

DEVELOPER'S AGREEMENT

Ronald Reagan Blvd.—Proposed Ring Road

This DEVELOPER'S AGREEMENT (this "Agreement") is by and between **Rancho Sienna KC, LP**, a Texas limited partnership ("Developer") and **Williamson County**, a political subdivision of the State of Texas (the "County") (sometimes hereinafter collectively referred to as the "Parties"), and is effective on this the ____ day of April, 2008 (the "Effective Date").

Recitals:

A. WHEREAS, Developer is the owner of certain real property located in Williamson County, which is planned to be developed as a master-planned community or other development, and locally known as Rancho Sienna (the "Development"); and

B. WHEREAS, as part and parcel of its road bonds project and corresponding Ronald Reagan Blvd. construction project (collectively, the "Construction Project"), the County seeks to construct a proposed ring road or loop ("Ring Road") near the intersections of Ronald Reagan Blvd. and State Highway 29, a portion of which (the "Developer Segment") is planned to traverse the Development on the East side of Ronald Reagan Blvd. as more particularly shown via schematic on the attached **Exhibit "A"**; and

C. WHEREAS, as consideration for the inclusion of the Developer Segment within the Construction Project, the parties hereto agree to undertake certain engineering, financial and other duties, responsibilities and obligations in connection therewith as more particularly described below; and

D. WHEREAS, in addition to necessary road infrastructure improvements, Developer desires to design and construct, among other things, adequate wastewater facilities to serve the needs of the Development; and

E. WHEREAS, in furtherance of the process of designing and constructing said wastewater facilities, Developer desires to acquire from the County such easement(s) as would most efficiently and economically provide for the location of certain wastewater line(s) that will serve the Development (the "Wastewater Line Easement"); and

F. WHEREAS, the County desires to provide to the Developer such easement as more particularly described below.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereby covenant and agree as follows:

1. **Dedication/Deed of Land.** The Parties hereby acknowledge that on or about the day 31st of December, 2007, the right-of-way for the Developer Segment was conveyed to the County by Rancho Sienna, Ltd.

2. Engineering responsibilities.

(a) The County has designed all of the Construction Project, save and except for the Developer Segment, from its western terminus at the Starks and Mello common property line, approximate plan station 17+99, to east of the intersection with existing CR 268 east of proposed Ronald Reagan, approximate plan station 78+50 (the "County Segment"). The Developer must design the segment from station 78+50 to its eastern terminus at SH 29 (i.e., the Developer Segment). Developer shall be responsible for all reasonable and necessary coordination with any property owners directly affected by the construction of the Developer Segment, all applicable public or governmental agencies, reasonable and necessary permitting requirements, and related items reasonably necessary and required to carry out such design. The Developer must prepare the plans for the Developer Segment in accordance with the design criteria as set forth in the Williamson County Design Criteria Manual. All engineering and plan development shall be coordinated with the County's design engineer, Turner Collie & Braden, and with the County's general engineering consultant, HNTB Corporation.

(b) The Developer shall provide the County with completed Developer Segment plans for incorporation into a single submittal by the County of the Water Pollution Abatement Plan ("WPAP") for the Ring Road. The Developer shall be solely responsible for design, submittal and approval of the WPAP for any planned development or construction within the Developer Segment. Furthermore, any changes to the construction plans caused by any revisions or amendments to the WPAP as it applies to the Developer Segment must be approved by Developer.

(b) The County shall be responsible for any required survey tasks for the County Segment; the Developer shall be responsible for any required survey tasks for the Developer Segment. The County shall immediately release the survey information for the County Segment to the Developer for design coordination between the two segments.

(c) The County shall be responsible for obtaining and delivering a copy to Developer of an environmental assessment for the entire Construction Project from a consultant of the County's choosing. Upon completion of the assessment work, the Developer shall reimburse the County for the portion of such work which is directly related and attributable to the Developer Segment. The reimbursement costs for the environmental assessment shall be calculated based on the pro-rata percentage of the Developer Segment length as it relates to the total project length, or upon other apportionment agreed to between the parties in writing. Any changes to the construction plans caused by the assessment(s) must be approved by the Developer.

(d) The County is hereby authorized and shall be responsible for the design of any relocation of any utilities that is reasonably necessary to accommodate the construction of the Developer Segment; provided however, Developer shall be responsible for (1) the costs incurred for; and (2) the actual completion of, any necessary utility relocations or placement within the Developer Segment.

3. **Construction specifications/responsibilities:**

(a) **The Road Improvements.** (i) For the portion of the Developer Segment to the West of Ronald Reagan Blvd., the improvements shall consist of two 12' wide lanes with 4' wide shoulders with a dedicated North bound turn lane at the East Bound Ronald Reagan Blvd. intersection approach; and (ii) for the portion of the Developer Segment to the East of Ronald Reagan Blvd., the improvements shall consist of two 12' wide lanes with 8' wide shoulders and a 14' wide two way turn lane, all in substantial compliance with the specifications shown in **Exhibit "B"** attached hereto (collectively the "Road Improvements"). The Road Improvements shall be constructed by the County and shall include all grading and paving improvements, and drainage facilities, including culverts and water quality features (i.e., vegetative filter strips).

(b) **Time and Amount of Reimbursement for Construction Costs.**

(1) The Developer shall be solely responsible for the payment of the costs of construction of the Developer Segment as set forth in this Section 3(b).

(2) The County has prepared and delivered to Developer a cost estimate therefor for the construction of the Developer's Segment, a true copy of which is attached hereto and made a part hereof for all purposes as **Exhibit "C"** ("Cost Estimate"). The Developer and the County hereby agree that the the total agreed upon amount of reimbursement to be paid by Developer to the County ("Reimbursement Amount") shall be the sum of **Five Hundred Thirty Six Thousand Sixty and 43/100 Dollars (\$536,060.43)**.

(3) On approximately the fifteenth (15) day of each calendar month during the construction of the Developer Segment, the County shall submit to Developer an application and certificate for payment ("Certificate") which shall state the status of completion of the construction of the Developer Segment, in terms of a percentage. The Certificate must be certified as complete and accurate by the Developer's engineer and the County Engineer. The Certificate shall be in substantially the same form as **Exhibit "D"**, attached hereto and made a part hereof for all purposes. No Certificate will be accepted by Developer unless it is certified as complete and accurate as set forth above.

(4) Within thirty (30) days of the receipt of each Certificate, the Developer shall pay to the County an amount equal to the stated percentage of completion *times* the Reimbursement Amount, *less* all sums previously paid.

(5) Developer shall not be responsible to reimburse the County for any amounts related to change orders unless each such change order(s) shall have been approved in advance in writing by Developer.

(6) Anything herein to the contrary notwithstanding, Developer shall not be responsible to reimburse the County for funding any improvements to the Developer Segment for which the County sells bonds, or otherwise secures reimbursement from third-parties or sources. Furthermore, Developer shall not be liable to any contractor, engineer, attorney, materialman, or other party employed or contracted with in connection with the construction of the Ring Road, but shall only be obligated to reimburse County in the manner and to the extent provided in this Agreement. In the event the County fails to commence construction of the Developer Segment within ninety (90) days after the latest of (1) full execution of this document, (2) an agreement upon the Reimbursement Amount and (3) the relocation of any utilities as set out in Section 2(e) above has been completed and/or diligently pursue completion of the Developer's Segment, Developer shall be entitled, upon 30 days written notice to the County, to assume sole responsibility for the remaining payments for and construction of the Developer's Segment.

Comment [JLW1]: I assumed that any relocation and the construction of the Developer Segment would proceed simultaneously. Am I mistaken? If I am correct, can't we delete subpart (3)?

(c) Conditions to Reimbursement. The Developer's obligation to pay the Reimbursement Amount shall be subject to the following terms and conditions:

- [a] Developer and the County agree upon the Reimbursement Amount;
- [b] The Developer Segment shall be constructed solely and directly by the County; and
- [c] All change orders must be approved by Developer.

4. Construction of Improvements. All improvements of and to the Ring Road, including the Developer Segment, will be constructed in a good and workmanlike manner in accordance with the ordinances, rules, and regulations of the County, and all other applicable regulatory agencies, as well as, this Agreement, as applicable.

5. Wastewater Line Easement in Kauffman Loop. The County hereby agrees to execute and deliver to Developer, contemporaneously with the execution of this Agreement, the Wastewater Line Easement attached hereto and made a part hereof for all purposes as **Exhibit "E"**.

6. Indemnity. (a) Developer shall indemnify and hold the County harmless from and against all losses, costs, damages, expenses and liabilities (herein collectively referred to as "County Losses") of whatsoever nature, including, but not limited to, attorneys' fees, costs of litigation, court costs, amounts paid in settlement and amounts paid to discharge judgments relating to any claim, lawsuit, cause of action or other legal action or proceeding brought against the County or to which the County may be party, even if groundless, false or fraudulent, directly, or indirectly resulting from, arising out of or relating to the acquisition, purchase, design or other responsibility or obligation of Developer contained in this agreement relating in any way to the

Developer Segment, save and except for the County's or any of its agent's, servant's or employee's own conduct, which proximately causes any such County Losses. In the event of any actions brought against the County in which indemnification by Developer is applicable, the County shall promptly give written notice to Developer, and Developer shall assume the investigation and defense of such action, including the employment of counsel and the payment of all expenses. The County shall have the right, at its expense, to employ separate counsel and to participate in the investigation and defense of any such action. Developer shall not be liable for the settlement of any such action made by the County without the consent of Developer; provided, however, that in the event of any settlement entered into with the consent of Developer or any final and non-appealable judgment in favor of a plaintiff in any such action, Developer shall indemnify and hold the County harmless from and against any losses incurred by reason of such settlement or judgment. The expiration of the terms of this Agreement shall not relieve Developer from any liability initiated hereunder arising prior to the expiration of this Agreement.

(b) The County shall indemnify and hold the Developer harmless from and against all losses, costs, damages, expenses and liabilities (herein collectively referred to as "Developer Losses") of whatsoever nature, including, but not limited to, attorneys' fees, costs of litigation, court costs, amounts paid in settlement and amounts paid to discharge judgments relating to any claim, lawsuit, cause of action or other legal action or proceeding brought against the Developer or to which the Developer may be party, even if groundless, false or fraudulent, directly, or indirectly resulting from, arising out of or relating to the construction of the Developer Segment or other responsibility or obligation of County contained in this agreement relating in any way to the Developer Segment, save and except for the Developer's or any of its agent's, servant's or employee's own conduct, which proximately causes any such Developer Losses. In the event of any actions brought against the Developer in which indemnification by County is applicable, the Developer shall promptly give written notice to County, and County shall assume the investigation and defense of such action, including the employment of counsel and the payment of all expenses. The Developer shall have the right, at its expense, to employ separate counsel and to participate in the investigation and defense of any such action. The County shall not be liable for the settlement of any such action made by the Developer without the consent of County; provided, however, that in the event of any settlement entered into with the consent of County or any final and non-appealable judgment in favor of a plaintiff in any such action, County shall indemnify and hold the Developer harmless from and against any losses incurred by reason of such settlement or judgment. The expiration of the terms of this Agreement shall not relieve County from any liability initiated hereunder arising prior to the expiration of this Agreement, and to the County necessary to fully effectuate any obligation of the County to indemnify the Developer, the County hereby waives sovereign immunity as to suit and to damages.

6. Notice. All notices, demands and requests required hereunder shall be in writing and shall be deemed to have been properly delivered and received (i) as of the date of delivery to the addresses set forth below if personally delivered or delivered by facsimile machine, with confirmation of delivery (in the event a facsimile is sent after 5:00 p.m. local Austin time, it shall be deemed to have been received on the next day), or email (as indicated below); (ii) three (3) business days after deposit in a regularly maintained receptacle for the United States mail, certified mail, return receipt requested and postage prepaid; or (iii) one (1) business day after deposit with Federal Express or comparable overnight delivery system for overnight delivery

with all costs prepaid. All notices, demands and requests hereunder shall be addressed as follows:

| If to County: | With a copy to: |
|--|---|
| Williamson County Attn: County Judge 710 Main Street, Suite 210 Georgetown, Texas 78726 | Charles Crossfield, Esq. Sheets & Crossfield, P.C. 309 East Main Street Round Rock, Texas 78644 Telecopier: (512) 255-8986 |
| If to Developer: | With a copy to: |
| Rancho Sienna KC, Ltd. Atten: William T. Gunn, III and Bradley D. Whittington 6836 Bee Cave Road, Suite 400 Austin, Texas 78746 Telecopier: (512) 328-8828 | Jesse L. Whittenton Whittenton & Hurst, LLP 6836 Bee Cave Road, Suite 400 Austin, Texas 78746-5073 Telecopier: (512) 732-7367 |
| and to: | |
| KCRS Partners, LLC c/o Anderson Property Development 316 W. 31st Street Kansas City, Missouri 64108 Attention: Ryan Anderson Telecopier: (816) 561-4760 | |

Any party may designate a change of address by notice to the other parties, given at least fifteen (15) days before such change of address is to become effective. The foregoing notwithstanding, any notice hereunder shall be effective when actually received by the party to whom such notice is being sent.

8. Miscellaneous

(a) Texas Law to Apply. THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED BY THE CONTRACT ARE PERFORMABLE IN WILLIAMSON COUNTY, TEXAS.

(b) Assignment. Parties Bound. This Agreement may be assigned by Developer only with the prior written approval of the County, which approval will not be unreasonably withheld, conditioned, or delayed. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, executors, administrators, personal

representatives, legal representatives, successors and assigns.

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

(d) Force Majeure. Notwithstanding anything to the contrary contained herein, in the event either party is prevented from performing its obligations hereunder due to inclement weather, strikes, riots, civil unrest, or any other cause which is beyond the reasonable control of such party (a delay due to any such cause being referred to herein or a "Force Majeure Delay") then the time period for such party's performance shall be extended by the length of the Force Majeure Delay and such party's failure to perform such obligation shall be excused for the duration of, and to the extent of, such Force Majeure Delay; provided, however, Force Majeure Delay shall not apply to, or excuse a party from its obligations in connection with (a) any obligation to pay a sum of money to the other party or anyone else, or (b) Purchaser's obligation to timely purchase Lots in accordance with the terms hereof..

(e) Legal Construction. in case any one or more of the provisions contained in this Agreement 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 Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

(f) Gender. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

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

(h) Schedule of Exhibits.

Exhibit A: Developer Segment

Exhibit B: Road Improvements

Exhibit C: Application and Certification of Payment

Exhibit D: Wastewater Line Easement

Developer:

RANCHO SIENNA KC, LP,

By: Rancho Sienna KC Development Co., LLC, a Texas limited liability company,
General Partner,

By: GHW Williamson, LLC, a Texas limited liability company, Its Authorized
Manager,

By: _____
William T. Gunn, III, Authorized Manager

By: KCRS Partners, LLC, a Missouri limited liability company, Its Authorized
Manager

By: Northland Highlands Texas, L.L.C., a Missouri limited liability
company, Its Member

By: _____
Print Name and Title:

By: Bicknell Family Holding Company, LLC, a Delaware limited liability
company, Its Member

By: _____
Print Name and Title:

County:

WILLIAMSON COUNTY TEXAS

By: _____
Dan A. Gattis, Williamson County Judge

ATTEST: _____
_____, Acting County _____

EXHIBIT A
DEVELOPER SEGMENT

EXHIBIT B
SPECIFICATIONS

EXHIBIT C
COST ESTIMATE

EXHIBIT “D”

APPLICATION AND CERTIFICATION OF PAYMENT

EXHIBIT “E”
WASTEWATER LINE EASEMENT