

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

DEVELOPMENT AGREEMENT
(Cottonwood)

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, Lennar Homes of Texas Land and Construction, Ltd., a Texas limited partnership, d/b/a Friendswood Development Company and M/I Homes of Houston, LLC, a Texas limited liability company, (both referred to herein as the "Owner"). 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 land, described as proposed on Exhibit A, attached hereto and incorporated herein for all purposes, (the "Owner's Property"); and

WHEREAS, Cottonwood Church Road and Cottonwood School Road are public roadways maintained by the County and adjacent to the Owner's Property; and

WHEREAS, Owner and County desire to enter into a Development Agreement to memorialize the terms in which the Owner will submit subdivision plats to the County for approval of its Commissioners Court, and construct the improvements to Cottonwood School Road.

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

1. Owner's Responsibilities.

(a) The Owner shall submit subdivision plats and required bonds meeting the requirements of the County's Regulation of Subdivisions for Commissioners Court approval to develop the Owner's Property; and

(b) The Owner shall dedicate adjacent portions of the Owner's Property along Cottonwood Church Road and Cottonwood School Road for additional right of way for alignment of roadway generally depicted on Exhibit B attached hereto and incorporated herein for all purposes, with specific dimension as determined by a final design prepared by the Owner and approved by the County of Owner's development and improvements to Cottonwood School Road; and

(c) The Owner shall be responsible for completing the design and construction of Cottonwood School Road in accordance with the County design and

construction standards as it develops phases of the Owner's Property depicted on Exhibit A:

- (I) Complete construction of Cottonwood School Road located within Phase I at or before the date the Owner completes building out of Phase I; and
 - (II) Complete design of Cottonwood School Road located within Phase II at or before the date the Owner completes building out of Phase II; and
 - (III) Complete construction of Cottonwood School Road located within Phase II prior to submission of final subdivision plat to Commissioners Court for approval of Phase III.
- (d) Owner will provide a bond for the roadway construction in an equivalent amount to a Subdivision Bond for Cottonwood School Road.

2. County's Responsibilities. In exchange for the Owner's commitment to submit subdivision plats meeting the requirements of the County's Regulation of Subdivisions and construct Cottonwood School Road in accordance with Section 1, the County agrees to consider the proposed subdivision plats for development of the Owner's Property for approval, without requiring construction of Cottonwood Church Road adjacent to the Owner's Property.

3. Disclaimer/Waiver of Damages/Liability

(a) The Owner acknowledges and agrees that the County is not providing any guarantee, representation and/or warranty, and the County hereby disclaims any guarantee, representation and/or warranty, of any work performed by the County, or their agents, employees, representatives, contractors, subcontractors and/or designees, in connection with the construction of connections to Cottonwood Church Road, in whole or in part.

(b) The Owner acknowledges and agrees that the County shall in no way be liable for any damages, if any, which may be sustained by the Owner and/or Owner's 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) The Owner hereby releases the 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 connections to Cottonwood Church Road and/or any other act and/or omission relating, directly or indirectly, to Cottonwood Church 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 the County or its authorized officers, agents, representatives or employees

4. PARTIES' ACKNOWLEDGEMENT OF THE 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) THE OWNER ACKNOWLEDGES AND AGREES THAT THE COMMITMENTS MADE BY THE 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) THE 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) THE OWNER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST THE 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 the Owner's Property only. Further, this Agreement does not waive or limit any of the obligations of the Owner to the County under any other order whether now existing or in the future arising.

6. Default. In the event the Owner fails to comply with any of the provisions of this Agreement within sixty (60) business days after the Owner's receipt of written

notice thereof from the County, the County shall have the following remedies in addition to the 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's Property and/or associated with the development of the Owner's Property; and/or
- (b) to refuse to finally accept the Owner's Property and/or any portion thereof; and/or
- (c) to seek specific enforcement of this Agreement.

In the event of the County's default under this Agreement, the 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:

Lennar Homes of Texas Land and Construction, Ltd.
Attention: Robert Santini, Community Development Manager
681 Greens Parkway, Suite 220
Houston, Texas 77067

M/I Homes of Houston, LLC
Attention: Brannon Boozer
10720 W Sam Houston Parkway N, Suite 100
Houston, Texas 77064

(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 the 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 the County and the Owner and/or its authorized representatives.

(p) Owner's Warranties/Representations. All warranties, representations and covenants made by the Owner in this Agreement or in any certificate or other instrument delivered by the Owner to the County under this Agreement shall be considered to have been relied upon by the County and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by the County or on County's behalf.

(q) Indemnification. The Parties agree that the Indemnity provisions set forth in Paragraphs 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.

[SIGNATURE PAGES TO FOLLOW.]

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:



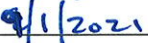
J. Stacy Slawinski, P.E., County Engineer

OWNER:

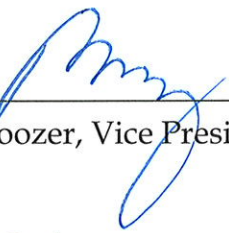
Lennar Homes of Texas Land and Construction, Ltd.,
a Texas limited partnership
d/b/a Friendswood Development Company

By: U. S. Home Corporation,
a Delaware corporation,
its general partner

 By: 
Michael W. Johnson, Vice President

Date:  9/1/2021

M/I Homes of Houston, LLC,
a Texas limited liability

By: 
Brannon Boozer, Vice President of Land

Date:  9.1.21

EXHIBIT A

Cottonwood Tract

FRIENDS WOOD
DEVELOPMENT COMPANY
A Lennar Company

451 Total Lots - 50-60'x120' Typ.

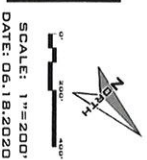
- 300 Total Lots - 50'x120' Typ.
- 151 Total Lots - 60'x120' Typ.



No permanent (concrete) improvements along Cottonwood Church Rd., only temporary improvements as may be required by final TIA.

Full Blvd improvements along Cottonwood School Rd., totaling 4,150 LF of half width concrete Blvd, the equivalent of Owner's obligation if constructing half width along all frontages. Asphalt transitions will not count towards this 4,150 LF.

THIS PLAN WAS PREPARED USING REASONABLY RELIABLE SOURCES AND IS SUBJECT TO CHANGE. THE PLANNED DEVELOPMENT IS BASED ON THE ASSUMPTION THAT THE PLANNED DEVELOPMENT WILL BE COMPLETED IN ACCORDANCE WITH THE PLANNED DEVELOPMENT. THE PLANNED DEVELOPMENT IS BASED ON THE ASSUMPTION THAT THE PLANNED DEVELOPMENT WILL BE COMPLETED IN ACCORDANCE WITH THE PLANNED DEVELOPMENT. THE PLANNED DEVELOPMENT IS BASED ON THE ASSUMPTION THAT THE PLANNED DEVELOPMENT WILL BE COMPLETED IN ACCORDANCE WITH THE PLANNED DEVELOPMENT.



JONES CARTER

EXHIBIT B

