

Development Agreement for the Windy Hill North Subdivision
March 20, 2018

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NB 46 Holdings, LLC
Todd Burek
22711 Fossil Peak
San Antonio, TX 78261

RE: Development Agreement for the Windy Hill North Tract

Dear Mayor Mitchell:

This Development Agreement ("Agreement") is entered into between the **City of Kyle, Texas**, a home rule municipal corporation (the "City") and **NB 46 Holdings, LLC**, a _____ limited liability company (the "Owner"), who owns that certain real property located in the City's extraterritorial jurisdiction (the "ETJ"), which contains ___ acres, more or less, and is more particularly described in **Exhibit A**, attached hereto and incorporated herein for all purposes (the "Property") as of March 20, 2018 (the "Effective Date"), for the purpose of establishing development standards for the Property and providing for future annexation of the Property. This Agreement is entered pursuant to the City Charter and applicable Texas law, including but not limited to Section 212.172, Texas Local Government Code. The Owner and the City are herein referred to together as the "Parties".

The Owner will benefit from the City granting waivers from the City's subdivision regulations, which are set forth in Chapter 41 of the City's Code of Ordinances (the "Subdivision Ordinance") as set forth in this Agreement. The City will benefit from the Owner's agreement to develop the Property in accordance with certain City regulations that are applicable within the city limits and to meet other obligations set forth in this Agreement. The benefits to the Parties set forth in this paragraph, plus the mutual promises expressed herein, are good and valuable consideration for this Agreement, the sufficiency of which is hereby acknowledged by the Parties.

The City hereby authorizes and approves the following waivers from the Subdivision Ordinance (the "Waivers"), provided that the Owner develops the Property in accordance with this Agreement. The City will approve plat applications and building permit applications for development that comply with this Agreement.

- 1) Owner will dedicate fifty feet (50') of right-of-way for roadways instead of

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- sixty feet (60'). Pavement width will be determined by the Emergency Services District at the time of site plan/construction plan review.
- 2) Owner may plat lots that are less than one acre in size.
 - 3) A minimum lot street frontage of sixty feet (60') is authorized.

The Owner will develop the Property with the land uses, densities, site layout, and development standards set forth in **Exhibit B**. The Owner will develop the Property in accordance with the local, state, and federal rules applicable within the City's ETJ and the City Rules. The City Rules are the following:

- 1) The Style Guide, set forth in Sections 53-30 and 53-931 of the City's Code of Ordinances.
- 2) Installation of eight-foot (8') wide trails with an improved surface in accordance with construction plans approved by the City.
- 3) Payment of park fees as set forth in Section 41-147(b) and (d) of the City's Code of Ordinances.
- 4) Payment of Adjacent Lane Mile fees as set forth in Section 41-137(p)(4) of the City's Code of Ordinances.
- 5) Chapter 8, Building Regulations, of the City's Code of Ordinance, including, but not limited to the requirement of obtaining building permits and inspections, and paying building permit and inspection fees.

The Owner further agrees to construct an amenity center on the Property. The Owner shall further obtain City inspection and approval roadways constructed on the Property prior to turning over the streets to the County for maintenance and operation, and shall pay the construction inspection fees calculated as set forth in Appendix A of the City's Code of Ordinances, the Fee Schedule.

The City will approve plat applications and building permit applications for development that comply with this Agreement. The City may approve minor deviations from the Master Plan attached as Exhibit B. In the event of a conflict between Exhibit B and the approved preliminary plat or final plat for the Property, the approved preliminary plat or final plat shall control.

By signing this Agreement, the Owner agrees on its behalf, and on behalf of future owners of the Property or portions thereof, that the City may annex the Property, or portions thereof, at such time determined appropriate by the City Council. This Agreement shall constitute the Owner's voluntary petition to be annexed into the City at such time the City Council decides to initiate annexation proceedings. The parties shall cause the Notice of Voluntary Annexation Petition to be recorded in the county real property records within thirty (30) days of the Effective Date.

This Agreement shall be recorded in the Hays County Real Property Records within thirty

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(30) days of the Effective Date.

Notwithstanding anything herein to the contrary, no Party shall be deemed to be in default hereunder until the passage of fourteen (14) business days after receipt by such party of notice of default from the other party. Upon the passage of fourteen (14) business days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement; provided that if the nature of the default is that it cannot reasonably be cured within the fourteen (14) business day period, the defaulting party shall have a longer period of time as may be reasonably necessary to cure the default in question; but in no event more than sixty (60) days. In the event of default, the non-defaulting party to this Agreement may pursue the remedy of specific performance or any other remedy available in law or in equity. As an additional remedy, the City may withhold approval of any development-related applications for the Property if the Property Owner is not in compliance with this Agreement. All remedies will be cumulative and the pursuit of one authorized remedy will not constitute an election of remedies or a waiver of the right to pursue any other authorized remedy.

To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws, and neither party waives any legal right or defense available under law or in equity. In the event of litigation relating to the subject matter of this Agreement, the prevailing party shall be entitled to receive from the other party its reasonable attorneys' fees and costs.

Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not, regardless of length of time during which that failure continues, be deemed a waiver of that party's right to insist upon strict compliance with all terms of this Agreement. In order to be effective as to a party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

This Agreement is binding on the Parties' respective successors and assigns and future owners of the Property, and this Agreement shall constitute a covenant running with the Property.

Any notice to be given hereunder by any party to another party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth in the signature block below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Agreement embodies the entire

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agreement among the Parties, supersedes all prior agreements and understandings, if any, relating to the subject matter hereof, and may be amended only by an instrument in writing executed collectively by each of the Parties hereto. The laws of the State of Texas shall govern the rights and duties of the Parties hereto and the validity, construction, enforcement and interpretation hereof; and the Parties hereto hereby irrevocably agree that in the event of any dispute involving this Agreement, venue for such dispute shall lie in any court of competent jurisdiction in Hays County, Texas.

IN WITNESS WHEREOF, we have caused this Agreement to be executed by our duly authorized representatives effective as of the _____ day of March, 2018.

CITY:

City of Kyle, Texas
a Texas home-rule municipal corporation

Attest:

By: _____
Name: Jennifer Vetrano
Title: City Secretary

By: _____
Name: Travis Mitchell
Title: Mayor
Mailing Address:

THE STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 2018, by Travis Mitchell, Mayor of the City of Kyle, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

(SEAL)

Notary Public, State of Texas

PROPERTY OWNER:

By: _____
Name: _____
Title: _____
Mailing Address: _____

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THE STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 2018, by _____, _____ a Texas _____, on behalf of said company.

(SEAL)

Notary Public, State of Texas

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Exhibit A
Property Description

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Development Agreement for the Windy Hill North Subdivision
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Exhibit B
Master Plan

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Exhibit C
Notice of Voluntary Annexation

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