

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is by and among the undersigned Avery Centre DevCo, Inc., a Texas Corporation ("DevCo" and "Owner"), RDW Holdings, Inc., d/b/a Waterstone Development Group ("RDW" and "Developer") and Williamson County, a political subdivision of the State of Texas (the "County"), on this _____ day of _____, 2009.

on assigns, RDW

RECITALS:

WHEREAS, DevCo ("Owner") is the Owner, and RDW ("Developer") is the developer, of the Property attached as **Exhibit A** planned to be developed as a master-planned community or other development (the "Development"); and

WHEREAS, the Developer, the City of Round Rock and the County are interested in co-operating with the Texas Department of Transportation ("TxDOT") in the widening and expansion of FM 1460 from Old Settlers Boulevard to approximately 1000' north of University Boulevard (the "1460 Project"); and

WHEREAS, Owner, as part of this Agreement has asked the Commissioner's Court of Williamson County to create of the **Avery Centre Road District No.1** and the **Avery Centre Road District No. 2** (together the "Districts"); and

WHEREAS, as consideration for the creation of the Districts, Developer agrees to participate in the funding of the FM 1460 Project as described below;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the undersigned Owner and Developer covenants and agrees as follows:

1. **Dedication of Land / Acquisition of Right-of-Way.** Owner and Developer have dedicated or will cause to be dedicated in fee simple to TxDOT the necessary right-of-way, utility easements and other related easements for the FM 1460 Project.

1.1. *Road Design Standards.* FM 1460 shall be designed to TxDOT standards. All other regional collector roads that are subject to reimbursement under this Agreement shall, to the extent governed by the City of Round Rock's ordinances and regulations in effect at the time of submission for approval, be constructed in accordance with such ordinances and regulations.

1.2. *Water Quality / Detention Ponds / Drainage Easements.* Owner and Developer agree to dedicate all necessary easements for the construction and maintenance of water quality / detention ponds and drainage easements necessary to serve the roads constructed under this Agreement.

1.3. *Acquisition of Right-of-Way and Easements.* Developer shall be responsible for the acquisition of all right-of-way and utility relocation easements needed for FM1460 Project, except for the property owned by Tera Vista Development. The Tera Vista right-of-way costs, however, are included in the FM 1460 Project Costs as stated in Section 4, below.

2. **Road Districts.**

2.1. *The Road Improvements.* The road improvements shall consist of widening and expanding FM 1460 to a four (4) lane divided arterial from the northern right-of-way of Old Settlers Blvd. to approximately 1000' north of University Blvd., and (b) all Residential Collector Roads within the Districts, all as shown on Exhibit B (collectively the "Road Improvements"). The Residential Collector Road Improvements include all grading and paving improvements as well as irrigation, landscaping, fencing, walls, and drainage facilities, including detention and water quality ponds. The Residential Collector Road Improvements shall also include all engineering, legal, financing related to the Road Improvements (including developer interest, capitalized interest on the bonds, and normal issuance costs) or other expenses incident to the construction of the road and associated work.

2.2. *Purpose.* The property that is to be included in the Districts is described in Exhibit A (the "Property"). The Districts shall be responsible for the levying of ad valorem taxes on the Property in accordance with Chapter 257 of the Texas Transportation Code, as amended, with the limitation that the purpose of the Districts is to issue bonds to reimburse Owner and Developer for all design and construction costs of the public Road Improvements as further provided in the Order of the County creating the Districts to the extent mentioned therein.

2.3. *Time and Amount of Reimbursement.* Each District agrees to use its best efforts to sell bonds for the improvements, but cannot guarantee the sale thereof and will not be obligated to offer the bonds for sale in contravention of any laws of the State of Texas. Within forty-five (45) days of the Districts' receipt of the proceeds of the bonds to finance the acquisition of the Road Improvements, the Districts shall reimburse Owner and Developer, as provided above. It is specifically understood and agreed by the parties that the issuance of bonds to acquire such Road Improvements will most likely be accomplished through a series of bond sales over time. The Districts' financial advisor shall advise the Districts as to the amount of bonds that can be prudently sold from time to time. No bonds shall be issued, when taken together with any other County debt issued pursuant to Article III, Section 52, in an amount exceeding 25% of the total assessed value of real property in the Districts.

2.4. Conditions to Reimbursement. The Districts obligation to issue the bonds and to reimburse Owner and Developer for funds advanced for the Road Improvements shall be subject to the following:

- a. No bonds will be issued until the Districts receive the recommendation of their financial advisor that the sale and amount of each particular bond issue is feasible and prudent based upon a number of considerations including the overlapping tax rate, tax collections history, percentage of collections, and assessed valuation to debt;
- b. Developer and Owner agree not to request the issuance of indebtedness by any District until such time as the assessed value of the land in the Districts is such that the proposed debt amount (when aggregated with all other outstanding debt of the respective Districts proposing to issue bonds) is twelve and one-half percent (12.5%) or less of such assessed value of land and improvements in the Districts;
- c. Owner shall, at its expense, submit to the District for which the issuance of bonds is requested, a market study, in a form acceptable to the County, prepared by a recognized feasibility consultant illustrating the demand for and feasibility of the type of development contemplated and/or underway within such District unless either District merits its own investment grade or better bond rating;
- d. Construction of the Residential Collector Road Improvements will be carried out through the award of contracts in substantial conformity with the bid procedure applicable to the County, and performed in accordance with the road standards and rules of the City;
- e. The construction contract for the Residential Collector Road Improvements will be approved by the Commissioner's Court of the County;
- f. Receipt of a bona fide bid or commitment to purchase the bonds;
- g. Approval of the bonds by the Attorney General of the State of Texas and registration of the bonds by the Comptroller of Public Accounts of the State of Texas;

- h. The Districts shall not be obligated to consider the issuance of bonds in an amount less than \$1,000,000.00; and
- i. Owner is current on all taxes, fees and obligations to the Districts and no additional District bonds will be issued if any outstanding bonds are in default or reserve funds have been drawn down and not replenished.
- j. NO DISTRICT DEBT SHALL BE ISSUED UNLESS AND UNTIL DEVELOPER IS IN FULL COMPLIANCE WITH SECTION 5 HEREIN, WHICH REQUIRES DEVELOPER TO FUND FIFTY (50%) PERCENT OF ALL FM 1460 PROJECT COSTS, AS HEREIN DEFINED, OVER AND ABOVE TEN MILLION DOLLARS (\$10,000,000), INCLUDING ALL COSTS OF RIGHT-OF-WAY ACQUISITIONS AND UTILITY RELOCATIONS. IN NO EVENT, HOWEVER, SHALL THE DEVELOPER BE REQUIRED TO PAY MORE THAN FIVE MILLION DOLLARS (\$5,000,000).
- k. ANY AND ALL DEBT ISSUED BY THE DISTRICTS SHALL BE SOLELY A DEBT OF THE DISTRICTS AND SHALL NOT BE AN OBLIGATION OF WILLIAMSON COUNTY OR THE CITY OF ROUND ROCK.

The bonds shall be offered on terms and conditions generally accepted in the bond market for similar types of obligations and at a net effective interest rate, taking into consideration any discount or premium, not to exceed two percent above the highest average interest rate reported by the "Bond Buyers" Index of 20 Municipal Bonds during the one month preceding the bond sale. The Districts shall not be obligated to sell or issue any amount of bonds in excess of the amount then recommended by the Districts' financial advisor. Each bond issue will fund a reserve fund to the maximum extent permitted by federal and state tax law unless determined unnecessary by the financial advisor.

3. **Design and Construction of FM 1460 Project.** TxDOT shall be responsible for the design and construction of the FM 1460 Project. TxDOT has or will enter into an Advanced Funding Agreement with the City of Round Rock which will require TxDOT to fund up to \$10,000,000 of the FM 1460 Project and for the City of Round Rock to be responsible for the remaining Project Costs. As outlined herein, the City of Round Rock, the Developer and Williamson County will participate in the funding of the balance of Project Costs.

4. **FM 1460 Project Costs.** Project Costs shall include, but not be limited to, all costs of design, engineering and surveying, material, labor, grading, paving, drainage, erosion

control, right-of-way acquisition costs, utility relocation costs and other costs related to the FM 1460 Project. (the "Project Costs").

5. **Project Costs to be Funded by Developer.** Developer shall be responsible for funding fifty (50%) percent of all Project Costs over and above Ten Million and No/100 Dollars (\$10,000,000), but in no event shall Developer be required to pay more than Five Million and no/100 Dollars (\$5,000,000). Terms and conditions of said payment shall be as stated in a separate Development Agreement between the Developer and the City of Round Rock.

6. **Project Costs to be Funded by County and City.** The City and County, through an Interlocal Agreement, will commit to share equally the remaining fifty (50%) of the Project Costs over and above the Ten Million Dollars remitted by the State and the above-described developer participation.

7. **Regional Collector Road Project Costs to be Funded by the Developer.** Owner shall promptly pay the costs of the Regional Collector Road Improvements as the same become due, including, without limitation, all "soft" and "hard" costs of the design, engineering, permitting, and materials, labor, construction and inspection arising in connection with the Regional Collector Road Improvements; all payments arising under any contracts entered into for the construction of the Regional Collector Road Improvements; all costs incurred in connection with obtaining governmental approvals, certificates, permits, required as a part of the construction of the Road Improvements. Neither the Districts, the City of Round Rock nor Williamson County shall be liable to any contractor, engineer, attorney, materialman or other party employed or contracted with in connection with the construction of the Regional Collector Road Improvements, but shall only be obligated to reimburse Owner through the Districts in the manner and to the extent provided in Section 2 of this Agreement.

8. **Indemnity.** Owner and Developer shall indemnify and hold Williamson County, the City of Round Rock and the Districts harmless from and against all losses, costs, damages, expenses and liabilities (herein collectively referred to as "Losses") of whatsoever nature, including, but not limited to, attorney's 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 Williamson County, the City of Round Rock or the Districts or to which Williamson County, the City of Round Rock or the Districts may be party, even if groundless, false or fraudulent, directly, or indirectly resulting from, arising out of or relating to the acquisition, purchase or construction of the Improvements. In the event of any actions brought against Williamson County, the City of Round Rock or the Districts in which indemnification by Owner and Developer is applicable, Williamson County, the City of Round Rock or the Districts shall promptly give written notice to Owner and Developer, and Owner and Developer shall assume the investigation and defense of such action, including the employment of counsel and the payment of all expenses. Williamson County, the City of Round Rock or the Districts shall have the right, at its expense, to employ separate

counsel and to participate in the investigation and defense of any such action. Owner and Developer shall not be liable for the settlement of any such action made by Williamson County, the City of Round Rock or the Districts without the consent of Owner and Developer; provided, however, that in the event of any settlement entered into with the consent of Owner and Developer of any final judgment for a plaintiff in any such action, Owner and Developer shall indemnify and hold Williamson County, the City of Round Rock or the Districts 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 Owner and Developer from any liability initiated hereunder arising prior to the expiration of this Agreement. Provided, however, this indemnification shall expire and terminate two (2) years after the later to occur of (i) the Improvements have been accepted for maintenance by the applicable governmental authority, or (ii) Owner and Developer shall have received final reimbursement from the Districts for the costs of Improvements.

9. **Continuing Securities Disclosures.** If requested by the County, Owner and Developer agrees to provide periodic information and notices of material events regarding Owner's development within the Districts in accordance with the Securities and Exchange Commission Rule 15c2-12.

10. **Notice of Districts.** Owner covenants to provide notice to anyone that purchases land within the Districts of its existence and ability to issue bonds (similar to the notice given regarding the existence of municipal utility districts).

11. **Violation of this Agreement.** In the event that Owner, Developer, or their respective successors or assigns fail to abide by the terms of this Agreement, a copy of this Agreement and evidence of violation of this Agreement shall be sufficient evidence and confession of judgment at an injunction hearing. Additionally, if Owner, or Developer, or their respective successors or assigns fail to substantially abide by the terms of this Agreement, the County reserves the option to terminate this Agreement, after providing to Owner and Developer, or their respective successors or assigns thirty (30) days prior written notice of the above-described failure and an opportunity to cure such failure within such 30 day period.

12. **Consents.** DevCo, the present owner of portions of the Districts' Property, consents to the execution of this Agreement. Subject to all legal requirements, the County consents to the creation of the Districts.

14. **Notice.** Except as otherwise provided to the contrary herein, any notice, request, demand, statement or consent give or made hereunder shall be in writing and shall be sent by registered or certified mail, return receipt requested and shall be deemed given when postmarked and addressed as follows:

If to the County:

Williamson County
ATTN: County Judge
710 Main Street, Suite 210

Georgetown, Texas 78626

With copy to:

Jana Duty
County Attorney
Williamson County
Georgetown, Texas, 78628
Phone: 512 / 943-1111

If to Developer:

RDW Holdings, Inc.
Attn: Robert D. Wunsch
4314 W. Braker Lane, Suite 250
Austin, Texas 78759
512 / 381-1280

With copy to:

J. Winston Chapman, Jr.
Rash Chapman Schreiber & Porter, LLP
2112 Rio Grande
Austin, Texas 78705
512 / 477-7543

If to Owner:

Avery Centre DevCo., Inc.
C/O John S. Avery
400 E. Main Street
Round Rock, Texas 78664

With copy to:

Charles N. Avery, III
400 E. Main Street
Round Rock, Texas 78664

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.

13. **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 Owner 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 and Owner that it is duly authorized and empowered to enter into this Agreement. Each Developer and Owner 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. Owner, Developer and the County agree that the obligations of each party shall be subject to events of force majeure such as natural calamity, strike, and acts of God.

(e) No Partnership. Owner, Developer, City and County are not partners or joint venturers. In no event will any of the parties hereto be liable or responsible for any contractual, tortuous, or other liability, obligation, or debt of any other party, whether a party to this Agreement or otherwise.

(f) 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, or unenforceability shall not affect any other provision in this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

(g) Gender. Words of any gender used in this Agreement shall be held to include the plural, and vice versa, unless the context requires otherwise.

(h) 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.

THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

EXECUTED EFFECTIVE _____, 2009.

Owner:

n/a
AVERY CENTRE DEVCO, INC.,
a Texas corporation

By: _____

John S. Avery, President

Developer:

RDW HOLDINGS, INC.

By: _____

Robert D. Wunsch, President

County:

Williamson County, Texas

By: _____

(Print Name): DAN A. GATTIS

(Title): County Judge