

THE STATE OF TEXAS §
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COUNTY OF FORT BEND §

**DEVELOPMENT AGREEMENT
(TAMARRON PARKWAY)**

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

WHEREAS, Owner proposes to continue development of its Tamarron Subdivision (the "Owner's Property"), as depicted in Exhibit "A" attached hereto and incorporated herein for all purposes; and

WHEREAS, Texas Heritage Parkway is a proposed four (4) lane divided highway within a two hundred foot (200') wide right-of-way that will be maintained by the County a portion of which is proposed to be located adjacent to Owner's Property (the "Enhanced Texas Heritage Parkway"); and

WHEREAS, the County and Owner agree that Owner's Property will substantially benefit from the construction of the Enhanced Parkway; and

WHEREAS, Owner is a potential party to the proposed Agreement for Regional Road Improvements for the Enhanced Texas Heritage Parkway contemplated to be entered into between the County, Owner and a number of other private entities to allocate the responsibilities for the design, financing and construction of the Enhanced Texas Heritage Parkway (the "THP Agreement"); and

WHEREAS, to date, the THP Agreement has not been executed (and may never be executed), but Owner is currently prepared to proceed with development of Owner's Property adjacent to the proposed right-of-way for the Enhanced Texas Heritage Parkway; and

WHEREAS, the County has investigated and determined that it would be advantageous and beneficial to the County and its citizens to allow development of Owner's Property to proceed and enter an agreement with contingent plans in the event THP Agreement is never signed and the Enhanced Texas Heritage Parkway is never built.

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

1. Certain obligations under this Agreement are contingent in nature and intended to

become effective only upon (i) the expiration of two (2) year from the effective date of this Agreement, and (ii) the failure of the Parties and other private entities to fully execute the THP Agreement prior to such two (2) year anniversary (collectively, the "Triggering Event"). The County and Owner shall act in good faith to pursue full execution of the THP Agreement within two (2) years of the effective date of this Agreement. In the meantime, the County will allow the platting of Owner's Property without the construction of the Enhanced Texas Heritage Parkway or any other road within the proposed right-of-way of the Enhanced Texas Heritage Parkway. However, should the Triggering Event occur, the responsibilities of the Parties prescribed in Paragraph 2 below shall apply to the development of Owner's Property through the County's plat approval process and thereafter the County shall follow the provisions of Paragraph 3 below relative to the platting of Owner's Property and construction of the hereinafter defined Reduced Texas Heritage Parkway. The County further recognizes that in the event the Triggering Event occurs, Owner no longer shall be obligated to pursue the execution of the THP Agreement for the construction of the Enhanced Parkway.

2. Owner's Responsibilities following the Triggering Event

(a) Owner shall dedicate right of way to the public necessary for construction of the Texas Heritage Parkway as a Major Thoroughfare, as such term is defined in Section 5.2 of the Fort Bend County Regulations of Subdivisions (the "Reduced Texas Heritage Parkway").

- (I) The right of way necessary for construction of the Reduced Texas Heritage Parkway as a Major Thoroughfare shall be no less than 100' in width and no more than 132' in width at intersections with other major thoroughfares.
- (II) Design and construction standards for the Reduced Texas Heritage Parkway shall be the minimum standards specified for a Major Thoroughfare in the Fort Bend County Regulations of Subdivisions, including particularly the requirements of Section 5.2 and 5.8 thereof. Storm sewer design shall be for ultimate six-lane boulevard and the detention for the roadway will be included in the subdivision master drainage plans.

(b) Owner shall design and construct or cause the design and construction of the northbound half-boulevard of the Reduced Texas Heritage Parkway as a Major Thoroughfare within the entire boundary limits of Owner's Property, and the southbound half-boulevard of the Reduced Texas Heritage Parkway as a Major Thoroughfare for a total of approximately 2,229 linear feet within the boundary limits of the southern portion of Owner's Property as depicted on Exhibit A.

- (I) Design of the Reduced Texas Heritage Parkway as a Major Thoroughfare shall commence prior to the expiration of three (3) years of the effective date of this Agreement;
- (II) Construction of the Reduced Texas Heritage Parkway as a Major Thoroughfare within all then platted subdivisions of Owner's Property shall commence prior to the expiration of four (4) years of the effective date of this Agreement; and
- (III) Construction of the Reduced Texas Heritage Parkway as a Major Thoroughfare within the portion of Owner's Property submitted for

subdivision plat approval after the expiration of four (4) years of the effective date of this Agreement shall commence contemporaneously with submission for such plat approval.

(c) At such time as the Reduced Texas Heritage Parkway is constructed to intersect with Tamarron Crossing and Tamarron Parkway, Owner agrees to pay fifty percent (50%) of the cost of constructing traffic lights at such intersections, as well as one hundred percent (100%) of the cost of a traffic signal at the southern major intersection within Owner's Property and the Reduced Texas Heritage Parkway at which Owner elects not to design and construct a roundabout.

3. County's Responsibilities following the Triggering Event

(a) The County shall review and approve subdivision plats and plans for the Reduced Texas Heritage Parkway within Owner's Property upon such meeting the County's standards for approval.

(b) The County will inspect the Reduced Texas Heritage Parkway within subdivisions of Owner's Property upon Owner's completion of construction and Owner's request for such inspection. The County will accept the Reduced Texas Heritage Parkway within subdivisions of Owner's Property upon completion of Owner's one-year maintenance period and successful inspection by County to address identified deficiencies.

(c) The County and Owner hereby agree that the terms of acceptance stated herein shall only apply to acceptance for the typical right of way dedication for a major thoroughfare and landscape easement dimensions as designed and required for the Reduced Texas Heritage Parkway under this Agreement and not as designed and required under the proposed THP Agreement.

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 THE 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 THE 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 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 Owner Property and/or associated with the development of Owner Property; and/or

(b) to refuse to finally accept 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 the 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:

D. R. Horton, Texas – Ltd.
Attention: Chris Lindhorst
14100 Southwest Freeway, Suite 500
Sugar Land, Texas 77478

With a copy to:

D.R. Horton
Attention: James Ilkenhans
4306 Miller Rd # A
Rowlett, TX 75088

(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 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 4 and 5 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.

(s) Term In the event the THP Agreement is fully executed by all parties

thereto prior to the two (2) year anniversary of this Agreement, this Agreement shall terminate immediately upon such full execution and thereupon (i) this Agreement shall have no further force and effect, and (ii) the Parties obligations related to the Enhanced Texas Heritage Parkway shall be controlled by the THP Agreement. In the event the Triggering Event occurs, this Agreement shall remain in effect until all of Owner's Property adjacent to the Reduced Texas Heritage Parkway is platted and the Reduced Texas Heritage Parkway located within Owner's Property is constructed. Notwithstanding the preceding, in the event the THP Agreement is executed before Owner begins design of the Reduced Texas Heritage Parkway, Owner may terminate this Agreement upon written notice to the County.

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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:

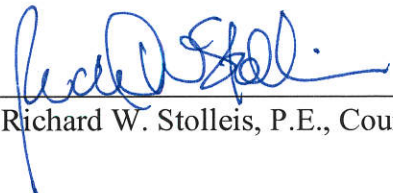
Robert E. Hebert, County Judge

Date

Attest:

Laura Richard, County Clerk

Approved:



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

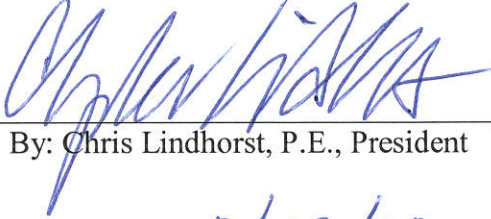
Approved as to legal form:

Marcus D. Spencer, First Assistant County Attorney

OWNER:

D.R. Horton-Texas, Ltd.

By: D. R. Horton, Inc., its Authorized Agent

A handwritten signature in blue ink, appearing to read "Chris Lindhorst", written over a horizontal line.

By: Chris Lindhorst, P.E., President

Date: 2/23/18

EXHIBIT A

