

STATE OF TEXAS           §  
                                     §  
COUNTY OF HAYS       §

**DEVELOPMENT AGREEMENT  
BETWEEN CITY OF KYLE, TEXAS, AND  
INTERMANDECO GP, LLC OR ASSIGNS**

This Development Agreement (“Agreement”) is by and between the City of Kyle, Texas, a home rule city situated in Hays County, Texas (the “City”) and INTERMANDECO GP, LLC OR ASSIGNS (“Developer”). The term “Parties” or “Party” means the City and the Developer collectively or singularly.

**RECITALS**

WHEREAS, Developer intends to purchase a parcel of real property (the “Property” or “Parcel”) in Hays County, Texas, which is more particularly described in the attached Exhibit “A”;

WHEREAS, the City is located in a rapidly growing metropolitan area for which new construction and land development can positively or negatively impact the future character and finances of the City;

WHEREAS, the City finds development agreements to promote master-planned communities are an appropriate way of establishing land use controls, providing for the construction of appropriate and necessary utility and roadway infrastructure, encouraging orderly economic growth, protecting the environment, and promoting the welfare of present and future citizens of the area;

WHEREAS, the City Council has found that the development of the Property in compliance with this Agreement will serve a public purpose and benefit the economy of the City and the best interests and welfare of the public.

WHEREAS, the City believes it is in the best interests of the City and the development to construct certain portions of both the Roland and Opal roadways and will assist the developer with the creation of a public improvement district to complete those and other authorized improvements pursuant to Chapter 372, Texas Local Government Code (the “PID Act”).

**NOW, THEREFORE**, for and in consideration of the above stated recitals, which are made a part of this Agreement, the benefits described below, plus the mutual promises expressed herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby contract, covenant and agree as follows:

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## **ARTICLE 1**

### **PURPOSE, AUTHORITY, TERM AND BENEFITS**

**1.01 Authority.** Authority for Developer and the City to enter into this Agreement exists under the City Charter of the City, Article III, Section 52-a of the Texas Constitution; Chapter 212, Subchapter G, Tex. Local Government Code, (“Subchapter G”), Chapter 395 of the Tex. Local Government Code; and such other statutes as may be applicable. The approval of this agreement is subject to and contingent upon the full and final approval of the public improvement district application for this development and the creation and authorization of the PID by resolution of the City Council.

**1.02 Project Defined.** The Project established by the Agreement includes a master-planned residential subdivision that will include single family lots, a multifamily or high density residential tract of land, a small retail tract of land and an amenity area which may be developed in conjunction with the Parks Department featuring paths and gathering places and some recreational facilities with a focus on preserving the natural features of the land. The Project, includes the subdivision of the Property, the construction of off-site and on-site utility and road facilities to serve the Project and Subdivision Infrastructure (defined below) to be dedicated and conveyed to the City, and other infrastructure adequate for the development of the Project consistent with this Agreement (the “Project”). The Project will include multiple phases for platting and construction purposes. The Project will additionally include the various improvements identified in the application for the public improvement district.

**1.03 Benefits.**

(a) The City desires to enter into this Agreement to provide additional control to the development standards for the Property.

(b) This Agreement provides: (i) alternative standards under certain City ordinances for the benefit of the Property; and (ii) the City’s commitment to timely provide water and wastewater service to Property based on the Concept Plan. The City’s execution of this Agreement constitutes a valid and binding obligation of the City under State Law. Developer’s execution of this Agreement constitutes a valid and binding obligation of the Developer.

**1.04 Term.** The term of this Agreement will commence on the Effective Date and continue for 240 days, unless Developer sends the City a notice of termination within its contract feasibility period on the Property or acquires title to the Property and delivers a copy of the recorded deed to the City within said 240-day period. If Developer acquires title to the Property and delivers a copy of the recorded deed to the City within said 240 days, then the term of this Agreement shall be fifteen (15) years from the Effective Date (“Term”). After the first Term, this Agreement may be extended for successive five-year periods upon written agreement signed by Developer and the City.

**1.05 Control of Development.** Developer intends to develop the Property in a manner which results in the enhancement of the tax base of the City. Notwithstanding any provision of the Code of Ordinances or uncodified ordinances of the City (the “Code”) to the contrary, the timing and sequencing of the development of the Property will be based on market demand and

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conditions and will be completed as and when Developer, in its sole discretion, determines it to be economically feasible.

**1.06 PID Approval.** Developer and City intend to finance a portion of the offsite wastewater facilities sufficient to serve the Property, a portion of the boundary road improvements sufficient to serve the Property and other authorized improvements under the PID Act (the “PID Improvements”) through a City administered PID. A PID application and petition will be submitted with this Development Agreement. If the submitted PID application is not approved by City Council as submitted by the Developer and the PID authorized by resolution of the City Council pursuant to Section 372.010 of the PID Act prior to the approval of this Agreement, then this Development Agreement shall become null and void. If the PID is authorized and approved by resolution of the City Council prior to the Developer acquiring title to the Property and the term of this Agreement subsequently expires pursuant to the 240-day time limit for acquisition of title to the Property in Section 1.04 of this Agreement, then the City Council will consider and approve such as a petition for dissolution of the PID.

**1.07 Bond Issuance Required.** Developer and City agree and acknowledge the PID Improvements are to be financed through two (2) separate bond issuances by the City. City agrees that, upon authorization of the PID, it will proceed immediately, upon request of the Developer, to levy assessments and bond issuances and acknowledges that for each bond issuance, PID bonds must be issued in an amount sufficient to finance the constructed PID Improvements reimbursable through such bond issuance prior to Developer’s commencement of any PID Improvements reimbursable through that bond issuance.

Notwithstanding the foregoing, Developer and City agree and acknowledge that a portion of the Property that Developer is acquiring will be subject to a lien in favor of Lovey Nauert Driskell, Individually and as Independent Executor of the Estate of Wyatt Ashley Driskell (“Driskell Lien”). The portion of the Property encumbered by the Driskell Lien is described in Exhibit D, attached hereto and made a part hereof (the “Encumbered Tract”). Developer and City agree and acknowledge that the Encumbered Tract shall not be subject to assessments in connection with the PID or to any liability in connection with the issuance of PID bonds until such time as the Driskell Lien has been released by written document suitable for recording in the Hays County Property Records.

## **ARTICLE 2 DEVELOPMENT STANDARDS AND REVIEW PROCEDURES**

**2.01 Generally.** Except as provided in this Agreement, all development applications and development of the Property will comply with the Code. If there is any conflict between the terms of this Agreement and the Code, the specific terms of this Agreement will control.

**2.02 Residential and Commercial.** The Parties agree that Developer shall be temporarily granted an R-1-A, R-3-2, and RS zoning classifications as detailed on the Concept Plan. Except as provided in this Agreement, the Property shall be subject to use and development standards as if subject to the City’s “R-1-A”, “R-3-2”, and RS zoning districts: provided, however, that, notwithstanding the previous zoning classifications, (i) approximately thirteen percent (13%) of the single family residential lots therein shall be a minimum of sixty five feet (65’) by one

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hundred feet (100'), (ii) approximately seventy three percent (73%) of the single family lots may be a minimum of fifty feet (50') by one hundred feet (100'), (iii) approximately fourteen percent (14%) of the single family lots may be a minimum of forty feet (40') by one hundred feet (100'), (iv) the maximum allowable density on the approximately 16.5 acre R-3-2 multifamily site shall be 21 units per acre and (v) the RS zoned tract will allow a single pad user or strip-type configurations either with or without drive-thru capability.

(a) To the extent the City concludes that a variance or allowance is necessary under its current codes, ordinances or regulations, Developer shall be granted the following variances that shall apply to the Property without the need for further approval.

1. R.O.W. Width. The streets that have residential units served by alleys on one or both sides of the street, as well as, the internal east/west street just south of Opal Ln. (Street A on the attached Concept Plan) and just north of Roland Ln. (Street K on the attached Concept Plan) may have a street right-of-way width of fifty feet (50') while maintaining the City's standard pavement width.

2. R.O.W. Width (Alleys). All alleys shall have a right-of-way width of twenty feet (20').

3. Pavement Width (Alleys). All alleys shall provide for sixteen feet (16') of pavement.

**2.03 Concept Plan.** A copy of the concept plan is attached hereto and incorporated herein for all purposes as Exhibit "B" ("Concept Plan"). Pursuant to Section 212.172, Tex. Local Government Code, Developer hereby confirms that the Concept Plan for the subdivision of the Property complies with the City's Subdivision Ordinance requirements for concept plans, the zoning district regulations applicable to the Property as set forth in this Agreement, and the City's Comprehensive Master Plan. The Concept Plan constitutes a development plan for the Property, as provided in Subchapter G of Section 212.172, Tex. Local Government Code.

Subject to the allowable uses set forth in Sections 2.02, a) the total allowable level of development of the Property shall be limited by the number of Living Unit Equivalents ("LUEs") as measured for water and wastewater service connections, and b) the intensity and timing of development within the Property will be determined solely by Developer; provided, however, that the intensity of development of the Property shall not exceed 540 single family lots and 345 multifamily units for a total of 895 LUEs which includes one (1) LUE per residential unit and ten (10) LUEs for the retail tract. So long as Developer does not increase the total level of allowable development, as measured by water and wastewater service connections, Developer may amend the Concept Plan and may amend the layout of lots and on-site infrastructure to serve the Project in compliance with this Agreement. The Concept Plan will be effective for the Term of this Agreement.

**2.04 Preliminary Plan.** Developer may submit to the City an application for a preliminary plan for the Property without submitting to the City a zoning application for the Property. The preliminary plan must comply with the requirements of this Agreement and generally comply with the Concept Plan and the allowable uses set forth in Sections 2.02 and 2.03. The preliminary plan may show lot layouts and street alignments different than shown in the

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Concept Plan so long as the total level of development, as measured by water and wastewater service connections, does not increase above 895 LUEs. Developer may request the City, including the City's Planning and Zoning Commission, to make a written determination that the preliminary plan complies with all applicable regulations; provided, however, that such determination shall not constitute the final approval of the preliminary plan. If the preliminary plan application complies with the terms of this Agreement, the City will approve the preliminary plan upon the request of Developer.

**2.05 Subdivision Plats.** Subdivision plats may be approved and constructed in one or more sections. Developer may submit to the City an application for a subdivision plat for a portion of the Property without submitting a zoning application for the Property. Developer may submit subdivision construction plans concurrently with a subdivision plat application.

**2.06 City Review and Approval.** This Agreement shall govern the review and approval of preliminary plans, subdivision plats, subdivision construction plans and other approvals, variances or other municipal authorizations hereafter required or requested by Developer. The City will accept and review applications for preliminary plans, final plats, subdivision construction plans and site development permits for the Property if the final plats, subdivision construction plans and site development permits for the Property comply with the requirements of this Agreement and generally comply with the Concept Plan and the allowable uses set forth herein. The City will approve applications for preliminary plans, subdivision plats and site development permits for the Property if said applications are in accordance with the requirements of this Agreement and/or City Code. Preliminary plans, subdivision plats, subdivision construction plans, and site development plans hereafter approved pursuant to this Agreement shall expire on the latter of the expiration of this Agreement or the date established by the Code.

**2.07 Parkland Dedication.** The Developer shall use its best efforts to work with the City's Parks Department to try to utilize as much of the land area and the natural characteristics of the open space and drainage area positioned between the proposed future Lots and the railroad tracks on the Concept Plan for use as parkland. The parties agree to mutually cooperate with the development of a plan to incorporate some park improvement features that work with the natural features of the land to create a quality destination for the citizens of the City. Proposed improvements including, but not limited to, parking facilities, a play structure, limited irrigation, walks and trails, and their related expenses will be subject to the review and approval of the Parks Board and may be credited toward parkland dedication and any applicable Park Fees in lieu of the dedication of additional parkland. Parkland improvements are to be performed at the time of the development of the phase adjacent to the proposed parkland improvements.

**2.08 Other Fees.** Except for fees or expenses otherwise specifically provided for in this Agreement, all fees required by the Code will be paid in accordance with the Code and applicable law.

**2.09 Effective Date.** Developer and City agree and acknowledge that Developer is in the process of acquiring the Property subject to this Agreement. Notwithstanding the foregoing, the Concept Plan set forth herein, or any applications submitted by Developer to City pertaining to the zoning, platting, or development of the Property, no zoning ordinance, plat, or development agreement, including this Agreement, shall be effective or binding on the Property until the closing date of the purchase of the Property by Developer.

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## **ARTICLE 3**

### **PUBLIC STREETS AND SUBDIVISION INFRASTRUCTURE**

**3.01 Perimeter Streets.** The requirements of Section 41-137(p) of the Code apply to the Project, except that for Roland and Opal lanes the Developer will dedicate land to accommodate for a total ROW width of 70' and improve the existing roads using a combination of the City's L2U and C3U roadway sections from the frontage road of IH 35, crossing the railroad tracks at grade with silent crossings, to 50' west of the development's main entrances as detailed in the attached Exhibit D. These improvements and any necessary ROW acquisition for Roland and Opal Lanes are part of the improvements included in the public improvement district to be created for this development. The improvement of either Roland or Opal Lanes financed by the PID must be an included improvement with the platting and construction of first phase of residential lots that fronts either of those roadways and their completion shall satisfy any and all of the City's perimeter roadway requirements for the entirety of the project.

**3.02 City Easements.** At the closing of the portion of land under an unimproved property contract that includes the City's existing Water Tower Site, the Developer shall convey the real property, within the 0.23-acre Water Storage Easement recorded in Volume 609, Page 193 in Hays County, Texas, along with an additional five (5.0') foot perimeter buffer to the City at no cost. At the time, the Developer files a final plat on an adjacent property that provides paved access to the City's Water Tower Site, the City will be prepared to and will immediately record a document to vacate, release and abandon the 1.17-acre (50' Wide) Access Easement recorded in Volume 715, Page 219 in Hays County, Texas.

**3.03 ROW Dedication.** Other than dedicating the applicable roadway right-of-way on a per phase basis throughout the development as interior phases are developed, Developer will dedicate, by plat, its portion of the applicable right-of-way that it owns in a variable width to account for the full seventy (70') feet of planned street right-of-way which shall generally result in a ROW dedication of 45' to 50' along the Opal Ln. frontage and 30' to 37' along the Roland Ln. frontage at no cost to the City as it develops each phase that contains applicable frontage along those thoroughfares.

**3.04 Subdivision Infrastructure.** All streets, roads, required sidewalks not fronting a residential, multifamily/high density residential or retail use, drainage, looped water system lines in accordance with the City's requirements and wastewater lines and facilities and all other infrastructure within the Property will be constructed by Developer to meet Code standards and will be dedicated and conveyed to the City at no cost to the City. Sidewalks fronting residential, multifamily/high density residential or retail uses shall be constructed by the builder/developer of each of those uses in accordance with the Code.

**3.05 Satisfactory Completion of Developer Improvements.** The term "Developer Improvements" includes Subdivision Infrastructure, PID Improvements and Utility Improvements, as defined herein. Upon completion of construction of each of Developer Improvements, Developer shall provide the City with final "record" drawings of the Developer Improvements, in both hard copy and digital (PDF or CAD, as requested by the City). Developer's engineer shall provide a certificate of completion to the City and the City shall conduct a final inspection of Developer Improvements within five (5) business days. The City shall within two (2) business

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days of conducting the final inspection provide a list of deficiencies found in the inspection so that when the deficiencies are corrected, Developer Improvements will meet the requirements for acceptance by the City for ownership, operation and maintenance. Developer shall be responsible for having those deficiencies remedied. Upon request, the City shall then re-inspect Developer Improvements within two (2) business days of receipt of notice from Developer, and if all deficiencies have been remedied to the City's satisfaction, the City shall furnish, within two (2) business days, a Letter of Satisfactory Completion to the Developer stating that the Developer Improvements have been constructed in substantial compliance with the Approved Plans, meet all applicable testing requirements and otherwise comply with the requirements of the City to accept the Developer Improvements for ownership, operation and maintenance and that building permits are available for the Lots contained within that subdivision plat.

### **3.06 City Acceptance of Developer Improvements.**

(a) As a precondition to the City's final acceptance of a Developer Improvement, the following shall be delivered to the City: executed all bills paid affidavits, bills of sale, assignments, or other instruments of transfer reasonably requested by the City, in a form and content reasonably acceptable to the City, to evidence the City's ownership of same. Contemporaneously therewith, all bonds, warranties, guarantees, and other assurances of performance, record drawings, easements, project manuals and all other documentation related to Developer Improvement to be accepted will also be delivered to the City. Utility easements for water and wastewater lines and other utility facilities within the Property may be conveyed by plat dedication or separate agreement and must be conveyed or dedicated to the City prior to the City's acceptance of Developer Improvements.

(b) Prior to Council acceptance of public improvements, Developer shall dedicate the Developer Improvements to the City by plat recordation, separate conveyance or other requested means. The City shall not unreasonably deny, delay, or condition its acceptance of such Developer Improvements.

**3.07 City to Own, Operate and Maintain Developer Improvements.** From and after the time of the City's final acceptance of a Developer Improvement, the City will own, operate, and maintain each Developer Improvement and shall be responsible for all costs associated with same. Upon the City's acceptance of all the Developer Improvements within a particular subdivision plat and the City's acceptance of water and wastewater service lines within said recorded final plat, Developer shall be allowed to connect to the accepted water and wastewater service lines in such a manner to serve lots within the recorded plat; provided that the City's applicable utility and connection fees are paid and that such connections meet the City's Code and technical requirements.

## **ARTICLE 4 WATER AND WASTEWATER SERVICE**

**4.01 Intent of the Parties Regarding Utility Services.** As of the Effective Date, the City has actively planned to have sufficient water & wastewater capacity to meet its overall service obligations, including providing 895 LUEs of water service currently available to the Property in accordance with the terms of this Agreement. The City represents that upon the completion of the

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Southside Wastewater Improvement Project, the City's wastewater capacity will be sufficient to serve the Project and other projects within the City. The City understands that its commitment to timely complete the Southside project is a material inducement to the Developer to acquire and proceed with this project. The City of Kyle, Texas will use its best efforts to complete the wastewater improvements on or before October 31<sup>st</sup>, 2018 and will provide sufficient wastewater treatment capacity to allow wastewater service connections for 895 LUE's to the Property in accordance with the terms of this Agreement, subject to the Developer constructing certain offsite wastewater improvements which are reimbursable by the PID. The City represents and warrants that if the City has not completed the Southside wastewater improvements on or before that date, the City of Kyle will provide temporary alternate wastewater treatment capacity sufficient to allow wastewater service connections for any and all developed and completed units in the Project from October 31<sup>st</sup>, 2018 until the Southside project has been completed, subject to the Developer constructing certain reasonable additional offsite wastewater connection improvements which are reimbursable by the PID. On or before October 20<sup>th</sup> of 2017, the City Council must approve and the Mayor or City Manager must execute a binding agreement with another municipality to provide for the temporary wastewater capacity sufficient to serve the Project or this Development Agreement shall become null and void. If needed, this temporary alternate wastewater treatment capacity will be utilized until those connections are diverted to the Southside project upon its completion.

#### **4.02 General Conditions For Connections to the City Utility System.**

(a) The Parties acknowledge that the City cannot deliver water and wastewater services to the Property unless certain agreed upon off-site wastewater improvements are completed as described in the attached Exhibit "C". These improvements must be constructed in accordance with City approved plans and specifications then accepted by the City. The City acknowledges, in proceeding with the construction of the off-site wastewater improvements, that Developer is relying on the City's performance of the City's obligation to timely provide 895 LUEs of water service and 895 LUEs of wastewater service with the possible need for the use of temporary alternate wastewater treatment capacity sufficient to allow wastewater service connections to the Property by the aforementioned date and in accordance with the terms of this Agreement.

(b) If the City modifies: (i) the definition of an LUE as compared to the LUE definition incorporated into this Agreement; (ii) water pressure requirements for a service connection to land within the Property; (iii) fire flow requirements for the issuance of building permits and certificates of occupancy without the installation of a sprinkler system; (iv) a Utility or Developer Improvement required for the City to provide water and wastewater service to any portion of the Property; or (v) any other aspect of water and wastewater service standards, the City shall be responsible for the timely design and construction of any additional utility facilities that would be necessary for the City to meet its water and wastewater service obligations under this Agreement, unless such modification by the City is in response to a request by the Developer for more than 895 LUEs of water and wastewater service. If the modifications described in the preceding sentence are required by federal or state law or regulations, the Parties shall consult regarding a reasonable resolution to funding such modifications.

**4.03 Service Commitment.** Subject to the completion of the off-site wastewater improvements with the possible use of temporary alternate wastewater treatment capacity, the City

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hereby commits 895 LUEs of water and wastewater service to the Property on or before October 31, 2018. Developer may record subdivision plats subject only to the completion of the construction of Subdivision Infrastructure for such plats, the off-site wastewater improvements and certain reasonable additional offsite wastewater connection improvements if the use of the temporary alternate wastewater treatment capacity is necessary.

**4.04 Service Connections.** The City will timely provide water and wastewater service to Lots within the Project, and will connect each residential unit or structure for another permitted use to the City's water and wastewater system upon payment of applicable fees and a Certificate of Occupancy being issued for the residential unit or structure and provide water and wastewater service for the residential unit or structure on the same terms and conditions as provided to all other areas of the City.

**4.05 Utility Improvement Construction Obligations.** Developer shall be solely responsible for the engineering and construction of all water and wastewater lines and facilities within the Property and the Off-Site Wastewater Improvements (collectively, the "Utility Improvements").

**4.06 Service Units Defined.** The size of a water meter required for any particular residential or non-residential structure shall be determined according to the City's applicable construction and plumbing standards in effect at the time that the building permit for that structure is approved, and the number of LUEs per meter to be accounted for hereunder shall be based on Chapter 50 ("Utilities"), Article VI, of the Code, which is incorporated into this Agreement for the limited purposes set forth in this Agreement.

**4.07 Use of City Property and Easements.** The City hereby consents, at no cost to Developer, to the use of any and all appropriate and available City rights-of-way, sites or easements that may be reasonably necessary to construct a Developer Improvement or PID Improvement, or for Developer to perform its obligations under this Agreement; provided, however, that the City's consent is subject to City approval of the location of a PID Improvement within the rights-of-way and easements and avoidance of utility facilities existing in such rights of way and easements.

**4.08 Easement and Right-of-Way Acquisition.** The PID Improvements and related easements and right-of-way are necessary and required by the City for the City to provide water, wastewater and roadway service to the Property. The City further agrees that there exists a public necessity for the construction of the PID Improvements for the Project; therefore, the City agrees to acquire any necessary offsite easements or right-of-way from third parties (including railway properties), including the use of eminent domain to acquire such easements pursuant to Section 4.09 of this Agreement. The City of Kyle is responsible for obtaining any and all right-of-way and/or temporary or permanent easements (including rights-of-way or easements over railway property) required for the construction of the full scope of all PID Improvements on or before January 31, 2018.

**4.09 Use of Condemnation.** The City Council has found that the development of the Property in compliance with this Agreement will benefit the economy of the City and serve the best interests and welfare of the public. Therefore, if Developer determines that it may be

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necessary for the City to use its eminent domain powers to acquire property or an interest in property to install a PID Improvement required by the City pursuant to this Agreement, Developer will make a request to the City to proceed with the acquisition of the easement in compliance with applicable law. The City will act on such a request within sixty (60) calendar days. If the City Council makes a finding that such requested easement is necessary to accomplish a public purpose and is otherwise lawful, the City Council may exercise its powers of eminent domain to attempt to acquire the requested easement or by other necessary means. The Parties agree to work cooperatively toward allowing the initiation of construction of a PID Improvement on an easement or right-of-way being acquired by the City at the earliest time lawfully permitted. If the City Council seeks condemnation, it will use reasonable efforts to pursue such within the minimum time allowed under state law.

## **ARTICLE 5 ANNEXATION**

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## **ARTICLE 6 ASSIGNMENT OF COMMITMENTS AND OBLIGATIONS; SUCCESSORS**

**6.01 Assignment of Developer Rights.** Developer may assign in whole or part its rights and obligations under this Agreement to persons purchasing all of the Property or a part of the Property but not to an individual purchaser of lots within a recorded final plat. In the event Developer assigns all of its respective rights under this Agreement in conjunction with the conveyance of any unplatted portion of the Property, a written assignment of said rights must be filed of record in the Official Public Records of Hays County, Texas in order to be effective. This Agreement may be assigned by Developer without the consent of the City to any Developer-affiliated or related entity and Developer will be released from its obligations under this Agreement upon delivery of a notice of assignment to the City. Any assignment of Developer's rights and obligations hereunder to an entity that is not affiliated with or related to Developer will not release Developer of their respective obligations under this Agreement for the assigned portion of the Property until the City has approved the written assignment; provided, however, the City shall not unreasonably deny, delay, or condition its approval of the assignment.

**6.02 Lot Conveyance Not an Assignment.** The mere conveyance of a lot or any portion of the Property without a written assignment of the rights of Developer shall not be sufficient to constitute an assignment of the rights or obligations of Developer hereunder, unless specifically provided herein.

**6.03 Agreement Binding on Assigns.** This Agreement shall be binding upon the Parties, their grantees, successors, assigns, or subsequent purchaser. In the event of an assignment of fee ownership, in whole or in part, of the Property by Developer, only the grantees and assignees and then current owners of any portion of the Property so assigned shall be liable under this Agreement for any subsequent default occurring after the conveyance and affecting only the portion or portions of the Property so assigned. Any reference to Developer or City shall be deemed to and will include the successors or assigns thereof, and all the covenants and agreements

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in this Agreement shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

## **ARTICLE 7 DEFAULT AND NOTICE**

**7.01 Notice and Opportunity to Cure.** If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party ten (10) days from receipt of the notice to cure the default.

**7.02 Remedies for Default.** Whether in contract or tort or otherwise, Developer agrees to waive all claims to damages and other remedies, including lost profits, delay damages, or for any special incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever; provided, however, Developer may enforce this Agreement as provided under §245.006 of the Texas Local Government Code and pursue remedies of strict or specific performance in such enforcement.

**7.03 Enforcement.** The Parties may enforce this Agreement by any proceeding at law or equity except the City is not waiving its right to sovereign immunity outside of enforcement of this Agreement and subject to the remedies herein nor may this paragraph 7.03 be interpreted as or otherwise construed to be a waiver. Failure of either Party to enforce this Agreement shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

**7.04 Litigation.** In the event of any third-party lawsuit or other claim relating to the validity of this Agreement or any actions taken by the Parties hereunder, Developer and the City intend to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The City's participation in the defense of such a lawsuit is expressly conditioned on budgetary appropriations for such action by the City Council. The filing of any third-party lawsuit relating to this Agreement or the development of the Project will not delay, stop or otherwise affect the development of the Project or the City's processing or issuance of any approvals for the Project, unless otherwise required by a court of competent jurisdiction.

**7.05 Notices.** Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received on the earlier of (i) actual receipt by mail, Federal Express or other delivery service, fax, email or hand delivery; (ii) three (3) business days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address stated in Section I; or (iii) one (1) business day after being sent by email.

Any notice mailed to the City shall be addressed:

City of Kyle  
Attn: City Manager  
100 W. Center Street  
Kyle, Texas 78640

Any notice mailed to the Developer shall be addressed:

Doreen Clark for Cary L. Cobb  
Intermandeco GP, LLC  
P.O. Box 670649  
Dallas, TX 75367

Any Party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

## **ARTICLE 8 PROPERTY AND MORTGAGEE OBLIGATIONS**

**8.01 Mortgagee Acceptance.** Developer shall assure that any mortgage financing obtained for the Property and the Project includes a provision that obligates the mortgagee to continue this Agreement in full force and effect subject to its terms and provisions in the event of a foreclosure or other action by such mortgagee, with a good and sufficient subordination provision, and any such mortgagee shall be deemed to have taken a security interest in the Property with notice of and subject to this Agreement, subject, however, to the terms of Section 1.07 above. Developer shall provide the City with an executed copy of a subordination agreement that is consistent with the requirements of this Agreement.

**8.02 Mortgagee Protection.** This Agreement will not affect the right of Developer to encumber all or any portion of the Property by mortgage, deed of trust or other instrument to secure financing for the Project, subject to the terms and provisions of Section 8.01. The City understands that a lender providing financing of the development of the Property ("Lender") may require interpretations of or modifications to this Agreement and agrees to not unreasonably refuse to cooperate with Developer and its Lenders' representatives in connection with any requests for interpretations or modifications so long as such modifications are not substantially inconsistent with the terms of this Agreement. The City agrees not to unreasonably condition, withhold or delay its approval of any requested interpretation or modification if the interpretation or modification is consistent with the intent and purposes of this Agreement. The City further agrees as follows:

- (a) Neither entering into this Agreement, nor any breach of this Agreement, will affect any lien upon all or any portion of the Property.
- (b) The City will, upon written request of a Lender given to the City by certified mail, return receipt requested, at the addresses provided in Section 7.05, provide the Lender with

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a copy of any written notice of default given to Developer under this Agreement within ten (10) days of the date such notice is given to Developer.

(c) Upon default by Developer under this Agreement, a Lender may, but will not be obligated to, promptly cure any default during any cure period extended to Developer, either under this Agreement or under the notice of default.

(d) Any Lender who comes into possession of any portion of the Property by foreclosure or deed in lieu of foreclosure will take such Property subject to the terms of this Agreement. No Lender will be liable for any defaults or monetary obligations of Developer arising prior to the Lender's acquisition of title, but a Lender will not be entitled to obtain any permits or approvals with respect to that Property until all delinquent fees and other obligations of Developer under this Agreement that relate to the Property have been paid or performed.

**8.03 Certificate of Compliance.** Within thirty (30) days of written request by either Party given to the other Party requesting a statement of compliance with this Agreement, the other Party will execute and deliver to the requesting Party a statement certifying that:

(a) this Agreement is unmodified and in full force and effect, or if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of each modification;

(b) there are no current uncured defaults under this Agreement, or specifying the date and nature of each default; and

(c) any other information that may be reasonably requested. The City Manager or the Mayor will be authorized to execute any requested certificate on behalf of the City.

## **ARTICLE 9 MISCELLANEOUS**

**9.01 Multiple Originals.** The Parties may execute this Agreement in one or more duplicate originals, each of equal dignity.

**9.02 Entire Agreement.** This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter, and may not be amended except by a writing signed by all Parties with authority to sign and dated subsequent to the date hereof. There are no other agreements, oral or written, except as expressly set forth herein.

**9.03 Recordation.** A copy of this Agreement will be recorded in the Official Public Records of Hays County, Texas.

**9.04 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. In the event of partial invalidity, the balance of the Agreement shall remain in full force and effect. This Agreement is performable in Hays County, Texas.

[DATE]

**9.05 Termination or Amendment By Agreement.** This Agreement may only be terminated or amended as to any or all of the Property at any time by mutual written consent of the City and Developer, except that Developer may terminate this Agreement by sending the City a notice of termination within its contract feasibility period on the Property, or may be terminated or amended only as to a portion of the Property by the mutual written consent of the City and the Developer of only the portion of the Property affected by the amendment or termination.

**9.06 No Oral or Implied Waiver.** The Parties may waive any of their respective rights or conditions contained herein or any of the obligations of the other party hereunder, but unless this Agreement expressly provides that a condition, right, or obligation is deemed waived, any such waiver will be effective only if in writing and signed by the party waiving such condition, right, or obligation. The failure of either party to insist at any time upon the strict performance of any covenant or agreement in this Agreement or to exercise any right, power, or remedy contained in this Agreement will not be construed as a waiver or a relinquishment thereof for the future.

**9.07 No Third-Party Beneficiary.** This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided herein.

**9.08 Effective Date.** This Agreement, except Article 2 (DEVELOPMENT STANDARDS AND REVIEW PROCEDURES), 3 (PUBLIC STREETS AND SUBDIVISION INFRASTRUCTURE) and 4 (WATER AND WASTEWATER SERVICE) is legally effective and enforceable upon the execution of this Agreement by both parties. Articles 2, 3 and 4 of this Agreement will become legally effective and binding on the parties only upon Developer acquiring title to the Property and Developer delivering to the City a copy of the deed recorded in the Official Public Records of Hays County, Texas that conveys title to Developer.

SIGNED and executed this \_\_ day of \_\_\_\_\_, 2017.

DEVELOPER:  
INTERMANDECO GP, LLC OR ASSIGNS

By: \_\_\_\_\_  
Cary L. Cobb, Vice President

CITY OF KYLE, TEXAS

By: \_\_\_\_\_  
R. Todd Webster, Mayor

ATTEST:

\_\_\_\_\_  
Amelia Sanchez, City Secretary

[DATE]

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2017, by Cary L. Cobb, Vice President of Intermandeco GP, LLC, a Texas limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public in and for the State of Texas

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2017, by R. Todd Webster, Mayor of Kyle, Hays County, Texas, on behalf of the city.

\_\_\_\_\_  
Notary Public in and for the State of Texas

[DATE]

**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**

[DATE]



**EXHIBIT B**  
**CONCEPT PLAN**

[DATE]

**EXHIBIT C**  
**OFF-SITE WASTEWATER IMPROVEMENTS DESCRIPTION**

[DATE]

**EXHIBIT D**  
**PERIMETER STREETS**

[DATE]