

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

DEVELOPMENT AGREEMENT
(Madden Road to Harlem Road Connection)

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas (the "County"), a body politic acting herein by and through its Commissioners Court and 10 Harlem AC, LLC, a limited liability company owning land in Fort Bend County (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 an approximate 10 acre tract of land situated in Fort Bend County, Texas, as generally shown on Exhibit "A" attached hereto and incorporated herein for all purposes, (the "Owner's Property"); and

WHEREAS, Madden and Harlem Roads are a public roadways maintained by the County and near or adjacent to the Owner's Property (the "Subject Roadways"); and

WHEREAS, the Owner desires to cooperate with the County in providing safe movement of traffic in the vicinity of the Owner's Property and reclaim the abandoned portion of Canal Road located with the Owner's Property and originally owned by its predecessor in interest; and

WHEREAS, the Parties desire to enter into a Development Agreement to memorialize the terms in which the Owner will dedicate land to facilitate the improvements to the Subject Roadways.

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

1. Owner's Responsibilities. The Owner agrees to:
 - (a) Dedicate approximately a 0.007 acre of land at the intersection of the Subject Roadways for right of way purposes as depicted on Exhibit A, upon execution of this Agreement;
 - (b) Construct a new driveway approximately 285 feet north of the south property line of the Owner's Property (the "New Driveway") to align with a modified median on Harlem Road, as shown on Exhibit A;
 - (c) Modify the existing median opening on Harlem Road to align with the New Driveway, as shown on Exhibit A;

(d) Connect a driveway to the improved portion of Madden Road adjoining the south property line of the Owner's Property at the pavement stub-out at a location to be mutually agreed upon by the Parties;

(e) Extend the existing median nose on Harlem Road at the existing south driveway to align with the new Madden Road, as depicted on Exhibit A;

(f) Remove two existing driveways connecting to Harlem Road as depicted on Exhibit A, upon substantial completion of the New Driveway; and

(g) Complete all such construction in accordance with approved construction drawings based on the County standards and as shown in attached Exhibit A.

(h) Upon completion of Owner's performance of the Owner's Responsibilities described in Section 1 (a) through (g), the Owner shall provide an accounting of the actual costs to complete the improvements described in (b) through (g), (the "Owner Improvements"). In the event actual costs of the Owner Improvements are less than the initial payment made by the County in accordance with Section 2 (e) below, the Owner shall repay the County the amount received in excess of such actual costs of the Owner Improvements within thirty (30) days of the County's acceptance of the accounting.

2. County's Responsibilities. In exchange for the Owner's commitment to dedicate land and complete Owner Improvements in accordance with Section 1 (a) - (g) above, the County agrees perform the following:

(a) Assist the Owner in obtaining the necessary approvals required to meet its obligations under this Agreement, including the permission necessary to allow drainage to Harlem Road as shown in Exhibit A;

(b) By order of Commissioners Court to be filed in the Official Public Records pursuant to Texas Transportation Code Section 251.058, abandon the portion of the Canal Road right-of-way identified by Fort Bend Central Appraisal District Quick Reference ID Number R155532 previously included as a part of a tract of land owned by the Owner that is no longer needed for public purpose due to the realignment of Beechnut (the "Abandonment Tract") as shown in Exhibit B attached hereto and incorporated herein for all purposes;

(c) Provide a metes and bounds survey of the Abandonment Tract; and

(d) Pay Owner actual costs to complete the Owner Improvements, up to an amount not to exceed \$280,761.00 based on invoices showing the amounts due for work performed in a form acceptable to the County, including necessary internal improvements such as adjusting drainage, extending electricity, installing new gate equipment, and sodding/seeding as needed for areas disturbed by construction, payable as follows:

- (I) Upon execution of this Agreement and receipt of conveyance document reflecting the dedication of land in accordance with Section 1 (a), the County shall pay Owner \$253,000.00, being approximately ninety percent (90%) of the estimated cost of the Owner Improvements; and
- (II) Within thirty (30) days after the County's acceptance of the full accounting provided by the Owner in accordance with Section 1 (h), the County will pay the Owner any remaining amount due to equal the total costs of Owner Improvements.

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 County hereby disclaims any guarantee, representation and/or warranty, of any work performed by County, or their agents, employees, representatives, contractors, subcontractors and/or designees, in connection with the performance of its obligations under this Agreement, in whole or in part.

(b) The Owner acknowledge 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 the Owner's Property, resulting, in whole or in part, directly or indirectly, from the 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 waive 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 the Subject Roads and/or any other act and/or omission relating, directly or indirectly, to the Subject Roads, 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 County or its authorized officers, agents, representatives or employees.

4. PARTIES' ACKNOWLEDGMENT 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.

5. Limitations of Agreement. The Parties hereto acknowledge this Agreement is limited to the development of Owner's 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 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 it 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:

10 Harlem AC, LLC
Attention: Joe A. Bono, Jr., Manager
9823 Harlem Road
Richmond, Texas 77407

(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 or delayed.

(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 law.

(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 the 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) Acknowledgments. The parties agree that the acknowledgments set forth in Paragraphs 3 and 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.

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:

10 HARLEM AC, LLC



Authorized Agent - Signature

Joe BONO, Jr

Authorized Agent - Name

Member

Title

2-3-2022

Date

EXHIBIT A

EXHIBIT B

ABANDONMENT TRACT

