

STATE OF TEXAS

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MEMORANDUM OF UNDERSTANDING

COUNTY OF COMAL

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SEALS FAMILY PROPERTIES, LLC, a Texas limited liability company (“Developer”), and NEW BRAUNFELS UTILITIES (“NBU”), a Texas municipally owned utility, (collectively the “Parties”) enter into this MEMORANDUM OF UNDERSTANDING (“MOU”) to proceed with discussions for the development of a parcel of property known as the Main Plaza Building (“MPB”) located at 263 Main Plaza, New Braunfels, Texas 78130 and legally described in Exhibit A (“Property”). This MOU identifies Developer and NBU as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, NBU seeks to identify a developer to both divest its interest in the MPB and enable a transformational project for the betterment of the community;

WHEREAS, NBU issued a request for proposals (the “RFP”) seeking to engage a developer for the re-development of the MPB;

WHEREAS, Developer responded to the RFP with a written proposal, completed an interview process, and has been identified as the selected respondent by NBU for the development of the MPB;

WHEREAS, the Parties look forward to working together, in furtherance of NBU’s investment in community betterment and to enhance the quality of the community for the future of downtown New Braunfels; and

WHEREAS, the Parties desire to explore the methods and steps necessary to reach an agreement to develop the Property to include the property transfer, design, financing, construction and operation of the redevelopment of the MPB (“Project”).

NOW, THEREFORE, in consideration of the representations, covenants, and undertakings set forth herein, the Parties agree as follows:

**Section 1. Purpose.** The purpose of this MOU is to establish a period during which the Parties agree to exclusively negotiate with each other in good faith to determine acceptable business terms and conditions of a development agreement for the Project (the “Term Sheet”).

**Section 2. Term.** This MOU shall commence upon the Effective Date (as hereinafter defined) and the Parties shall work to negotiate an agreement regarding each Party’s duties and responsibilities from a business perspective in developing the Project (the “Term Sheet”) and present such Term Sheet to the NBU Board of Trustees for consideration no later than its August 25, 2022 Board meeting. The term may be extended by mutual written consent of the Parties. The foregoing notwithstanding, either Party may terminate this MOU at any time by providing ten (10) days’ written notice to the other Party.

If a Term Sheet is agreed to, the Parties agree and acknowledge that they will then work to develop the Term Sheet into a binding conveyance of real property and a development agreement (the “Development

Agreement”) and present the Development Agreement to the NBU Board of Trustees for consideration no later than its April 2023 Board meeting. If substantial progress is being made, the term may be extended by mutual written consent of the Parties.

**Section 3. Parameters for Negotiations.** To the extent applicable, negotiations between the Parties under this MOU, may include, but are not limited to, the following terms related to the Project to be included in the Term Sheet:

- A. Short- and long-term project decision making;
- B. Structure and economics of the transaction;
- C. Development schedule for the Project including milestones;
- D. Programmatic concept for the Project;
- E. Property and building plans for the Project (depicting building locations, elevations, building square footages and tenant mix, parking, access points, landscaped areas, vehicular circulation, and both public and transit patron pedestrian circulation);
- F. Marketing/branding plan for the Project;
- G. Tenant mix for the Project;
- H. Pro forma for the Project (addressing detailed development and operational costs, anticipated rents, estimated profit and appropriate return measurements);
- I. Financing plan for the Project (addressing the proposed methods of construction and permanent financing, and amounts and sources of equity and debt capital);
- J. Future distribution of cash flow;
- K. Potential payments to NBU, if in the form of lease payments for the land and/or air rights;
- L. City and/or other incentives;
- M. Any other financial terms of the Project;
- N. Termination Rights; and
- O. Any other terms required for the conveyance of real property and the development and operation of the Project.

**Section 4. Cooperation.** The Parties agree to cooperate with each other in promptly supplying information and analyses relating to the Project.

**Section 5. Effect of this MOU; Termination.**

**5.1 Nature of MOU.** This MOU is intended to constitute an agreement by the Parties to exclusively negotiate in good faith towards the agreement of a Term Sheet for the potential development agreement and acquisition of the Property. This MOU is not intended to constitute a binding agreement by the Parties to acquire all or any portion of the Property or to construct the Project, nor is it intended to constitute a binding agreement to enter into a Development or Partnership Agreement or any other contract. Notwithstanding any other provision hereof, no Party shall be under any obligation to approve or execute any agreement during or upon conclusion of this MOU. Any Party may refuse to approve and execute any agreement at its sole and absolute discretion, with or without cause.

**5.2 Exclusive Nature of Negotiations.** The Parties intend that negotiations conducted pursuant to this MOU be negotiated exclusively between the Parties. Accordingly, each Party agrees that during the term of this MOU, each shall negotiate exclusively with the other Party with respect to the development of the Project on the Property except as otherwise mutually agreed to in writing.

**5.3 Confidentiality.** The terms of this MOU and the Parties' discussions and exchanged written materials relating to this MOU (the "Confidential Information") are confidential, subject to the Texas Open Meetings Act and the Public Information Act (the "Acts"). The Confidential Information shall include, without limitation, (a) the proposed business terms, (b) the anticipated development costs of the Project, and (c) the Term Sheet. Except as required by the Acts or the issuance of an opinion by the Office of the Attorney General requiring release, the details hereof and any other Confidential Information may not be shown or disclosed by either Party hereto to any other person or entity, except to those employees, attorneys, accountants or other advisors who have a need to know as a result of being involved in the proposed transaction.

The term "Confidential Information" does not include information that (i) is already in possession of third parties, provided that such information is not known to be subject to another confidentiality agreement with, or other obligation of secrecy to, the parties hereto, (ii) becomes generally available to the public other than as a result of a disclosure by the parties hereto, or (iii) becomes available to third parties on a non-confidential basis from a source other than the Parties hereto, provided that such source is not known to be bound by a confidentiality agreement with or other obligation of secrecy to one of the Parties hereto.

The Parties agree that the Confidential Information has been and will be used solely for the purpose of evaluating the possibility of effectuating the transactions described herein, and that such information will be kept confidential; provided, however, that (i) any of such information may be disclosed to potential third party investors, tenants, lenders, and others who need to know such information for the purpose of evaluating entering into agreements to assist in effecting the transactions described herein and who execute similar confidentiality agreements agreeing to keep the Confidential Information confidential, and (ii) a disclosure of such information to which all parties consent in writing may be made. If any of the parties are requested or required in a judicial, administrative or governmental proceeding to disclose any Confidential Information, each Party agrees that it will cooperate with the others and provide each with prompt notice of such request(s) so that any of the Parties may seek an appropriate protective order and/or waiver of requirements of compliance with the provisions of this "Confidentiality" section. If, in the absence of a protective order or the receipt of a waiver hereunder any of the Parties are nonetheless, in the opinion of counsel, legally required to disclose Confidential Information under the Acts or to any tribunal or else stand liable for contempt or suffer other censure or penalty, they may disclose such information without liability hereunder provided that they comply with the notice provisions hereof.

**5.4 Termination of this MOU.** Each Party reserves the right to terminate this MOU, with or without cause, upon ten (10) days' prior written notice to the other Parties, thereby withdrawing from such negotiations without any liability to the other Party. The Parties, by their respective execution hereof, knowingly agree, notwithstanding anything herein to the contrary, that neither of

them shall have any right to specific performance of this MOU, or any other equitable or legal remedies under law.

**Section 6. Notices.** Any notices, requests or approvals given under this MOU from one Party to another may be personally delivered, transmitted by facsimile transmission or email, or deposit with the United States Postal Service for mailing, postage prepaid, to the address of the other Party as stated in this paragraph, and shall be deemed to have been given at the time of personal delivery or facsimile transmission or, if mailed, on the third day following the date of deposit with the United States Postal Service. Notices shall be sent as follows:

If to NBU:

New Braunfels Utilities
Chief Operations Officer
263 Main Plaza
New Braunfels, TX 78130
rkelso@nbutexas.com

If to Developer:

Seals Family Properties, LLC
Gary Seals
392 W. Mill Street
New Braunfels, TX 78130
gseals@furtherholdings.com

**Section 7. Indemnification.** TO THE FULLEST EXTENT PERMITTED BY LAW, DEVELOPER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS NBU AND EACH BOARD MEMBER, OFFICER, EMPLOYEE OR AGENT THEREOF (NBU AND ANY SUCH PERSON BEING HEREIN CALLED AN "INDEMNIFIED PARTY"), FOR, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS) FOR INJURY TO OR DEATH OF ANY PERSONS, PHYSICAL DAMAGE TO PROPERTY, OR INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHT TO WHICH ANY SUCH INDEMNIFIED PARTY MAY BECOME SUBJECT, UNDER ANY THEORY OF LIABILITY WHATSOEVER ("CLAIMS"), INsofar AS SUCH CLAIMS (OR ACTIONS IN RESPECT THEREOF) RELATE TO, ARISE OUT OF, OR ARE CAUSED BY THE DEVELOPER, ITS OFFICERS, EMPLOYEES, OR AGENTS IN CONNECTION WITH THE PERFORMANCE OF THIS MOU.

**Section 8. Governing Law & Venue.** This MOU shall be governed by the laws of the State of Texas without regard to its conflict of law principles. Exclusive venue shall lie in a court of competent jurisdiction in Comal County, Texas.

**Section 9. Attorneys' Fees.** If any legal action is brought to enforce, construe, interpret or invalidate the terms of this MOU, a prevailing party shall be entitled to all costs and expenses incurred in any such action, including court costs and reasonable attorneys' fees, in addition to any other relief to which such party may be entitled.

**Section 10. Interpretation.** This MOU shall be interpreted as a whole and in accordance with its fair meaning and as if each Party participated equally in its drafting. Captions are for reference only and are not to be used in construing meaning. The recitals are deemed incorporated into this MOU.

**Section 11. Assignment.** Neither this MOU nor any right or obligations herein may be assigned by either Party nor may either Party delegate the performance of any of its duties hereunder without in either case the other Party's prior written consent; provided, however, that the Developer may assign its rights and obligations under this MOU to an entity consisting exclusively of the Developer, Gillum Development, LP, and Kingham Dalton Investments, GP. If the Developer makes such assignment, the Developer must notify NBU in writing within three (3) business days.

**Section 12. Third Party Beneficiaries.** Nothing in this MOU, express or implied, is intended to or shall confer upon any third party any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this MOU.

**Section 13. Amendment.** No modification, rescission, waiver, release or amendment of any provision of this MOU shall be made except by a written agreement executed by each of the Parties.

**Section 14. Severability.** Any provision or part of this MOU held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Parties, who agree that this MOU shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**Section 15. Entire Agreement.** This MOU constitutes the entire understanding and agreement of the Parties concerning this subject. This MOU integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior negotiations, discussions and previous agreements between the Parties concerning all or any part of the subject matter of this MOU.

**Section 16. Electronic Signatures.** Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. Each party further agrees that if it agrees to conduct a transaction by electronic means in this MOU, it may refuse to conduct other transactions by electronic means and that such right may not be waived by this MOU.

*Signature page to follow*

**IN WITNESS WHEREOF**, the Parties hereto have executed this MOU in multiple originals, this \_\_\_\_\_ day of \_\_\_\_\_ (the “Effective Date”).

**NBU:**  
**NEW BRAUNFELS UTILITIES,**  
a Texas municipally owned utility

By: \_\_\_\_\_  
Ian Taylor, Chief Executive Officer

**DEVELOPER:**  
**SEALS FAMILY PROPERTIES, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A: PROPERTY LEGAL DESCRIPTION**

263 Main Plaza, New Braunfels, Texas 78130