

**DEVELOPMENT AGREEMENT BETWEEN  
THE CITY OF MISSOURI CITY, TEXAS,  
AND  
SIENNA 325, L.P.  
(Single Family 34-acre Property)**

This DEVELOPMENT AGREEMENT (the "Agreement") is entered into between SIENNA 325, L.P., a Texas limited partnership, its successors or assigns ("Developer"), and THE CITY OF MISSOURI CITY, TEXAS (the "City"), a municipal corporation in Fort Bend and Harris Counties, Texas, acting by and through its governing body, the City Council of Missouri City, Texas (collectively, the "Parties") to be effective on the date on \_\_\_\_\_, 2020 (the "Effective Date").

**RECITALS**

The Developer owns approximately 34 acres of land (defined herein as the "Tract") in Fort Bend County, Texas and currently within the corporate limits of the City. The Developer anticipates the City will deannex the Tract from the corporate limits of the City prior to executing this Agreement. The Developer intends to develop the Tract for single family use. The Developer represents that the development of the Tract requires an agreement providing for long-term certainty concerning development of the Tract. A copy of the metes and bounds of the Tract is attached as **Exhibit A**.

The execution of this Agreement by the City is contingent upon the Developer petitioning the Tract for annexation into Sienna Plantation Municipal Utility District No. 10 (the "District"), and the District consenting to the annexation.

The Developer and the City wish to enter into this Agreement to provide certainty of regulatory requirements throughout the term of this Agreement, and encourage the creation of high-quality development for the benefit of the District and the present and future residents of the City.

The Developer and the City wish to enter into this Agreement to further provide certain planning authority essential to the development of the Tract to insure compliance

Authority for this Agreement exists under Chapter 212, Subchapter G, Texas Local Government Code; Chapter 43, Texas Local Government Code; Chapter 245, Texas Local Government Code; and Section 212.172 of the Texas Local Government Code.

The City is a home rule city with all powers except those specifically limited by the Constitution and laws of the State of Texas and the City Charter.

The City wishes to provide for the orderly, safe and healthful development of the Tract, and the City and the Developer agree that the development of the Tract and provision of utilities can best proceed pursuant to a development agreement.

## AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits contained herein as well as other good and valuable consideration, the sufficiency of which is acknowledged by the parties, the City and Developer agree as follows:

### ARTICLE I DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. Unless the context indicates others, the following words as used in this Agreement shall have the following meanings:

“City” means the City of Missouri City, Texas, a home rule municipal corporation situated in Fort Bend and Harris Counties, Texas, acting by and through its governing body, the City Council of Missouri City, Texas.

“City Code” means the Missouri City Code and other ordinances and regulations adopted by the City of Missouri City, as such ordinances may be amended, changed, supplemented or repealed from time to time.

“Developer” means Sienna 325, L.P., a Texas limited partnership and its successor and assigns.

“District” means Sienna Plantation Municipal Utility District No. 10.

“ESFC” means that amount of water or wastewater, as applicable, set by the Master District that constitutes an Equivalent Single Family Connection, which amount may be changed from time to time. At the time of this Agreement, an ESFC of wastewater means 315 gallons per day of water and an ESFC of water means 400 gallons per day of water.

“General Plan” means the General Plan prepared by Developer as submitted to the City as of the date of this Agreement, and then as approved by the City and, amended from time to time, as described in **Exhibit B**.

“Master District” means Sienna Plantation Municipal Utility District No. 1.

“Sienna Plantation Development Agreement” means the Sienna Plantation Joint Development Agreement, as adopted in the City of Missouri City Ordinance No. O-96-05 on February 19, 1996, as amended through the tenth amendment.

“Tract” means the approximately 34 acres of land to be developed by Developer, as described in **Exhibit A**.

“TCEQ” means the Texas Commission on Environmental Quality or its successor agency.

Section 1.2. Exhibits. The following Exhibits attached to this Agreement are a part of the Agreement as though fully incorporated herein:

Exhibit A	Metes and Bounds of 34 acres
Exhibit B	General Plan for Development
Exhibit C	Current City Codes and Ordinances relevant to the Tract

## ARTICLE II GENERAL PLAN AND LAND USE

Developer hereby agrees that the Tract will be developed for single family residential use in accordance with the General Plan for Development, attached hereto, and made a part hereof for all purposes, as Exhibit B. The Developer may develop the Tract in accordance with any type of single family residential designation set forth in the City’s zoning ordinance of the City Code as R-1, R-1-A, R-2, R-3, R-4, R-5, R-6, or in the Development Guidelines attached as Exhibit E to the Sienna Plantation Development Agreement. As consideration for the City’s obligations under this Agreement, the Developer intends to proceed to develop the Tract consistent with the General Plan as expeditiously as possible as determined by real estate and financial market and legal conditions. This Article does not require and shall not be construed as requiring the Developer to develop the Tract on any particular schedule or timetable.

## ARTICLE III DEVELOPER OBLIGATIONS

Section 3.1. Development of Tract. The Developer agrees to provide all water, sewer and drainage facilities to the Tract. The Developer agrees to develop the Tract in accordance with the rules, obligations, and restrictions of the Sienna Plantation Joint Development Agreement, incorporated for all purposes except the following:

- (a) All references to the City Code shall be construed to refer to such references as they exist on the Effective Date;
- (b) Article III, Sections 3.08 and 3.09 (relating to consent to create municipal utility districts) of the Sienna Plantation Joint Development Agreement;
- (c) Article V, Amended Sections 5.02 and 5.03 (providing for construction of a fire station) and amended Section 5.04 (providing for the installation of traffic signals);

- (d) Article IX, Section 9.05, Subsections 9.06(a) and 9.06(b), and any other provisions of Article IX providing for arbitration;
- (e) Exhibit "G," Schedule of Fees;
- (f) The entire Fifth Amendment to the Sienna Plantation Joint Development Agreement, dated November 5, 2007; and
- (g) The entire Eighth Amendment to the Sienna Plantation Joint Development Agreement dated July 15, 2013.

Section 3.2. Drainage Improvements. The Developer will prepare and submit a Drainage Impact Analysis showing that the proposed development will not have an adverse impact due to development. This impact analysis will be consistent with applicable City of Missouri City and Fort Bend County Drainage District criteria and will be submitted to all entities having jurisdiction for review and approval. Based on the effective Flood Insurance Rate MAP (FIRM), it appears that a small (southern) section of this tract is located within a Special Flood Hazard Area (SFHA). A Letter of Map Revision based on Fill (LOMR-F) or a Letter of Map Amendment (LOMA) is required should the subject tract be located within an SFHA.

Section 3.3. Associations. The Developer will annex the Tract into the Sienna Plantation Residential Association, Inc. (the "Association") or the Sienna Plantation Property Owners Association (the "SPPOA"). The District, Sienna Plantation Levee Improvement District of Fort Bend County, Texas, SPPOA and/or the Association shall maintain all park and recreational facilities.

Section 3.4. Park and Recreational Facilities. The Developer will comply with the City's parkland dedication ordinance as set forth in the City Code.

Section 3.5. Waiver of Actions Under Private Real Property Rights Preservation Act. The Developer hereby waives its right, if any, to assert any causes of action against the City accruing under the Private Real Property Rights Preservation Act, Chapter 2007, Texas Government Code (the "Act"), that the City's execution or performance of this Agreement or any authorized amendment or supplements thereto may constitute, either now or in the future, a "Taking" of Developer's, Developer's grantee's, or a grantee's successor's "Private Real Property," as such terms are defined in the Act. Provided, however, that this waiver does not apply to, and the Developer and Developer's grantees and successors do not waive their rights under the Act to assert, a claim under the Act for any action taken by the City beyond the scope of this Agreement which otherwise may give rise to a cause of action under the Act.

ARTICLE IV  
COMPLIANCE WITH CITY REGULATIONS

Section 4.1. Requirements for Development. It is expressly understood and agreed by the City and Developer that, except as provided by Section 3.1 of this Agreement, development of the Tract shall comply with the Sienna Plantation Development Agreement.

Section 4.2. General Plan for Development. Developer intends to develop the Tract as a residential development. The City and Developer agree that the plats submitted to the City for approval regarding the Tract may include any single family designation from R-1 through R-6 of the zoning ordinance of the City Code, or in the Development Guidelines attached as Exhibit E to the Sienna Plantation Development Agreement.

Section 4.3. Future Amendments to the General Plan. The General Plan may be further modified or amended by the Developer as permitted in the Sienna Plantation Development Agreement; provided, however, any Major Modification, as defined in the Sienna Plantation Development Agreement must be reviewed and approved by the City Council. Any Minor Modification, as defined by the Sienna Plantation Development Agreement, may be approved by the City Manager or his designee.

Section 4.4. Public Improvements. The Developer agrees to require home builders to construct adjacent sidewalks as part of either the street paving, home building, or landscaping. For all utilities and public improvements associated with the Tract, the Developer agrees to comply with all City platting requirements, including electronic submittal of all applications, variances, plans and close-out documents.

Section 4.5. Water and Wastewater Services. The Developer agrees to develop all water and wastewater infrastructure in accordance with the General Plan, the Sienna Plantation Development Agreement, and the Master District rules and regulations. The Developer will submit through the District to the City for review and approval, all water and wastewater plans. The District shall develop, own, operate and maintain the internal water and wastewater system, in accordance with the TCEQ, City, and Master District requirements.

Section 4.6. Current City Codes and Ordinances. The current City Codes and Ordinances attached as **Exhibit C** to this Agreement apply to the development of the Tract.

ARTICLE V  
DEFAULT AND TERMINATION

Section 5.1. Material Breach of Agreement. It is the intention of the Parties to this Agreement that the Tract be developed in accordance with the terms of this Agreement.

- (a) The Parties acknowledge and agree that any substantial deviation by the Developer from the material terms of this Agreement would frustrate the intent of this Agreement, and, therefore, would be a material breach of this Agreement. A material breach of this Agreement by the Developer shall be deemed to have occurred in the event of failure of the Developer to comply with a provision of this Agreement or the Sienna Plantation Development Agreement applicable to the Tract.
- (b) The Parties acknowledge and agree that any substantial deviation by the City from the material terms of this Agreement would frustrate the intent of this Agreement and, therefore, would be a material breach of this Agreement. A material breach of this Agreement by the City shall be deemed to have occurred in the event of failure of the City to comply with a provision of this Agreement or the Sienna Plantation Development Agreement applicable to the Tract. In the event that a party to this Agreement believes that another party has, by act or omission, committed a material breach of this Agreement, the provisions of this Article V shall provide the remedies for such default.

Section 5.2. Notice of Developer's Default.

- (a) The City shall notify Developer in writing of an alleged failure by the Developer to comply with a provision of this Agreement, describing the alleged failure with reasonable particularity. Developer shall, within thirty (30) days after receipt of the notice or a longer period of time as the City may specify in the notice, either cure the alleged failure or, in a written response to the City, either present facts and arguments in refutation or excuse of the alleged failure or state that the alleged failure will be cured and set forth the method and time schedule for accomplishing the cure.
- (b) The City shall determine: (i) whether a failure to comply with a provision has occurred; (ii) whether the failure is excusable; and (iii) whether the failure has been cured or will be cured by Developer. The Developer shall make available to the City, if requested, any records, documents or other information necessary to make the determination, except to the extent that such information is protected by attorney/client privilege.
- (c) If the City determines that the failure has not occurred, or that the failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the City, or that the failure is excusable, the determination shall conclude the investigation.
- (d) If the City determines that a failure to comply with a provision has occurred and that the failure is not excusable and has not been or will not be cured by Developer in a manner and in accordance with a schedule reasonably

satisfactory to the City, then the City shall notify the Developer and may pursue any and all remedies it has at law or equity.

Section 5.3. Notice of City's Default.

- (a) Developer shall notify the City Manager in writing specifying any alleged failure by the City to comply with a provision of this Agreement, describing the alleged failure with reasonable particularity. The City shall, within thirty (30) days after receipt of the notice or the longer period of time as Developer may specify in the notice, either cure the alleged failure or, in a written response to Developer, either present facts and arguments in refutation or excuse of the alleged failure or state that the alleged failure will be cured and set forth the method and time schedule for accomplishing the cure.
- (b) Developer shall determine: (i) whether a failure to comply with a provision has occurred; (ii) whether the failure is excusable; and (iii) whether the failure has been cured or will be cured by the City. The City shall make available to the Developer, if requested, any records, documents or other information necessary to make the determination that are subject to the Public Information Act, Chapter 552, Texas Government Code.
- (c) If Developer determines that the failure has not occurred, or that the failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to Developer, or that the failure is excusable, the determination shall conclude the investigation.
- (d) If Developer determines a failure to comply with a provision has occurred and that the failure is not excusable and has not been or will not be cured by the City in a manner and in accordance with a schedule reasonably satisfactory to Developer, then Developer shall notify the City and may pursue any and all remedies it has at law or equity.

Section 5.4. Remedies. In addition to all the rights and remedies provided under the laws of the State of Texas, because of the peculiar damage each party hereto might suffer by virtue of a default by another party, each party shall be entitled to the equitable remedy of specific performance or mandamus, as well as all other legal and equitable remedies available.

Section 5.5. Termination. This Agreement may be terminated by mutual agreement of the City and the Developer.

ARTICLE VI  
MISCELLANEOUS

Section 6.1. Sale of Tract; Assignability. Any Agreement by Developer to sell the entirety or any portion of the Tract to a person intending to develop the tract or such portion thereof (a "Successor Developer," whether one or more) and any instrument of conveyance for the entirety or any portion of the Tract to such Successor Developer shall recite and incorporate this Agreement and provide that this Agreement be binding on such Successor Developer. This Agreement is not intended to be, and shall not be, binding on the ultimate purchasers of residential lots or residential parcels out of the Tract. This Agreement is assignable upon written notice to the City; such notice of assignment shall be given within 30 days of an assignment and such notice shall include evidence that the assignee has assumed the obligations under this Agreement.

Section 6.2. Force Majeure. In the event a party is rendered unable, wholly or in part, by force majeure, to carry out any of its obligations under this Agreement, it is agreed that on such party's giving notice and full particulars of such force majeure in writing to the other party as soon as possible after the occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided, but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as used herein shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy or of terrorism, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, suspension of issuance of permits by environmental agencies outside the control of any party, explosions, breakage or damage to machinery or pipelines and any other incapacities of any party similar to those enumerated and not within the control of the party claiming such inability.

Section 6.3. Law Governing. This Agreement shall be governed by the laws of the State of Texas, and no lawsuit shall be prosecuted on this Agreement except in a federal or state court of competent jurisdiction. Any disputes or proceedings arising out of this Agreement shall be subject to the exclusive jurisdiction of the Texas State courts in Fort Bend County, Texas.

Section 6.4. Non-Waiver of Immunity. Notwithstanding any other provision of this Agreement, the City, on behalf of itself, its officers, employees, and agents, does not waive or relinquish any immunity from liability, limitation of liability, or defense provided by the Constitution and the laws of the State of Texas as a result of its execution of this Agreement and the performance of the covenants contained herein.

Section 6.5. No Additional Waiver Implied. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto of any term, covenant, condition, or liability hereunder, or the performance by any party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

Section 6.6. Addresses and Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply, or advise (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by any party to another (except bills), must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three (3) days after it is deposited. Notice given in any such other manner shall be effective when received by the party to be notified. For the purpose of notice, addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the City, to:

City of Missouri City  
1522 Texas Parkway  
Missouri City, TX 77489  
Attention: City Manager

With a copy to the City Attorney

If to the Developer, to:

Sienna 325, L.P.  
Mr. Alvin San Miguel  
5777 Sienna Parkway, Suite 100  
Missouri City, TX 77459

With a copy to:

Angela Lutz  
Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027

The Parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify any other address by at least fifteen (15) days' written notice to the other parties.

Section 6.7. Merger and Modification. This Agreement, including the exhibits that are attached hereto and incorporated herein for all purposes, and, except as otherwise provided in this Agreement, the Sienna Plantation Development Agreement, as amended through the tenth amendment, embodies the entire Agreement between the Parties relative to the subject hereof. This Agreement shall be subject to change or modification only with the mutual written consent of both Parties.

Section 6.8. Severability. The provisions of this Agreement are severable, and if any part of this Agreement or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of part of this Agreement to other persons or circumstances shall not be affected thereby.

Section 6.9. Benefits of Agreement. This Agreement is for the benefit of the City and Developer, and shall not be construed to confer any benefit on any other person except as expressly provided for herein.

Section 6.10. Recordation. The City shall record this Agreement and any amendments thereof in the deed records of Fort Bend County. In addition, any assignments of this Agreement shall be recorded in the deed records of Fort Bend County. This Agreement, when recorded, shall be a covenant running with the land and binding upon the Tract, the parties and their assignees during the term of this Agreement. However, this Agreement shall not be binding upon and shall not constitute any encumbrance to title as to any purchaser of a tract or lot within the Tract who does not intend to resell, subdivide or develop the tract or lot in the ordinary course of business.

Section 6.11. Term. This Agreement shall be in force and effect from the Effective Date and continue for a term of thirty (30) years unless otherwise previously terminated pursuant to some term or condition of this Agreement or by express written agreement by the City and Developer. Upon expiration of thirty (30) years from the Effective Date of this Agreement, this Agreement may be extended upon mutual consent of the Developer and the City.

Section 6.12. Cooperation. The City and Developer each agree to cooperate with each other as may be reasonable necessary to carry out the intent of this Agreement, including but not limited to, the execution of such further documents as maybe reasonably necessary.

Section 6.13. Authority for Execution. The City hereby certifies, represents and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the City Charter and City Code. The Developer hereby certifies, represents and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreement of such entity.

Section 6.14. Incorporation of Exhibits and Other Documents by Reference. All Exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement, except as otherwise provided.

Section 6.15. Conflict. In the event of a conflict between this Agreement and the Sienna Plantation Development Agreement, this Agreement prevails.

(Signature Pages to Follow)

Executed by the Developer and the City to be effective on the Effective Date.

SIENNA 325, L.P., A TEXAS LIMITED PARTNERSHIP

By: Sienna 325 GP LLC, a Texas limited liability company, its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TEXAS §

§

COUNTY OF FORT BEND §

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Alvin San Miguel, Vice President of Sienna 325 GP LLC, a Texas limited liability company, as a General Partner of Sienna 325, L.P., a Texas limited partnership, on behalf of said partnership and said company.

\_\_\_\_\_  
Notary Public, State of Texas

(NOTARY SEAL)

CITY OF MISSOURI CITY, TEXAS

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Yolanda Ford, Mayor

ATTEST:

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Maria Jackson, City Secretary

APPROVED AS TO FORM:

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E. Joyce Iyamu, City Attorney

STATE OF TEXAS                   §  
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COUNTY OF FORT BEND       §

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Yolanda Ford, Mayor, City of Missouri City, on behalf of said City.

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Notary Public, State of Texas

(NOTARY SEAL)