



Travis County Commissioners Court Agenda Request

Meeting Date: January 22, 2013

Prepared By: Joe Arriaga **Phone #:** 854-7562

Division Director/Manager: Anna Bowlin, Division Director Development Services and Long Range Planning

A handwritten signature in black ink, appearing to read "Anna Bowlin", written over the printed name.

Department Head/Title: Steven M. Manilla, P.E., County Executive-TNR

Sponsoring Court Member: Commissioner Davis, Precinct One

AGENDA LANGUAGE:

Consider and take appropriate action on the following requests:

- A) Receive comments regarding a plat for recording: The Commons at Rowe Lane IIC- Final Plat (The Commons at Rowe Lane IIC - Subdivision Final Plat - 45 Single Family Lots and 1 Hike and Bike Lot - Windmill Ranch Avenue - City of Pflugerville ETJ) in Precinct One ; and
- B) Subdivision Construction Agreement for The Commons at Rowe Lane IIC.

BACKGROUND/SUMMARY OF REQUEST:

A) This final plat consists of 46 total lots on 9.735 acres. There are 1,360 linear feet of public streets proposed with this final plat. Water service will be provided by Manville Water Supply Corporation and wastewater service will be provided by the City of Pflugerville. Parkland fees in lieu of dedication have been paid to the City of Pflugerville through a development agreement.

The applicant is currently utilizing the county's alternative fiscal agreement and the plat is being held in abeyance until the remaining fiscal has been posted. Fiscal surety has been posted with Travis County which addresses the fiscal requirements.

B) The applicant, Rowe Lane Development, LP. wishes to enter into a standard subdivision construction agreement with Travis County.

STAFF RECOMMENDATIONS:

As the Commissioners Court approved the utilization of the county's alternative fiscal agreement and the final plat was approved by the City of Pflugerville on December 3, 2012; staff recommends approval of the final plat and the subdivision construction agreement.

ISSUES AND OPPORTUNITIES:

Staff has not received any inquiries from anyone concerning this final plat.

FISCAL IMPACT AND SOURCE OF FUNDING:

N/A

EXHIBITS/ATTACHMENTS:

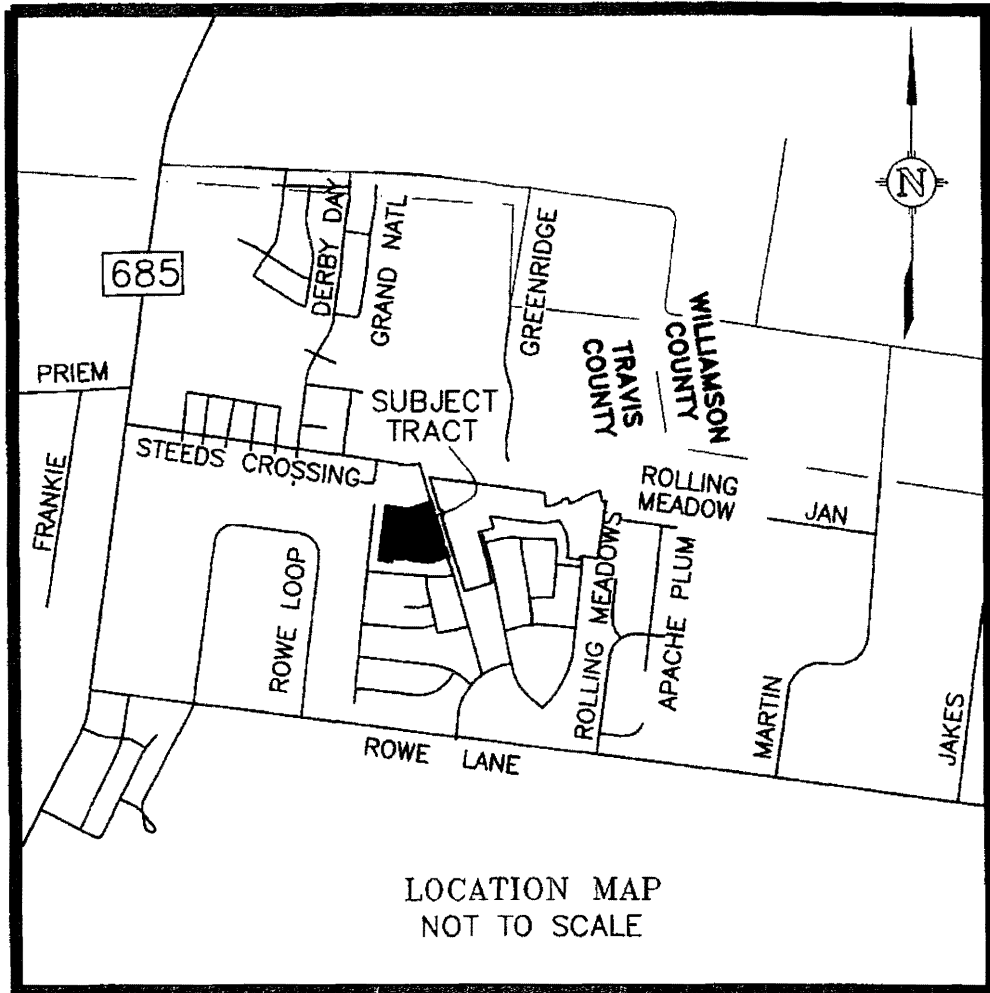
- Location map
- Precinct map
- Proposed final plat
- Subdivision Construction Agreements

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429
Anna Bowlin	Division Director	TNR	854-7561

CC:

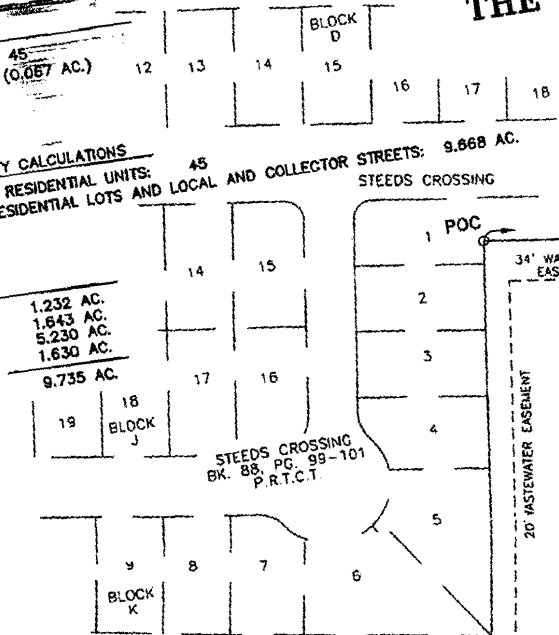
: :
0101 - Administrative Svs-



LOCATION MAP
NOT TO SCALE

FINAL PLAT THE COMMONS AT ROWE LANE PHASE II C

LINEAR FEET OF NEW STREETS	
WIND VANE WEST	50' ROW
CHOICE PLACE	50' ROW
HUCKABEE BEND	50' ROW
TOTAL	



THE COMMONS AT ROWE LANE, LP
(10.032 ACRES)
DOC. NO. 2005045836
O.P.R.T.C.T.

PUBLIC RIGHT-OF-WAY
(0.632 ACRES)
DOC. NO. 2007014114
O.P.R.T.C.T.

ULTIMATE
100-YEAR FLOODPLAIN
POST DEVELOPMENT

LOT 9
ROLLING HILLS
BK. 76, PG. 277
P.R.T.C.T.

THE COMMONS AT ROWE LANE,
PARCEL 3
(62.806 ACRES)
DOC. NO. 2007205045
O.P.R.T.C.T.

1.232 AC.
1.643 AC.
5.230 AC.
1.630 AC.
9.735 AC.

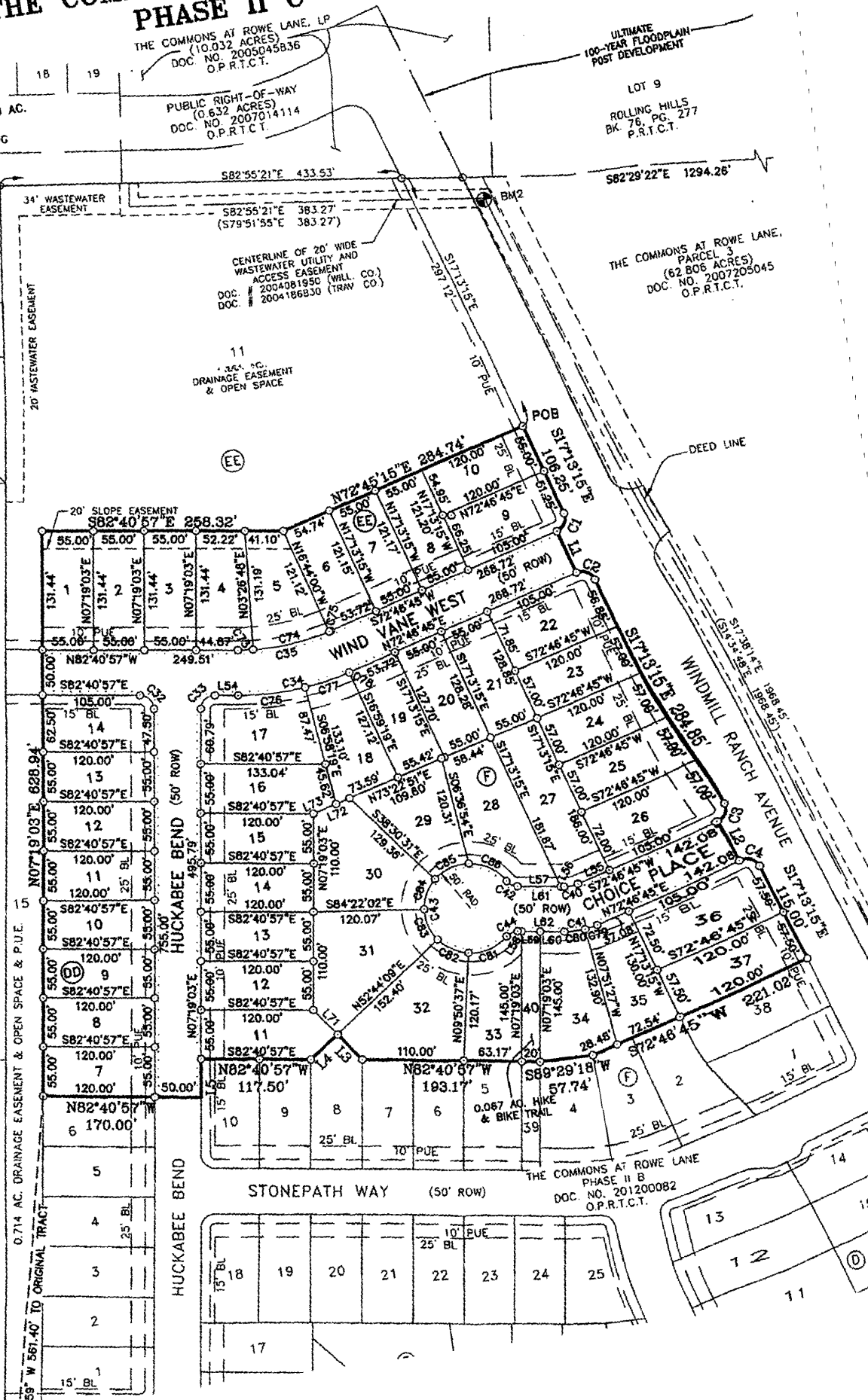
STEEDS CROSSING
BK. 88, PG. 99-101
P.R.T.C.T.

11
0.364 AC.
DRAINAGE EASEMENT
& OPEN SPACE

ASNER SURVEY
TRACT NO. 2753

REAGAN CURTIS STEPHENS
(7.85 ACRES)
DOC. NO. 2001088318
O.P.R.T.C.T.

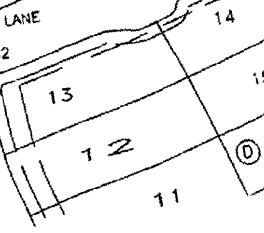
MARK A. DONNELL
BERLY V. DONNELL
(5.21 ACRES)
C. NO. 1999002082
O.P.R.T.C.T.



STONEPATH WAY (50' ROW)

THE COMMONS AT ROWE LANE
PHASE II B
DOC. NO. 201200082
O.P.R.T.C.T.

HUCKABEE BEND



SUBDIVISION CONSTRUCTION AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Agreement is made and entered into by and between The Commons at Rowe Lane, L.P., a Texas limited partnership, (the "**Subdivider**") and Travis County, Texas, (the "**County**"), hereinafter collectively referred to as the "**Parties**".

WHEREAS, the Subdivider owns the tract of real property described in **Exhibit "A"**, which is attached hereto and made a part hereof, (the "**Property**"); and

WHEREAS, the Subdivider desires to subdivide the Property, pursuant to the proposed final plat of "The Commons at Rowe Lane, Phase IIC" (the "**Subdivision**"); and

WHEREAS, the County desires to set forth the Subdivider's responsibility for the construction of the Subdivision's roads and drainage facilities (the "**Improvements**"); and

WHEREAS, the Subdivider desires to set forth the County's responsibility to accept the constructed Improvements for maintenance;

NOW, THEREFORE, the Parties agree as follows:

I. **SUBDIVIDER'S OBLIGATIONS**

A. Improvements. The Subdivider shall construct the Improvements required to comply with the County's Standards for the Construction of Streets and Drainage in Subdivisions (the "**Standards**"). The Improvements will conform to the construction plans, permits, and specifications approved by the County prior to commencement of construction.

B. Security. To secure the Subdivider's obligations, the Subdivider will provide a financial guarantee of performance in the amount of the estimated cost of constructing the Improvements (the "**Security**"), which has been determined by a professional engineer and approved by the County's Transportation and Natural Resources Department ("**TNR**"). The Security must be in a form approved for use in the Standards or otherwise approved by the County Attorney's Office.

C. Alternative Fiscal. Notwithstanding any other provisions of this Agreement, the Subdivider may request the Commissioners Court to hold the administratively approved plat in abeyance until all streets, alleys, sidewalks, and drainage improvements in the Subdivision are completed. The Subdivider must post fiscal security to secure restoration of disturbed areas should construction not be completed. Upon satisfactory completion, the submitted plat shall be forwarded to the Commissioners Court for approval and recording, provided adequate fiscal security has been posted to secure the one year Construction Performance Period described below.

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D. Completion. The Improvements must be constructed no later than three (3) years after the effective date of this Agreement. This period may be extended by the delivery to the County at least forty five (45) days prior to the expiration of the Security of an extension of the Security in a form approved by the County. Upon completion of the Improvements, the Subdivider will provide the County with a complete set of construction plans for the Improvements, certified "as built" by the engineer responsible for preparing the approved construction plans and specifications.

E. Warranty. The Subdivider warrants the public Improvements will be free from defects for a period of one (1) year from the date the County accepts the construction of the public Improvements (the "**Performance Period**"). The Subdivider shall correct and repair any defects in materials or workmanship, including design inadequacies and damage to or deterioration of the public Improvements that occur before and during this Performance Period due to any cause. As a condition of the County's acceptance of dedication of any of the public Improvements, the Subdivider must post fiscal security in the form of cash, a performance bond, or other approved form and in the amount of ten percent (10%) of the cost of constructing the public Improvements, to secure the warranty established by this Agreement. It is expressly acknowledged that the public Improvements must meet County Standards at the end of the one year Construction Performance Period in order for the County to release the construction performance fiscal security.

F. Increase in Security. If the County determines the cost of constructing the Improvements exceeds the posted Security, within thirty (30) days after notice and demand, the Subdivider shall provide additional Security in an amount equal to the additional estimated cost.

G. Reduction in Security. During the construction of the Improvements, the Security may be reduced in accordance with the percentage of completion of the construction. The Executive Manager of TNR will execute Statements of Partial Reductions in the Amount of Security, when provided with the following documentation:

- (1) a professional engineer's certification of quantities of work completed;
- (2) a contractor's invoice for work completed; and
- (3) a TNR inspection report, indicating the completion of the portion of the work represented by the contractor's invoice.

After the approval and acceptance of the construction of the Improvements, the Security for the public Improvements may be reduced by ninety percent (90%) of the cost of the approved construction and held for the one-year Performance Period. After the approval of the construction of the private Improvements, the Security posted for the private Improvements will be fully released. In addition, the County agrees to release or reduce, as appropriate, the Security provided by the Subdivider, if the County accepts a substitute Security for all or any portion of the Improvements.

H. Covenant, Restriction, and Condition. In the event that the Improvements are not constructed to County Standards and the required Security has expired, the Subdivider

shall not sell, transfer, or convey any of the lots in the Subdivision until sufficient Security has been posted with the County for the completion of the construction.

II. COUNTY'S OBLIGATIONS

A. Inspection and Approval. The County will inspect the Improvements during and at the completion of construction. If the Improvements are completed in accordance with the Standards, the County will approve the Improvements and accept the public Improvements.

B. Notice of Defect. The County will notify the Subdivider, if an inspection reveals that any portion of the Improvements is not constructed in accordance with the Standards or is otherwise defective. However, the County is not responsible for the construction of the Improvements, the quality of the material, or the construction methods utilized. In addition, the County is not responsible for making continuous on-site inspections of the construction work and the County has no privity with or responsibility for the construction contractor or any subcontractors. The Subdivider will have thirty (30) days from such notice to cure the defect. It is an event of default under this Agreement, if the defect is not cured prior to the expiration of the time to cure.

C. Performance Period Security Release. Upon the expiration of the one-year Performance Period with no damages or defects which the Executive Manager notifies the Subdivider must be corrected, the Executive Manager will release the Performance Period Security.

D. Conditions to Draw on Security. The County may draw upon any Security posted under this Agreement upon the occurrence of one or more of the following events:

- (1) The failure of the Subdivider to construct the Improvements to the applicable County Standards;
- (2) The Subdivider's failure to renew or replace the Security at least forty-five (45) days prior to its expiration;
- (3) The acquisition of the Property or a portion of the Property by the issuer of the Security or other creditor through foreclosure or an assignment or conveyance in lieu of foreclosure;
- (4) The arrangement by the Commissioners Court for the completion of one or more of the Improvements; or
- (5) The determination by the Commissioners Court that the completion of one or more of the public Improvements is in the public Interest.

E. Notice of Intent to Draw. The County shall provide ten (10) days written notice of the occurrence of such an event to the Subdivider with a copy provided to any fiscal surety, lender, or escrow agent. The notice will include a statement that the County intends to provide for the performance of some or all of Subdivider's obligations hereunder for the construction of the Improvements, if the failure is not cured. The County shall be entitled to draw the amount it considers necessary to perform the

Subdivider's obligations under this Agreement up to the total amount allocated for the Improvements. In lieu of a drawing based on an event described in subparagraphs (b) or (c), above, the County may accept a substitute Security.

F. Use of Proceeds.

- (1) The County must utilize the proceeds of any posted security solely for the purpose of completing the Improvements to the County's Standards or to correct defects in or failures of the Improvements.
- (2) The County may in its sole discretion complete some or all of the unfinished Improvements at the time of default, regardless of the extent to which development has taken place in the Subdivision or whether development ever commenced, without incurring any obligation to complete any of the unfinished Improvements. If the County uses the proceeds to complete, repair, or reconstruct the Improvements, it will do so as a public trustee of the development process in order to protect purchasers and taxpayers from the adverse consequences of a subdivider default or to protect the public interest by completing the Improvements.
- (3) The County is not a private subdivision developer and its draft on the Security and utilization of the proceeds to complete, repair, or reconstruct the Improvements is not an acceptance of the dedication of the Improvements. The acceptance of the Improvements is specifically contingent upon the delivery to the County of Improvements, which have been constructed to County Standards or the express order of acceptance by the County's Commissioners Court.
- (4) The Subdivider has no claim or rights under this Agreement to funds drawn under the Security or any accrued interest earned on the funds to the extent the same are used by the County hereunder.
- (5) All funds obtained by the County pursuant to one or more draws under the Security shall be maintained by the County in an interest bearing account or accounts until such funds, together with accrued interest thereon (the "**Escrowed Funds**"), are disbursed by the County.
- (6) The County shall disperse all or portions of the Escrowed Funds as Improvements are completed by the County, or in accordance with the terms of a written construction contract between the County and a third party for the construction of the Improvements.
- (7) Escrowed Funds not used or held by the County for the purpose of completing an Improvement or correcting defects in or failures of an Improvement, together with any interest accrued thereon, shall be paid by the County to the Issuer of the Security or, if the Security was originally in the form of cash, to the Subdivider, no later than sixty (60) days following the County's acceptance of the Improvement or its decision not to

complete the Improvements using Escrowed Funds, whichever date is earlier.

G. Releases. The Executive Manager will, subject to the performance of the Subdivider of its obligations under this agreement and the Travis County Standards for Construction of Streets & Drainage in Subdivisions, execute such releases of this Agreement as are necessary and reasonable upon the request of the Subdivider or a purchaser of a portion of the Property.

III. MISCELLANEOUS

A. Covenants, Restrictions, and Conditions. These Covenants, Restrictions, and Conditions will operate as covenants running with the land and will be binding upon the Subdivider and the Subdivider's legal representatives, successors and assigns.

B. Measure of Damages. The measure of damages for breach of this Agreement by the Subdivider is the actual cost of completing the Improvements in conformance with the County's Standards, including without limitation its associated administrative expenses.

C. Remedies. The remedies available to the County and the Subdivider under this Agreement and the laws of Texas are cumulative in nature.

D. Third Party Rights. No non-party shall have any right of action under this Agreement, nor shall any such non-party, including without limitation a trustee in bankruptcy, have any interest in or claim to funds drawn on the posted Security and held in escrow by the County in accordance with this Agreement.

E. Indemnification. The Subdivider shall indemnify and hold the County harmless from and against all claims, demands, costs, and liability of every kind and nature, including reasonable attorney's fees, for the defense of such claims and demands, arising from any breach on the part of Subdivider of any provision in this Agreement, or from any act or negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements. The Subdivider further agrees to aid and defend the County, if the County is named as a defendant in an action arising from any breach on the part of Subdivider of any provision in this Agreement or from any act or negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements.

F. No Waiver. The waiver of any provision of this Agreement will not constitute a waiver of any other provision, nor will it constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement. The County's failure to enforce any provision will not constitute a waiver or estoppel of the right to do so.

G. Attorney's Fees. The prevailing party in any litigation hereunder is entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other party. If the court awards relief to both parties, each will bear its own costs.

H. Successors and Assigns. This Agreement is binding on the Subdivider and the heirs, successors, and assigns of the Subdivider and on any person acquiring an ownership interest in the Property through the Subdivider. The Subdivider's obligations under this Agreement may not be assigned without the written approval of the County; provided the County's approval shall not be unreasonably withheld if the Subdivider's assignee expressly assumes all obligations of the Subdivider under this Agreement. An assignment shall not be construed as releasing the Subdivider from Subdivider's obligations under this Agreement and Subdivider's obligations hereunder shall continue notwithstanding any assignment approved pursuant to this Paragraph unless and until the County executes and delivers to the Subdivider a written release. The County agrees to release the Subdivider, if the Subdivider's assignee expressly assumes the Subdivider's obligations under this Agreement and has posted the Security required by this Agreement. The County in its sole discretion may assign some or all of its rights under this Agreement and any such assignment shall be effective upon notice to the Subdivider.

I. Expiration. This Agreement will terminate upon the vacation of the Subdivision by the Subdivider or the completion of the Subdivider's obligations under this Agreement, whichever occurs first.

J. Notice. Any notice under this Agreement must be in writing and will be effective when personally delivered or three (3) days after deposit in the U.S. Mail, postage prepaid, certified with return receipt requested, and addressed as follows:

Subdivider: The Commons at Rowe Lane, L.P.,
2929 W. 5th, Suite A
Fort Worth, Texas 76107
Attn: Lee Nicol

Copy to: Armbrust & Brown, PLLC
100 Congress Avenue, Suite 1300
Austin, Texas 78701
Attn: Kevin M. Flahive

County: Transportation & Natural Resources Dept.
P.O. Box 1748
Austin, Texas 78767
Attn: Executive Manager

Copy to: Travis County Attorney's Office
P.O. Box 1748
Austin, Texas 78767

The parties may change their respective addresses for notice to any other location in the United States in accordance with the provisions of this Paragraph.

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K. Severability. If any provision of this Agreement is held by a court to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability shall not affect the validity of any other provision and the rights of the parties will be construed as if such provision was never part of this Agreement.

L. Jurisdiction and Venue. This Agreement concerns real property located in Travis County, Texas, and shall be governed and construed under Texas law. Venue for any action arising under this Agreement shall be exclusively in Travis County, Texas.

M. Captions Immaterial. The captions or headings of the paragraphs of this Agreement are for convenience only and shall not be considered in construing this Agreement.

N. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. Any oral representations or modifications concerning this Agreement shall be of no force or effect, except a subsequent written modification executed by both parties. NO OFFICIAL, EMPLOYEE, OR AGENT OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND, MODIFY, OR OTHERWISE CHANGE THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COMMISSIONERS COURT.

This Agreement is executed as of the dates set forth below and is effective upon approval by the County of the final plat for the Subdivision or upon approval of Alternative Fiscal in accordance with County regulations.

(Signature Page to Follow)

TRAVIS COUNTY, TEXAS:

SUBDIVIDER:

THE COMMONS AT ROWE LANE, L.P.,
a Texas limited partnership

County Judge

By: ROWE COMMONS CORPORATION,
a Texas corporation,
its General Partner

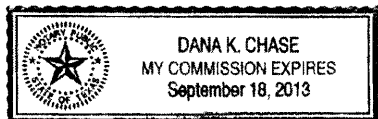
Date: _____

By: *Lee Nicol*
Name: Lee Nicol
Title: President
Authorized Representative
Date: 12.30.2011

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 30 day of December, 2011,
by Lee Nicol, in the capacity stated herein.



Dana K Chase
Signature of Notary

After Recording Return to:

Executive Manager, Transportation and Natural Resources
P.O. Box 1748
Austin, Texas 78767

STATE OF TEXAS
COUNTY OF TRAVIS

9.735 ACRE TRACT,
SITUATED IN THE
JACOB CASNER SURVEY,
ABSTRACT NO. 2753,
TRAVIS COUNTY, TEXAS

LEGAL DESCRIPTION

DESCRIPTION OF A 9.735 ACRE TRACT, SITUATED IN THE JACOB CASNER SURVEY, ABSTRACT NO. 2753, BEING A PORTION OF THAT CERTAIN 108.529 ACRE TRACT OF LAND CONVEYED TO THE COMMONS AT ROWE LANE, L.P., OF RECORD IN DOCUMENT NO. 2005022370 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID 9.735 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

Commencing at a 1/2 inch iron rod with cap set (ZWA) for the northwest corner of said 108.529 acre tract being also an interior ell corner of Steeds Crossing, a subdivision of record in Book 88, Pages 99 thru 101 of the Plat Records of Travis County, Texas and being the northwest corner of the herein described tract;

THENCE S 82°29'22" E with the north line of said 108.529 acre tract, the south line of said Steeds Crossing and the south line of a 10.032 acre tract of land as described in a deed to The Commons at Rowe Lane, LP of record in Document Number 2005045836 of the Official Public Records of Travis County, Texas for a distance of 433.53 feet to 1/2 inch iron rod with cap set (ZWA) for the northeast corner of proposed Lot 11, Block EE, of Proposed Final Plat The Commons at Rowe Lane Phase IIB;

THENCE S 17°13'15" E over and across said 108.529 acre tract for a distance of 297.12 feet to 1/2 inch iron rod with cap set (ZWA) for the POINT OF BEGINNING and being the northeast corner of the herein described tract;

THENCE, continuing over and across said 108.529 acre tract the following twenty (20) courses and distances:

1. S 17°13'15" E for a distance of 106.25 feet to a 1/2 inch iron rod with cap set (ZWA) at the beginning of a curve to the right,
2. along said curve to the right, an arc distance of 23.56 feet, said curve having a radius of 15.00 feet, a central angle of 90°00'00" and a chord bearing of S 27°46'45" W for a chord distance of 21.21 feet to a 1/2 inch iron rod with cap (ZWA) set at the end of said curve,
3. S 17°13'15" E for a distance of 50.00 feet to a 1/2 inch iron rod with cap set (ZWA) at the beginning of a curve to the right,

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4. along said curve to the right, an arc distance of 23.56 feet, said curve having a radius of 15.00 feet, a central angle of $90^{\circ}00'00''$ and a chord bearing of $S 62^{\circ}13'15'' E$ for a chord distance of 21.21 feet to a 1/2 inch iron rod with cap (ZWA) set at the end of said curve,
5. $S 17^{\circ}13'15'' E$ for a distance of 284.85 feet to a 1/2 inch iron rod with cap set (ZWA) at the beginning of a curve to the right,
6. along said curve to the right, an arc distance of 23.56 feet, said curve having a radius of 15.00 feet, a central angle of $90^{\circ}00'00''$ and a chord bearing of $S 27^{\circ}46'45'' W$ for a chord distance of 21.21 feet to a 1/2 inch iron rod with cap (ZWA) set at the end of said curve,
7. $S 17^{\circ}13'15'' E$ for a distance of 50.00 feet to a 1/2 inch iron rod with cap set (ZWA) at the beginning of a curve to the right,
8. along said curve to the right, an arc distance of 23.56 feet, said curve having a radius of 15.00 feet, a central angle of $90^{\circ}00'00''$ and a chord bearing of $S 62^{\circ}13'15'' E$ for a chord distance of 21.21 feet to a 1/2 inch iron rod with cap (ZWA) set at the end of said curve,
9. $S 17^{\circ}13'15'' E$ for a distance of 115.00 feet to a 1/2 inch iron rod with cap set (ZWA),
10. $S 72^{\circ}46'45'' W$ for a distance of 221.02 feet to a 1/2 inch iron rod with cap set (ZWA),
11. $S 89^{\circ}29'18'' W$ for a distance of 57.74 feet to a 1/2 inch iron rod with cap set (ZWA),
12. $N 82^{\circ}40'57'' W$ for a distance of 193.17 feet to a 1/2 inch iron rod with cap set (ZWA),
13. $N 36^{\circ}21'01'' W$ for a distance of 38.61 feet to a 1/2 inch iron rod with cap set (ZWA),
14. $S 52^{\circ}44'09'' W$ for a distance of 39.79 feet to a 1/2 inch iron rod with cap set (ZWA),
15. $N 82^{\circ}40'57'' W$ for a distance of 117.50 feet to a 1/2 inch iron rod with cap set (ZWA),
16. $S 07^{\circ}19'03'' W$ for a distance of 41.71 feet to a 1/2 inch iron rod with cap set (ZWA),
17. $N 82^{\circ}40'57'' W$ for a distance of 170.00 feet to a 1/2 inch iron rod with cap set (ZWA),
18. $N 07^{\circ}19'03'' E$ for a distance of 628.94 feet to a 1/2 inch iron rod with cap set (ZWA),
19. $S 82^{\circ}40'57'' E$ for a distance of 258.32 feet to a 1/2 inch iron rod with cap set (ZWA),
and
20. $N 72^{\circ}45'15'' E$ for a distance of 284.74 feet to the **POINT OF BEGINNING** and containing 9.735 acres of land.

UP