

**EXHIBIT 1**

**PLAZA VOLENTE ANNEXATION AND DEVELOPMENT**  
**DRAFT AGREEMENT**

THE STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS                   §

This Plaza Volente Annexation and Development Agreement (the "**Agreement**") is made and entered into by and among the **CITY OF AUSTIN, TEXAS**, a municipal corporation acting by and through its duly authorized City Manager (the "**City**"), and Plaza Volente Residential, as Owners of the Property, including without limitation their successors, assigns, agents, and affiliated entities ("**Owners**") by the signatures below. Owners warrant and represent that there are no other owners of any portion of the Property and no other third parties holding an interest therein.

**RECITALS**

- A. Owners own a total of approximately 25 acres of land located entirely in Travis County, Texas described in the attached Exhibit "A" ("Property"). Subject property is located in the City's extraterritorial jurisdiction ("ETJ"), but not within its corporate limits.
- B. The City has begun the process to institute annexation proceedings for the Property.
- C. The Owners desire to have the Property remain in the City's ETJ, in consideration for which the Owners agree to enter into this Agreement.
- D. This Agreement is entered into pursuant to Sections 43.035 and 212.172 of the Texas Local Government Code, in order to address the desires of the Owners and the procedures of the City.
- E. The Owners and the City acknowledge that this Agreement runs with the land and is binding upon the City and the Owners and their respective successors and assigns for the term of this Agreement, as defined below.
- F. This Development Agreement is to be recorded in the Official Public Records of Travis County.

**NOW, THEREFORE**, for and in consideration of the mutual agreements, covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and Owners agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

Section 1.01 Terms Defined in this Agreement. In this Agreement, each of the following terms shall have the meanings indicated:

"**City Code**" means the City Code of Austin, together with all its related administrative rules and technical criteria manuals.

"**City Council**" means the City Council of the City or any other successor governing body.

"**Development documents**" mean any City of Austin application or request made in connection with the proposed development of land, including: (1) building permit (with the exception of a building permit to repair, replace or supplement any existing structures for so long as the primary purpose of such improvements is for, or ancillary to, the uses of the Property permitted herein); and (2) site plan permit.

"**Effective Date**" and similar references means the date of the first approval of a Development document.

"**ETJ**" means all land located within the City's extraterritorial jurisdiction under Chapter 42 of the Texas Local Government Code, as reflected in the recitals of this Agreement.

"**Land Development Code**" shall mean the Land Development Code of the City, codified as Title 25 and Title 30 of the City Code.

"**Notice**" shall have the meaning set forth in Section 8.04.

"**Ordinances**" shall mean the ordinances of the City.

"**Property**" shall have the meaning set forth in the recitals to this Agreement.

"**Term**" and similar references shall mean the period of time commencing on the Effective Date and continuing for fifteen (15) years from the Effective Date.

**Section 1.02 Other Definitions**. All capitalized terms used but not defined in this Agreement shall have the meaning given to them in the City Code.

**ARTICLE II**  
**LAND USE**

**Section 2.01 Uses.**

- A. The Owners covenant and agree to **develop** the Property as **commercial and multi-family land use**.

**ARTICLE III**  
**APPLICABLE ORDINANCES**

**Section 3.01 Applicable Requirements.**

- A. Prior to full purpose annexation, development documents are subject to applicable regulations in Title 30 of the Land Development Code, and after full purpose annexation, development documents are subject to applicable regulations in Title 25 of the Land Development Code. Property shall be developed in accordance with plats and other permit applications submitted to, and approved by, the City and Travis County through their Single Office for subdivision regulation, and as finally approved by the appropriate approval bodies.
- B. Owners hereby waive any and all claims under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any actions Owners have taken in violation of Article II of this Agreement.
- C. Pursuant to Section 43.035(b)(1)(B) of the Texas Local Government Code, the City is authorized to enforce city regulations and planning authority that does not materially interfere with the use of the Property for commercial and multi-family land uses, in the same manner the regulations are enforced within the City's boundaries. The City specifically reserves its authority pursuant to Chapter 251 of the Texas Local Government Code to exercise eminent domain over property that is subject to a Chapter 43 and/or Chapter 212 development agreement.

**ARTICLE IV**  
**ANNEXATION**

**Section 4.01 Annexation.**

- A. The parties intend that this Agreement guarantee the continuation of the extraterritorial status as herein set forth. The City guarantees the continuation of the extraterritorial status of the Property, its immunity from annexation by the City, and its immunity from City property taxes for the term of this Agreement, subject to the provisions of this Agreement. Except as provided in this Agreement, the City agrees not to initiate, pursue or perform an involuntarily annexation of the Property for the term of this Agreement.
- B. The Owners acknowledge that the approval of the first development document will constitute a petition for voluntary annexation by the Owners, and the Property will be subject to annexation at the discretion of the City Council. The Owners agree that when the approval of the first development document occurs, such annexation shall be voluntary and Owners hereby consent to such annexation as though a petition for such annexation had been tendered by Owners.
- C. Owners and City agree that, upon the occurrence of Section 4.01(B), the City shall have the option, but not the obligation, to annex for full purposes pursuant to the terms of this Agreement. If the Property is annexed pursuant to the terms of this Agreement, then the City shall provide services to the Property pursuant to Chapter 43 of the Texas Local Government Code. Property voluntarily annexed pursuant to this Agreement may be required to have infrastructure improvements to facilitate development, including but not limited to streets and roads, street and road drainage, land drainage, and water, wastewater, and other utility systems. Owners hereby acknowledge the provision of infrastructure improvements necessitated by proposed future development shall be the sole responsibility of the Owners, excluding, however, infrastructure improvements required as a result of the exercise of eminent domain or deed in lieu thereof.
- D. After full purpose annexation, all city ordinances, regulations and requirements applicable in the City's full purpose jurisdiction, including city taxation, shall apply to the area annexed. From the date of annexation until the Property is zoned, the Property is designated in accordance with the zoning

district provided for under City Code Section 25-2-222. During the term of this Agreement, the City shall not annex any part of the Property except as provided in this Article IV.

## ARTICLE V

### **LEGISLATIVE DISCRETION: REPRESENTATIONS AND WARRANTIES**

**Section 5.01 Legislative Discretion.** This Agreement is not intended to bind, and the parties agree in fact and law that the Agreement does not bind, the legislative discretion of the City Council to approve or disapprove any proposed annexation ordinance for the Property, subject to and in accordance with the provisions hereof.

#### **Section 5.02 Representations and Warranties of Owners.**

- A. **Organization and Good Standing.** Owners have full power and authority to conduct business as it is now being conducted, to own or use the properties and assets that they purport to own or use, and to perform all their obligations under this Agreement.
- B. **Authority; No Conflict.** This Agreement constitutes a legal, valid and binding obligation of Owners, enforceable against Owners in accordance with its terms. Owners have the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform their obligations under this Agreement.

#### **Section 5.03 Representations and Warranties of the City.**

- A. **Organization and Good Standing.** The City is a duly organized and validly existing municipal corporation in good standing under the laws of the State of Texas, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under this Agreement.
- B. **Authority; No Conflict.** This Agreement constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms. The City has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform its obligations under this Agreement.

## ARTICLE VI

### **FRUSTRATION OF PURPOSE**

**Section 6.01 Frustration of Purpose.** If any word, phrase, clause, sentence, paragraph, section or other part of this Agreement is affected in whole or in part as a result of amendments to the underlying statutory authority for this Agreement, or a final judicial decree for which all appeals have expired or been exhausted, or if the Texas Legislature amends state law in a manner having the effect of limiting or curtailing any right or obligation of the parties under this Agreement, then the parties agree and understand that the purpose of this Agreement may be frustrated. In such case, the parties agree to work in good faith to amend this Agreement so that the purpose of this Agreement may be fully realized, including full purpose annexation if necessary. Owners agree not to protest annexation of the Property in accordance with this Agreement, and further agree not to sponsor or support legislation that would hinder the City's ability to annex any portion of the Property in accordance with the provisions hereof.

## ARTICLE VII

### **DEFAULT AND REMEDIES FOR DEFAULT**

**Section 7.01 Default.** It shall be a default under this Agreement by a party, if such party shall fail to perform any of its obligations under this Agreement and such failure shall remain uncured following the expiration of ten (10) business days after such party's receipt of written notice of the nature and extent of such failure. However, in the event the default is of a nature that cannot be cured within such ten (10) 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 forty-five (45) days.

**Section 7.02 Remedies between the City and Owners.** Should any default between Owners and the City remain uncured after Notice to the other as provided in Section 8.04, and expiration of the cure period without the default being materially cured, the non-defaulting party, whether Owners or City, may pursue any remedy that is available at law or in equity at the time of breach.

**Section 7.03 Mediation.** In order to avoid unnecessary litigation, in the event either party fails to materially cure an alleged default within the cure period set out in Section 7.01 above, then if requested by either party, prior to seeking any form of relief from a court of law or agency of competent jurisdiction, each party agrees to

enter into mediation concerning the alleged default for a period of not more than thirty (30) days prior to filing of any court action. Nothing in this Agreement shall be construed to limit the parties from mediating a default after any court or agency action may have been filed.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

**Section 8.01 Amendments to Agreement.** This Agreement may be amended only by a written agreement signed by the City and all of the then Owners of record of the Property.

**Section 8.02 Termination.** This Agreement may be terminated as to any or all of the Property only by express written agreement executed by the City and all of the then Owners of record of the Property. In the event this Agreement is terminated by mutual agreement of the parties or by its terms, the parties shall promptly execute and file of record in the Official Public Records of Travis County, Texas, a document confirming the termination of this Agreement, and such other documents as may be appropriate to reflect the basis upon which such termination occurs.

**Section 8.03 Agreement Binds Successors and Runs with the Land.** This Agreement shall bind and inure to the benefit of the parties, their successors and assigns. The terms of this Agreement shall constitute covenants running with the land comprising the Property and shall be binding on Owners. After the Effective Date hereof, this Agreement, at the City's cost, shall be recorded in the Official Public Records of Travis County, Texas.

**Section 8.04 Notice.** Any person who sells or conveys any portion of the Property or any interest therein shall, prior to such sale or conveyances, give written notice of this Agreement to the prospective purchaser or grantee, and shall give written notice of the sale or conveyance to the City. The foregoing sentence shall not apply with respect to any transfer by death of an Owner or by involuntary transfer. Furthermore, the Owners and the Owners' heirs, successors, and assigns shall give the City written notice within 14 days after Owners become aware of any change in the agricultural exemption status of the Property. The parties designate the following as their addresses for all Notice under this Agreement:

**Address of the City of Austin**

**Address of the Property Owner**

All Notices required or permitted hereunder will be in writing and given by (a) hand delivery to the addressee, (b) certified mail, return receipt requested, postage prepaid in a properly addressed envelope, or (c) commercial delivery service. Notices will be deemed to be given and received as of the earlier of (a) actual receipt or (b) the third day after the date of deposit with the U.S. Postal Service.

If any party desires to change its address for notice, such party will give notice to all other parties in accordance with the terms hereof and such change of address will be effective as of the last to occur of (a) the effective date recited in such notice, or (b) the 10th day after the date such notice is "received".

**Section 8.05 Severability.** 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 that the remainder of this Agreement shall not be affected.

**Section 8.06 Waiver.** Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement shall not be deemed a waiver of such provision or of any other provision of this Agreement, and such party shall have the right at any time(s) thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

**Section 8.07 Applicable Law and Venue.** The interpretation and validity of this Agreement shall be governed by the laws of the State of Texas (without regard to conflicts of law principles). Venue for any dispute arising from or related to this Agreement shall be in Texas state district court in Travis County, Texas (being the county in which the Property is located) and shall be in accordance with the Texas Civil Practice and Remedies Code.

**Section 8.08 Reservation of Rights.** To the extent not inconsistent with this Agreement, each party reserves all rights, privileges and immunities under applicable laws.

**Section 8.09 Counterparts.** This Agreement may be executed in multiple counterparts which shall be construed together as a single original instrument as though all parties had signed one instrument, and, when executed, each counterpart shall be binding upon and inure to the benefit of each of the parties executing the instrument whether or not all other parties have executed same.

**Section 8.10 Survival.** This Agreement shall survive its termination to the extent necessary for the implementation of the provisions of Articles II, III, and IV as well

as any other provision herein which, by its terms, is performable, or applies, after termination.

**Section 8.11 Exhibits.**

Exhibit "A" Description of Property: Exhibit "A" is attached hereto and incorporated herein for all purposes.

**EXECUTED** in multiple counterparts, each of which shall constitute an original, to be effective as of the Effective Date.

**CITY:**

**CITY OF AUSTIN,**  
A home rule city and Texas municipal corporation

By:

\_\_\_\_\_  
J. Rodney Gonzales, Assistant City Manager

Date: \_\_\_\_\_

**THE STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by J. Rodney Gonzales, as Assistant City Manager of the City of Austin, a municipal corporation, on behalf of said municipal corporation.

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

OWNER:

**PROPERTY OWNERS NAME**

By:

\_\_\_\_\_  
**PROPERTY OWNERS NAME**

Date: \_\_\_\_\_

**THE STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_ 2020, by **PROPERTY OWNERS NAME**.

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