

RIGHT OF WAY EASEMENT ENCROACHMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This Encroachment Agreement (this "Agreement") dated _____, 2019, is made and entered into by FORT BEND COUNTY DRAINAGE DISTRICT (the "Drainage District"), a political subdivision of the State of Texas, acting by and through its duly authorized officials, and FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 185 (the "MUD"), a political subdivision of the State of Texas organized pursuant to the provisions of Article XVI, Section 59 of the Texas Constitution and operating pursuant to Chapters 49 and 54 of the Texas Water Code, acting by and through its duly authorized officers.

RECITALS

WHEREAS, pursuant to that document identified in the Official Public Records of Fort Bend County as Document No. 2007141978, Centex Homes, a Nevada general partnership ("Centex"), granted, sold, and conveyed to the Drainage District certain right of way (the "Right of Way"), subject to the restriction that such Right of Way shall be used exclusively for the drainage of water and for the maintenance, repair, and operation of drainage facilities (the "Restriction"); and

WHEREAS, the MUD desires to construct maintain, and operate a trail and related appurtenances as described in Exhibit "A" attached hereto (the "Trail") which will encroach upon the aforementioned Right of Way (the "Encroachment"); and

WHEREAS, Centex executed a Waiver of Restrictive Covenants, attached hereto as Exhibit "B", waiving the Restriction in its entirety releasing the Right of Way from the Restriction; and

WHEREAS, the Drainage District is willing to consent to the Encroachment on the terms and conditions set forth herein.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Drainage District hereby consents to this Encroachment subject to the following terms and conditions:

AGREEMENT

Article 1. Notification. The MUD shall notify the Drainage District within fifteen (15) calendar days before starting construction or performing maintenance on the Trail.

Article 2. Permits. The MUD will prepare or have prepared any plans, specifications, and estimates, all as necessary for the Trail. The MUD will obtain all approvals required by any governmental authority possessing jurisdiction over the Trail, including, without limitation, any approvals required by Fort Bend County and the Fun Bend County Drainage District prior to installing the Trail.

Article 3. Operation and Maintenance. Upon completion of the Trail, the MUD, at its sole cost and expense, will assume responsibility for the operation and maintenance of the Trail.

Article 4. Abandonment. If the MUD closes or abandons the Trail, the MUD shall remove the Trail in its entirety and restore the Property as closely as possible to its previous condition.

Article 5. Drainage District Maintenance. The MUD shall close the Trail at such times as the Drainage District performs maintenance or construction operations on the Property. The Drainage District agrees to provide notice to the MUD of such maintenance and construction operations at least one (1) week prior to the initiation of maintenance or construction operations.

In the event the Drainage District alters its facilities within the Property and the Trail may impede Drainage District facilities, the MUD, at its own expense, agrees to remove or relocate the Trail.

Article 6. Insurance. The MUD shall obtain and maintain, at its own expense, comprehensive public liability insurance on the Trail so long as it exists in an amount which will insure the Drainage District against risk of loss due to claims under the Texas Tort Claims Act. The MUD shall present a copy of the insurance to the Drainage District prior to opening the Trail to the public. The insurance shall include the Drainage District as an added insured. The MUD shall not cancel the insurance without providing thirty (30) days written notice to the Drainage District.

Article 7. Indemnification. **TO THE EXTENT ALLOWED BY LAW, THE MUD SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE DRAINAGE DISTRICT FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, FINES, COSTS, ACTIONS, JUDGMENTS, EXPENSES, LIABILITIES, AND CONSEQUENTIAL DAMAGES OF EVERY KIND AND NATURE WHATSOEVER WHICH IN ANY WAY IS CONNECTED WITH THE PERFORMANCE OF WORK, FAILURE TO PERFORM WORK, MAINTENANCE, REPAIR AND ENGINEERING ARISING FROM OR INCIDENT TO THE TRAIL, INCLUDING BUT NOT LIMITED TO ACTUAL OR ALLEGED BODILY INJURY, RESULTING FROM ANY ACT OR OMISSION, NEGLIGENT OR OTHERWISE, ON THE PART OF THE DRAINAGE DISTRICT, ITS OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS. IN THE EVENT THE PROVISIONS OF THIS ARTICLE ARE INVALID OR UNCONSTITUTIONAL, THIS PROVISION SHALL BE SEVERABLE AND THE REMAINDER OF THIS AGREEMENT SHALL BE ENFORCEABLE TO THE EXTENT ALLOWED BY LAW.**

Article 8. Express Negligence. **TO THE EXTENT ALLOWED BY LAW, THE MUD SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE DRAINAGE DISTRICT FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, FINES, COSTS, ACTIONS, JUDGMENTS, EXPENSES, LIABILITIES, AND CONSEQUENTIAL DAMAGES OF EVERY KIND AND NATURE WHATSOEVER WHICH IN ANY WAY IS CONNECTED WITH THE PERFORMANCE OF WORK, MAINTENANCE, REPAIR AND ENGINEERING ARISING FROM OR INCIDENT TO THE TRAIL, INCLUDING BUT NOT LIMITED TO ACTUAL OR ALLEGED BODILY**

INJURY, RESULTING FROM ANY ACT OR OMISSION, NEGLIGENT OR OTHERWISE, ON THE PART OF THE DRAINAGE DISTRICT, ITS OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS. IN THE EVENT THE PROVISIONS OF THIS ARTICLE ARE INVALID OR UNCONSTITUTIONAL, THIS PROVISION SHALL BE SEVERABLE AND THE REMAINDER OF THIS AGREEMENT SHALL BE ENFORCEABLE TO THE EXTENT ALLOWED BY LAW.

Article 9. Liability For Other Work. NOTWITHSTANDING THE PROVISIONS OF ARTICLES 7 AND 8 OF THIS AGREEMENT, ABOVE, THE MUD ASSUMES NO RESPONSIBILITY FOR, AND SHALL NOT INDEMNIFY THE DRAINAGE DISTRICT FOR, ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, FINES, COSTS, ACTIONS, JUDGMENTS, EXPENSES, LIABILITIES, AND CONSEQUENTIAL DAMAGES OF EVERY KIND AND NATURE WHATSOEVER WHICH ARE ANY WAY CONNECTED WITH THE PERFORMANCE OF WORK, FAILURE TO PERFORM WORK, MAINTENANCE, REPAIR AND ENGINEERING PRIOR TO OR AFTER THIS AGREEMENT FOR PURPOSES UNRELATED TO THIS AGREEMENT,

Article 10. Amendments. Amendments to this Agreement may be enacted only through a mutually agreed upon, written amendment, duly executed by the MUD and the Drainage District.

Article 11. Successors and Assigns. The MUD and the Drainage District each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement. The MUD shall not assign or otherwise transfer its rights and obligations under this Agreement without the prior written consent of the Drainage District, which consent shall not be unreasonably withheld or delayed, in the event the rights and obligations are transferred to a governmental entity acceptable to Drainage District.

Article 12. Remedies. Violation or breach of contract terms by either party shall be grounds for termination of this Agreement, provided that one party has given the other party written notice of such violation or breach and that the breaching party, within 30 days after receiving such notice, has not resolved such violation or breach or, if such violation or breach cannot be resolved within such 30-day period, has not commenced efforts in good faith to resolve such violation or breach.

Nothing in this Agreement shall be construed as a limitation of the parties' remedies at law, including but not limited to breach of contract, injunctive relief, or other legal remedy. In the event legal action is instituted, venue shall be proper only in Fort Bend County, Texas.

Article 13. Notice. All notices to either party under this Agreement shall be delivered personally or sent by certified or registered U.S. mail, postage prepaid, addressed to such party at the following addresses:

To MUD: Fort Bend County Municipal Utility District No. 185
c/o Coats Rose, P.C.
Attn: John G. Cannon
9 Greenway Plaza, Suite 1000
Houston, Texas 77046

To Drainage District: Fort Bend Drainage District
Attn: Chief Engineer
301 Jackson Street
Richmond, Texas 77469

With a Copy to: Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

Notices shall be deemed given on the date so delivered or received, unless otherwise provided herein. Either party hereto may change the above by sending written notice of such change to the other party in the manner provided above.

Article 14. Prior Agreements. It is understood that this agreement in no way modifies or supersedes the terms and provisions of any existing agreements between the parties hereto.

Article 15. Term of Agreement. This Agreement becomes effective when finally executed by the Drainage District, This Agreement will terminate upon mutual agreement and consent of both parties.

[SIGNATURE PAGES FOLLOW]

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate on the dates below stated.

FORT BEND COUNTY MUNICIPAL UTILITY
DISTRICT NO. 185

Edwin A. Thomas

President, Board of Directors

ATTEST:

[Signature]

Secretary, Board of Directors

Date: 10-16-19



THE STATE OF TEXAS §

COUNTY OF Harris §

This instrument was acknowledged before me on the 16th day of October, 2019 by Edwin Allen Thomas President, Board of Directors of FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 185.



Monica Roberts-Jenkins

Notary Public, State of Texas

FORT BEND COUNTY DRAINAGE DISTRICT

By: _____
KP George, Fort Bend County Judge

Date: _____

ATTEST:

Laura Richard, Fort Bend County Clerk

Date: _____

(SEAL)

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2019
by KP George, Fort Bend County Judge, FORT BEND COUNTY DRAINAGE DISTRICT.

Notary Public, State of Texas

EXHIBIT "A"

Description and or Depiction of the Trail and Encroachment
Follows this Page

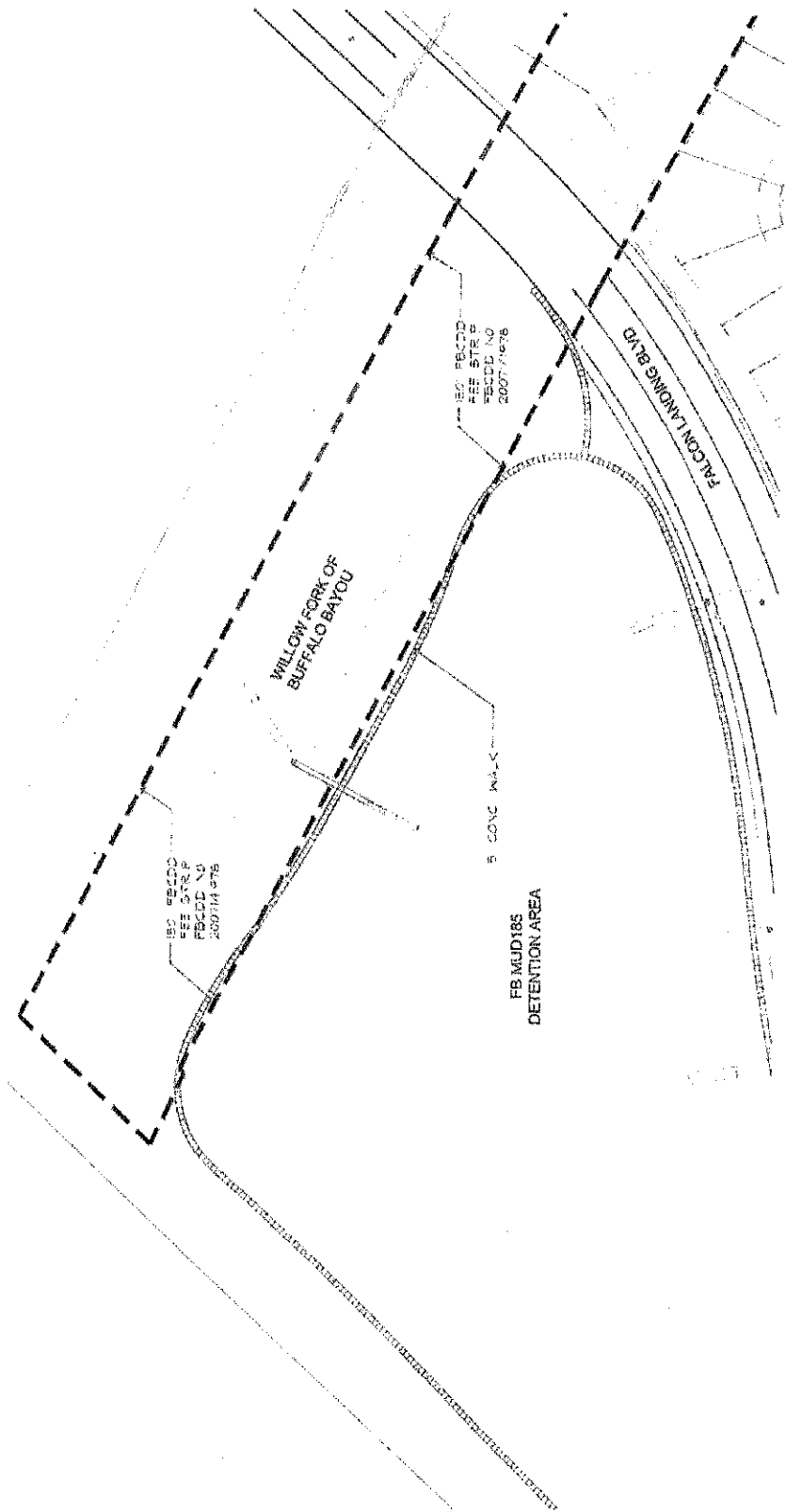


Exhibit "A"
 Fort Bend County M.U.D. No. 185 Detention Walk

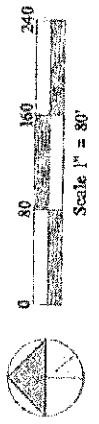


EXHIBIT "B"

Executed Copy of Waiver of Restrictive Covenants
Follows this Page

WAIVER OF RESTRICTIVE COVENANTS

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

WHEREAS, pursuant to that certain Dedication Special Warranty Deed dated November 6, 2007 and recorded under Clerk's File No. 2007141978 in the Official Public Records of Fort Bend County, Texas (the "Deed"), Centex Homes, a Nevada general partnership ("Centex"), granted, sold, and conveyed to the Fort Bend County Drainage District (the "District") certain land (the "Land") more particularly described in such Deed, subject to the restriction that such land be used exclusively for the drainage of water and for the maintenance, repair, and operation of drainage facilities (the "Restriction").

WHEREAS, Fort Bend County Municipal Utility District No. 185, a body politic organized and existing under the laws of the State of Texas (the "District"), desires to construct a recreational trail abutting the Land and encroaching into the Land.

WHEREAS, Centex desires to waive and release the Restriction to allow the District to construct, maintain and replace a recreational trail on the Land.

NOW, THEREFORE, for good and valuable consideration paid to it by the District, the receipt and adequacy of which is hereby acknowledged by the undersigned, Centex agrees as follows:

1. Waiver and Release of the Restriction. The Restriction is hereby waived in its entirety and the Land is hereby released in its entirety from the Restriction. The Restriction shall be of no further force or effect.

[Remainder of page intentionally blank]

