

## SITE DEVELOPMENT AGREEMENT

THIS SITE DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into as of \_\_\_\_\_, 2006 (the "**Effective Date**"), by and between the **KELLER INDEPENDENT SCHOOL DISTRICT** ("**KISD**"), whose address for notice is \_\_\_\_\_, Keller, Texas 76248, and **REALTY CAPITAL GOLDEN BEACH, LTD.**, a Texas limited partnership ("**RCC**"), whose address for notice is 99 Main Street, Suite 200, Colleyville, Texas 76034.

The following recitals are true and correct and part of this Agreement.

A. KISD is the owner of a certain tract of land depicted as the "**KISD Tract**" on the site plan attached hereto as **EXHIBIT "A"** and made a part hereof (the "**Site Plan**") and more particularly described and depicted in **EXHIBIT "B"** attached hereto and made a part hereto.

B. RCC is the owner of that certain tract of land described and depicted in **EXHIBIT "C"** attached hereto and made a part hereof and further identified as the "**RCC Tract**" on the Site Plan. The KISD Tract and the RCC Tract are sometimes hereafter collectively referred to as the "**Development**."

C. KISD and RCC acknowledge that it is in their mutual interest to cooperate in certain below-described work benefiting the Development.

D. KISD and RCC also acknowledge that simultaneously with execution of this Agreement, RCC is granting to the City of Fort Worth, for the benefit of KISD, (i) a perpetual easement for the construction, operation, maintenance, replacement, upgrade, and repair of a permanent drainage facility and (ii) a temporary construction easement in connection with the construction of said facility.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained and for other good and valuable consideration, the receipt and full sufficiency of which are hereby mutually acknowledged, KISD and RCC agree as follows:

1. **Site Improvement Work.** The "**Site Improvement Work**" (herein so-called), which RCC shall cause to be completed in connection with the Development, shall mean all construction work as defined in that certain proposed Section 404 Individual Permit for Realty Capital – North Beach Street Addition as being considered by the Corp of Engineers, a copy of which has been given to KISD and which KISD acknowledges receiving. RCC shall complete the Site Improvement Work in compliance with all applicable federal, state and local laws, statutes, rules, regulations and ordinances (collectively, "**Laws**"), provided however, that RCC shall not be responsible for curing or remediating prior violations of Laws or preexisting conditions constituting violations of Laws on or pertaining to the KISD Tract. KISD further acknowledges and agrees that RCC and its employees, officers, agents and contractors who are performing the Site Improvement Work may perform such other construction work on or proximate to the KISD Tract as may elsewhere be agreed by the parties at the same time as RCC performs the Site Improvement Work. RCC shall obtain final inspection and approvals from all appropriate governmental authorities as required to dedicate the improvements to the City of Fort Worth within sixty (60) months after the Effective Date (the "**Completion Date**"). RCC shall achieve completion within the time set forth above subject to delays caused by strikes, fire, war, tornado or other "Acts of God."

2. **Payment of the Site Improvement Work.** "**Project Costs**" shall mean the aggregate cost of all costs necessary to complete the Site Improvement Work. All Project Costs shall be paid by RCC when such costs become due and payable.

3. **Access.** KISD hereby grants to RCC and its employees, officers, agents, contractor(s), and subcontractor(s) a temporary access and construction easement to and on the KISD Tract for the purposes of performing the Site Development Work. The temporary access and construction easement shall expire upon the Completion Date.

4. **Notice.** Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party hereto in connection with this Agreement shall be in writing and shall be deemed to have been properly given if delivered in person or by courier for overnight delivery or sent by United States mail, registered or certified, return receipt requested, or by telecopy to the addresses set out above with confirmation of receipt, or to such other addresses as are from time to time specified by at least ten (10) days advance written notice delivered to the addresses first specified above. Any notice sent by telecopy shall be deemed effective upon confirmation of the transmission by the remitting party.

5. **Covenants Run With the Land.** The easement and rights granted herein run with the land and are easements appurtenant to the RCC Tract and KISD Tract. The rights, duties and obligations under this Agreement may be exercised by, are for the benefit of and bind, all current and future owners, deed of trust beneficiaries, and mortgagees of the RCC Tract and KISD Tract and all of their respective tenants, subtenants, occupants, licensees, invitees, employees, and agents and any invitees and employees of such tenants, subtenants, and occupants, provided all such parties shall abide by the limitations on use set forth in this Agreement. The rights and obligations contained herein shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

6. **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto or any third party to create the relationship of principal and agent or create any partnership, joint venture or other association between KISD and RCC.

7. **Termination.** If KISD does not fully comply with the terms of this Agreement, then RCC may, without prejudice to any other right or remedy and after giving KISD written notice, terminate this Agreement. Notwithstanding anything to the contrary, RCC may terminate this Agreement by providing written notice to KISD at any time prior to RCC's commencement of the Site Improvement Work.

8. **Civil Order 5281.** This Agreement is subject to the restrictions provided in Civil Order 5281 as more particularly described in EXHIBIT "D" attached hereto.

9. **Costs and Attorneys' Fees.** If either party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the party recovering substantially the remedies allowed in such action shall be entitled to recover all costs and expenses of litigation, including its reasonable attorneys' fees.

10. **Entire Agreement; Modification; Severability.** This Agreement supersedes all prior discussions and agreements between RCC and KISD with respect to the subject matter hereof and contains the sole and entire understanding between RCC and KISD with respect thereto. This Agreement shall not be modified or amended except by a written instrument executed by the parties hereto. If any provision of this Agreement is found to be invalid or unenforceable, such provision shall be severed such that the remainder of this Agreement shall not be affected thereby.

11. **Texas Law.** THIS AGREEMENT IS MADE UNDER AND SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF TEXAS.

12. **Venue.** THE PARTIES HERETO HEREBY AGREE THAT THE VENUE OF ANY ACTION ARISING UNDER THIS AGREEMENT WILL BE EXCLUSIVELY IN THE STATE COURTS OF TARRANT COUNTY, TEXAS.

13. **Multiple Counterparts.** This Agreement may be signed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**RCC:**

**Realty Capital Golden Beach, Ltd.,**  
a Texas limited partnership

By: Realty Capital Partners II, Inc.,  
a Texas corporation,  
its general partner

By: \_\_\_\_\_  
Name: Richard A. Myers  
Title: President

**KISD:**

**Keller Independent School District**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS           §  
                                     §  
COUNTY OF TARRANT   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Richard A. Myers, President of Realty Capital Partners II, Inc., Texas corporation, general partner of Realty Capital Golden Beach, Ltd., a Texas limited partnership, on behalf of said corporation and limited partnership.

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

STATE OF TEXAS           §  
                                     §  
COUNTY OF TARRANT   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_, \_\_\_\_\_ of Keller Independent School District.

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

By its execution below, RCC's lender listed below acknowledges and agrees that this Agreement has been approved by the lender and the rights granted hereunder will not be terminated by the lender in the event of a foreclosure.

**LegacyTexas Bank**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2006,  
by \_\_\_\_\_, \_\_\_\_\_ of LegacyTexas Bank, on behalf of said bank.

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

**After Recording, Please Return to:**

J. Andrew Rogers  
Kelly Hart & Hallman LLP  
201 Main Street, Suite 2500  
Fort Worth, Texas 76102

[illegible]

**FOUR NORTH**

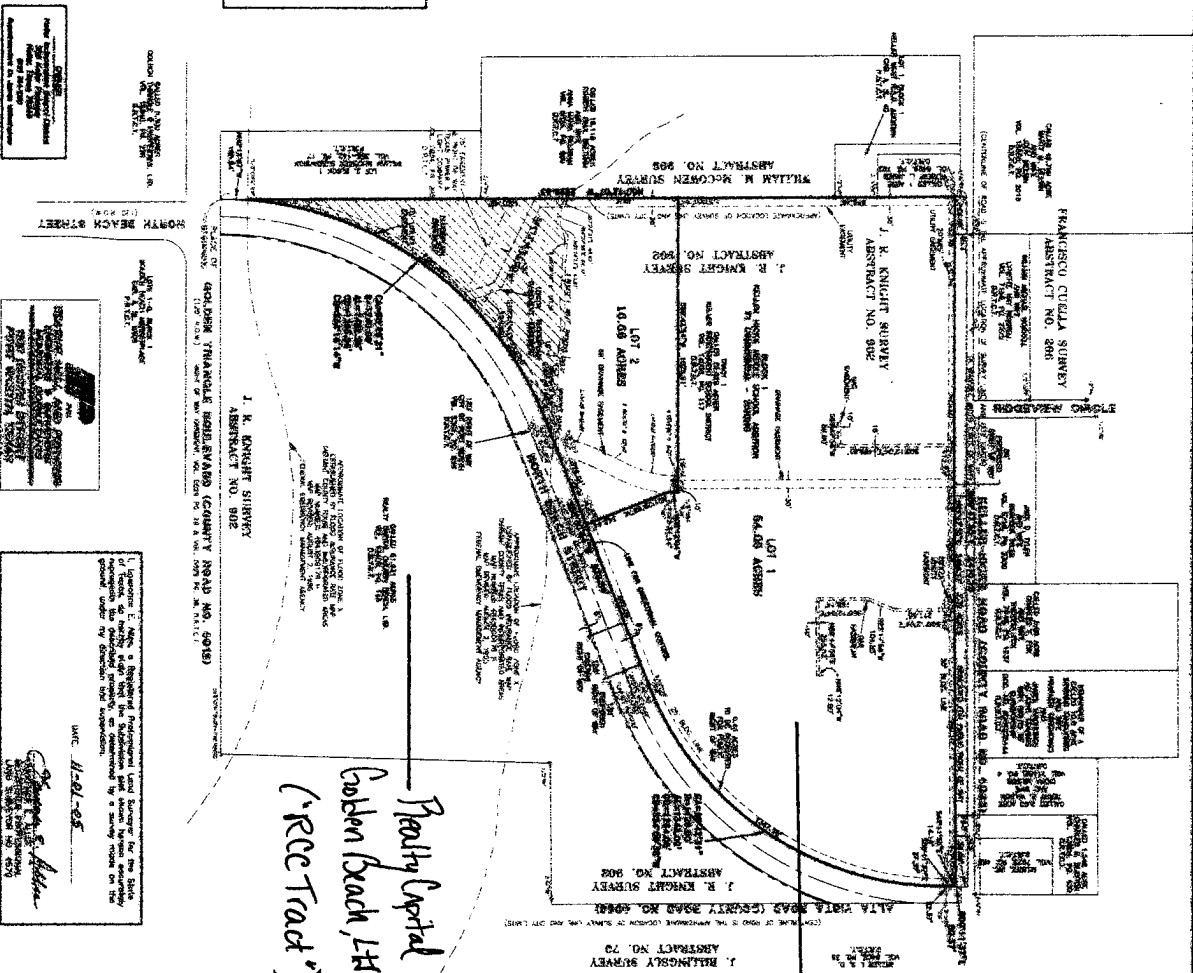
CITY PLAN COMMISSION  
CITY OF FORT WORTH, TEXAS

THIS MAT IS VALID ONLY IF ACCORDS WITH THE (S) WORDS  
APPEAR ON THE BACK OF THIS MAT.

DATE APPROVED MAY 1 1975 AS

BY *James H. [Signature]* CHAIRMAN

*John A. [Signature]* SECRETARY

[illegible][illegible][illegible][illegible]

Plat recorded in Cabinet 11 Slide 104-482 Date: 11/14/68

FINAL PLAN OF  
 LOTS 1 & 2, BLOCK 1  
 KELLER HIGHS MIDDLE SCHOOL ADDITION  
 A TRUSS ROOF TRACT OF LAND  
 SITUATED IN THE  
 CITY OF FORT WORTH, TARRANT COUNTY, TEXAS  
 L. R. ENGLISH  
 AN ADDITION TO THE  
 CITY OF FORT WORTH, TARRANT COUNTY, TEXAS  
 OCTOBER 2000

[illegible][illegible]

LAWRENCE, STEVENSON.	
NAME	STEVENSON, LAWRENCE
DATE	10-10-1968
TIME	10:00 AM
PLACE	1000 N. 10th St.
REMARKS	1000 N. 10th St.
BY	1000 N. 10th St.
DATE	10-10-1968

Figure 1 is a line graph showing the variation of the ratio of the maximum to the minimum value of the function  $f(x)$  versus the parameter  $\alpha$ . The x-axis is labeled  $\alpha$  and ranges from 0 to 400. The y-axis is labeled  $f(x)$  and ranges from 0 to 200. The curve starts at approximately (0, 100), rises to a peak of about 180 at  $\alpha = 100$ , and then gradually decreases to about 140 at  $\alpha = 400$ . A vertical line is drawn at  $\alpha = 200$ , and a horizontal line is drawn at  $f(x) = 100$ . The intersection of these lines is marked with a dot.

## EXHIBIT B

A parcel of land, situated in the J.R. Knight Survey, Abstract No. 902, Tarrant County, Texas, being a portion of Lot 2, Block 1, Keller Hicks Middle School Addition, shown by plat recorded in Cabinet A, Slide 10642, Plat Records of Tarrant County, Texas, conveyed to the Keller Independent School District by deed recorded in Volume 14000, page 117, Deed Records of Tarrant County, Texas, said parcel of land being more particularly described by metes and bounds as follows:

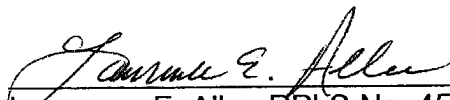
**Beginning** at a 5/8 inch capped iron rod (TNP) found at the south corner of said Lot 2 on the northerly right-of-way line of North Beach Street;

Thence N 00°12'07" W, with the west line of said Lot 2, a distance of 1001.89 feet to a 5/8 inch capped iron rod (TNP) set for the north corner of the parcel herein described;

Thence S 64°13'45" E, a distance of 444.68 feet to a 5/8 inch capped iron rod (TNP) set on the northerly right-of-way line of said North Beach Street at the beginning of a curve to the left, having a radius of 1245.00 feet and a chord bearing and distance of S 26°08'49" W, 900.73 feet;

Thence southwesterly along said curve, through a central angle of 42°24'49", an arc distance of 921.62 feet to the **Place of Beginning** and containing 3.43 acres of land, more or less.

*Bearings are based on the Texas State Plane Coordinate System, North Central Zone (NAD83).*

  
Lawrence E. Allee RPLS No. 4570  
Teague Nall and Perkins, Inc.  
April 26, 2006



# EXHIBIT B

LOT 2, BLOCK 1  
KELLER HICKS MIDDLE SCHOOL ADDITION  
CAB. A, SLD. 10642, P.R.T.C.T.

CALLED 18.119 ACRES  
ROBERT PAUL BELTRAM  
AND WIFE  
ANNA MARIA BELTRAM  
VOL. 6825, PG. 689  
D.R.T.C.T.

KELLER INDEPENDENT SCHOOL DISTRICT  
VOL. 14000, PG. 117  
D.R.T.C.T.

5/8" CIR 8" TNP

3/4" IRF

75' EASEMENT  
& RIGHT OF WAY  
TEXAS POWER &  
LIGHT COMPANY  
VOL. 2884, PG. 208  
D.R.T.C.T.

3.43 ACRES

FLOODPLAIN  
EASEMENT

10' UTILITY  
EASEMENT

NO 0° 12' 07" W 1001.89'

WILLIAM MCCOWEN SURVEY  
ABSTRACT NO. 999

LOT 2, BLOCK 1  
WILLIAM MCCOWEN SUBDIVISION  
VOL. 388-142, PG. 17  
P.R.T.C.T.



J. R. KNIGHT SURVEY  
ABSTRACT NO. 902

REALTY CAPITAL GOLDEN BEACH, LTD.  
VOL. 17406, PG. 145  
D.R.T.C.T.

$\Delta = 42^{\circ} 24' 49''$   
 $R = 1245.00'$   
 $L = 921.62'$   
 $CL = 900.73'$   
 $CB = S 26^{\circ} 08' 49'' W$

APPROXIMATE LOCATION OF FLOOD ZONE X  
ESTABLISHED BY FLOOD INSURANCE RATE MAP  
TARRANT COUNTY TEXAS AND INCORPORATED AREAS  
MAP NUMBER: 48439C0170 H  
MAP REVISED: AUGUST 2, 1995  
FEDERAL EMERGENCY MANAGEMENT AGENCY

PLACE OF  
BEGINNING

GOLDEN TRIANGLE BOULEVARD (COUNTY ROAD NO. 4012)

(VARIABLE WIDTH R.O.W.)

LOT 1, BLOCK 1  
CRAWFORD FARMS PLAZA  
CAB. A, SLD. 10777  
P.R.T.C.T.

LOTS 1-8, BLOCK 1  
GOLDEN BEACH MARKETPLACE  
CAB. A, SL. 8409  
P.R.T.C.T.

3.43 ACRES OF LAND  
A PORTION OF

LOT 2, BLOCK 1  
KELLER HICKS MIDDLE SCHOOL ADDITION

AN ADDITION TO THE  
CITY OF FORT WORTH, TARRANT COUNTY, TEXAS  
SITUATED IN THE  
J. R. KNIGHT SURVEY, ABSTRACT NO. 902

## NOTES:

- Bearings are based on the Texas State Plane Coordinate System, North Central Zone (NAD83).
- Integral parts of this survey:
  - Legal Description
  - Sketch
- This survey was done without the benefit of a Title Policy. No research was done for easements.

100 0 50 100 200



SCALE: 1" = 100'

*Lawrence E. Allee*  
Lawrence E. Allee

April 26, 2006

Date:



**TEAGUE NALL AND PERKINS**  
CONSULTING ENGINEERS

1100 Macdon Street  
Fort Worth, Texas 76102  
(817) 336-5773

JOB NO. KSD04212

[illegible]



## EXHIBIT D

The following restrictions shall in all things be observed, followed, and complied with:

(a) The Property, or any part thereof, shall not be used in the operation of, or in conjunction with, any school or other institution of learning, study or instruction which discriminates against any person because of his race, color, or national origin, regardless of whether such discrimination be effected by design or otherwise.

(b) The Property, or any part thereof, shall not be used in the operation of, or in conjunction with, any school nor other institution of learning, study or instruction which creates, maintains, reinforces, renews, or encourages, or which tends to create, maintain, reinforce, renew or encourage a dual school system.

(c) These restrictions and conditions shall be binding upon GRANTEE, its successors and assigns for a period of fifty (50) years from the date GRANTEE acquires the Property.

(d) The foregoing restrictions and other covenants hereafter set out are covenants running with the land, and each and every parcel thereof, and shall be fully binding upon any person, firm, partnership, corporation, trust, church, club, governmental body, or other organization or entity whatever (whether private or governmental in nature), without limitation, hereafter acquiring any estate, title, interest or property in the Property, whether by descent, devise, purchase or otherwise; and no act or omission upon the part of the District or any purchaser, their successors and assigns, shall be a waiver of the operation or enforcement of such restrictions; but neither restriction shall be construed to be a condition subsequent or special limitation on the estate thereby conveyed.

(e) It is further covenanted, that third party beneficiaries of the restrictions set forth above shall be as follows:

- (1) As to the restrictions set out in (a) above, any person prejudiced by its violation;
- (2) As to the restriction set out in (b) above, any public school district or any person prejudiced by its violation; and
- (3) As to either or both of the restrictions set out in (a) and (b) above, the United States of America, as plaintiff, and the American G.I. Forum, the League of United Latin American Citizens (LULAC), and the National Association for the Advancement of Colored People (NAACP), as intervenors, in U.S. v. Texas, Civil Action No. 5281, Tyler Division, U.S. District Court, Eastern District of Texas; reported in U.S. v. Texas, 321 F. Supp. 1043 (E.D. Tex. 1970); U.S. v. Texas, 330 F.Supp. 235 (E.D. Tex. 1971); aff'd with modifications sub nom, U.S. v. State of Texas and J.W. Edgar, et al., 447 F.2d 441 (5th Cir. 1971); stay den. sub nom, Edgar v. U.S., 404 U.S. 1206 (1971); cert den. 404 U.S. 1016 (1972).

(f) It is further covenanted, that in case of a violation of either or both of the above restrictions, any of the third party beneficiaries above alluded to is authorized and empowered to prosecute proceedings at law or in equity against any person, firm, partnership, corporation, trust, church, club, governmental body or other organization or entity whatever (whether private or governmental in nature), without limitation:

- (1) To enforce either or both of such restrictions relating to the use of the above-described property;
- (2) To abate or prevent violations of either or both of such restrictions; and
- (3) To recover damages for a breach of either or both of such restrictions.

## EXHIBIT D

(g) It is further covenanted, that if any third party beneficiary referred to above shall prosecute proceedings at law or in equity for the aforesaid purposes, such third party beneficiary may recover reasonable attorney's fees from the violator or violators of either or both of such restrictions, if the Court finds that the proceedings were necessary to bring about compliance therewith.