

THE STATE OF TEXAS §
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COUNTY OF FORT BEND §

DEVELOPMENT AGREEMENT
(Harvest Green – Fresh Garden Way STD Section 1)

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 Grand Parkway 1358 LP (hereinafter referred to as “Owner”), a Texas Limited Partnership authorized to conduct business in the State of Texas.

WHEREAS, Owner proposes to develop its land situated in the William Morton One and One-Half League Grant, A-62 in Fort Bend County, Texas (“Harvest Green”); and

WHEREAS, Fresh Garden Way is a public road classified as a collector which Owner has constructed; and

WHEREAS, County and Owner agree that County is relying on Owner’s commitment to construct Fresh Garden Way, seek County’s acceptance of Fresh Garden Way, and to submit a subdivision plat for Fresh Garden Way Street Dedication Sec 1 for approval and recording in accordance with the Fort Bend County Regulations of Subdivisions; and

WHEREAS, County and Owner agree that Harvest Green will substantially benefit from the construction of Fresh Garden Way; and

WHEREAS, County has investigated and determined that it would be advantageous and beneficial to County and its citizens to enter into this Agreement, as provided herein; and

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

1. County acknowledges Owner has dedicated the necessary right of way for Fresh Garden Way by Plat recorded under Fort Bend County Clerk’s File No. 2019112063, and such Plat includes a portion of Old Dixie Drive.
2. County and Owner agree Owner has constructed Fresh Garden Way as a collector street in accordance with County requirements subject to County’s final inspection and acceptance process.
3. County shall construct Old Dixie Drive, upon determination of the County, in its sole discretion. The Owner and County acknowledge and agree there are no current plans to schedule to construct Old Dixie Drive and Owner has no control over when or if County will construct Old Dixie Drive.

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 OF NECESSARY RIGHT OF WAY FOR FRESH GARDEN WAY AND CONSTRUCTION OF THAT PORTION OF FRESH GARDEN WAY 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 Harvest Green 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 the portion of Fresh Garden Way shown on Plat filed under Fort Bend County Clerk's File No. 2019112063 within Harvest Green; and/or
- (b) 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:

Grand Parkway 1358 LP
Attention: Larry D. Johnson and Elizabeth F. York
5005 Riverway Drive, Suite 500
Houston, Texas 77056

With a copy to:

Grand Parkway 1358 LP
Attention: Jerry Ulke
22316 Grand Corner Drive, Suite 270
Katy, Texas 77494

(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) Waivers and Releases. The parties agree that the Waiver and Release provisions set forth in Paragraph 4 herein are conspicuous, and the parties have read and understood the same. 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.

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:

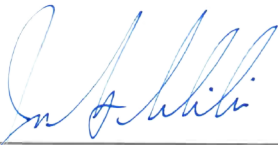
KP George, County Judge

Date

Attest:

Laura Richard, County Clerk

Approved:



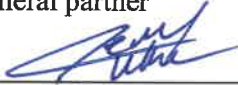
J. Stacy Slawinski, P.E., County Engineer

Approved as to legal form:

Marcus D. Spencer, First Assistant County Attorney

GRAND PARKWAY 1358 LP,
a Texas limited partnership

By: Johnson 1358 GP LLC,
a Texas limited liability company
Its general partner

By: 
Name: JERRY ULKE
Title: VICE PRESIDENT