

STATE OF TEXAS §  
COUNTY OF BEXAR §

**FIRST AMENDMENT OF DEVELOPMENT AGREEMENT**

**THIS FIRST AMENDMENT OF DEVELOPMENT AGREEMENT** (this “First Amendment”) is made effective the 20<sup>th</sup> day of September, 2018 by the undersigned.

This First Amendment is made by and between HCV Tower, LLC (the “Developer”) and the City of Hill Country Village, Texas (the “City”). Developer and City are herein collectively referred to as the “Parties.”

WHEREAS, Developer is developing certain property which is legally described as 7.982 acres of land out of the William Bunney Survey No. 915, Abstract 878, the H.C. McKay Survey No. 333, Abstract 513, County Block 4990, Bexar County, Texas, said 7.982 acre tract being more particularly described by metes and bounds on Exhibit “A” attached hereto and made a part hereof (the “Property”); and

WHEREAS, the Property lies within the extraterritorial jurisdiction of the City; and

WHEREAS, Developer requested access points to and from the Property along Tower Drive; and

WHEREAS, Developer requested that it be allowed to construct up to six buildings on the Property and use the Property for any uses currently listed as being permitted in the B-2 Zoning District of the City; and

WHEREAS, Developer expressed the intention to acquire easements from third parties to facilitate Developer installing a sanitary sewer and wastewater line from the Property to a City sewer main; and

WHEREAS, Developer also requested that the minimum front yard setback for the Property be 35 feet, the minimum side yard setback for the Property be 12 feet, the minimum rear yard setback for the Property be 25 feet, and that the maximum building height on the Property be one story but will not exceed 35 feet; and

WHEREAS, the City wishes to have its building codes be applicable to the Property and to have assurances as to the use of the Property and to have the Property annexed into the City by agreement; and

WHEREAS, the Legislature of the State of Texas enacted §51.072(a) of the Texas Local Government Code, which provides that a municipality has the full power of local self-government; and

WHEREAS, Section 212.172 of the Texas Local Government Code authorizes the governing body of a municipality with less than 1.9 million population to enter into a contract with an owner of land located in the extraterritorial jurisdiction of the municipality; and

WHEREAS, Section 212.172 of the Texas Local Government Code allows parties under such a contract to (1) authorize enforcement by the municipality of certain municipal (and use and development regulations in the same manner as such regulations are enforced within the municipality's borders, (2) authorize enforcement of environmental regulations, (3) provide for annexation of the land, (4) specify the uses and development of the land before and after annexation, and (5) include other lawful terms.

WHEREAS, the Property described in Exhibit "A" to this First Amendment is encumbered by and subject to the Development Agreement ("Agreement") attached as Exhibit "B" to this First Amendment.

WHEREAS, the Parties entered into the Agreement on October 27, 2016.

WHEREAS, the Parties have agreed to amend provisions of Agreement related to building height, septic system, and notice.

NOW, THEREFORE, both Parties hereby amend the following provisions of the Agreement as hereinafter set forth, which Agreement shall be and remain in full force and effect as amended hereby:

5. Structure Height and Screening. The maximum height of any building or structure to be constructed or placed on the Property will be one story but will not exceed 25 feet in height. The height of a building or structure will be measured from the foundation or base of such improvement. Any portion of the Property bordering on property which is used or zoned as residential shall have a solid fence or screening device at least 6 feet in height separating the Property from the land which is used or zoned for residential purposes.

9. Connection to Septic and City Sanitary Sewer and Wastewater Line. At Developer's sole expense, Developer may install an aerobic septic system or may acquire easements from third parties and construct, install, operate, use, inspect, reconstruct, modify, repair, maintain, rebuild, remove, and replace a sanitary sewer and wastewater line from the Property to the City's sewer main. Developer may construct and maintain such sanitary sewer and wastewater line in accordance with City requirements and will permit the City Engineer to inspect the construction, installation, operation, use, reconstruction, modification, repair, maintenance, removal, and replacement of the sanitary sewer and wastewater line to determine if such line is constructed, installed, operated, used, inspected, reconstructed, modified, repaired, maintained, rebuilt, removed, and replaced in accordance with all applicable state and City requirements and laws. Provided that such sanitary sewer and wastewater line has been constructed and installed in compliance with all state and City requirements and laws (in the sole opinion of the City engineer) and further provided that Developer has paid all applicable fees and expenses and obtained all required permits, Developer's sanitary sewer and wastewater line may connect to the City's sewer main. City may – but is not obligated to – accept assignment of such sanitary sewer and wastewater line. Should the City not accept assignment of the sanitary sewer and wastewater

line and the water line, the Developer may assign any lines not accepted to the City of San Antonio Water System.

18. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) by delivering the same in person to such party; or (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) by facsimile; provided a copy of such notice is sent within one (1) day thereafter by another method provided above.

The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

If to City:                      City of Hill Country Village  
   Attention: City Administrator  
   116 Aspen Lane  
   Hill Country Village, TX 78232

If to Developer:                HCV Tower, LLC  
   200 Concord Plaza Drive, Suite 800  
   San Antonio, TX 78216

*[Remainder of page intentionally left blank; signatures follow on next page]*

**DEVELOPER:**

HCV TOWER, LLC

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

**CITY:**

**CITY OF HILL COUNTRY VILLAGE**

By: \_\_\_\_\_  
Gabriel Durand-Hollis, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Frank Morales, City Secretary

Acknowledgments

STATE OF TEXAS  
COUNTY OF BEXAR

This instrument was acknowledged before me, the undersigned authority, and the \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, \_\_\_\_\_ of HCV Tower, LLC, a Texas limited liability company, on behalf of said Company.

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

STATE OF TEXAS  
COUNTY OF BEXAR

This instrument was acknowledged before me, the undersigned authority, on the \_\_\_ day of November, 2018, by Gabriel Durand-Hollis, Mayor of the City of Hill Country Village, Texas, a municipal corporation, on behalf of said corporation.

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Notary Public, State of Texas

## Exhibit "A"



### FIELD NOTES FOR A 7.982 ACRE TRACT

A 7.982 acre tract of land, out of the William Bunney Survey No. 915, Abstract 878, the H.C. McKay Survey No. 333, Abstract 513, County Block 4990, Bexar County, Texas and being the remaining portion of a called 15.000 acre tract of land as conveyed to Agnes Leona Monken of record in Volume 5240 Page 713 of the Deed Records of Bexar County, Texas, currently shown as being owned by Marvin H. Monken, Jr., per the Bexar County Appraisal District and being more particularly described by metes and bounds as follows:

**BEGINNING** at a found  $\frac{3}{4}$ " iron rod in the northeast right-of-way line Tower Drive, for the south corner of a called 3.000 acre tract of land as conveyed to Chesters Hamburgers Co., of record in Volume 8879 Page 1944 of the Official Public Records of Bexar County, Texas, in the southwest line of the 15.000 acre tract and for the west corner of the tract described herein, from which a found  $\frac{1}{2}$ " iron rod in the northeast right-of-way line of Tower Drive, in the southwest line of the 15.000 acre tract, for the west corner of the 3.000 acre tract and for the south corner of a called 3.000 acre tract of land as conveyed to Chesters Hamburgers Co., of record in Volume 9215 Page 702 of the Official Public Records of Bexar County, Texas bears, N 30° 10' 42" W, a distance of 240.25 feet, from which a found  $\frac{1}{2}$ " iron rod in the northeast right-of-way line of Tower Drive and for the west corner of the 3.000 acre tract described in Volume 9215 Page 702 of the Official Public Records of Bexar County, Texas and also being the original west corner of the 15.000 acre tract bears, N 30° 00' 14" W, a distance of 281.04 feet;

**THENCE:** N 41° 14' 10" E, departing the northeast right-of-way line of Tower Drive and along and with the southeast line of the 3.000 acre tract (Volume 8879 Page 1944), a distance of **610.45 feet** to a set  $\frac{1}{2}$ " iron rod with a blue plastic cap stamped "KFW SURVEYING" in the southwest line of Lot 6, Block 2 of the Country Village Subdivision Unit 1, a plat of record in Volume 8200 Pages 8-9 of the Deed and Plat Records of Bexar County, Texas, for the east corner of the 3.000 acre tract (Volume 8879 Page 1944), in the northeast line of the 15.000 acre tract and for the north corner of the tract described herein, from which a found  $\frac{1}{2}$  iron rod in a rock wall for the southwest corner of Crest Trail, a 50 foot wide right-of-way as shown on the Country Village Subdivision Unit 1 Plat, for the south corner of Lot 12 of the Country Village Subdivision Unit 1 Plat and in the northeast line of the 3.000 acre tract (Volume 8879 Page 1944) bears, N 48° 44' 29" W, a distance of 108.51 feet;

**THENCE:** S 48° 44' 29" E, along and with the southwest line of Lot 6 and the northeast line of the 15.000 acre tract, a distance of **436.47 feet** to a found  $\frac{1}{2}$ " iron rod for the north corner of a called 1.000 acre tract of land, Parcel 5, as conveyed to Marmon Family Properties, Ltd., of record in Volume 6575 Page 1539 of the Official Public Records of Bexar County, Texas and the most easterly corner of the tract described herein, from which a found  $\frac{1}{2}$  iron rod with a plastic cap stamped "Pape Dawson" for the south corner of Lot 6, the most westerly corner of a called 0.895 acre tract of land as conveyed to San Marcos Centex, LLC., of record in Volume 17662 Page 630 of the Official Public Records of Bexar County, Texas and in the northeast line of the 1.000 acre tract and the 15.000 acre tract bears, S 48° 44' 29" E, a distance of 54.99 feet, from which a found PK nail for the north corner of a called 1.4000 acre tract of land, Parcel 4, as conveyed to Marmon Family Properties, Ltd., of record in Volume 6575 Page 1539 of the Official Public Records of Bexar County, Texas, the east corner of the 1.000 acre tract and the 15.000 acre tract bears, S 48° 44' 29" E, a distance of 74.60 feet;

**THENCE:** Along and with the northwest and southwest lines of the 1.0000 acre tract, Parcel 5, the following two (2) courses:

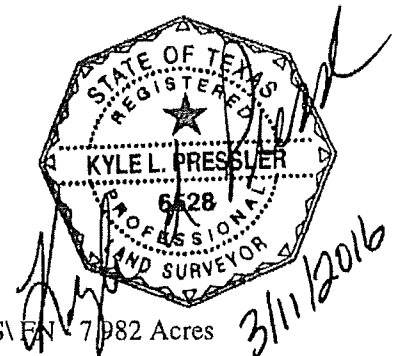
1. **S 41° 16' 57" W**, a distance of **335.79 feet** to a found ½" iron rod for the west corner of the 1.0000 acre tract and an interior corner of the tract described herein, and
2. **S 48° 34' 11" E**, a distance of **130.00 feet** to a found ½" iron rod in the southeast line of the 15.000 acre tract, in the northwest line of a called 6.1280 acre tract of land as conveyed to Marmon Family Properties, Ltd., of record in Volume 16352 Page 1197 of the Official Public Records of Bexar County, Texas, for the south corner of the 1.0000 acre tract and an easterly exterior corner of the tract described herein;

**THENCE:** **S 41° 17' 37" W**, along and with the southeast line of the 15.000 acre tract, the northwest line of the 6.1280 acre tract and the northwest line of a called 2.5836 acre tract, Parcel 6, as conveyed to Marmon Family Properties, Ltd., of record in Volume 6575 Page 1539 of the Official Public Records of Bexar County, Texas, a distance of **428.23 feet** to a found ½" iron rod in the northeast right-of-way line of Tower Drive, for the west corner of Parcel 6, the south corner of the 15.000 acre tract and the tract described herein;

**THENCE:** Along and with the common lines between Tower Drive and the 15.000 acre tract, the following four (4) courses:

1. With a curve to the left having a radius of **997.41 feet**, an arc length of **112.14 feet**, a delta angle of **06° 26' 31"** and a chord bears, **N 32° 49' 58" W**, a distance of **112.09 feet** to a set ½" iron rod with a blue plastic cap stamped "KFW SURVEYING" for a point of tangency of the tract described herein,
2. **N 36° 03' 14" W**, a distance of **261.49 feet** to a set ½" iron rod with a blue plastic cap stamped "KFW SURVEYING" for an angle of the tract described herein,
3. **N 31° 19' 14" W**, a distance of **111.35 feet** to a set ½" iron rod with a blue plastic cap stamped "KFW SURVEYING" for an angle of the tract described herein, and
4. **N 30° 10' 42" W**, a distance of **101.99 feet** to the **POINT OF BEGINNING** and containing **7.982 acres**, more or less, in Bexar County, Texas. Said tract being described in accordance with an exhibit prepared by KFW Surveying. Bearings are based on NAD83 (2011) Texas State Plane South Central Zone, 4204. Distances recited herein are surface distances using an average combined scale factor of 0.9998300289.

Job No.: 16-028  
Prepared by: KFW Surveying  
Date: March 11, 2016  
File: S:\Draw 2016\16-028 7.3 Acres Hill Country Village\DOCS\EN 7.982 Acres



**Exhibit "B"**

**CITY OF HILL COUNTRY VILLAGE, TEXAS**

**DEVELOPMENT AGREEMENT**

STATE OF TEXAS       §  
COUNTY OF BEXAR   §

This Development Agreement executed between HCV Tower, LLC (the "Developer") and the City of Hill Country Village, Texas (the "City"). Developer and City are herein collectively referred to as the "Parties."

WHEREAS, Developer or an affiliate of Developer has entered into a contract to purchase and wishes to develop certain property which is legally described as 7.982 acres of land out of the William Bunney Survey No. 915, Abstract 878, the H.C. McKay Survey No. 333, Abstract 513, County Block 4990, Bexar County, Texas, said 7.982 acre tract being more particularly described by metes and bounds on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, the Property lies within the extraterritorial jurisdiction of the City; and

WHEREAS, Developer has requested access points to and from the Property along Tower Drive; and

WHEREAS, Developer has requested that it be allowed to construct up to six buildings on the Property and use the Property for any uses currently listed as being permitted in the B-2 Zoning District of the City; and

WHEREAS, Developer has expressed the intention to acquire easements from third parties to facilitate Developer installing a sanitary sewer and wastewater line from the Property to a City sewer main; and

WHEREAS, Developer has also requested that the minimum front yard setback for the Property be 35 feet, the minimum side yard setback for the Property be 12 feet, the minimum rear yard setback for the Property be 25 feet, and that the maximum building height on the Property be two stories but will not exceed 35 feet; and

WHEREAS, the City wishes to have its building codes be applicable to the Property and to have assurances as to the use of the Property and to have the Property be annexed into the City by agreement; and

WHEREAS, the Legislature of the State of Texas enacted §51.072(a) of the Texas Local Government Code, which provides that a municipality has the full power of local self-government; and

WHEREAS, Section 212.172 of the Texas Local Government Code authorizes the governing body of a municipality with less than 1.9 million population to enter into a contract with an owner of land located in the extraterritorial jurisdiction of the municipality; and



WHEREAS, Section 212.172 of the Texas Local Government Code allows parties under such a contract to (1) authorize enforcement by the municipality of certain municipal (and use and development regulations in the same manner as such regulations are enforced within the municipality's borders, (2) authorize enforcement of environmental regulations, (3) provide for annexation of the land, (4) specify the uses and development of the land before and after annexation, and (5) include other lawful terms.

NOW, THEREFORE, in consideration of the sum of Ten Dollars, the mutual terms, covenants, and conditions herein, and other good and valuable consideration, each to the other, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Recitals. The foregoing recitals are incorporated herein and made a part of this Agreement.

2. Property. The real property which the Developer wishes to develop is legally described as 7.982 acres of land out of the William Bunney Survey No. 915, Abstract 878, the H.C. McKay Survey No. 333, Abstract 513, County Block 4990, Bexar County, Texas, said 7.982 acre tract being more particularly described by metes and bounds on Exhibit "A" attached hereto and made a part hereof (the "Property"). The Property is located within the extraterritorial jurisdiction of the City.

3. Uses. Developer agrees that the Property shall be used as defined below:

Office use: a facility or facilities used primarily for conducting the affairs of a business, profession, service, industry, government or like activity. Office may include flex space building(s), which may be configured to accommodate a combination of office and storage uses.

4. Density and Setbacks. The maximum number of buildings which may be constructed or located on the Property is six. All lots located on the Property shall have a minimum front yard setback of 35 feet, a minimum side yard setback of 12 feet, and a minimum rear yard setback of 25 feet.

5. Structure Height and Screening. The maximum height of any building or structure to be constructed or placed on the Property will be two stories but will not exceed 35 feet in height. Any portion of the Property bordering on property which is used or zoned as residential shall have a solid fence or screening device at least 6 feet in height separating the Property from the land which is used or zoned for residential purposes.

6. Access to Tower Drive. Although the Property is located in the extraterritorial jurisdiction of the City, the Property abuts Tower Drive, a thoroughfare located within the city limits of the City. Developer must obtain permission from the City for vehicular access to and from the Property from Tower Drive. The City will grant two access points to or from the Property onto Tower Drive. The location of such access points will be determined by engineers for the City and the Developer in conjunction with the Chief of Police of the City, taking into account public safety considerations.

7. Applicability of City Building Ordinances. The City may enforce all current City building codes in regard to the construction and location of any structure on the Property for which construction is commenced within five years of the Effective Date of this Agreement. Thereafter, the City may enforce all City building codes then in effect in the City.

8. Annexation. Not later than December 31, 2019, Developer will file and pursue to acceptance by the City an application for the Property to be annexed into the City.

9. Connection to City Water Line and Sanitary Sewer and Wastewater Line. The City will permit Developer to access water lines on Tower Drive to serve the Property. At Developer's sole expense, Developer will acquire easements from third parties and construct, install, operate, use, inspect, reconstruct, modify, repair, maintain, rebuild, remove, and replace a sanitary sewer and wastewater line and water line from the Property to the City's sewer and water mains. Developer will construct and maintain such water line and sanitary sewer and wastewater line in accordance with City requirements and will permit the City Engineer to inspect the construction, installation, operation, use, reconstruction, modification, repair, maintenance, removal, and replacement of the water line sanitary sewer and wastewater line to determine if such line is constructed, installed, operated, used, inspected, reconstructed, modified, repaired, maintained, rebuilt, removed, and replaced in accordance with all applicable state and City requirements and laws. Provided that such sanitary sewer and wastewater line has been constructed and installed in compliance with all state and City requirements and laws (in the sole opinion of the City engineer) and further provided that Developer has paid all applicable fees and expenses and obtained all required permits, Developer's water line and sanitary sewer and wastewater line may connect to the City's water and sewer mains. City may – but is not obligated to – accept assignment of such water line sanitary sewer and wastewater line. Should the City not accept assignment of the sanitary sewer and wastewater line and the water line, the Developer may assign any lines not accepted to the City of San Antonio Water System.

10. Indemnity. **DEVELOPER AGREES TO PROTECT, INDEMNIFY, AND SAVE CITY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER ARISING IN FAVOR OF ANY THIRD PARTY ON ACCOUNT OF, OR RESULTING FROM, THE PERFORMANCE OF THIS AGREEMENT BY DEVELOPER OR DEVELOPER'S AGENTS, REPRESENTATIVES, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS.**

11. Assignment. This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other party.

12. Amendment. Except as otherwise provided in this Agreement, this Agreement may only be amended by a written amendment signed by the Parties.

13. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties hereto and shall not be construed to confer any rights upon any third party.

14. Waiver. The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.

15. Entire Agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter of this Agreement and supersedes any and all prior agreements, whether oral or written, dealing with the subject matter of this Agreement.

16. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Texas and is performable and enforceable in Bexar County, Texas.

17. Severability and Legal Construction. If any term or provision of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remainder of the terms and provisions of this Agreement shall remain in full force and effect and shall not in any way be invalidated, impaired or affected. This Agreement shall not be construed more or less favorably between the parties by reason of authorship.

18. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) by delivering the same in person to such party; or (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) by facsimile; provided a copy of such notice is sent within one (1) day thereafter by another method provided above.

The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

If to City:                   City of Hill Country Village  
                                  Attention: City Administrator  
                                  116 Aspen Lane  
                                  Hill Country Village, TX 78232

If to Developer:           HCV Tower, LLC  
                                  4040 Broadway, Suite 400  
                                  San Antonio, TX 78209

19. Governmental Immunity. Nothing contained herein shall ever be construed as a waiver or relinquishment of governmental or sovereign immunity by City the rights to which are specifically reserved herein to the fullest extent authorized by law. The Parties expressly agree that no public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.

20. Running with the Land. It is intended and determined that this Agreement shall constitute covenants, which shall run with the land. As such, this Agreement may be recorded in the Official Public Records of Bexar County, Texas.

21. Survival. The obligations of Developer in this Agreement shall survive the expiration or termination of this Agreement.

22. Signature by Developer. This Agreement must be signed by or on behalf of Developer prior to presentation of this Agreement to the City Council of City for its discussion and possible action. Execution of this Agreement by Developer is binding on Developer and on any affiliate of Developer which takes title to the Property.

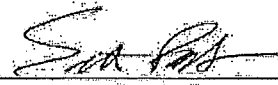
23. Effective Date. The effective date of this Agreement is the date Developer or an affiliate of Developer takes title to the Property and the City is not obligated to sign this Agreement until that date provided that the City may rescind any City approval of this Agreement if the Developer does not take title to the Property on or before December 31, 2016.

24. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

*[Remainder of page intentionally left blank; signatures follow on next page]*

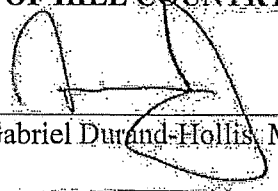
**DEVELOPER:**

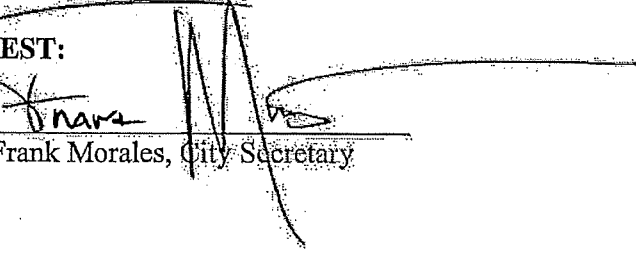
HCV TOWER, LLC

By:   
Name: Scott Bornton  
Title: Manager

**CITY:**

**CITY OF HILL COUNTRY VILLAGE**

By:   
Gabriel Durand-Hollis, Mayor

**ATTEST:**  
By:   
Frank Morales, City Secretary