

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 the Opal roadway and Roland roadway across the Property and have the developer dedicate the associated ROW in exchange for waiver of certain development fees as a result of those improvements being built and ROW being dedicated.

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:

[DATE]

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.

1.02 Project Defined. The Project established by the Agreement includes a master-planned residential subdivision that will include single family lots, open spaces and two (2) small retail tracts of 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 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.

1.03 Benefits.

(a) The City desires to enter into this Agreement because Developer agrees to construct these road improvements in exchange for the waiver of certain City fees as defined herein.

(b) 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 365 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 365-day period. If Developer acquires title to the Property and delivers a copy of the recorded deed to the City within said 365 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.

ARTICLE 2
**ROW DEDICATION, OPAL LN IMPROVEMENTS, ROLAND LN IMPROVEMENTS,
AND CITY FEE WAIVERS**

2.01 Opal Ln ROW Dedication & Improvements. The Developer will re-construct Opal Ln as a C3U roadway across the Property as depicted in Exhibit “B” and dedicate the associated ROW.

2.02 Roland Ln Improvements. The Developer will re-construct Roland Ln across the Property as a C3U roadway as depicted in Exhibit “B” and dedicate the associated ROW.

[DATE]

2.03 City Fee Waivers. Since the Developer will be fully improving the adjacent Opal Ln and Roland Ln across the property and dedicating necessary ROW, the value of those Opal Ln and Roland Ln improvements and the value of the additional ROW dedication will be credited against the Adjacent Lane Mile fees (ALMF) for the Project.

2.05 Satisfactory Completion of Developer Improvements. The term “Developer Improvements” includes Opal Ln Improvements and Roland Ln Improvements, as defined herein. Upon completion of construction 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 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.

2.06 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.

(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.

2.07 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 the Developer Improvement and shall be responsible for all costs associated with same.

ARTICLE 3
ASSIGNMENT OF COMMITMENTS AND OBLIGATIONS; SUCCESSORS

3.01 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 entity and Developer will be released from its obligations under this Agreement upon delivery of a notice of assignment to the City.

3.02 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.

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

ARTICLE 4
DEFAULT AND NOTICE

4.01 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) business days from receipt of the notice to cure the default.

4.02 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.

[DATE]

4.03 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 4.03 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.

4.04 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.

4.05 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.

[DATE]

ARTICLE 5
PROPERTY AND MORTGAGEE OBLIGATIONS

5.01 Mortgage 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. Developer shall provide the City with an executed copy of a subordination agreement that is consistent with the requirements of this Agreement.

5.02 Mortgage 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 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.

5.03 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:

[DATE]

- (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 6 MISCELLANEOUS

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

6.02 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.

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

6.04 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.

6.05 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.

6.06 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.

6.07 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.

[DATE]

6.08 Effective Date. This Agreement is legally effective and enforceable upon the execution of this Agreement by both parties.

SIGNED and executed this __ day of _____, 2020.

DEVELOPER:
INTERMANDECO GP, LLC OR ASSIGNS

By: _____
Cary L. Cobb, Vice President

CITY OF KYLE, TEXAS

By: _____
R. Travis Mitchell, Mayor

ATTEST:

Amelia Sanchez, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2020, 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 _____, 2020, by R. Travis Mitchell, 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
OPAL LN & ROLAND LN IMPROVEMENTS

[DATE]