

**ASSIGNMENT  
AND  
CONSENT OF THE CITY OF PFLUGERVILLE, TEXAS  
TO THE ASSUMPTION OF THE  
NEW SWEDEN DEVELOPMENT AGREEMENT**

STATE OF TEXAS                     §  
  §         KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF TRAVIS               §

That this ASSIGNMENT AND CONSENT TO ASSUMPTION OF DEVELOPMENT AGREEMENT (the "Consent to Assumption"), is made by and between the City of Pflugerville, Texas, a Texas home rule municipal corporation (hereinafter referred to as "City"), Owen NS2, L.P., a Texas limited partnership ("Owen"), and Terrell Timmermann (hereinafter referred to as "Timmermann").

**PREMISES:**

WHEREAS, the City and Owen are parties to that certain New Sweden Development Agreement, a copy of which is attached hereto as Exhibit A (hereinafter referred to as the "Development Agreement") with regard to the development and use of that certain 426.0 acres of land, more or less, in Travis County, Texas located inside the boundaries of New Sweden Municipal Utility District No. 2 (the "District") as described in the Development Agreement and hereafter in this Consent to Assumption as the "MUD 2 Tract". The legal description of the MUD 2 Tract is attached hereto as Exhibit B.

WHEREAS, Owen acquired ownership of all of the property in the MUD 2 Tract after the time the Development Agreement was executed.

WHEREAS, the City has previously consented to Owen's assumption of the rights, title, interests and obligations of a Developer in and under the Development Agreement in so far as they pertain to the MUD 2 Tract.

WHEREAS, Contingent upon the City's approval and execution of this Consent to Assumption, Owen has agreed to convey a portion of the MUD 2 Tract to Timmermann, which property is more particularly described in Exhibit C which is attached hereto and incorporated herein by reference (the "Property"), and which Property is located within the boundaries of the District.

WHEREAS, Timmermann has now agreed to assume the rights, title, interests and obligations of Owen as Developer in and under the Development Agreement in so far as they pertain to the Property conveyed to Timmermann from Owen.

WHEREAS, the City consents to the assumption by Timmermann of the Development Agreement, with regard to the Property.

NOW, THEREFORE, in consideration of the foregoing premises, the promises and conditions provided herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. ASSIGNMENT OF CONDITIONS, COVENANTS, RIGHTS AND OBLIGATIONS.

Owen hereby relinquishes all right, title, and interest in and to the Development Agreement that affects or relates to the Property, and hereby assigns and transfers to Timmermann said portion of the Development Agreement as it affects and relates to the Property, effective as of the date hereof, together with all rights, requirements, and obligations of any nature arising therefrom.

2 ASSUMPTION OF CONDITIONS, COVENANTS, RIGHTS AND OBLIGATIONS.

Timmermann hereby accepts the rights and obligations of the Development Agreement as it affects and relates to the Property and agrees to carry out and perform all of the conditions, covenants and obligations of Developer as stated therein accruing from and after the date hereof and to assume all responsibilities therefore accruing from and after the date hereof.

3. CONSENT TO ASSUMPTION. The City hereby consents to the assumption of all rights, title, interests and obligations of Owen under the Development Agreement by Timmermann as Developer from Owen, as it affects and relates to the Property described in Exhibit C hereto.

4. CONFIRMATION OF NON-ANNEXATION COVENANTS. Pursuant to Section 3.2 of the Development Agreement, the City confirms and agrees that upon confirmation of the District in an election held for that purpose, when presented with a strategic partnership agreement executed by the District in the form attached as Exhibit E to the Development Agreement, the City will, at its discretion, either (i) execute the strategic partnership agreement with the District, or (ii) execute an amendment to the Development Agreement that incorporates the same covenants for non-annexation of the MUD 2 Tract (including the Property) as are set forth in the strategic partnership agreement attached as Exhibit E to the Development Agreement.

5. BUILDING PERMITS. Timmermann hereby agrees that all residential and non-residential vertical construction requiring a building permit within the MUD 2 Tract shall comply with the City's Construction Code that is in effect at the time a building permit is issued for construction of the applicable structures.

6. ENTIRE AGREEMENT. This Consent to Assumption contains the entire understanding between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between or among the parties hereto, relating to the subject matter of this Consent to Assumption, which are not fully expressed herein.

7. FURTHER ACTS. Each party hereto agrees to perform any and all such further and additional acts and execute and deliver any and all such further and additional instruments and documents as may be reasonably necessary in order to carry out the provisions and effectuate the intent of this Consent to Assumption.

8. AUTHORITY. Each party hereto represents and warrants that it has full authority to execute the Consent to Assumption and bind to the Consent to Assumption its respective partners, trustees, beneficiaries, remaindermen, directors, officers, employees, agents, advisors, attorneys, successors, assigns and personal representatives. Timmermann warrants, represents, covenants, and agrees that



Austin, TX 78701

With a copy to:

Armbrust & Brown  
Attn: David Armbrust  
100 Congress Ave. STE 1300  
Austin, TX 78701

or such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

15. SUCCESSORS OF TIMMERMANN. This Agreement shall automatically inure to the benefit of any successor to Timmermann, whether through death or assignment upon written notice to the City from any heir or assignees of Timmermann.

IN WITNESS WHEREOF, the parties execute this Assignment and Consent to Assumption of Development Agreement and made it effective as of \_\_\_\_\_, 2012.

**OWEN NS2, L.P.**  
By: Owen NS2 GP, LLC

By: \_\_\_\_\_  
Joe Owen, Manager

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_ 2012, by Joe Owen, Manager of Owen NS2 GP, LLC, a Texas limited liability company, general partner of Owen NS2, L.P., a Texas limited partnership, on behalf of said company and partnership.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

\_\_\_\_\_  
TERRELL TIMMERMANN

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on \_\_\_\_\_ 2012, by \_\_\_\_\_ of \_\_\_\_\_, a Texas \_\_\_\_\_, on behalf of Terrell Timmermann.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**CITY OF PFLUGERVILLE, TEXAS**

**A TEXAS MUNICIPAL CORPORATION**

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

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on \_\_\_\_\_ 2012, by \_\_\_\_\_ of the City of Pflugerville Texas, a Texas municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS