

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this "*Amendment*") is made and entered into as of May 12, 2005, by and among the CITY OF CEDAR PARK, TEXAS, a home rule municipality located in Williamson County, Texas (the "*City*"), and V-S CEDAR PARK, LTD., a Texas limited partnership (the "*Developer*"), or its assigns, and CONTINENTAL HOMES OF TEXAS, L.P., a Texas limited partnership doing business as D.R. Horton – America's Builder ("*Continental*").

RECITALS:

A. Reinvestment Zone Number One, City of Cedar Park, Texas (the "*Zone*") is a tax increment reinvestment zone designated as such and created by the City on December 20, 2001, Ordinance No. D-01-12-20-10B (the "*TIRZ Ordinance*"), pursuant to the Tax Increment Financing Act, as codified in Chapter 311 of the Texas Tax Code (the "*Act*"). The Zone as originally approved covered approximately 470 acres, is located entirely in Williamson County (the "*County*") and within the corporate limits of the City, and is generally bounded by New Hope Road on the north, New Hope Road, a neighboring landowner, and U.S. 183-A right-of-way on the east, FM. 1431 and the railroad spur on the south and the railroad right-of-way on the west. The duration of the Zone a 30-year period, ending December 31, 2031. The owner of the majority of the property within the Zone is the Developer, and a portion of the property is owned by Continental.

B. The City has the authority to adopt tax increment financing pursuant to the Act, for areas within its jurisdiction designated by the City as reinvestment zones, and to implement incentive programs to encourage economic development pursuant to TEX. CONST., Article III, Section 52-a, TEX. LOCAL GOV'T CODE, Ch. 380, and other economic development statutes.

C. The City has zoned the Property in accordance with the Regulating Plan and Urban Code and the restrictions and conditions contained in the Regulating Plan and Urban Code will be incorporated into the zoning ordinances applicable to each portion of the Property. The Regulating Plan and Urban Code, together with all restrictions and conditions incorporated therein, will control the development and use of the Property.

D. The City and Developer entered into that certain Development Agreement dated December 20, 2001 (the "*Development Agreement*"), to facilitate the development of the Property, and subject to and in accordance with the terms of the Agreement and this Amendment, the City has agreed to take certain actions and to construct, or cause to be constructed, various public improvements, and to use Tax Increment and/or Bond Proceeds in accordance with the Development Agreement to pay the costs of those eligible Project Costs in accordance with the Plans.

E. The City, Developer, and Continental entered into that certain First Amendment to Development Agreement dated as of May 15, 2003 (the "*First Amendment*") whereby the City, Developer, and Continental (i) acknowledged adoption of the Amended Final Project Plan and Reinvestment Zone Financing Plan for the Zone (the "*Final Plan*"), and (ii) amended and replaced Exhibit D to the original Development Agreement.

F. This Amendment has been submitted to the City for consideration and review, and the City has taken all actions required to be taken prior to the execution of this Amendment to make the same binding upon the City according to the terms hereof.

AGREEMENT:

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

1. **Defined Terms.** All terms used in this Amendment shall have the meaning set for the in the Development Agreement.

2. **Adoption of Amendments to Final Project Plan.** The City has adopted the "2005 Amendments to the Amended Final Project Plan and Reinvestment Zone Financing Plan for the Zone (the "2005 Amendments", and together with the Amended Final Project Plan and Reinvestment Zone Financing Plan for the Zone, the "Final Plan"). The terms, conditions, covenants, and provisions of the 2005 Amendments and the Final Plan are incorporated herein by this reference.

3. **Revised Exhibit D.** Not in limitation of any of the foregoing, the document attached hereto as Exhibit D amends, replaces, and supercedes the Exhibit D which was attached to the Development Agreement.

(a) **Costs and Expenses Incurred.** The City acknowledges and agrees that the costs and expenses described and detailed on Exhibit "D-1" are approved TIRZ expenses and qualified for reimbursement in accordance with the Development Agreement, the Developer Reimbursement Agreement, and the Final Project Plan.

(b) **Section 3.3(e).** Section 3.3(e) of the Development Agreement is hereby amended and restated in its entirety to read as follows: "All construction contracts for the TIRZ Improvements shall be advertised, bid and awarded in the manner provided by law applicable to the City, unless otherwise approved by the City."

4. **Construction and Reimbursement.**

(a) **Developer's Performance.** The January 1, 2007 deadline set forth in the first sentence of Section 4.2(b) of the Development Agreement is hereby changed, and such deadline for development shall be January 1, 2010.

(b) **Priority; Certain Improvements.** Sections 4.2(h) and 4.2(i) of the Development Agreement are hereby amended and restated in their entirety as follows:

(h) **Priority of Reimbursement.** The Developer and the City agree and acknowledge that the acquisition and construction of certain TIRZ Improvements should take priority in the implementation of the Plans. **Exhibit D** sets forth three phases of TIRZ Improvements. The Developer and the City agree that the Phase 1 TIRZ Improvements and Phase 2 Reimbursements shall be reimbursed prior to the Phase 3 TIRZ Improvements. Within Phase 1, the TIRZ Improvements shall be reimbursed on a "first in, first out" basis. Within Phase 2, the TIRZ Improvements shall be reimbursed in the order listed within such phase as shown in **Exhibit D**; subject, however, to Section 4.2(i) below. The order of the TIRZ Improvements within each phase may be changed by agreement of the Parties. After all Phase 1 and 2 TIRZ Improvements have been constructed and reimbursed, Phase 3 TIRZ Improvements shall be reimbursed in an order established by the Board of Directors of the Zone and approved by the City Council. Nothing herein shall prohibit the Developer from constructing Phase 3 Improvements prior

to completion of the Phase 1 and Phase 2 Improvements, and any such construction is expressly permitted.

(i) Reimbursement for Certain TIRZ Improvements.

Reimbursement to the Developer for funds advanced for (i) the construction of Discovery Boulevard (through Downtown) (as shown in Exhibit D and the Plans) or (ii) the Downtown Drainage Improvements is conditioned upon such TIRZ Improvements being substantially complete within two years after the date that the Developer obtains all required governmental approvals to construct such TIRZ Improvements. If TIRZ Bonds are sold for reimbursement of Phase 2 Reimbursements prior to the completion of Main Street Phase I Infrastructure, the City and the Zone shall escrow Bond Proceeds in an amount sufficient to complete construction of the Main Street Phase I Infrastructure.

5. Expansion of TIRZ. The City, Developer, and Continental agree that the City and the Board of Directors of the TIRZ may expand the boundaries of the TIRZ to include the land shown on Exhibit One attached hereto and incorporated herein by reference. Neither the Developer nor Continental will oppose the annexation of any of the areas shown on Exhibit One, and the Developer and Continental agree to cooperate with the City in accomplishing any such annexation.

6. Maintenance of Certain Improvements and Amenities.

(a) City Responsibilities. The City agrees that it will be responsible for the maintenance, repair, and upkeep of the "City Site" (being parcel 4 as shown on Exhibit Two), for the "City Parks and Ponds" (being parcels 5, 6, 7, 14, and 18 as shown on Exhibit Two), and for the "Train Depot" (being parcel 9 as shown on Exhibit Two).

(b) Other Improvements and Amenities. Developer and Continental agree that public open space, including right-of-way and related landscaping, other than the City Site and the City Parks and Ponds will be maintained by the Developer, Continental, the homeowners association, a property owners association, and/or some other legal entity. Not in limitation of any other provisions in this Agreement, the references to "Developer" and "Continental" as used in this Section 6(b) are expressly meant to include Developer's and Continental's respective successors and assigns. Further, the City acknowledges and agrees that Developer's and Continental's maintenance agreements herein will be assigned to and assumed by one or more other developers or owners and ultimately to one or more homeowners and/or property owners associations and that upon such assignment and assumption, Developer and Continental, as applicable, will be released from liability for maintenance as provided herein.

(c) Use of Increment. At such time as all TIRZ Improvements have been completed and the party constructing such improvements has received the reimbursements due to such party as provided in the Development Agreement (and other related agreements), any revenue to the TIRZ that exceeds the requirements to service debt issued by the TIRZ and is not subject indentures or covenants relating thereto may be used to pay for the maintenance, repair, and upkeep of the public property described above. Such funds shall be shared equitably by the parties responsible for such maintenance, repair, and upkeep.

7. New Hope Road. Developer agrees to dedicate and convey to the City at no cost or expense to the City land for the right-of-way for the realignment and reconstruction of New Hope Road (the "New Hope Road ROW"). The New Hope Road ROW is generally described as being (i) a strip of land approximately fifteen feet (15') in width off the northern boundary of the TIRZ adjacent to and contiguous with the existing right-of-way for New Hope Road, running from the northwest corner of the Zone in an easterly direction to Discovery Boulevard, and (ii) a strip of land

approximately one hundred twenty feet (120') feet in width from Discovery Boulevard east to the intersection of County Road 180 and County Road 181 (excluding, however, the land for right-of-way for 183A, which has already been acquired by the CTRMA. The New Hope Road ROW is generally shown on Exhibit Three attached hereto and incorporated herein. Developer agrees to execute all necessary documentation for the dedication and conveyance of the New Hope Road ROW within ten (10) days after delivery thereof to Developer by the City. The City agrees to replace any fencing removed in the course of construction New Hope Road with fencing of equal or better quality.

8. **Cottonwood Creek Regional Detention and Water Quality Ponds.** The City agrees to pay for the costs (up to a maximum amount of \$35,250.00) of an engineering study (the "*Cottonwood Study*") by Gray Jansing & Associates of the regional detention and water quality requirements and needs related to the addition of the City's New Hope Road realignment and improvement project and the Triad Hospital project and all proposed development within the Zone that drains into Cottonwood Creek and the impact thereof on the Cottonwood Creek Regional Detention and Water Quality Ponds (the "*Cottonwood Ponds*"), as outlined in the proposal dated February 4, 2005 by Gray Jansing & Associates.

(a) **Credit.** The City will receive credit for all amounts paid for the Cottonwood Study against the City's share of costs for the Cottonwood Ponds, as determined by the Cottonwood Study.

(b) **Contracting Entity.** The Gray Jansing & Associates proposal will be revised to show the City as the contracting entity and City will be the contracting entity any subsequent agreement with respect to the Cottonwood Study, unless otherwise agreed by the parties. Both Developer and Continental shall have full rights of access to and use of the Cottonwood Study.

(c) **Temporary Easements.** Developer agrees to grant to the City temporary drainage easements for construction of temporary detention and water quality pond facilities (the "*Temporary Facilities*") for the New Hope Road project in the location generally shown on Exhibit Three. The temporary easement(s) will terminate upon completion of the Cottonwood Ponds and the dedication of drainage easements to the necessary parties (whose lands will be served by the Cottonwood Ponds). In constructing any such temporary detention and water quality pond facilities, the City agrees to replace any fencing removed in the course of construction with fencing of equal or better quality.

(d) **General Provisions.** The parties agree to cooperate in the design and location of the Cottonwood Ponds and Temporary Facilities in order to maximize the use of each party's land as well as to minimize the adverse impact which the Cottonwood Ponds and Temporary Facilities and any associated easements may have on each party's land. The parties further agree to cooperate with each other and negotiate in good faith to reach agreement with respect to sharing of costs for the design, engineering, and construction of the Cottonwood Ponds.

9. **Miscellaneous.**

(a) **Applicable Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Texas and the laws of the United States of America applicable to transactions in Texas.

(b) **Successors and Assigns; No Third Party.** This Amendment shall be binding upon and inure to the benefit of the City, the Developer, and Continental and their respective successors and permitted assigns.

(c) Number and Gender; Captions. Whenever used herein, the singular number shall include the plural and the plural the singular, and the use of any gender shall be applicable to all genders. The captions, headings, and arrangements used in this Amendment are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

(d) Severability. If any provision of this Amendment shall for any reason be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

(e) Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

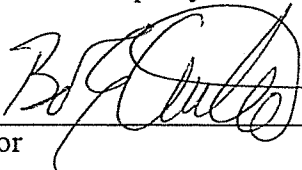
[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES FOLLOW]


IN WITNESS WHEREOF, the Parties have duly executed this Amendment pursuant to all requisite authorizations as of the date first above written.

CITY:

CITY OF CEDAR PARK, TEXAS,
a home rule municipality

By: 
Mayor

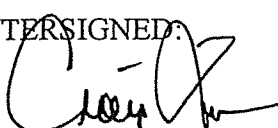
ATTEST:


City Secretary

(SEAL)

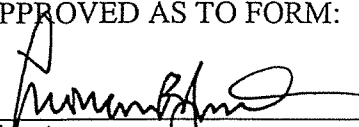


COUNTERSIGNED:


City Manager

Date countersigned: 5/12/05

APPROVED AS TO FORM:



City Attorney

Date: 5.13.05

DEVELOPER:

V-S Cedar Park, Ltd.
(a Texas limited partnership)

By: Parkway Management Corp.
(a Texas corporation)
Its General Partner

By: 
Name: HENRY N. VARNATT
Title: PRESIDENT

CONTINENTAL:

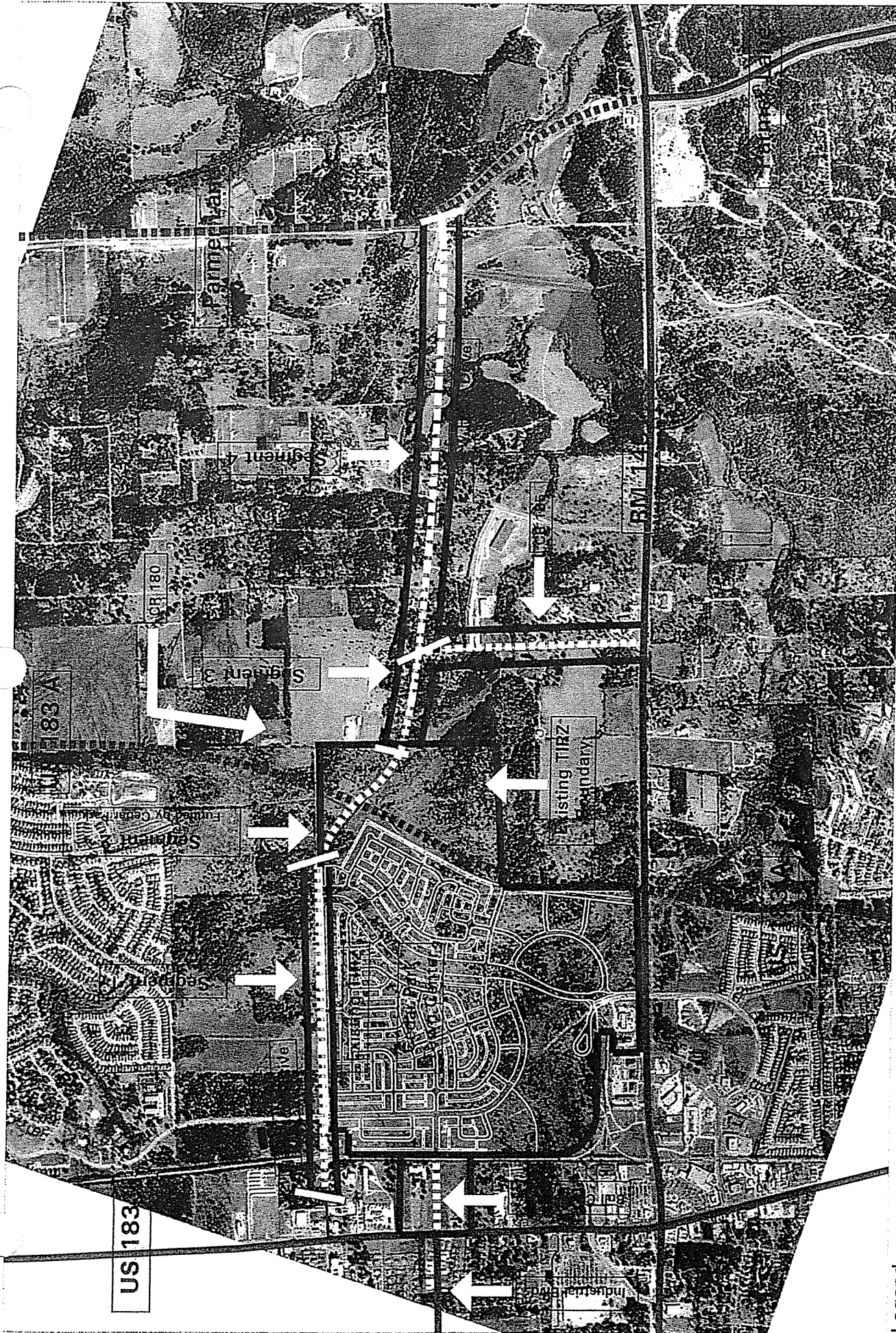
Continental Homes of Texas, L. P.
(a Texas limited partnership)

By: CHTEX of Texas, Inc.
(a Delaware corporation)
Its General Partner

By: Burl B. McClendon III
Name: Burl B. McClendon III
Title: Secretary

EXHIBIT "D"														
Cedar Park Downtown Tax Increment Reinvestment Zone No. 1														
TIRZ Improvements Allocations														
Item	TIRZ Improvement Description	Time to Complete	Total Project Cost	TIRZ Reimbursed								Total TIRZ Reimb	Non-Reimbursed	
				Developer Funded				City Funded					%	Total
	PHASE I			%	Capital	Interest	Total	%	Capital	Interest	Total		%	Total
1	Discovery Blvd. Through Downtown ¹	2 yrs	\$2,261,000	100%	\$2,261,000	\$271,320	\$2,532,320	0%	\$0	\$0	\$0	\$2,532,320	0%	\$0
2	Downtown Drainage Improvements ²	2yrs	\$3,800,000	100%	\$3,800,000	\$456,000	\$4,256,000	0%	\$0	\$0	\$0	\$4,256,000	0%	\$0
3	Main Street Infrastructure Phase I ³	Agmt	\$1,855,000	100%	\$1,855,000	\$222,600	\$2,077,600	0%	\$0	\$0	\$0	\$2,077,600	0%	\$0
	Subtotal Phase I		\$7,916,000		\$7,916,000	\$949,920	\$8,865,920		\$0	\$0	\$0	\$8,865,920		\$0
	PHASE II													
4	Main Street Landscaping Phase I ⁴	Agmt	\$700,000	100%	\$700,000	\$84,000	\$784,000	0%	\$0	\$0	\$0	\$784,000	0%	\$0
5	Discovery Blvd through Downtown Landscaping ¹	Agmt	\$1,250,000	100%	\$1,250,000	\$150,000	\$1,400,000	0%	\$0	\$0	\$0	\$1,400,000	0%	\$0
6	Downtown Drainage Improvements Landscaping ⁵	Agmt	\$700,000	100%	\$700,000	\$84,000	\$784,000	0%	\$0	\$0	\$0	\$784,000	0%	\$0
7	Discovery Blvd Landscaping Thru Residential ⁶	TBD	\$250,000	50%	\$125,000	\$15,000	\$140,000	0%	\$0	\$0	\$0	\$140,000	50%	\$125,000
8	Community Facility Acquisition (18.1 Acres)	Agmt	\$1,379,763	100%	\$1,379,763	\$165,572	\$1,545,335	0%	\$0	\$0	\$0	\$1,545,335	0%	\$0
9	City Hall Site Acquisition (12.4 Acres)	TBD	\$1,000,000	0%	\$0	\$0	\$0	100%	\$1,000,000	\$120,000	\$1,120,000	\$1,120,000	0%	\$0
10	Main Street Infrastructure Phase 2 ³	TBD	\$1,855,000	100%	\$1,855,000	\$222,600	\$2,077,600	0%	\$0	\$0	\$0	\$2,077,600	0%	\$0
11	Main Street Landscaping Phase 2 ⁴	TBD	\$700,000	100%	\$700,000	\$84,000	\$784,000	0%	\$0	\$0	\$0	\$784,000	0%	\$0
	Subtotal Phase II		\$7,834,763		\$6,709,763	\$805,172	\$7,514,935		\$1,000,000	\$120,000	\$120,000	\$8,634,935		\$125,000
	PHASE III													
12	Amphitheatre	TBD	\$3,405,580	0%	\$0	\$0	\$0	100%	\$3,405,580	\$408,670	\$3,814,249	\$3,814,249	0%	\$0
13	Trails/Ball Fields	TBD	\$1,135,193	0%	\$0	\$0	\$0	100%	\$1,135,193	\$136,223	\$1,271,416	\$1,271,416	0%	\$0
14	Greenway Pedestrian Links ⁷	TBD	\$2,724,464	33%	\$908,155	\$108,979	\$1,017,133	33%	\$908,155	\$108,979	\$1,017,133	\$2,034,266	33%	\$908,155
15	Tree Transplanting ⁸	TBD	\$1,700,000	50%	\$850,000	\$102,000	\$952,000	0%	\$0	\$0	\$0	\$952,000	50%	\$850,000
16	Street Market, Street Furniture, etc. ⁹	TBD	\$1,700,000	100%	\$1,700,000	\$204,000	\$1,904,000	0%	\$0	\$0	\$0	\$1,904,000	0%	\$0
	Subtotal Phase III		\$10,665,237		\$3,458,155	\$414,979	\$3,873,133		\$5,448,928	\$653,871	\$6,102,799	\$9,975,932		\$1,758,155
	TOTAL COST		\$26,416,000		\$18,083,918	\$2,170,070	\$20,253,988		\$6,448,928	\$773,871	\$7,222,799	\$27,476,787	7%	\$1,883,155
Notes														
1. Roadway, traffic circles, bridge, landscape improvements, including lighting, monumentation, trails, tree transplanting.														
2. Regional detention, water quality and wet pond, wet pond plantings, aeration, earthworks, drop and discharge structures, walls, tree transplanting.														
3. Roadway, bridge, streetscape improvements, including special paving, signage and lighting. <i>Note:</i> "Main Street" is the spine street that runs through the Town Center Area.														
4. Street trees, planting, irrigation, fountains, site furniture and tree transplanting.														
5. Earthworks, walls, pedestrian bridges, trails, site furnishings, lighting, planting, irrigation and tree transplanting.														
6. Landscape improvements, including lighting, tree transplanting, street trees, trails, fountains, site furniture, public art, monumentation and signage.														
7. Trails, walks, lighting, site furniture, planting, irrigation, signage, pedestrian bridges.														
8. Transplanted trees into Downtown District, Discovery Boulevard through residential, public areas in Zone.														
9. Street furniture, signage, environmental graphics, public art, fountains, pedestrian, shade structures.														
10. Capital costs include all hard and soft costs, exclusive of administration costs, incurred in constructing the TIRZ improvements including but not limited to construction, engineering, surveying, geotechnical, environmental, inspection and right-of-way easement acquisition.														

EXHIBIT "D-1"
Cedar Park Downtown Tax Increment Reinvestment Zone No. 1
\$139,850 for construction of the tower steel structure, foundation, and installation



Legend:

Existing Roads

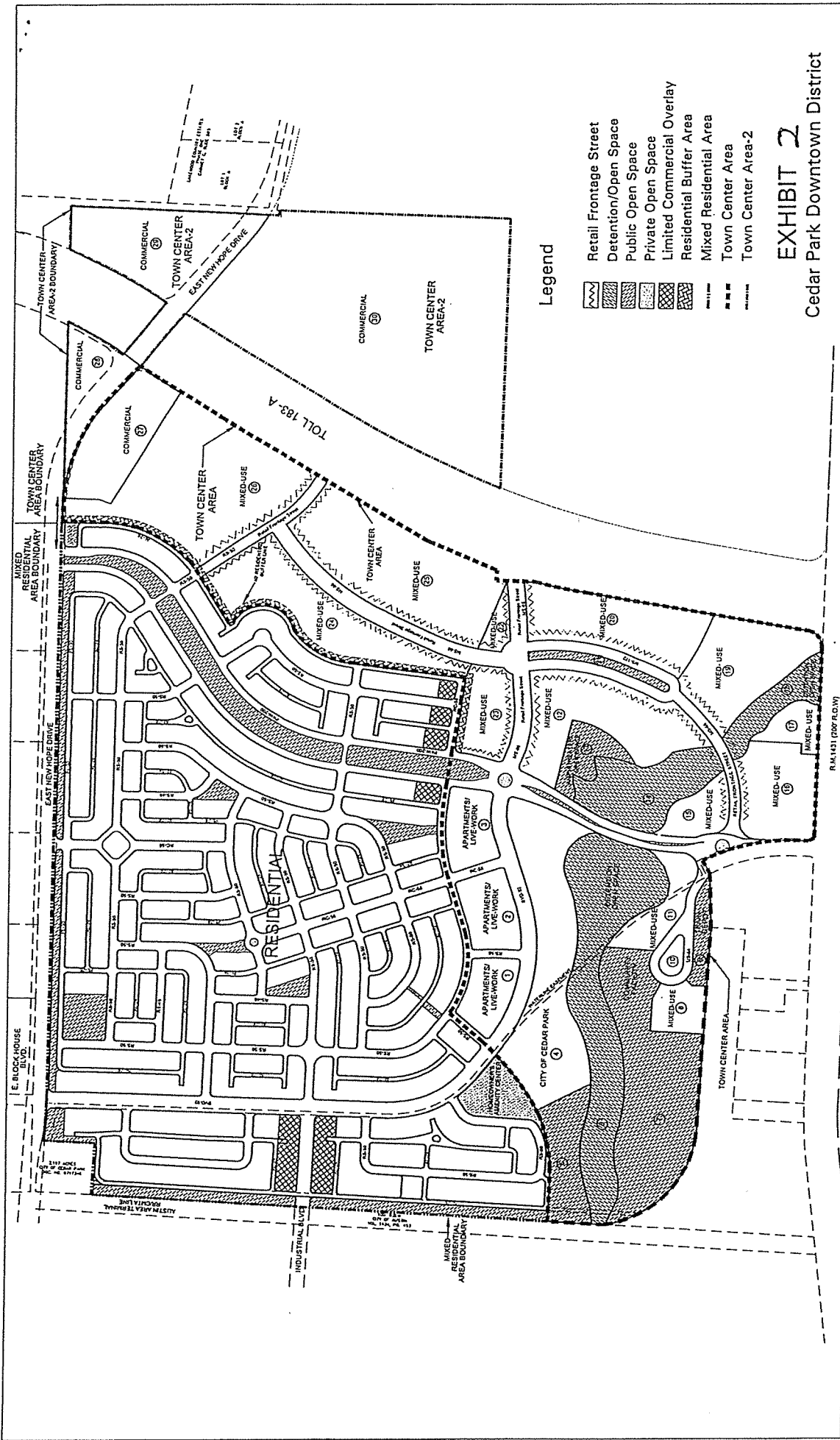
Proposed Roads
funded with

County Increment

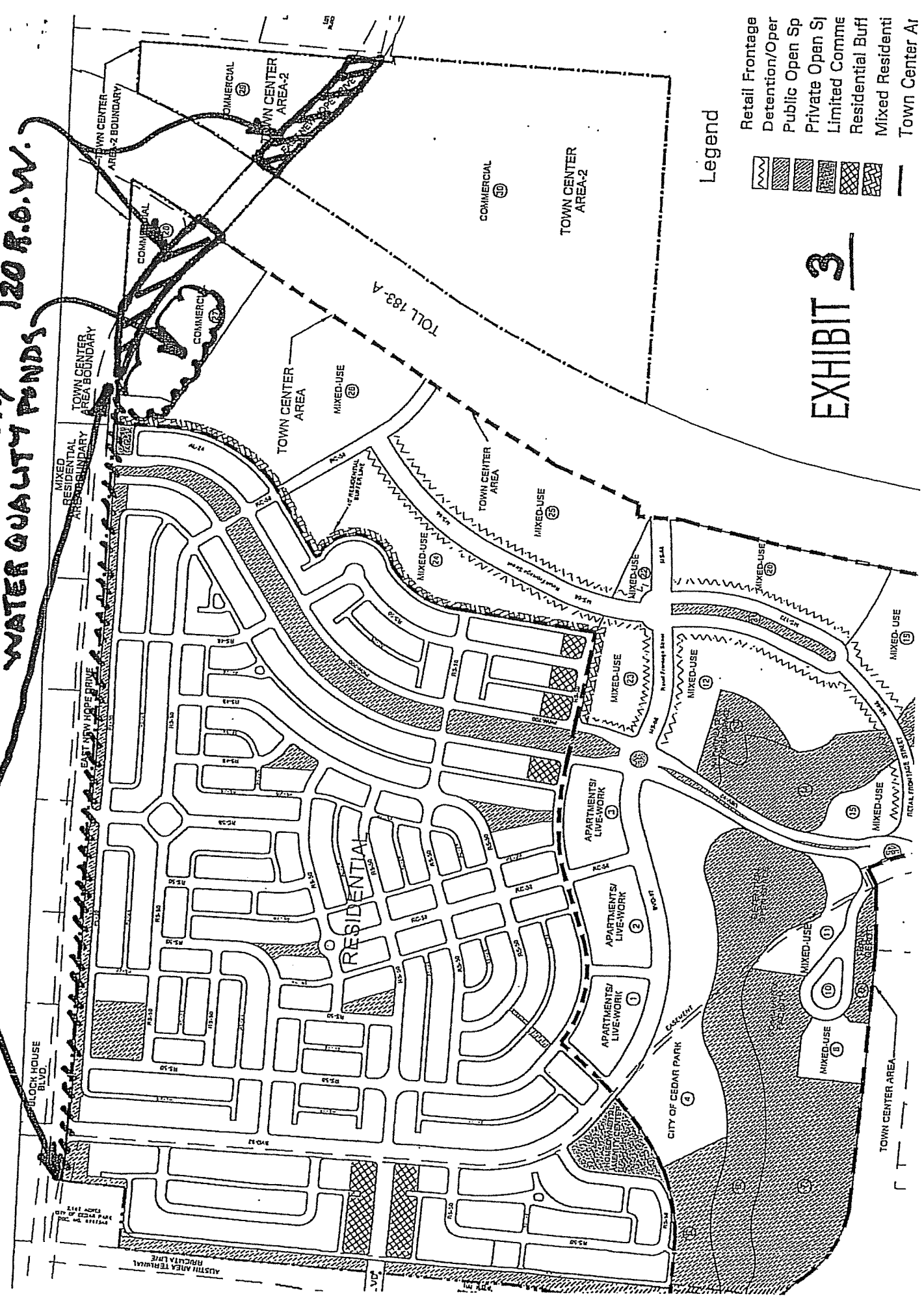
**Exhibit One to Second Amendment
to the Development Agreement**

April 25, 2005
Scale 1" = 1/3 Mile





15' R.O.W. ———
 TEMP. DETENTION/
 WATER QUALITY PONDS ———
 120' R.O.W. ———



- Legend
- Retail Frontage
 - Detention/Open
 - Public Open Sp
 - Private Open Sp
 - Limited Comme
 - Residential Bufl
 - Mixed Residenti
 - Town Center Ar

EXHIBIT 3