

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT AND FIRST AMENDMENT TO POSSESSION AND USE AGREEMENT

This Second Amendment to Development Agreement and First Amendment to Possession and Use Agreement (this "**Amendment**") is made the Effective Date set forth below by and between WILLIAMSON COUNTY, a political subdivision of the State of Texas ("**County**") and HIGHLAND SIX TWENTY RESIDENTIAL, LTD., a Texas limited partnership ("**Developer**").

RECITALS:

A. County and Developer entered into that certain Development Agreement dated July 17, 2007, providing for the construction of certain improvements to FM 620 and the extension of Great Oaks Drive through the HIGHLAND HORIZON SUBDIVISION as more particularly described in the Development Agreement.

B. By Amendment to Development Agreement effective March 29, 2011 (the "**First Amendment to Development Agreement**"), County and Developer agreed that Developer shall cause the extension of Great Oaks Boulevard to be completed, subject to County reimbursing the costs incurred by Developer in completing such extension by depositing the estimated cost of the construction of Great Oaks Boulevard with Gracy Title Company to be held and disbursed in accordance with the terms of an Escrow Agreement in the form attached as an exhibit to the First Amendment to Development Agreement (the above-described Development Agreement, as amended by said First Amendment to Development Agreement, is referred to herein as the "**Development Agreement**").

C. Concurrently with the execution of the First Amendment to Development Agreement, County and Developer entered into that certain Possession and Use Agreement also dated effective March 29, 2011 (the "**Possession Agreement**") with respect to certain real property required as right-of-way for the construction of O'Connor Blvd., which among other things provided for the conveyance of the right-of-way upon the deposit of the estimated cost of construction with Gracy Title Company under the above-described Escrow Agreement as provided in the First Amendment to Development Agreement.

D. County has advised Developer that County currently has the funds required to be deposited under the Escrow Agreement, but has requested Developer agree that instead of depositing such funds with Gracy Title Company to be disbursed as provided in the Escrow Agreement, County wishes to disburse the funds directly to Developer to reimburse the cost of the construction of Great Oaks Boulevard, and County and Developer desire to amend and modify the terms and provisions of the Development Agreement and the Possession Agreement as set forth in this Amendment.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements for the parties set forth herein, as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Developer agree as follows:

1. All capitalized terms used herein but not defined shall have the meanings assigned to them in the Development Agreement and/or the Possession Agreement.

2. Paragraphs 4, 5, 7 and 9 of the First Amendment to Development Agreement are hereby deleted in their entirety and the following are substituted in the place thereof:

4. County and Developer confirm and acknowledge that the County has commenced the construction of O'Connor Boulevard, and in connection with the construction of O'Connor Boulevard, County and Developer have entered into a Possession and Use Agreement dated effective March 29, 2011, providing for the conveyance of certain right-of-way by Developer upon the reimbursement of the costs incurred by Developer for the construction of the extension of the Great Oaks Project as provided in this Amendment.

5. County shall issue the permits and approvals required by the County for the construction of the extension of the Great Oaks Project and upon receipt of such permits, Developer shall cause the Project Engineer to publicly advertise and obtain bids for the construction of the extension of the Great Oaks Project as reflected in the Plans in accordance with the bidding requirements of Sections 252.041-252.0435 of the Texas Local Government Code. Upon receipt of such bids, County and Developer shall jointly review such bids and determine which bid shall be accepted. Promptly after the County and Developer approval of a bid, Developer shall finalize a contract with the successful bidder for the construction of the extension of the Great Oaks Project as reflected in the Plans for a fixed price or on a cost-plus with guaranteed maximum basis in the amount of the approved bid (the **"Construction Contract"**).

7. County confirms, covenants, represents and agrees that it has currently available funds in hand in the amount of \$555,000.00, which funds have been set aside, budgeted, reserved and allocated exclusively for the purpose of reimbursing Developer for the costs to complete the extension of the Great Oaks Project. County agrees to maintain, retain, hold and disburse such funds only in strict accordance with the terms of this Amendment to pay the actual, out-of-pocket Costs incurred by Developer in connection with the construction of the extension of the Great Oaks Project as follows:

(a) Such funds shall be disbursed by County not later than ten (10) days after receipt of a written request from Developer (the **"Disbursement Request"**) that includes each of the following:

i. a copy of the request by the General Contractor for a progress payment under the Construction Contract for the work performed and the labor and materials provided through the date of the request, or invoices; and

ii. a written statement from the Project Engineer certifying that all work to the date for which disbursement is

requested has been substantially completed to the satisfaction of the Project Engineer materially in accordance with the Plans.

(b) The amount of each Disbursement Request shall be made by County disbursing directly into the account of Developer in accordance with a Williamson County Direct Deposit Authorization Form, in the form attached hereto as Exhibit B, signed and delivered by Developer to County; provided, nothing contained in such Williamson County Direct Deposit Authorization Form shall constitute an amendment or modification of any of the terms and provisions set forth in the Development Agreement, as amended.

County expressly confirms, covenants, represents and agrees that no other condition, consent, authorization, approval is, or shall be, required for the disbursement of the funds to Developer in accordance with the foregoing.

9. County confirms and acknowledges that Developer has obtained approval of the Williamson County Conservation Foundation for inclusion of the extension of the Great Oaks Project for participation in the Williamson County Regional Habitat Conservation Plan (the "RHCP"). Developer has paid and shall be responsible for the payment of any fees required for such participation, and in no event shall County be required to pay or contribute the cost of any mitigation that may be required under the RHCP or otherwise with respect to endangered species.

3. The following provision is added to the Development Agreement:

Developer agrees to retain copies of all draw requests and supporting documentation and all other information and accounting records that are directly related to the actual, out-of-pocket costs incurred by Developer in connection with the construction of the extension of the Great Oaks Project and the payment of such costs for a period of three (3) years after the date of the final reimbursement payment is paid to Developer. At any time prior to the expiration of said 3-year period, and upon reasonable prior notice to Developer, County, or its duly authorized representative, shall have the right to audit such materials and accounting records. County, or its duly authorized representative, shall have access for reasonable periods during Developer's normal business hours to such materials and accounting records and shall have the right to photocopy any and all of such materials and accounting records. County shall be responsible for all of the costs and expenses with respect to any such audit and examination of such materials and accounting records, including without limitation the costs of photocopies. County shall provide a copy of such audit to Developer within ten (10) days after the County issues or receives such audit.

4. County and Developer agree that paragraph 1 of the Possession Agreement shall be deleted in its entirety and the following shall be substituted in the place thereof:

1. As additional consideration for the conveyance of the rights granted herein, GRANTEE additionally agrees to reimburse GRANTOR for the costs of the

construction of the extension of Great Oaks Drive through the Highland Horizon Subdivision, but not to exceed a total of \$555,000.00, in accordance with the terms of that certain Development Agreement dated July 17, 2007, as amended. Upon GRANTOR's receipt of the costs of the construction of the extension of Great Oaks Drive, GRANTOR shall execute a Donation Special Warranty Deed to GRANTEE for the Property subject to this Agreement.

5. Except as expressly amended and modified by this Amendment, the terms and provisions of the Development Agreement and the Possession Agreement shall continue in full force and effect, and the same are hereby in all respects confirmed, ratified and approved.

6. Miscellaneous.

(a) THIS AMENDMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED BY THE DEVELOPMENT AGREEMENT AS AMENDED ARE PERFORMABLE IN WILLIAMSON COUNTY, TEXAS.

(b) County represents and warrants to Developer that County is duly authorized and empowered to enter into this Amendment. Developer represents and warrants to County that it has the requisite authority to enter into this Amendment. Each signatory to this Amendment represents and warrants that he or she has the authority to execute this Amendment on behalf of the party for whom such person is signing.

(c) In case anyone or more of the provisions contained in this Amendment shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Amendment, and this Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Amendment.

(d) This Amendment may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) agreement, but in making proof of this Amendment, it shall not be necessary to produce or account for more than one such counterpart.

Executed by County and Developer on the dates set forth below their respective signatures below to be effective the date the last party signs (the "**Effective Date**").

COUNTY:

WILLIAMSON COUNTY

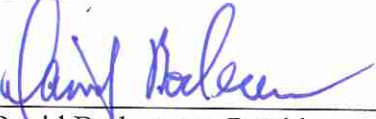
By: _____
Dan A. Gattis, County Judge

Dated: May ____, 2012

DEVELOPER:

HIGHLAND SIX TWENTY RESIDENTIAL, LTD.

By: HRI-GP No. 1, L.L.C., a Texas limited liability
company, General Partner

By: 
David Bodenman, President

Dated: April 30, 2012