

THE STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND       §

**ROADWAY USE AND MAINTENANCE AGREEMENT**  
**(TPHTM 359, LLC)**

THIS ROADWAY USE AND MAINTENANCE 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 TPHTM 359, LLC, a Delaware limited liability company (the "Project Company"). The County and the Project Company may be individually referred to as a "Party" or collectively as the "Parties."

WHEREAS, the Project Company is currently developing property located within the jurisdiction of the County which will require use of certain public roads maintained by the County (hereinafter defined as "County Roads" as described in Exhibit A attached hereto and incorporated herein for all purposes) for delivery, access and egress to and from that certain property for a residential development to be constructed by the Project Company (the "Project Company's Development"); and

WHEREAS, the Project Company is applying for and/or has obtained a Development Permit and a Right of Way Permit (collectively, the "Permits") to develop the Project Company's Development that may cause incremental damage to County Roads by use of vehicles, cranes, or other means of delivery, access and egress during the construction phases of developing the Project Company's Development; and

WHEREAS, the Parties desire to enter into this Agreement to memorialize the terms in which the Project Company will address incremental damage to the County Roads and comply with the terms of the Permits to be issued by the County.

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

1. Project Company's Responsibilities. The Project Company agrees to:
  - A. Prior to the beginning of the Construction Phase (as defined below), remit a letter of credit or surety bond in the amount of (Seven Hundred Twenty Thousand and 00/100 Dollars) \$720,000.00 to cover any costs of repairing the County Roads as determined by County. The letter of credit or surety bond provided by the Project Company shall comply with the requirements of Section 2.11 of the Fort Bend County Regulations of Subdivisions; and

- B. Use commercially reasonable efforts to minimize the disruption to public roadways and "Repair" the County Roads to their pre-existing condition prior to the delivery, access and egress to and from the Project Company's Development, in a manner as described below to the extent of damages caused by the Project Company during the Construction Phase (as defined below):
- (I) For Graveled County Roads:
    - (a) Light grading using motor grader;
    - (b) Repair of potholes that are caused by the Project Company and were not existing prior to on-site construction activities, as determined by video documentation and/or an initial site-walk with authorized representatives of both Parties (the "Video Documentation"). The Video Documentation shall be completed and submitted to the County prior to the start of the Construction Phase;
    - (c) Washboard conditions caused by Project Company;
    - (d) Importing and installing of aggregate (crushed concrete) as necessary to make such repairs;
    - (e) Usage of brush skid steer attachment for track-out;
    - (f) Usage of water truck for dust suppression, as needed; and
    - (g) Maintenance as needed to match pre-existing conditions.
  
  - (II) For Chip Seal and Asphalt County Roads:
    - (a) Repair of potholes that are caused by the Project Company and were not existing prior to on-site construction activities, as determined pursuant to review of the Video Documentation;
    - (b) Importing aggregate (crushed concrete) as necessary;
    - (c) Applying Cold Mix asphalt and hand tamping as required;
    - (d) Usage of brush skid steer attachment for track-out; and
    - (e) Maintenance as needed to match pre-existing conditions.

Project Company may implement pre-finish repairs to permit continuing traffic through the Construction Phase, with final or topping repairs to be implemented upon completion of Construction Phase.

- C. Commence and thereafter diligently continue performance of all Repairs within the following timelines:
  - (I) Within forty-eight (48) hours of the Project Company's receipt of notification of the need to Repair provided by the County for notifications received Monday through the close of business Thursday;
  - (II) Within seventy-two (72) hours of the Project Company's receipt of notification of the need to Repair provided by the County for notifications received between the close of business on a Thursday and the opening of business on the following Monday, and those notifications received during a County holiday; and
  - (III) As soon as commercially reasonable to perform emergency repairs, as reasonably determined by County.
- D. Request approval of Commissioners Court for approval for non-emergency roadway closures to the County Roads. Emergency closures, as determined within the sole discretion of the County's Road Commissioner or his designee, may be approved by such Road Commissioner or his designee; and
- E. Notify the office of the County's Road Commissioner by electronic mail at least four (4) hours prior to the repair of potholes performed on behalf of the Project Company; and
- F. Reimburse the County for the cost of repairs performed by the County if the Project Company does not commence the necessary repair work within the deadlines prescribed above payable at the follow rates:
  - (I) \$35 per man hour;
  - (II) \$85 per equipment hour; and
  - (III) Material at cost.
- G. Submit a picture of the defect and the remediated area with the name of the County Road & Bridge inspector and the date of the inspection by email to Scott.Wieghat@fortbendcountytexas.gov and brent.mccauley@fortbendcountytexas.gov to close out the Repair. Project

Company email address: BypassBESS@aypa.com and legal@aypa.com.

- H. Project Company shall not, under any circumstances, use any portion of Winner Foster Road for any construction-related activities for the Project. This includes, but is not limited to, construction traffic, material deliveries, and haul routes by Project Company, its contractors, or suppliers.
  
- I. Prior to commencement of the Construction Phase, Project Company shall cause its contractors to furnish County with properly executed certificates of insurance which shall evidence all insurance required under this Agreement and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Project Company's contractors shall provide certified copies of such insurance endorsements and/or policies if requested by County. Project Company's contractors shall maintain such insurance coverage from the time the Construction Phase commences until the same is completed and shall provide replacement certificates and/or endorsements for any such insurance expiring prior to completion of the Construction Phase. Project Company's contractors shall obtain such insurance written on an Occurrence form from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and in the following types and minimum limits:
  - (I) Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
  
  - (II) Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
  
  - (III) Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
  
  - (IV) Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.

County and members of the Fort Bend County Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All liability policies shall contain a waiver of subrogation in favor of County.

If required coverage is written on a claims-made basis, Project Company warrants that any retroactive date applicable to Project Company's contractors coverage under the policy precedes the Effective Date of this Agreement and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Agreement is completed.

Project Company shall not commence any portion of the Construction Phase until it has caused the insurance required herein to be provided and certificates of such insurance have been provided to and approved by County.

No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to County.

Approval of the insurance by County shall not relieve or decrease the liability of the Project Company.

- J. **PROJECT COMPANY SHALL INDEMNIFY AND HOLD HARMLESS THE COUNTY ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS ("INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LIABILITY, OR CAUSES OF ACTION, INCLUDING DEATH, PERSONAL INJURY, OR PROPERTY DAMAGE, ARISING OUT OF OR RELATED TO THE ACTIVITIES OF PROJECT COMPANY, ITS AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH PROJECT COMPANY EXERCISES CONTROL, PERFORMED UNDER THIS AGREEMENT AND WHICH RESULT FROM ANY NEGLIGENT ACT, ERROR, OR OMISSION; INTENTIONAL TORT; INTELLECTUAL PROPERTY INFRINGEMENT; OR FAILURE TO PAY A CONTRACTOR, SUBCONTRACTOR, OR SUPPLIER; COMMITTED BY PROJECT COMPANY OR BY ANY PERSON EMPLOYED BY PROJECT COMPANY, OR PROJECT COMPANY'S AGENT, CONTRACTOR, SUBCONTRACTOR, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH PROJECT COMPANY EXERCISES CONTROL.**

PROJECT COMPANY SHALL FURTHER INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM ANY AND ALL COSTS OF REPAIR AND/OR REPLACEMENT OF ANY STREET, ROAD, BRIDGE, DRAINAGE STRUCTURE, OR OTHER PORTION OF THE COUNTY ROADS CAUSE BY PROJECT COMPANY'S FAILURE TO MAKE THE REPAIRS TO THE COUNTY ROADS AS REQUIRED UNDER THIS AGREEMENT.

2. County's Responsibilities. In exchange for the Project Company's commitments made in accordance with Section 1 above and satisfaction of all other requirements for receipt of the Permits, the County agrees:
  - A. To issue such Permits for the development of the Project Company's Development in accordance with applicable rules, regulations and statutes;
  - B. To grant permission to use the County Roads for delivery, access and egress to and from the Project Company's Development by vehicle, crane, or other means of delivery, access and egress during the construction phases of the Project Company's Development, being July 1, 2025 through November 30, 2026 ("Construction Phase"), which phase may be extended by Project Company by providing notice to the County;
  - C. To grant permission to maintain the County Roads during the Construction Phase;
  - D. To promptly repair damages to the County Roads caused by natural weather conditions, including flooding and hurricanes and to maintain the County Roads following the Construction Phase;
  - E. Provide written acknowledgment of receipt of email provided by Project Company to close-out Repairs within five (5) calendar days of such receipt; and
  - F. Release Project Company or Project Company's contractors from any bonds or other assurance securing the Project Company's performance under this Agreement for successfully completed Repairs, subject to County's reasonable determination, within forty-five (45) calendar days of completion of the last item submitted for approved close-out during the Construction Phase.

3. Third Party Agreements. In the event that other third parties execute roadway use and maintenance agreements (or similar agreements) with the County prior to completion of the Construction Phase that apply to all or a portion of the County Roads, the Parties will use reasonable efforts to allocate responsibility for damage and subsequent repairs to County Roads between the Project Company and such other third parties; provided, however that the County shall have the right to make the final determination of responsibility between Project Company and such other third parties, which determination shall be made in the County's reasonable discretion.
  
4. 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, 4<sup>th</sup> Floor  
Richmond, Texas 77469

With a copy to:

Fort Bend County, Texas  
Attention: County Judge  
401 Jackson Street  
Richmond, Texas 77469

If to Project Company, to:

TPHTM 359, LLC  
c/o Taylor Morrison of Texas, Inc.  
Attn: David Colunga  
3250 Briarpark Drive, Suite 300  
Houston, TX 77042  
dcolunga@taylormorrison.com

5. Project Company may not assign this Agreement to another party without the prior written consent of County, which consent shall not be unreasonably withheld. Any purported or attempted assignment or transfer in violation of this Section shall be null and void.
6. 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 hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
7. Neither the execution of this Agreement nor any other conduct of either party relating to this Agreement shall be considered a waiver or surrender by County of its governmental powers or immunity under the Texas Constitution or the laws of the state of Texas.
8. This Agreement shall be construed according to the laws of the state of Texas. Venue for any claim arising out of or relating to the subject matter of this Agreement shall lie in a court of competent jurisdiction of Fort Bend County, Texas.
9. The contents of this Section are required by Texas law and are included by County regardless of content. For purposes of Sections 2252.152, , Texas Government Code, as amended, Project Company hereby verifies that Project Company and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate, that, unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
10. By his or her signature below, each signatory individual certifies that he or she is the properly authorized person or officer of the applicable Party hereto and has the requisite authority necessary to execute this Agreement on behalf of such Party, and each Party hereby certifies to the other that it has obtained the appropriate approvals or authorizations from its governing body as required by law.

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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, TEXAS:


\_\_\_\_\_  
KP George, County Judge

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Laura Richard, County Clerk

Approved:

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

PROJECT COMPANY:

TPHTM 359, LLC,  
a Delaware limited liability company

By: TM 359 Member, LLC,  
a Texas limited liability company,  
its Administrative Member

By:   
\_\_\_\_\_

Name: **William Dalton, Vice President**

Title: \_\_\_\_\_

EXHIBIT A  
Road Maintenance Limits



-  Amandera Project Area
-  Limits of Existing 22-ft Rural Road (Beadle Lane)