THE STATE OF TEXAS

COUNTY OF FORT BEND

## **DEVELOPMENT AGREEMENT**(SPRING GREEN BOULEVARD ROUNDABOUT)

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas (hereinafter referred to as "the County"), a body politic acting herein by and through its Commissioners' Court, and NASH Cinco NW LLC, a Delaware limited liability company authorized to conduct business in the State of Texas (hereinafter referred to as "NASH")

WHEREAS, Spring Green Boulevard, Crossover Road and Katy Flewellen Road are public roads maintained by the County that currently intersect at location on land owned by NASH; and

WHEREAS, County proposes to construct a roundabout at Spring Green Boulevard and Katy Flewellen Road, and connect Crossover Road to Spring Green Boulevard (the "Project"); and

WHEREAS, NASH proposes to develop the Cinco Ranch Community adjacent to the roundabout (the "CNW Property"); and

WHEREAS, County and NASH agree that CNW Property will substantially benefit from the construction of the Project; and

WHEREAS, County has agreed to construct the Project and NASH agrees to: (a) dedicate right of way necessary to complete the Project; (b) construct certain roads within the CNW Property that connect to the Project; and (c) advance funds to the County as a contribution to the Project; and

WHEREAS, County has investigated and determined that it would be advantageous and beneficial to County and its citizens to participate in the construction of the Project, as provided herein; and

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, County and NASH agree as follows:

1. <u>Description of Project</u>. The Project consists of the construction of a roundabout at Spring Green Boulevard and Katy Flewellen Road, and the connections of Crossover Road and Cinco Trace Boulevard to Spring Green Boulevard, as described on Exhibit A attached hereto and incorporated herein for all purposes.

- 2. NASH's Responsibilities. NASH hereby agrees to perform the following:
  - (a) Dedicate the right of way within the CNW Property for Spring Green Boulevard, Crossover Road and Katy Flewellen Road based on a mutually agreeable road configuration;
  - (b) Construct Cinco Trace Boulevard within the CNW Property to the limit of the Project;
  - (c) Advance funds for costs, as estimated and shown on Exhibit B attached hereto and incorporated herein for all purposes, to the County upon confirmation by the units and unit pricing listed in the final construction contracts for the Project, upon written confirmation from the County that the Project is ready to proceed, and within thirty (30) days prior to the start of construction, which include:
    - i. The prorate share of the Project based on the portion of the Project within the CNW Property; and
    - ii. One-half of the cost of realigned Crossover Road from the roundabout on Spring Green Boulevard westward to reconnect with the existing Crossover Road pavement, including design and construction expenses and based on the original length of Crossover adjoining the Cinco Ranch Community, as defined on the attached Exhibit B; and
  - (d) Additionally, County agrees to credit NASH's expenses for certain improvements against the amount of funds to be advanced as provided in 2(c) above, including the installation of landscaping, irrigation, lighting and maintenance of the roundabout, at an amount not to exceed the budged amount of \$48,500.00, allocated as follows:
    - i. \$35,000 for the planting and irrigation of the roundabout;
    - ii. \$8,000 to add four (4) decorative street lights consistent with the lights along the length of Cinco Trace; and
    - iii. \$5,500 for one year of maintenance including water and electrical.
- 3. County's Responsibilities. The County hereby agrees to perform the following:
  - (a) Coordinate right of way dedication and abandonment with the affected property owners with the portion of Crossover Road to be abandoned more fully identified on attached Exhibit C;
  - (b) Construct the roundabout at Spring Green Boulevard and Katy Flewellen Road and connect Crossover Road to Spring Green Boulevard;
  - (c) Close certain portions of Crossover Road and Katy Flewellen Road, mutually agreeable by NASH and County; and
  - (d) Coordinate with affected dry utility companies for relocation of existing facilities within abandoned portions of Crossover Road and Katy Flewellen Road. However, County is not responsible for the cost associated with utility relocation.

- (e) Concurrent with the approval of this Agreement by the County, County further agrees to submit the plat of Section 19 of Cinco Ranch Northwest, or as promptly as possible upon NASH's delivery of said final plat to the County, for Commissioners Court approval.
- 4. <u>Disclaimer/Waiver of Damages/Liability</u>. (a) NASH acknowledges and agrees that County is not providing any guarantee, representation and/or warranty, and County hereby disclaims any guarantee, representation and/or warranty, of any work performed by County, or their agents, employees, representatives, contractors, subcontractors and/or designees, inconnection with the construction of the Project, in whole or in part.
- (b) NASH acknowledges and agrees that County shall in no way be liable for any damages, if any, which may be sustained by the NASH and/or CNW Property, resulting, in whole or in part, directly or indirectly, from County's failure to complete the construction of the Project by any certain date and/or as set forth in this Agreement.
- (c) NASH hereby releases County, its officers, agents, representatives and employees, from and against, and waives any and all rights to, any and all claims and/or demands for damages (personal or property), injury (including death), or otherwise, it/they may have with regard to the construction and/or completion of the Project and/or any other act and/or omission relating, directly or indirectly, to the Project, in whole or in part, as provided in this Agreement, except to the extent any such claims arise due to, or damages are caused by, solely and directly, the negligence or willful misconduct of County or its authorized officers, agents, representatives or employees.
- 5. PARTIES' ACKNOWLEDGEMENT OF COUNTY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/NASH'S WAIVER AND RELEASE OF CLAIMS FOROBLIGATIONS IMPOSED BY THIS AGREEMENT.
  - (a) NASH ACKNOWLEDGES AND AGREES THAT THE CONTRIBUTION MADE BY NASH TO COUNTY, IN WHOLE OR IN PART, DOES NOT CONSTITUTE A:
    - (I) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION:
    - (II) VIOLATION OF THE TEXAS TRANSPORTATION CODE, AS IT EXISTS OR MAY BE AMENDED;
    - (III) NUISANCE; AND/OR
    - (IV) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW

## AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.

- (b) NASH RELEASES COUNTY FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- (c) NASH WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- (d) THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.
- 6. <u>Limitations of Agreement</u>. The parties hereto acknowledge this Agreement is limited to the Project only. Further, this Agreement does not waive or limit any of the obligations of NASH to County under any other order whether now existing or in the future arising.
- 7. <u>Default</u>. In the event NASH fails to comply with any of the provisions of this Agreement within thirty (30) business days after NASH's receipt of written notice thereof from County, County shall have the following remedies in addition to County's other rights and remedies, at law or in equity:
  - (a) to file this instrument in the Real Property Records of Fort Bend County as a lien and/or encumbrance against NASH and/or the Property; and/or
  - (b) to refuse to accept any portion of any public improvements on the CNW Property and/or associated with the development of the CNW Property; and/or
    - (c) to refuse to finally accept the CNW Property and/or any portion thereof; and/or
    - (d) to seek specific enforcement of this Agreement.

In the event of County's default under this Agreement, NASH will be entitled to seek specific performance and/or any other remedy available to them at law or in equity.

#### 8. Miscellaneous.

(a) <u>Notice</u>. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt

at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

### If to County, to:

Fort Bend County Engineering Attention: Richard W. Stolleis, P.E., County Engineer 301 Jackson Street Richmond, Texas 77469

### With a copy to:

Fort Bend County Attention: Robert E. Hebert, County Judge 401 Jackson Street Richmond, Texas 77469

#### If to NASH, to:

NASH CNW LLC Attention: Alan F. Bauer 10940 West Sam Houston Pkwy, North, Suite 300 Houston, Texas 77064

- (b) <u>Assignment</u>. This Agreement is not assignable by NASH without the prior written consent of County, which consent shall not be unreasonably withheld.
- (c) <u>Binding Effect</u>. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed.
- (d) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.
- (e) <u>Venue</u>. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Fort Bend County, Texas.
- (f) <u>Consideration</u>. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- (g) <u>Counterparts</u>. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.
- (h) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and

necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

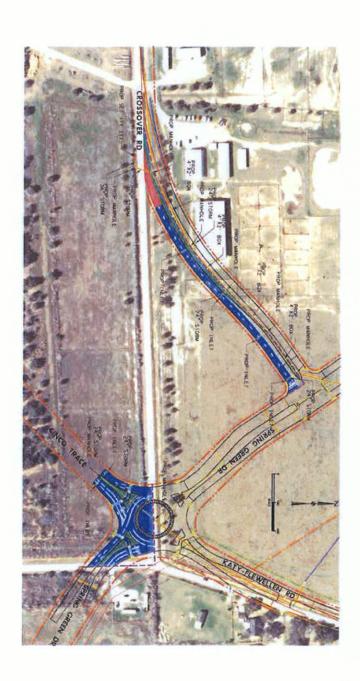
- (i) <u>Savings/Severability</u>. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- (j) <u>Representations</u>. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.
- (k) <u>Miscellaneous Drafting Provisions</u>. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
- (l) <u>Sovereign Immunity</u>. The parties agree that County has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- (m) No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- (n) Attorneys' Fees. In any legal proceeding brought to enforce the terms of this Agreement, the prevailing party may recover its reasonable and necessary attorneys' fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.
- (o) <u>Incorporation of Recitals</u>. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of County and the NASH and/or its authorized representatives.
- (p) NASH's Warranties/Representations. All warranties, representations and covenants made by NASH in this Agreement or in any certificate or other instrument delivered by NASH to County under this Agreement shall be considered to have been relied upon by County and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by County or on County's behalf.

- (q) <u>Indemnification</u>. The parties agree that the Indemnity provisions set forth in Paragraphs 4 and 5 herein are conspicuous, and the parties have read and understood the same.
- (r) <u>Waiver</u>. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any tune, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date executed by County.

FORT BEND COUNTY:	
Weley delen	5.23-2017
Robert E. Hebert, County Judge	Date
Attest: Jama Richard	TA SON
Laura Richard, County Clerk	S THE SECOND SEC
Approved: COUNTY PROJECT MANAGER	COUNTY TEXTILITY
Richard W. Stolleis, P.E., County Engineer	_
NASH Cinco NW LLC, a Delaware limited liability company:	
01-0	

By Alan F. Bater, Authorized Signatory



SPRING GREEN ROUNDABOUT  SPRING GREEN ROUNDABOUT
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ЕХНІ	BIT B									
PROPORTIONAL CO	OSTS BREAK	DOWN								
ITEM	UNIT	QTY	COST	TOTAL COST						
SITE PREPARATION	AC	4	\$1,500.00	\$6,000						
REMOVE EXISTING PAVEMENT	SY	667	\$8.00	\$5,333						
ROADWAY EXCAVATION	CY	2,400	\$10.00	\$24,000						
FLEX BASE (10")	SY	390	\$40.00	\$15,600						
HMAC (2" TRANSITION)	TON	172	\$70.00	\$12,017						
LIME (6%)	TON	102	\$150.00	\$15,244						
LIME TREAT SUBGRADE (6")	SY	7,528	\$2.00	\$15,056						
CONCRETE PAVEMENT (8IN)	SY	6,456	\$50.00	\$322,794						
DRILL SHAFT (RDWY ILL POLE) (30IN)	LF	16	\$115.00	\$1,840						
CONC BOX CULV (4FT X 2FT)	LF	430	\$200.00	\$86,000						
REINFORCED CONCRETE PIPE (CL III)(24IN)	LF	436	\$90.00	\$39,240						
REINFORCED CONCRETE PIPE (CL III)(36IN)	LF	85	\$100.00	\$8,500						
TYPE "C" MANHOLE	EA	5	\$3,200.00	\$16,000						
TYPE "B-B" INLET	EA	6	\$3,000.00	\$18,000						
SET (TY II) (24IN) (RCP) (4:1)C	EA	1	\$1,000.00	\$1,000						
MOBILIZATION	LS	1	\$94,000.00	\$94,000						
BARRICADES, SIGNS, AND TRAFFIC HANDLING	МО	6	\$1,800.00	\$10,800						
CONCRETE PAVERS	SY	242	\$135.00	\$32,655						
MONOLITHIC CURB & GUTTER	LF	2,790	\$8.00	\$22,320						
MOUNTABLE CURB	LF	212	\$10.00	\$2,120						
PED RAMPS (TY 2)	EA	4	\$1,440.00	\$5,760						
PED RAMPS (TY 5)	EA	1	\$1,500.00	\$1,500						
PED RAMPS (TY 7)	EA	2	\$1,600.00	\$3,200						
PED RAMPS (TY 21)	EA	4	\$1,000.00	\$4,000						
SMALL ROADSIDE SIGNS	EA	11	\$500.00	\$5,500						
IN RD IL AM (TY SA) 50T-8 (400W) S	EA	2	\$2,900.00	\$5,800 \$3,586						
CONDT (PVC) (SCH 80) (2")	LF	355	\$10.10							
ELEC CONDR (NO. 8) BARE	LF	355	\$1.00	\$355						
ELEC CONDR (NO. 8) INSULATED	LF	710 260	\$1.00 \$0.50	\$710						
PAV MRK TY I (W) 4" (BRK)	LF			\$130						
PAV MRK TY I (W) 4" (DOT)	LF	250	\$0.50	\$125						
PAV MRK TY I (W) 4" (SLD)	LF	667	\$0.50	\$334						
PAV MRK TY I (W) 12" (SLD)	LF	35	\$2.50	\$88						
PAV MRK TY I (W) 24" (SLD)	LF	330	\$8.00	\$2,640						
PAV MRK TY I (W) (ARROW)	EA	6	\$160.00	\$960						
PAV MRK TY I (W) (DBL ARROW)	EA	6	\$300.00	\$1,800						
PAV MRK TY I (W) 36" (YLD TRI)	EA	30	\$100.00	\$3,000						
STABILIZED CONSTRUCTION ACCESS	EA	1	\$2,500.00	\$2,500						
INLET PROTECTION BARRIER - STAGE 1	EA	10	\$400.00	\$4,000						
INLET PROTECTION BARRIER - STAGE 2	EA	10	\$400.00	\$4,000						
HYDRO-MULCH SEEDING	AC	0.22	\$2,450.00	\$539						
REINFORCED FILTER FABRIC	LF	1,840	\$2.25	\$4,140						
CONSTRUCTION TOTAL  ENGINEERING (10%)										
						PROJECT MANAGEMENT (2%)  CONSTRUCTION MANAGEMENT (3%)  MATERIAL TESTING (3%)				
TOTAL PROPORTIONAL COSTS										

# EXHIBIT C

# DESCRIPTION OF A 1.680 ACRE TRACT OF LAND SITUATED IN THE ALEX PHILIPS SURVEY, ABSTRACT NO. 300 & THE JAMES CONNER SURVEY, ABSTRACT NO. 157 FORT BEND COUNTY, TEXAS

BEING a 1.680 acre (73,175 square feet) tract of land situated in the Alex Philips Survey, Abstract No. 300 and the James Conner Survey, Abstract No. 157, both of Fort Bend County, Texas and being a portion of a called 492.046 acre tract of land as described in a deed to Nash Cinco NW, LLC recorded under Fort Bend County Clerk's File Number (F.B.C.C.F. No.) 2010082160, and a called 34.2300 acre tract of land as described in a deed to Live Oak Ranch, Inc. recorded under F.B.C.C.F. No. 2002107809, said 1.680 acre tract of land described by metes and bounds as follows:

COMMENCING at a 1/2-inch iron pipe found for the northwest corner of said 492.046 acre tract, lying in the centerline of Flewellen Katy Road (60 feet wide) as recorded under Volume 31, Pages 247 & 249 of the Fort Bend County Deed Records;

THENCE, S 88°08'25" W, along the north line of said 492.046 acre tract, a distance of 277.02 feet to the **POINT OF BEGINNING** of the herein described tract, lying in a non-tangent curve to the right, from which its center bears S 86°23'47" W, 215.00 feet;

THENCE, over and across said 492.046 acre tract the following courses and distances:

In a Southerly direction, along said curve to the right, a distance of 28.08 feet, having a radius of 215.00 feet, a central angle of 07°28'58" and a chord which bears S 00°08'16" W, 28.06 feet to the southeast corner of the herein described tract:

S 88°01'44" W, a distance of 1,165.62 feet to the southwest corner of the herein described tract, and the beginning of a non-tangent curve to the left, from which its center bears N 12°58'23" W, 1,050.00 feet;

In an Easterly direction, along said curve to the left, at a arc distance of 121.67 feet passing the common line of said 492.046 acre tract and said 34.2300 acre tract, and continuing for a total distance of 231.31 feet, having a radius of 1,050.00 feet, a central angle of 12°37'19" and a chord which bears N 70°42'57" E, 230.84 feet to the northwest corner of the herein described tract;

THENCE, continuing over and across said 34.2300 acre tract the following courses and distances:

N 87°48'51" E, a distance of 941.08 feet to the northeast corner of the herein described tract;

S 10°58'11" E, a distance of 16.89 feet to the beginning of a tangent curve to the right;

### CINCO RANCH NW SECTION 19 1.680 ACRES CROSSOVER ROAD ABANDONMENT

OCTOBER 28, 2015 JOB NO. 3552

In a Southerly direction, along said curve to the right, a distance of 27.64 feet, having a radius of 215.00 feet, a central angle of 07°21'57" and a chord which bears S 07°17'12" E, 27.62 feet to the **POINT OF BEGINNING** and containing 1.680 acres (73,175 square feet) of land.

Bearing orientation is based on the Texas Coordinate System, South Central Zone 4204, NAD-83 and is referenced to monuments found along the north line of said 492.046 acre tract as cited herein.

The above description is not to be used as fee conveyance.

Glenn Fisher

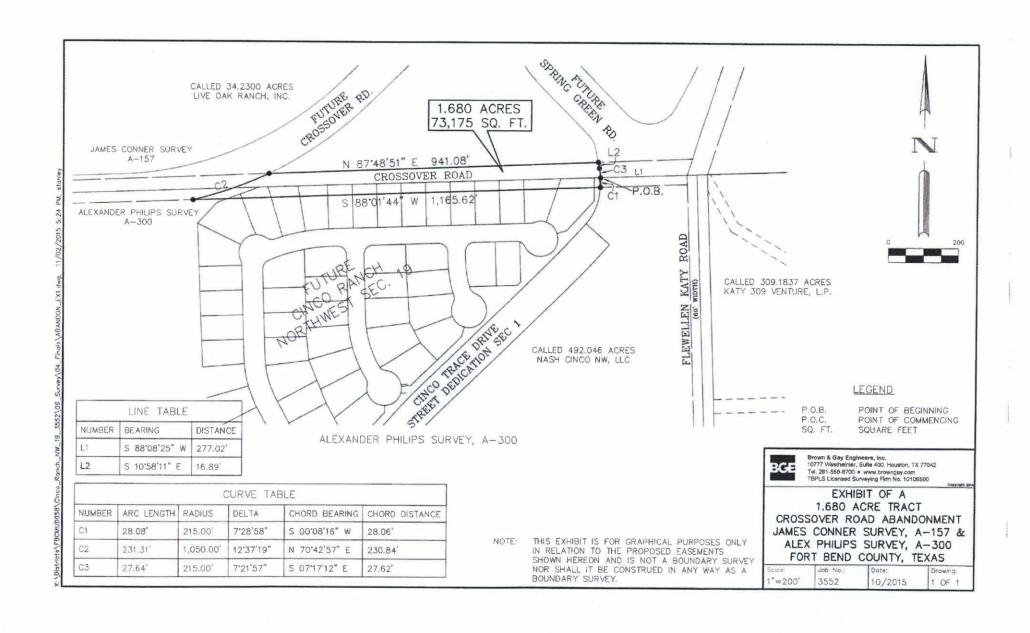
RPLS No. 4146

Brown & Gay Engineers, Inc.

10777 Westheimer Road, Suite 400

Houston, Texas 77042 Telephone: (281) 558-8700

TBPLS Licensed Surveying Firm No. 10106500



### **CERTIFICATE OF INTERESTED PARTIES**

FORM 1295

					1 of 1	
	Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.	Ē	_	OFFICE USE	ONLY OF FILING	
1				ate Number:		
	of business.	1	2017-2	207333		
	Newland Communities		D-4- F1	On al.		
L	Houston, TX United States		Date Fi			
Z	2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.			05/15/2017		
	Fort Bend County Date			ate Acknowledged:		
3	Provide the identification number used by the governmental entity or state agency to track description of the services, goods, or other property to be provided under the contract.	or identify t	he con	tract, and pro	vide a	
	20170523 Spring Groop Boulevard Boundahout					
	Spring Green Boulevard Roundabout					
_				Nature of	f interest	
4	Name of Interested Party City, State, Country (plac	e of busines	siness) (check		applicable)	
				Controlling	Intermediary	
			$\dashv$			
5	Check only if there is NO Interested Party.					
6	AFFIDAVIT I swear, or affirm, under penalty of perjuit	n, that the of	hove di	celocure is true	and correct	
	KATHLEEN JUNE HAWN	ry, urau tries au	DUVE UI	sciosure is true	and correct.	
	Notary Public, State of Texas					
	Comm. Expires 06-09-2018					
	Notary 1D 81 4886-3	~				
	Signature of authorized ag		cting b	usiness entity		
	Vice Preside	7+				
	AFFIX NOTARY STAMP / SEAL ABOVE	- •				
	Alan P. B		5H2)	<b>አ</b> ንላ	ا	
				<u>up</u>		
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	$J \sim J \sim J \sim -1$					
	Kathley X Leve Hain Kothleen Tung Hown	/	Vota	N		
•	Signature of officer administering oath  Printed name of officer administering oath	Title	of offi	ce administeri	ng oath	

### **CERTIFICATE OF INTERESTED PARTIES**

FORM 1295

				1 of 1	
	Complete Nos. 1 - 4 and 6 if there are interested parties.  Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.		OFFICE USE		
<ul> <li>Name of business entity filing form, and the city, state and country of the business entity's place of business.</li> <li>Newland Communities</li> <li>Houston, TX United States</li> </ul>			CERTIFICATION OF FILING Certificate Number: 2017-207333  Date Filed:		
2	Name of governmental entity or state agency that is a party to the being filed.	contract for which the form is	05/15/2017		
	Fort Bend County		Date Acknowledged 05/23/2017		
3	Provide the identification number used by the governmental entity description of the services, goods, or other property to be provide 20170523  Spring Green Boulevard Roundabout		the contract, and pro	vide a	
4	Name of Interested Party	City, State, Country (place of busine	ess) (check a	Nature of interest (check applicable)	
			Controlling	Intermediary	
_					
5	Check only if there is NO Interested Party.				
6		ffirm, under penalty of perjury, that the	shove diselegare is true	a and correct	
		mini, dilaci penaky oi penjary, arac are	above disclosure is that	s and correct.	
		Signature of authorized agent of conti	racting business entity		
	AFFIX NOTARY STAMP / SEAL ABOVE				
	Sworn to and subscribed before me, by the said	, this the	day of	,	
	Signature of officer administering oath	fficer administering oath Ti	tle of officer administer	ing oath	