

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

**DEVELOPMENT AGREEMENT
(KINGDOM HEIGHTS BOULEVARD)**

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 572-Three, Ltd., (hereinafter referred to as "Owner"), a company authorized to conduct business in the State of Texas.

WHEREAS, Owner proposes to continue develop its land north of Kingdom Heights Boulevard (the "Owner Property") with approximately 800 additional lots; and

WHEREAS, Kingdom Heights Boulevard is a public road classified as a major thoroughfare that is maintained by the County with a portion of which is located adjacent to the Owner Property; and

WHEREAS, Owner previously committed to making certain improvements to Kingdom Heights Boulevard as appropriate for major thoroughfares to provide required access to portions of Owner Property as it develops, as reflected in Exhibit A attached hereto and incorporated herein for all purposes; and

WHEREAS, County and Owner agree that County relied on Owner's commitment to complete the construction of Kingdom Heights Boulevard in approving plats previously presented by Owner in accordance with the Fort Bend County Regulations of Subdivisions; and

WHEREAS, County and Owner agree that Owner Property will substantially benefit from the improvements to Kingdom Heights Boulevard; and

WHEREAS, 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 Kingdom Heights Boulevard, 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 obligation to begin construction of the eastbound and westbound lanes of Kingdom Heights Boulevard in accordance with the construction drawings attached thereto as Exhibit A and incorporated herein for all purposes shall become due incrementally as follows:

(a) North half of boulevard from Wembly Way to Leonetti Lane as depicted on Exhibit A shall be constructed in conjunction with the first section of lots in the area designated as A are platted north of Kingdom Heights Boulevard. Construct a flashing yellow

traffic signal per TxDOT design requirements at the intersection of FM 723 and Kingdom Heights Boulevard per agreement with TxDOT (if signal does not meet Texas Manual of Uniform Traffic Control Devices warrants at this time, signal can be deferred until section (b) threshold it met; and

(b) Full boulevard from Leonetti Lane to "Future Intersection" (street and entrance to wastewater treatment plant) as depicted on Exhibit A shall be constructed in conjunction with the first section of lots in the area designated as B are platted north of Kingdom Heights Boulevard.

2. Owner must complete construction as provided in Section 1 above before County will inspect the streets within Owner's Property subdivided for development north of Kingdom Heights to begin the one-year maintenance period for acceptance into the County roadway maintenance system.

3. 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.

4. 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.

5. 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

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.

6. 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:

572-Three, Ltd.
Attention: Mark W. Millis
19855 Southwest Freeway, Suite 300
Sugar Land, Texas 77479

(b) Assignment. This Agreement is not assignable by Owner without the prior written consent of County, 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 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.

[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:

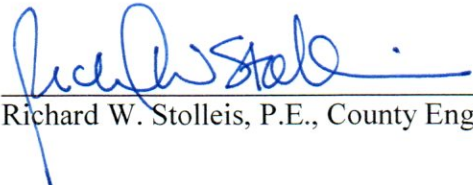
Robert E. Hebert, County Judge

Date

Attest:

Laura Richard, County Clerk

Approved:



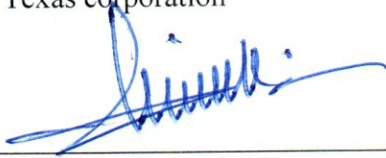
Richard W. Stolleis, P.E., County Engineer

Approved as to legal form:

Marcus D. Spencer, First Assistant County Attorney

572-Three, Ltd, a Texas limited partnership

By: Its General Partner, The Millis Group, Inc.,
A Texas corporation



By: Mark W. Millis, President

Date:

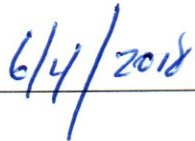


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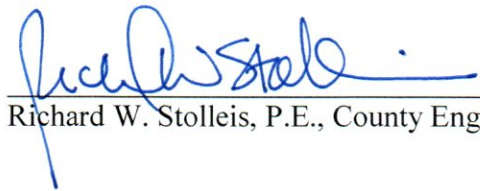
Robert E. Hebert, County Judge

Date

Attest:

Laura Richard, County Clerk

Approved:



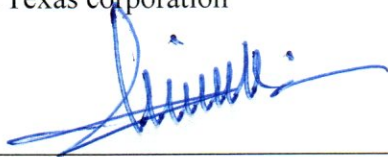
Richard W. Stolleis, P.E., County Engineer

Approved as to legal form:

Marcus D. Spencer, First Assistant County Attorney

572-Three, Ltd, a Texas limited partnership

By: Its General Partner, The Millis Group, Inc.,
A Texas corporation



By: Mark W. Millis, President

Date:

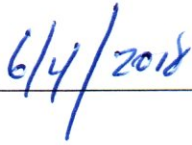


EXHIBIT A

