

**DEVELOPMENT AGREEMENT  
ESTABLISHING DEVELOPMENT STANDARDS  
FOR THE CASTELLA COURT PLANNED UNIT DEVELOPMENT**

This Development Agreement Establishing Development Standards for the Castella Court Planned Unit Development (the "Agreement") is made and entered into, effective as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **City of Leander, Texas**, a Texas home rule municipal corporation (the "City"), and **Hoch Construction** (the "Developer"). The City and the Developer are sometimes referred to herein as the "Parties." The Parties agree as follows.

**Section 1. Purpose; Consideration.**

- (a) The Developer owns that certain 1.5 acre tract located in Williamson County, Texas, being more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes (the "Property") and wishes to develop the Property for Townhouse Community (the "Development"). The Developer desires that the City be able to enforce the development standards set forth herein through its building permit, inspection, and certificate of occupancy processes by this agreement, given that House Bill 2439 adopted in the 86<sup>th</sup> Legislative Session limits the ability of cities to enforce certain development standards governing building materials by ordinance.
- (b) The Developer will benefit from the City enforcing the Development Standards as set forth herein because it will be more efficient and cost-effective for compliance to be monitored and enforced through the City's building permit and inspection processes and will help ensure that the Development is built out as planned by the Developer after conveyance to the builder of homes or other buildings and structures authorized by the applicable zoning regulations. The City will benefit from this Agreement by having assurance regarding certain development standards for the Development, having certainty that such Development Standards may be enforced by the City, and preservation of property values within the City.
- (c) The benefits to the Parties set forth in this Article 1, plus the mutual promises expressed herein, are good and valuable consideration for this Agreement, the sufficiency of which is hereby acknowledged by both Parties.

**Section 2. Term; Termination.**

- (a) The term of this Agreement shall be in full force and effect from the Effective Date hereof, subject to earlier termination as provided in this Agreement. Unless earlier terminated as provided in this Agreement, this Agreement shall terminate upon the issuance of the final certificate of occupancy for the final structure in the Development.
- (b) The Parties further mutually agree that this Agreement shall be in full force and effect upon the date above first written, provided that the City may terminate this Agreement if Developer defaults under the terms of this Agreement, subject to the notice and cure provisions in Section 6.

### **Section 3. Development Standards.**

- (a) **Masonry Requirements.** The exterior wall standards set forth in this section shall apply to the structures located on the Property. At least eighty-five percent (85%) of the combined exterior surface area of all walls, including all stories of primary buildings / structures, shall consist of un-painted clay brick, ledge stone, fieldstone, cast stone, marble, granite, tile, painted or tinted stucco, non-reflective glass façade, glass block (or alternative glazing e.g. Kalwall) and factory tinted (not painted) split faced concrete masonry unit (non-residential buildings and structures only) or similar material approved by the Director of Planning. All street facing walls of primary buildings / structures constructed of more than ninety (90%) percent stucco shall include at least two (2) architectural features that break the wall plane. These architectural features may also count toward the required design features for building fronts in this section if they meet those requirements. One of these features shall include a contrasting color around the windows and doors. The window and door trim shall visibly project from the wall. The other architectural feature(s) may include accent materials such as stone or brick, display or other ornamental windows, awnings, canopies or similar design features approved by the Director of Planning. Solid wood planking and decorative cementitious-fiber panels may be used for accent features. The remaining exterior wall surface shall be comprised of those materials listed or cementitious-fiber planking (not panels unless they are used with board and batten application). Solid wood planking and decorative cementitious-fiber panels may be used for accent features.

**Section 4. Development of the Property.** Except as modified by this Agreement, the Development and the Property will be developed in accordance with all applicable local, state, and federal regulations, including but not limited to the City's ordinances and the zoning regulations applicable to the Property, and such amendments to City ordinances and regulations that that may be applied to the Development and the Property under Chapter 245, Texas Local Government Code, and good engineering practices (the "Applicable Regulations"). If there is a conflict between the Applicable Regulations and the Development Standards, the Development Standards shall control. Applications for building permits must be in compliance with this Agreement, as well as the Applicable Regulations, in order for such application to be approved and a building issued. Any structure constructed on the Property must comply with this Agreement and the Applicable Regulations for a certificate of occupancy to be issued for such structure.

### **Section 5. Assignment of Commitments and Obligations; Covenant Running with the Land.**

- (a) Developer's rights and obligations under this Agreement may be assigned by Developer to one (1) or more purchasers of all or part of the Property; provided the City Council must first approve and consent to any such assignment by Developer of this Agreement or of any right or duty of Developer pursuant to this Agreement, which consent shall not be unreasonably withheld or delayed.
- (b) This Agreement shall constitute a covenant that runs with the Property and is binding on future owners of the Property, and a copy of this Agreement shall be recorded in the Official Public Records of Williamson County, Texas. The Developer and the City acknowledge and agree that this Agreement is binding upon the City and the Developer

and their respective successors, executors, heirs, and assigns, as applicable, for the term of this Agreement.

**Section 6. Default.** 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 other equitable legal remedy not inconsistent 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. In addition to the other remedies set forth herein, the City may withhold approval of a building permit application or a certificate of occupancy for a structure that does not comply with the Development Standards.

**Section 7. Reservation of Rights.** 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.

**Section 8. Attorneys Fees.** In the event of action pursued in court to enforce rights under this Agreement, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

**Section 9. Waiver.** 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.

**Section 10. Force Majeure.**

- (a) The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority; insurrections; riots; epidemic; landslides; lightning, earthquakes; fires, hurricanes; storms, floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability.
- (b) If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the

occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.

- (c) It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

**Section 11. Notices.** 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 below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed:

City of Leander  
Attn: City Manager  
200 West Willis  
P.O. Box 319  
Leander, Texas 78646-0319

with copy to:

The Knight Law Firm, LLP  
Paige H. Saenz  
223 West Anderson Lane, #A105  
Austin, Texas 78752

Any notice mailed to the Developer shall be addressed:

Hoch Construction  
Attn: Nich Hoch, Owner/Developer  
7209 Celebration Court  
Jonestown, Texas 78645

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this section.

**Section 12. Waiver of Alternative Benefits.** The Parties acknowledge the mutual promises and obligations of the Parties expressed herein are good, valuable and sufficient consideration for this Agreement. Therefore, save and except the right to enforce the obligations of the City to perform each and all of the City's duties and obligations under this Agreement, Developer hereby waives any and all claims or causes of action against the City Developer may have for or with respect to any duty or obligation undertaken by Developer pursuant to this Agreement, including any benefits that may have been otherwise available to Developer but for this Agreement.

**Section 13. Severability.** Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining

provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

**Section 14. Agreement and Amendment.** This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties and may not be amended except by a writing approved by the City Council of the City that is signed by all Parties and dated subsequent to the date hereof.

**Section 15. No Joint Venture.** The terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents, do not assume any responsibilities or liabilities to any third party in connection with the development of the Property. The City enters into this Agreement in the exercise of its public duties and authority to provide for development of property within the City pursuant to its police powers and for the benefit and protection of the public health, safety, and welfare.

**Section 16. No Third Party Beneficiaries.** This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a party, unless expressly provided otherwise herein, or in a written instrument executed by both the City and the third party. Absent a written agreement between the City and third party providing otherwise, if a default occurs with respect to an obligation of the City under this Agreement, any notice of default or action seeking a remedy for such default must be made by the Owner.

**Section 17. Effective Date.** The Effective Date of this Agreement is the defined date set forth in the first paragraph.

**Section 18. Recordation.** This Agreement or a memorandum of Agreement acceptable to the City and Developer shall be recorded in the Official Public Records of Williamson County, Texas.

**Section 20. Texas Law Governs.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Williamson County, Texas. Venue shall lie exclusively in Williamson County, Texas.

**Section 21. Anti-Boycott Verification.** To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, the Developer represents that neither the Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer (i) boycotts Israel or (ii) will boycott Israel through the term of this Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this paragraph have the meanings assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code, as amended.

**Section 22. Iran, Sudan and Foreign Terrorist Organizations.** To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Developer represents that Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

**Section 23. Time is of the Essence.** It is acknowledged and agreed by the Parties that time is of the essence in the performance of this Agreement.

**Section 24. Exhibits.** The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

**Exhibit A – Property Description**

EXECUTED in multiple originals this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

**CITY:**  
**City of Leander, Texas**  
a Texas home-rule municipal corporation

Attest:

By: \_\_\_\_\_  
Name: Dara Crabtree  
Title: City Secretary

By: \_\_\_\_\_  
Name: Troy Hill  
Title: Mayor

**THE STATE OF TEXAS** §  
**COUNTY OF WILLIAMSON** §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by Troy Hill, Mayor of the City of Leander, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

**DEVELOPER:**

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

**THE STATE OF TEXAS** §  
**COUNTY OF \_\_\_\_\_** §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ company, on behalf of said company.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT "A"**

**Description of Property**