

**ORDINANCE NO. 20111006-020**

**AN ORDINANCE APPROVING A MANAGED GROWTH AGREEMENT FOR DEVELOPMENT OF THE HIGH POINTE VILLAGE SITE PLAN PROJECT.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** The Council finds that the High Pointe Village site plan project described in SPC-2007-0466C(XT2).MGA, is a large, long term project under Section 25-1-540 (*Managed Growth Agreements*).

**PART 2.** The Council approves the Managed Growth Agreement ("MGA") between the City of Austin and New Corridor Development LP, attached to and incorporated into this ordinance as Exhibit 1. The MGA is limited to the High Pointe Village development approved under Site Plan No. SPC-2007-0466C(XT2).MGA, subject to any minor revisions approved in accordance with the MGA. To the extent the MGA conflicts with the City Code, the MGA shall be controlling.

**PART 3.** The City Manager or his designee may execute the agreement for the City.

**PART 4.** The Council waives board or commission review, if any, required for the MGA.

**PART 5.** This ordinance takes effect on October 17, 2011.

**PASSED AND APPROVED**

\_\_\_\_\_, 2011      §  
   §      Lee Leffingwell  
   §      Lee Leffingwell  
        Mayor

**APPROVED:** Karen M. Kennard      **ATTEST:** Shirley A. Gentry  
   Karen M. Kennard      Shirley A. Gentry  
   City Attorney      City Clerk

# **EXHIBIT 1**

## **MANAGED GROWTH AGREEMENT** **BETWEEN THE CITY OF AUSTIN AND** **NEW CORRIDOR DEVELOPMENT LP**

This Managed Growth Agreement ("Agreement") between the City of Austin, Texas ("City") and New Corridor Development LP ("New Corridor") is made and entered into by the City, a home-rule municipal corporation acting by and through its duly authorized City Manager and New Corridor. New Corridor and the City may be referred to jointly as Parties or singly as "Party" in this Agreement.

### **RECITALS**

1. On August 10, 2007, New Corridor Development LP filed an application for a consolidated site plan for the construction of the High Pointe Village on property described in Exhibit A, which is attached hereto and incorporated herein ("the Property"). An extension to the application was filed December 8, 2010.
2. On September 16, 2008, the Zoning and Platting Commission approved Site Plan No. SPC-2007-0466C, authorizing the construction of a mixed use development with two mixed use with approximately 37,795 sq. ft. of retail and 15,725 sq. ft. of restaurant uses, with associated parking, drives, and related improvements on 27.85 acres ("the Project").
3. New Corridor desires to extend the life of the project because the applicant claims financing and construction of the project has been delayed due to the condemnation process initiated by the City to obtain easements for the Jollyville water transmission main, which transverses the tract and it could take 10 years to construct all buildings.

NOW, THEREFORE, for and in consideration of the mutual covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and New Corridor, Development, LP agree as follows:

## **Section 2.02            Revisions to the Site Plan**

Minor revisions to the Project shall be permitted in accordance with the City Code and City regulations. However, New Corridor Development, LP may not construct any improvements on the Property that the City Manager determines to vary substantially from the Project as defined by Site Plan No. SPC-2007-0466C without forfeiting the rights granted under this Agreement to develop the Project under Original Regulations.

## **Section 2.03            Exceptions from Right to Develop Under Original Regulations**

In this section, New Corridor Development, LP agrees to comply with City regulations adopted after December 8, 2010, as they pertain to:

- a. erosion and sedimentation controls;
- b. uniform building, fire, electrical, plumbing, or mechanical codes adopted by recognized national code organizations or local amendments to those codes enacted to address imminent threats of destruction of property or injury to persons;
- c. regulations to prevent the imminent destruction of property or injury to persons that do not affect landscaping, tree preservation, open space, or park dedication, lot size or dimensions, lot coverage, building size, residential or commercial density, or timing of the project, or that change development permitted by a restrictive covenant required by the City; and
- d. state and/or federal regulatory requirements.

## **ARTICLE III** **MISCELLANEOUS PROVISIONS**

### **Section 3.01            Notice.**

It is contemplated that the Parties will contact each other concerning the subject matter of this Agreement. However, any formal notice or communication required to be given by one Party to another by this Agreement ("Notice") shall be given at the addresses below for the Parties.

Notice may be given by: (1) delivering the Notice to the Party to be notified; (2) by depositing the Notice in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; or (3) by sending the Notice by telefax with confirming copy sent by mail to the Party to be notified.

## **ARTICLE I**

### **PURPOSE & LEGAL AUTHORITY**

#### **Section 1.01            Purpose.**

The purpose of this Agreement is to provide certainty that the Project will not be required to undergo design changes as a result of changes to City regulations over a long period of time required for New Corridor Development, LP to acquire permits and complete the Project in phases.

#### **Section 1.02            Legal Authority.**

Section 25-1-540 of the City Code authorizes the execution of Managed Growth Agreements for planning and developing large projects, long term projects, or any project having special benefits that are in the public interest. The Project is a large, long-term mixed-use project, and the applicant states it has been delayed due to the condemnation process initiated by the City to obtain easements for the Jollyville water transmission main, which transverses the tract.

#### **Section 1.03            Expiration Date**

Section 25-1-540 provides that a Managed Growth Agreement may specify the time period during which a project may comply with the regulations in effect when the first application for the project is filed and establish an expiration date for each application necessary to complete the project.

## **ARTICLE II**

### **TERMS**

#### **Section 2.01            Original Regulations; Expiration Date**

Subject to Section 2.03 below, New Corridor Development, LP may construct the Project to comply with City regulations in effect on December 8, 2010, which is the day the application extension was originally submitted under the Comprehensive Watershed Ordinance and Land Development Code (“Original Regulations”). The expiration date of Site Plan No. SPC-2007-0466C for purposes of Chapter 25-5 of the City Code and the expiration date of the Project for purposes of Article 12 of Chapter 25-1 of the City Code shall be September 16, 2021.

Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective after the earlier of the date of actual receipt or three days after the date of the deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified or purposes of Notice, the addresses of the Parties shall, until changed as provided in this section, be as follows:

City of Austin:                      City Manager  
   P.O. Box 1088  
   Austin, Texas 78767

with required copy to:            City Attorney  
   P.O. Box 1088  
   Austin, Texas 78767

Owner:                                New Corridor Development, LP (Nancy Bui)  
   3800 Alazan  
   Austin, Texas 78734

The Parties may change their addresses for Notice purposes by providing five days written notice of the changed address to the other Party.

If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating Notice is extended to the first business day following the Saturday, Sunday, or legal holiday.

### **Section 3.02            Severability.**

The provisions of this Agreement are not severable. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to any person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the Parties agree and understand that the omission of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement would frustrate the purpose of this Agreement, and, therefore, in that event, this Agreement shall terminate.

### **Section 3.03            Waiver.**

Any failure by a Party to the Agreement to insist on strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver of the provision or of any other provision of the Agreement. A Party has the right at any time to insist on strict performance of any of the provisions of this Agreement.

**Section 3.04                   Applicable Law and Venue.**

The construction and validity of this Agreement shall be governed by the laws of the State of Texas (without regard to conflict of laws principles). Venue shall be in Travis County, Texas.

**Section 3.05                   Incorporation of Exhibits.**

All Exhibits attached to or referred to in this Agreement are incorporated into this Agreement by reference for the purposes set forth in this Agreement.

**Section 3.06                   Assignability, Successors, and Assigns.**

This Agreement is not assignable by New Corridor Development, LP or the City without the prior written consent of the City Council or New Corridor Development, LP.

The Agreement shall be binding on and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

**Section 3.07                   Amendment.**

This Agreement may only be amended in writing on the approval of the City Council and New Corridor Development, LP.

**ARTICLE IV**  
**DEFAULT AND REMEDIES FOR DEFAULT**

**Section 4.01                   Default.**

On the occurrence, or alleged occurrence, of an event of default, the non-defaulting Party shall send the defaulting Party notice of its default or alleged default. Except as otherwise specifically provided in this Agreement, the defaulting Party must cure its default within 30 days following the notice of the receipt of the default, or, must begin to cure the default within 14 days following receipt of the notice of default and diligently pursue the cure to completion within 50 days of receipt of the notice of default. If the defaulting Party fails to abide by these deadlines, the non-defaulting Party shall have all rights and remedies available in law and equity and all rights and remedies provided in this Agreement. All of these rights and remedies shall be cumulative.

This Agreement shall be effective on the date it has been signed by both Parties.

**New Corridor Development, LP**

By: \_\_\_\_\_

Name: Nancy Bui

Title:

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

**STATE OF** \_\_\_\_\_ §

**COUNTY OF** \_\_\_\_\_ §

Before me \_\_\_\_\_, Notary Public, on this day personally appeared Nancy Bui, \_\_\_\_\_ of New Corridor Development, LP, a \_\_\_\_\_ limited partnership, known to me personally to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on \_\_\_\_\_, 2011.

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

Approved as to form:

City of Austin

\_\_\_\_\_  
Brent Lloyd  
Assistant City Attorney

\_\_\_\_\_  
Sue Edwards  
Assistant City Manager  
Date:\_\_\_\_\_



## **EXHIBIT A**

### **"The Property"**

27.85 acres more or less as described as  
Lots 1A, 1B, 1C, 1D and 1E, Resubdivision of Lot 1,  
New Corridor at River Place Subdivision  
recorded in Document No. 200900032  
of the Official Public Records of Travis County, Texas.

AFTER RECORDING, RETURN TO:

City of Austin  
Planning and Development Review Department  
P.O. Box 1088  
Austin, Texas 78767  
Project Name: High Pointe Village Managed Growth Agreement  
Attn: Sue Welch  
Case No.: SPC-2007-0466C(XT2).MGA