENT WITNESSETH that, in consideration of the covenants and conditions set forth herein, the City and the Owner agree as follows:

ARTICLE I. GENERAL PROVISIONS

- 1.1. Purpose.** The purpose of the PDD Agreement is to ensure a development that includes compatibility of land uses and allows for the adjustment of changing community demands by meeting one or more of the following criteria, namely that it:
- (a) provides for superior design of lots or buildings;
 - (b) provides for open space for public use;
 - (c) provides amenities or features that would be of special benefit to the property users or community;
 - (d) protects, preserves, or adequately mitigates for natural amenities and environmental assets such as trees, creeks, ponds, floodplains, hills, slopes, viewscapes and wildlife habitats;
 - (e) protects or preserves existing historical buildings, structures, features, or places;
 - (f) provides for an appropriate balance between the intensity of development and the ability to provide adequate supporting public facilities and services; and
 - (g) meets or exceeds the present standards of the City’s Code.
- 1.2. Zoning.** The Property is designated “PDD {#}” with a base district of P5 Core (with Warrants) and shall be developed in accordance with the PDD {#} Ordinance, the PD Master Plan, and this Agreement (including the Development Standards and Warrants). It is hereby acknowledged that regardless of the zoning category approved for the Property, the Property shall be able to be developed for a Retail shopping center in accordance with the PD Master Plan, the Warrants, the Development Standards and the terms and conditions of this Agreement. A hotel is also an approved use within the Project. All matters not specifically addressed in this Agreement shall be regulated by applicable sections of the Code (as hereinafter defined). If there is a conflict between this Agreement and the Code, this Agreement shall supersede the specific conflicting provisions of the Code.
- 1.3. Development Standards Approved.** The Development Standards set out in Article II of this Agreement and listed on *Exhibit C to Attachment “A”* (the “Development Standards”) are hereby approved. Owner agrees that all uses and development within the Property shall substantially conform to the PD Master Plan.
- 1.4. Minor Changes.** Minor changes may be made to this Agreement, including the PD Master Plan, by Owner and the City Manager without action of the City Council or Planning & Zoning Commission. Such minor changes shall include, for example, but not limited to, minor adjustments to the parking layout, pedestrian connectivity layout, lot layout, drainage ways, street and drive alignments, minor changes to any matters depicted on exhibits hereto that are intended to be substantially accurate, but approximate according to

the terms hereof, minor adjustments to building footprints, building location, building size or building elevations and other adjustments that do not result in overall increases to traffic or density as set forth in the PD Master Plan and which do not otherwise frustrate the purposes of this Agreement. The City Manager may approve minor changes in writing following consultation with the City Engineer. Any dispute between the Owner and City Manager regarding whether a change is a “minor change” shall be referred to the Planning & Zoning Commission for recommendation and City Council for final approval.

- 1.5. Major Changes.** Any change which is not a minor change shall require a zoning amendment with recommendation by the Planning & Zoning Commission and final approval by the City Council.
- 1.6. Definitions.** Words and terms used herein shall have their usual meaning except as they may be specifically defined in this Agreement, or, if capitalized and not defined herein, as defined in the City Code of Ordinances, including, without limitation, the PDD Ordinance, the Zoning Ordinance, the Sign Ordinance, and the Lighting Ordinance, as such Code exists on the effective date of this Agreement and as is modified by this Agreement.

Agreement: This contract between the City of Bastrop, Texas, and the Owner, including all Attachments and Exhibits, which are incorporated herein for all intents and purposes.

City: The City of Bastrop, Texas, an incorporated Home-Rule municipality located in Bastrop County, Texas.

City Manager: The chief administrative officer of the City of Bastrop, Texas. The term shall also include the Deputy City Manager.

City Council: The governing body of the City.

City Engineer: The engineer of the City.

City Permit: A city license, certificate, approval, registration, consent, permit, or other form of authorization required by a City ordinance, regulation or rule in order to develop, construct and operate the improvements on the Property.

Code: The City’s Code of Ordinances, including, without limitation, the PDD Ordinance, and the PDD {#} Ordinance, as such Code exists on the Effective Date of this Agreement and as is modified by this Agreement.

Development Standards: As defined in Section 1.3.

Edward Burleson Lane Improvements: As defined in Section 2.4.5.

Effective Date: The Effective Date of this Agreement shall be the date of full execution by both Parties.

Owner: BRP EAST, L.P., a Texas limited partnership, and any subsequent owner(s).

Original Zoning Ordinance: As defined in the Recitals.

PD Master Plan: The Planned Development (“PD”) Master Plan submitted to the City by the Owner and attached hereto as *Exhibit B to Attachment “A”*.

Preliminary Drainage Plans: Shall mean the preliminary Drainage Plans for the Project prepared by LJA Engineering and approved by the City on November 2, 2022.

Preliminary Infrastructure Plans: Shall mean the preliminary Infrastructure Plans for the Project February 22, 2023 prepared by LJA Engineering.

Project: A planned development on the Property consisting of mixed-use retail, commercial services, restaurants and hotel, together with a reciprocal access driveway, parking areas, open spaces, and utilities as described in this Agreement and the PD Master Plan.

Property: As defined in the Recitals.

Public Improvement Construction Plans: As defined in Section 4.6.

Retail: The sale of goods to the public, usually in stores, for use or consumption by the ultimate consumer. Retail shall not include the operation of outdoor storage (except as an accessory use), automotive sales, automotive services (except as an accessory use), warehousing (except as an accessory use), ministorage, call centers, or multifamily residences.

TIA: Shall mean the Traffic Impact Analysis for the Project prepared by LJA Engineering dated April 14, 2023.

Traffic Improvements: Collectively, the Wagon Wheel Improvements and the Edward Burleson Lane Improvements.

Warrants: As defined in the Recitals.

Wagon Wheel Improvements: As defined in Section 2.4.3.

ARTICLE II. PD MASTER PLAN

2.1 General Site Regulations. Except as otherwise provided in this Agreement and the PDD {#} Ordinance, the Property shall be governed by site regulations contained in the Code applicable to the base zoning district, currently, P5 with Warrants. The overall development of the Property shall be substantially similar in look, feel and design to the adjacent, existing Burleson Crossing Shopping Center.

2.2 Open Areas; Landscape; Trees. See Warrants (*Exhibit D to Attachment “A”*) and Development Standards (*Exhibit C to Attachment “A”*).

2.3 Exterior Design. See Warrants (*Exhibit D to Attachment “A”*) and Development Standards (*Exhibit C to Attachment “A”*).

2.3.1 Safe Harbor. Buildings constructed in accordance with the exterior design standards reflected in the renderings included in *Exhibit “C”* shall be deemed adequate and acceptable for purposes of this Agreement. Any modifications or deviations from the exterior design principles of *Exhibit “C”* shall be in accordance with the text of this Agreement.

2.3.2 Alternatives. Upon written request by Owner or Owner’s agent to the City for approval of such an alternative, the City Manager may, in the exercise of the City Manager’s discretion, administratively approve alternatives to the foregoing building and architectural elements otherwise applicable to the Project. To be approved administratively, the proposed alternatives must substantially comply with the foregoing building and architectural elements and must be designed to result in increased aesthetic appeal. A copy or memorandum of any such alternatives, whether approved administratively or by Council, shall be placed in the public record and shall run with the land.

2.3.3 Building Separation. Notwithstanding any other provision of the Code, the minimum separation distance between buildings on the Property may equal the minimum separation distance necessary to satisfy the applicable building and fire codes, including zero separation buildings that meet said Code requirements.

2.4 Access.

2.4.1 Traffic Impact Analysis. The TIA has been prepared and submitted to the City. In consideration for Owner’s agreement to construct and pay for the Traffic Improvements and the dedication of the right-of-way as described in this Agreement, the City hereby waives any requirement for Owner to pay any fees or pro-rata amounts assigned or allocated to the Project pursuant to the TIA.

2.4.2 Access Easements. The Property will be covered by a Reciprocal Access Easement Agreement, which will be recorded in the Official Public Records of Bastrop County, Texas.

2.4.3 Wagon Wheel Improvements. Owner agrees to design, construct and pay for the private road (with a 30’ pavement width as set forth in the Preliminary Infrastructure Plans, the PD Master Plan and this Agreement) that commences at Edward Burleson Lane on the western boundary of the Property and continues easterly through the Property and terminates at the existing section of Wagon Wheel as more particularly described and/or depicted on *Exhibit F to Attachment “A”* attached hereto and made a part hereof (the “Wagon Wheel Improvements”). The Wagon Wheel Improvements will remain private (no public right of way) and

except for purposes of platting, will be treated as a private right-of-way and Owner, or the property owners' association established for the Project, shall be responsible for the maintenance of the Wagon Wheel Improvements after construction is completed. It is hereby acknowledged and agreed that the Wagon Wheel Improvements satisfy Section [REDACTED] of the Code. The water line within the Wagon Wheel Improvements (as shown on the Preliminary Infrastructure Plans) will be dedicated to the City via an easement upon completion of construction of said water line.

2.4.4 Blakey Lane Right of Way.

- (a) Owner agrees to dedicate the right-of-way in varying widths (but no more than sixty five feet (65') in width or the width needed to match the existing Blakey Lane right of way, whichever is less) at the northern portion of the Property as depicted on *Exhibit G to Attachment "A"* attached hereto and made a part Owner, to allow the City to expand Blakey Lane. The City acknowledges that Owner is not responsible for construction of Blakey Lane. The City shall be responsible for utilities within Blakey Lane and sidewalk(s) for Blakey Lane.
- (b) For a period of three (3) years from the Effective Date (the "Reservation Period"), Owner agrees to reserve the portion of the Property depicted on *Exhibit G of Attachment "A"* ("ROW Reservation Area") for the City to use as right-of-way. During the Reservation Period, the City shall provide Owner with written notice if the City elects to use the ROW Reservation Area as right-of-way ("Election Notice").
- (c) If, at any time during the Reservation Period, Owner receives a bona fide offer from a third party to buy or lease any or all of the ROW Reservation Area and/or the parcel of land immediately adjacent to the ROW Reservation Area, Owner will give written notice to the City. Upon receiving the written notice, the City shall have ninety (90) days to provide the Election Notice. If the City does not provide Owner with an Election Notice prior to the expiration of the 90-day period, then the reservation shall automatically terminate, Owner shall thereafter be allowed to use the land for its purposes without any further actions, and the City agrees to remove any and all plat notes regarding the ROW Reservation Area from the Preliminary Plat and Final Plat.
- (d) If (i) at the end of the Reservation Period, the City has not provided Owner with an Election Notice or (ii) if the City provides an Election Notice, but thereafter fails to (x) commence and complete construction of a public roadway within the ROW Reservation Area within one (1) year from the expiration of the Reservation Period, or (y) purchase the ROW Reservation Area from Owner within one (1) year from the expiration of the Reservation Period, then the reservation shall automatically terminate, Owner shall thereafter be allowed to use the land for its purposes without any further actions, and the City agrees to remove any and all plat notes regarding the ROW Reservation Area from the

Preliminary Plat and Final Plat.

- 2.4.5 Edward Burleson Lane Improvements.** Owner agrees to dedicate approximately 0.76 acres of land located along the western boundary of the Property, as more particularly described and/or depicted on *Exhibit E of Attachment "A"* attached hereto and made a part hereof to the City. Furthermore, Owner shall design, construct and pay to improve Edward Burleson Lane as more particularly described and/or depicted on *Exhibit E of Attachment "A"* attached hereto and made a part hereof ("Edward Burleson Lane Improvements"). Upon completion of the Edward Burleson Lane Improvements, Owner shall dedicate the Edward Burleson Lane Improvements to the City and once dedicated, the Edward Burleson Lane Improvements shall be maintained by the City.
- 2.4.6 Public Improvements.** It is hereby intended that the Traffic Improvements will be constructed generally in accordance with the development specifications set forth on the Public Improvement Construction Plans. To assist in the construction of the Traffic Improvements, the City will make available, at no cost to Owner, the right to use any rights of way or easements held by the City. If offsite easements are required and Owner is unable to obtain all required offsite easements, upon written request and documentation of a good faith effort, the City may consider using its powers of eminent domain to assist with easement/right of way acquisition.
- 2.5 Signs.** Notwithstanding other sign provisions in the Code, *Exhibit C of Attachment "A"* attached hereto shall constitute the sign regulations for the Property and shall govern all signage for the Property.
- 2.6 Property Phasing or Scheduling.** The Project may be developed in phases. Individual lots or pads may be developed as they are required by their end uses. Some lots may not be practically built on until public wastewater service becomes available to some or all of the lots with sufficient capacity to serve the end use.
- 2.7 Impervious Cover.** There shall be a total of no more than 85(%) impervious cover on the Property as a whole, impervious cover may be averaged over the entire Property allowing some lots increased impervious cover offset by lots with lesser impervious cover.
- 2.8 Drainage.** The Project shall comply with the Preliminary Drainage Plan.
- 2.9 Easements.** All lots will be granted an irrevocable easement along one or more shared access easements. These terms will be included in the Reciprocal Access Easement Agreement covering the Property.
- 2.13 Development Plan & Construction.**
- 2.13.1** The City hereby determines that, notwithstanding Section ___ of the PDD Ordinance, the PD Master Plan shall become non-effective if the Owner does not commence construction of the initial phase of the Project within ten (10) years after

the Effective Date. Once construction commences, the PD Master Plan shall be effective indefinitely.

2.13.2 In any event, the PD Master Plan shall remain in effect for at least ten (10) years unless Owner sooner requests that it be replaced or terminated.

2.14 Fees. Owner shall pay the City's standard application, review and development fees, as set out in the City's Fee Schedule Ordinance in effect as of the Effective Date. The City's consultant costs directly and exclusively related to this Agreement and PDD {#} Ordinance shall be reimbursed by the Owner to the City.

ARTICLE III. UTILITY CAPACITY

The City hereby warrants and represents that the City commits to provide water and wastewater service to the Property, subject to execution of a separate utility agreement between Owner and the City. Furthermore, all water and wastewater utility infrastructure shall be constructed and operated in compliance with said separate utility agreement between Owner and the City.

ARTICLE IV. APPLICABLE RULES & REGULATIONS

4.1 Intent. The parties intend that this Agreement authorize certain Property uses and development on the Property; provide for the uniform review and approval of plats and development plans for the Property; provide exceptions to certain ordinances; and provide other terms and consideration. It is the intent of the City and Owner that these vested development rights include the character of land uses and the development of the Property in accordance with the standards and criteria set forth in this Agreement and the Code, as modified in accordance with the exceptions set forth in this Agreement.

4.2 Applicable Rules. Each application for a City Permit including a Site Plan, that may be filed with the City for the Project, shall comply with, and shall be reviewed, processed and approved, only in accordance with the terms of the ordinances that were in enacted on or before the Effective Date, except as modified by this Agreement, subject to the exceptions set forth below. The provisions of this Section shall not apply to the following types of City ordinances, rules, and regulations:

- (a) International building, fire electrical, plumbing, or mechanical codes of the type typically found in the City Code;
- (b) Ordinances and regulations for utility connections (other than with regard to utility capacity commitments described in Article III of this Agreement); and
- (c) Ordinances and regulations to prevent the imminent destruction of property or injury to persons.

Permit applications subject to (a), (b) and (c) above shall be evaluated according to ordinances in effect at the time of application for the individual permit. However, Owner and City may agree that the applicable submission for a permit or approval be evaluated in

accordance with the requirements of a subsequent City ordinance, regulation, or rule.

4.3. Owner’s Right to Continue Development.

4.3.1 In consideration of Owner’s agreements hereunder, the City agrees that it will not, during the term of this Agreement, impose or attempt to impose:

- (a) any moratorium on building or development within the Property; or
- (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plats, final plats, site plans, building permits, certificates of occupancy or other necessary approvals, within the Property.

4.3.2 The preceding subsection does not apply to any temporary moratoriums uniformly imposed throughout the City due to an emergency constituting an imminent threat to public health or safety, provided that such moratorium will continue only during the duration of the emergency.

4.4. Approvals. The City agrees that preliminary plats, final subdivision plats and construction documents submitted in accordance with this Agreement will be reviewed, and processed in a timely manner and otherwise in accordance with the Code, as modified by this Agreement.

4.4.1 Construction plans consistent with the Code, as modified by this Agreement can be approved prior to approval of final plat.

4.4.2 The approval of the preliminary plat of all or a portion of the Property shall expire thirty six (36) months after the City’s approval unless:

- 1. A corresponding final plat on the Property (or a portion of the Property) approved on the preliminary plat is filed; or
- 2. An extension is granted by the City.

4.5 Preliminary Plat. Sections 4.5 and Section 4.6 of this Agreement are replacing the platting process within the Code. The Project shall follow the process set forth in Sections 4.5 and 4.6 of this Agreement. Notwithstanding anything in the Code to the contrary, the Preliminary Plat for the Property, together with the Preliminary Drainage Plans and the Preliminary Infrastructure Plans shall be submitted at the same time to the City and together shall be deemed to serve as the Preliminary Plat. The Preliminary Drainage Plans and the Preliminary Infrastructure Plans will be used to develop the Public Improvement Construction Plans.

4.6 Final Plat. Final Drainage and Infrastructure Plans shall be submitted as the “Public Improvement Construction Plans” concurrently with the final plat for the Property. The City hereby agrees that the fiscal posting accompanying the final plat for the Property may be in the form of cash, bond, letter of credit or a construction completion agreement executed by Owner. The form of the construction completion agreement shall be substantially in the same form as the

agreement attached hereto as *Exhibit H of Attachment "A"*. The final plat shall be acknowledged and agreed and recorded by City prior to construction. For example, the order of sequence will be: 1) approval of the final plat by the City, 2) fiscal posting or execution of construction completion agreement, 3) recordation of the final plat, and 4) construction of improvements.

4.7 Wagon Wheel ROW. For purposes of platting, Wagon Wheel will be considered a public right of way and will be built to the standards set forth in the Design Standards and Warrants.

4.8 No Regulation Plan. The platting process for the Property shall not include a Neighborhood Regulation Plan because it is not necessary for this type of commercial development.

4.9 Site Development Plan Review.

A. **Purpose.** This section establishes a site plan review process for the Property. The purpose of the review is to ensure efficient and safe land development, harmonious use of land, compliance with appropriate design standards, safe and efficient vehicular and pedestrian circulation, parking and loading, and adequate water supply, drainage and storm water management, sanitary facilities, and other utilities and services.

B. **Applicability.** Site plan review and approval shall be required for new construction or the significant enlargement or alteration of any exterior dimension of any building, structure, or improvement within the Property.

As used in this section, the term "improvements" shall also include alterations made to land only, such as paving, filling, clearing, or excavating. As used in this section, the term "significant enlargement or alteration" shall mean the construction of structures, or the alteration of land, if such construction or alteration impacts or potentially affects other existing or future land uses, including those on adjacent or nearby land.

The City Manager shall make the initial determination of whether a proposed development, construction, enlargement, or improvement requires a site plan or not.

The site development plan must be prepared by a licensed and registered professional land surveyor, and/or a licensed professional engineer.

No building permit shall be issued for any of the above developments unless a site plan is first approved by the City. No certificate of occupancy shall be issued unless all construction and development conforms to the site plan as approved by the City. A public hearing on a site plan is not required.

The fee for a site plan will be determined by the City Manager.

C. **Site Plan Details.** The site plan shall contain sufficient information relative to site design considerations, including but not limited to the following:

1. Location of existing and proposed building(s), structure(s) or other improvement(s), as well as proposed modifications of the external configuration of the building(s), structure(s) or improvement(s),
2. Required front, side and rear setbacks from property lines,
3. Existing or proposed easements or right-of-way, within or abutting the lot where development is being proposed,
4. The dimensions of any street, sidewalk, alley or other part of the property intended to be dedicated to public use. These dedications must be made by separate instrument and referenced on the site plan,
5. On and off-site circulation (including truck loading and pickup areas) and fire lanes,
6. Required parking with dimensions given for layout.
7. Topography,
8. Grading,
9. Landscaping design,
10. The location and size of existing public water and wastewater lines, fire hydrants and manholes available to service the-proposed development; or, if public service is unavailable, the location and size of existing private on site water and wastewater facilities; and any proposed water and wastewater lines, fire hydrants and manholes required to serve the project,
11. Location of screening with dimensions and material used,
12. Engineering for streets and utilities,
13. The location of the 100-year flood plan on the proposed development site, if any,
14. Calculations, prepared by a licensed professional engineer, showing the storm water flow (e.g., rate, velocity, location} before and after the proposed construction. Calculations must take into account storm water that currently enters and exits the site,
15. Building elevations,
16. The location and ownership of adjacent properties,
17. If it is the intent to use groundwater under the land, a licensed engineer registered to practice in Texas must certify that adequate groundwater is available to serve the development, and
18. Location of dumpster(s) and screening for dumpster(s).

Provision of the above items shall conform to the principles and standards set forth in this Agreement.

D. Principles and standards for site plan review. The City staff shall review the site plan for compliance with all applicable ordinances (as modified by this Agreement).

Based upon its review, the staff may approve, conditionally approve, request modifications, or deny the site plan based on evaluation of the site plan details with respect to the site plan's compliance with all provisions of the PDD {#} Ordinance, and other ordinances of the City of Bastrop including but not limited to off-street parking and loading, lighting, open space, and the generation of objectionable smoke, flames, noise, odors, dust, glare, vibration, or heat, as such

ordinances have been modified by this Agreement (including the Warrants and Development Standards).

4.10. Approval Process.

A. The Director of Planning and Development, or designee, shall review and approve, approve with conditions, or deny all site plans except for PD, CUP or other districts requiring public hearings. Any decision on a site plan with which the applicant disagrees may be appealed to the Planning and Zoning Commission as set forth in (B) below.

B. The City staff shall place the site plan on the regular agenda of the Planning and Zoning Commission within thirty (30) days after the request for appeal. If recommended for approval by the Planning and Zoning Commission, the site plan shall be deemed approved by the City. If the site plan is recommended for denial by the Planning and Zoning Commission, the applicant must request the site plan be placed on the City Council's agenda within ten (10) days from the date the appeal was denied by the Planning and Zoning Commission. The City Council shall have final approval or disapproval on all site plans which are appealed.

C. If development of a lot with an approved site plan has not commenced within five (5) years of the date of final approval of the site plan, the site plan shall be deemed to have expired. Said review and approval shall be evaluated according to the standards above, taking in to account all changes to applicable ordinances which have occurred subsequent to the prior approval of the site plan.

It is recognized that final architectural and engineering design may necessitate minor changes in the approved site plan. In such cases, the Director of Planning and Development shall have the authority to approve minor modifications of an approved site plan, provided that such modifications do not materially change the circulation and building location on the site, or any conditions specifically attached as part of a City Council approval.

ARTICLE V. TERM, ASSIGNMENT & AMENDMENT

5.1 Term. The term of this Agreement will commence on the Effective Date (as defined below) and continue in perpetuity, unless terminated on an earlier date under other provisions of this Agreement or by written agreement of the City and Owner. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns of Owner that construct the improvements on the Property contemplated hereunder.

5.2 Amendment by Agreement. This Agreement may be canceled, changed, modified or amended, in whole or in part, only by the written and recorded agreement by the City and the then current owner of the Property. In the event that the Property shall be owned by more than one owner, then this Agreement may be canceled, changed, modified or amended, in whole or in part, only by the written and recorded agreement by the City and the owners of sixty (60%) of the land area of the Property; provided, however, that so long as Owner has an ownership interest in the Property, it shall be required to join in any

cancellation, change, amendment or modification of this Agreement.

5.3 Assignment.

5.3.1 This Agreement shall run with the land. All the Owners and all future owners of all or any portion of the Property, including, without limitation, any affiliates of Owners to which all or any portion of the Property is conveyed and contributed, shall have the benefits of this Agreement, and the Property may be developed as set forth herein without further action by the City; provided, however, that this Agreement may be amended as otherwise set forth herein.

5.3.2 If Owner assigns its rights and obligations as to a portion of the Property, then the rights and obligations of an assignee and Owner will be severable, and Owner will not be liable for the nonperformance of the assignee and vice versa. In the case of nonperformance by one Owner, the City may pursue all remedies against that nonperforming Owner as a result of that nonperformance unless and to the limited extent that such nonperformance pertains to a City requirement that also is necessary for the performing Owner's project, which performing Owner may also pursue remedies against the nonperforming Owner.

5.3.3 Upon sale, transfer or conveyance of all or portions hereinafter described Property by the Owner thereof (the owner of each portion of the Property called "Owner" of such portion herein), the duties and obligations of the Owner, as it relates to the transferred Property, shall be assumed by the new owner, and the transferring Owner shall have no further liability relating to such transferred Property.

5.3.4 The sale, transfer or conveyance of all or portions of the hereinafter described Property by the Owner shall include restrictive covenants that subject the conveyed portions to the terms of this Agreement.

5.3.5 This Agreement touches and concerns the Property and runs with the land.

5.4 Cooperation

5.4.1 The City and Owner shall cooperate with each other as reasonable and necessary to carry out the intent of this Agreement, including, but not limited to the execution of such further documents as may be reasonably required.

5.4.2 The City agrees to cooperate with Owner, at Owner's expense, in connection with any waivers, permits or approvals Owner may need or desire from Bastrop County, the Texas Commission on Environmental Quality, the Texas Department of Transportation, or any other regulatory authority in order to develop the Project in accordance herewith.

5.4.3 In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any other actions taken hereunder, Owner and the City agree to

cooperate in the defense of such suit or claim, and to use their respective commercially reasonable efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. Each party agrees to pay its own legal fees in connection with any such third party claim.

ARTICLE VI. MISCELLANEOUS PROVISIONS

6.1 Necessary Documents & Actions. Each party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary to effectuate the purposes and intent of this Agreement.

6.2 Severability. In case one or more provisions contained herein are deemed invalid, illegal, or unenforceable in any respect such invalidity, illegality or unenforceability shall not affect any other provisions hereof and in such event, this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

6.3 Applicable Law. This Agreement shall be construed under and in accordance with the laws of The State of Texas.

6.4 Venue. All obligations of the parties created hereunder are performable in Bastrop County, Texas and venue for any action arising hereunder shall be in Bastrop County.

6.5 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than the parties hereto (and their respective successors and assigns), any rights, benefits, or remedies under or by reason of this Agreement.

6.6 Duplicate Originals. This Agreement may be executed in duplicate original, each of equal dignity.

6.7 Notices. Until changed by written notice thereof any notice required under this Agreement may be given to the respective parties, by certified mail, postage prepaid or by hand delivery to the address of the other party shown below:

Owner:	City of Bastrop:
BRP East, LP	City of Bastrop, Texas
100 E. Anderson Lane, Suite 200	1311 Chestnut Street
Austin, Texas 78752	Bastrop, Texas 78602
Attn: Steve Durhman	Attn: City Secretary

6.8 Effective Date. This Agreement shall be effective from and after the date of due execution hereof by all parties.

6.9 Binding Effect. This Agreement and the PD Master Plan bind and benefit the Owner and its successors and assigns.

- 6.10 List of Exhibits.** The following attachments and exhibits are attached hereto and incorporated into this Agreement for all intents and purposes.
- 6.11 Force Majeure.** Owner and the City agree that the obligations of each party shall be subject to force majeure events such as unavailability of materials, labor shortages, natural calamity, fire or strike.
- 6.12 Estoppel Certificates.** From time to time upon written request by any seller or purchaser of all or a portion of the Property, or any lender or prospective lender of the Owner or its assignees, the City shall execute a written estoppel certificate to such seller or purchaser stating, if true that the City has not given or received any written notices alleging any events of default under this Agreement.

Attachment “A” – Planned Development District No. __ and Zoning Map

- Exhibit A.....Property Legal Description
- Exhibit BPD Master Plan
- Exhibit CDevelopment Standards
- Exhibit C- 1Signage
- Exhibit C-1-1Multiple-Tenant Building
- Exhibit C-1-2Single-Tenant Buildings
- Exhibit C-2.....Inline Shop Space & Anchor/Junior Anchor
Building Elevations Front, Side & Rear
Elevations
- Exhibit C-4.....Plaza Area
- Exhibit C-5.....Parking Lot Lighting
- Exhibit C-6.....Anchor/Junior Anchor/Inline Outside Sales
& Display Areas
- Exhibit C-7Landscaping
- Exhibit D.....Warrants
- Exhibit EEdward Burleson Improvements
- Exhibit F.....Wagon Wheel Improvements
- Exhibit G.....Blakely Lane
- Exhibit H.....Form of Completion Agreement

[Signatures on following page.]

THE UNDERSIGNED PARTIES HEREBY EXECUTE THIS AGREEMENT :

CITY OF BASTROP, TEXAS:

BRP EAST, LP

by: _____
Lyle Nelson, Mayor

by: _____
Steve Durhman, Manager

Date of Execution

Date of Execution

ATTEST:

ATTEST:

by: _____
Ann Franklin, City Secretary

by: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

by: _____
Alan J. Bojorquez, Attorney for
City of Bastrop, Texas

by: _____
Talley J. Williams, Counsel for
BRP EAST, L.P.

ATTACHMENT “A”

EXHIBIT “A”

PROPERTY

ATTACHMENT “A”

EXHIBIT “B”

PD MASTER PLAN

ATTACHMENT “A”
EXHIBIT “C”
DEVELOPMENT STANDARDS

ATTACHMENT “A”

EXHIBIT “D”

WARRANTS

ATTACHMENT “A”

EXHIBIT “E”

EDWARD BURLESON IMPROVEMENTS

ATTACHMENT “A”

EXHIBIT “F”

WAGON WHEEL IMPROVEMENTS

ATTACHMENT "A"

EXHIBIT "G"

BLAKELY LANE

ATTACHMENT “A”

EXHIBIT “H”

FORM OF COMPLETION AGREEMENT