

THE STATE OF TEXAS                   §  
   §  
   §  
COUNTY OF FORT BEND               §

**DEVELOPMENT AGREEMENT**  
(Vanbrooke)

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 Vanbrooke, LLC, (hereinafter referred to as "Owner"), a company authorized to conduct business in the State of Texas. The County and the Owner may be individually referred to as a "Party" or collectively as the "Parties."

WHEREAS, the Owner proposes to develop its subdivision of 245.1 acres of land situated in the Isaac N. Charles ½ League A-17, & the Nathan Brookshire League, A-14, in Fort Bend County, Texas (the "Owner Property"); and

WHEREAS, Hunt Road is a public road maintained by the County with a portion located adjacent to the Owner Property; and

WHEREAS, the County and Owner agree that the Owner Property will substantially benefit from the improvements to Hunt Road; and

WHEREAS, the County has investigated and determined that it would be advantageous and beneficial to County and its citizens to allow the incremental completion of the construction of Hunt Road, as provided herein; and

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

1.     Owner's Responsibilities:

The Owner agrees to dedicate the right-of-way and construct the north half-boulevard (2 lanes), concrete, curb and gutter roadway section with associated storm sewer and sidewalks in accordance with the phased roadway construction drawing attached thereto as Exhibit A and incorporated herein for all purposes:

(a)     Phase I of Roadway Construction – The Owner shall dedicate 20 feet of right of way along Hunt Road for portions of the Owner Property adjacent to Hunt Road, including the increased minimum centerline curve radius to 1500 feet as shown in Exhibit A, and construct approximately 1,800 feet of Hunt Road from the Phase III entry from Hunt Road to FM 359. The approach to FM 359 shall include a left turn/through lane and a right turn lane. Owner is not responsible for the installation of a traffic signal at the FM 359 and Hunt Road intersection. Owner will provide detention capacity for ultimate roadway design (six-lane boulevard with turn lanes at intersections). The construction will occur simultaneously with the construction of the streets within Phase III of the Owner Property. The construction will occur simultaneously with the construction of the streets within Phase III of the Owner Property. The Owner will provide to the County, a metes & bounds description of a portion

of the property identified under Fort Bend Central Appraisal District Parcel ID: 0017-00-000-0441-901, to be acquired by the County under a roadway or construction easement to complete the construction of Hunt Road.

(b) Phase II of Roadway Construction – The Owner shall dedicate the additional 20 feet of right of way along Hunt Road for portions of Owner Property adjacent to Hunt Road, and construct approximately 2,600 feet of Hunt Road from the Phase III entry from Hunt Road to the Phase II entry from Hunt Road as shown Exhibit A. Owner will provide outfall and detention capacity for ultimate roadway design (six-lane boulevard with turn lanes at intersections). The construction will occur simultaneously with the construction of the streets within Phase II of the Owner Property. The Owner will provide to the County, a metes & bounds description of a portion of the property identified under Fort Bend Central Appraisal District Parcel ID: 0017-00-000-0343-901, to be acquired by the County under a roadway or construction easement to complete the construction of Hunt Road.

(c) Undeveloped Owner Property – The Owner agrees to dedicate portions of its undeveloped Owner Property west of its Phase II to Pool Hill Road for the right of way necessary to complete Hunt Road. However, the Owner shall not be obligated to construct or contribute to the costs of constructing any improvements to Hunt Road west of the transition after the Phase II entry or Pool Hill Road until the Owner, its successors or assigns submits a subdivision plat to the County for approval and development of its Owner Property west of its Phase II to Pool Hill Road. In the event the Owner elects to develop the portion of the Owner Property west of Brookshire Creek, Owner further agrees that it, its successors or assigns shall reimburse the County for any improvements made to such portions of Hunt Road or Pool Hill Road described in this subsection by the County, prior to plat approval. Notwithstanding the preceding, Owner may plat the approximately 10 acres in the most northwest corner of Owner Property into lots no smaller than 1 acre per lot with no further required improvements to Hunt Road or Pool Hill Road.

(d) The Owner shall dedicate forty (40) feet of its Owner Property adjacent to FM 359 for right of way to accommodate future widening.

2. County's Responsibilities:

(a) The County shall assume responsibility for the maintenance of portions of Hunt Road constructed by the Owner under this Agreement upon completion of the one-year maintenance period by the Owner and acceptance into County's maintenance system in accordance with the Fort Bend County Regulations of Subdivisions.

(b) The County will acquire the portions of land described in Sections 1 (a) and (b) above for the right of way necessary to complete the construction of Hunt Road.

(c) The County agrees to act as a sponsor and submit a letter to the Texas Department of Transportation reflecting such commitment for the public road connection to FM 359.

3. Disclaimer/Waiver of Damages/Liability

(a) Owner 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, in connection with the construction of Hunt Road, in whole or in part.

(b) Owner acknowledges and agrees that County shall in no way be liable for any damages, if any, which may be sustained by the Owner and/or Owner Property, resulting, in whole or in part, directly or indirectly, from County's failure to complete its responsibilities stated herein by any certain date and/or as set forth in this Agreement.

(c) Owner 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), it/they may have with regard to the construction and/or completion of Hunt Road and/or any other act and/or omission relating, directly or indirectly, to Hunt Road, 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, the negligence, breach of this Agreement or willful misconduct of County or its authorized officers, agents, representatives or employees

**4. PARTIES' ACKNOWLEDGEMENT OF COUNTY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/OWNER'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.**

**(a) OWNER ACKNOWLEDGES AND AGREES THAT THE CONTRIBUTION MADE BY OWNER 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) OWNER 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) OWNER 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.**

5. Limitations of Agreement. The parties hereto acknowledge this Agreement is limited to the development of Owner Property only. Further, this Agreement does not waive or limit any of the obligations of Owner to County under any other order whether now existing or in the future arising.

6. Default. In the event Owner fails to comply with any of the provisions of this Agreement within sixty (60) business days after Owner'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 refuse to accept any portion of any public improvements on the Owner Property and/or associated with the development of the Owner Property; and/or
- (b) to refuse to finally accept the Owner Property and/or any portion thereof; and/or
- (c) to seek specific enforcement of this Agreement.

In the event of County's default under this Agreement, Owner will be entitled to seek any remedy available to them at law or in equity.

7. Miscellaneous.

(a) Notice. 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: County Engineer  
301 Jackson Street  
Richmond, Texas 77469

With a copy to:

Fort Bend County  
Attention: County Judge  
401 Jackson Street  
Richmond, Texas 77469

If to Owner, to:

Vanbrooke, LLC.  
Attention: Jennifer Keller  
2450 Fondren,  
Houston, Texas 77063

(b) Assignment. This Agreement is not assignable by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

(c) Binding Effect. 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) Venue. 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) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

(g) Counterparts. 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) Savings/Severability. 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) Representations. 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) Miscellaneous Drafting Provisions. 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) Sovereign Immunity. 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) Incorporation of Recitals. 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 Owner and/or its authorized representatives.

(p) Owner's Warranties/Representations. All warranties, representations and covenants made by Owner in this Agreement or in any certificate or other instrument delivered by Owner 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) Indemnification. The parties agree that the Indemnity provisions set forth in Paragraphs 3 and 4 herein are conspicuous, and the parties have read and understood the same.

(r) Waiver. 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 time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

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:

\_\_\_\_\_  
Robert E. Hebert, County Judge

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Laura Richard, County Clerk

Approved:

\_\_\_\_\_  
Richard W. Stolleis, P.E., County Engineer

Approved as to legal form:

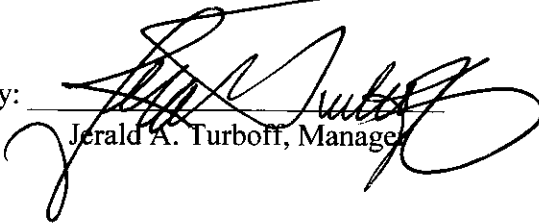
\_\_\_\_\_  
Marcus D. Spencer, First Assistant County Attorney

OWNER:

VANBROOKE, LLC

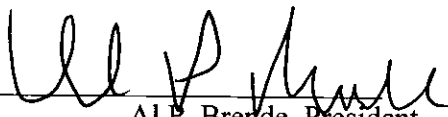
A Texas limited liability company

By: Vanbrooke Development, LLC  
A Texas limited liability company, its manager

By:   
Jerald A. Turboff, Manager

By: L.T. PARTNERSHIP, LTD  
Texas limited partnership, its manager

By: L.T. Management, Inc.  
a Nevada corporation, its general partner

By:   
Al P. Brende, President



# EXHIBIT A

