

THE STATE OF TEXAS           §  
  §  
  §  
COUNTY OF FORT BEND       §

**DEVELOPMENT AGREEMENT**  
(FALCON LANDING BLVD – MOBILITY BOND PROJECT NO. 703)

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 Newland Real Estate Group, LLC, authorized to conduct business in the State of Texas (hereinafter referred to as “Newland.”)

WHEREAS, Newland has developed an area south of Falcon Landing Blvd. between Spring Green and Gaston Road, more or less, being the subdivision known as Cinco Ranch West (the “Property”); and

WHEREAS, the County and Katy Independent School District (hereinafter referred to as “District”) have plans to reconstruct Falcon Landing Blvd, (hereinafter referred to as the “Project”); and

WHEREAS, the Property benefits from the construction of the two (2) eastbound lanes along the frontage of Cinco Ranch West, Sections 15 and 25, or approximately 3800 linear feet of concrete paving and the storm sewers to drain the south half of the 100 feet wide right-of-way, hereinafter described (hereinafter defined as the “Boulevard Improvements”); and

WHEREAS, County has agreed to construct, as part of the Project, the Boulevard Improvements at the locations hereinafter set forth and Newland agrees to: (a) pay for a portion of the cost to incorporate the Boulevard Improvements into plans for Project; and (b) pay for a portion of the construction costs of the Boulevard Improvements; and

WHEREAS, County has investigated and determined that it would be advantageous and beneficial to County and its citizens to participate in the construction of the Project as provided herein.

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

1.     Description of Project. The Project consists of the construction of certain improvements related to the expansion of Falcon Landing Blvd., described above as the Project and including the Boulevard Improvements.
  
2.     Land Subject to Agreement. The land that is the subject of this Agreement is composed of the Project site and the Property.
  
3.     Location of Boulevard Improvements. In exchange for the payment of a portion of the design and construction costs, County has agreed to construct the Boulevard Improvements. If the ultimate location(s) of the Boulevard Improvements is/are changed, in whole or in part as described herein, resulting in the complete removal of any portion of the

Boulevard Improvements from the Project, County will return the associated Developer Funds (hereinafter defined), plus interest earned, if any, to Newland within thirty (30) days of County's final decision with regard to the complete removal of the portion of the Boulevard Improvements from the Project.

4. Completion of Construction of Access Improvements. Newland agrees that County shall in no way be liable for any damages, if any, which may be sustained by Newland and/or the Property, resulting, in whole or in part, directly or indirectly, from County's failure to complete the construction of the Boulevard Improvements by any certain date and/or as set forth in this Agreement.

5. Construction of Project. County will construct the Project including the Boulevard Improvements. Newland has agreed to pay \$360,000 for a portion of the costs to construct the Boulevard Improvements.

6. Newland's Payment for its portion of the Boulevard Improvements Construction Costs. Within thirty (30) days after the execution of this Agreement by the County Newland will pay to County \$360,000, hereafter referred to as the "Developer Funds." The Developer Funds will be available to County for the construction costs associated with the Boulevard Improvements, and County shall, in its sole discretion, be entitled to use, at any time, all or a portion of the Developer Funds in connection with the construction of the Boulevard Improvements. At such time as the County issues a final letter of acceptance for the construction of the Project, the County shall provide to Newland an accounting of the use of the Developer Funds, providing reasonable detail. Further, Newland, within thirty (30) days of receiving written notice from County, will, with no specific requirement to pay, consider paying to the County additional funds for portions of reasonable and necessary construction costs associated with the construction of the Boulevard Improvements. Notwithstanding anything to the contrary herein, County and Newland agree that Newland shall not, under any circumstance, be responsible for any additional part or portion of the construction costs associated, directly or indirectly, with the Boulevard Improvements.

7. Intentionally Deleted.

8. Intentionally Deleted.

9. **PARTIES' ACKNOWLEDGEMENT OF COUNTY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/NEWLAND'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.**

**(A) NEWLAND ACKNOWLEDGES AND AGREES THAT THE CONTRIBUTION MADE BY NEWLAND 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) NEWLAND 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) NEWLAND 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.

10. Limitations of Agreement. The parties hereto acknowledge this Agreement is limited to the Boulevard Improvements only. Further, this Agreement does not waive or limit any of the obligations of Newland to County under any other order whether now existing or in the future arising.

11. Default. In the event Newland fails to comply with any of the provisions of this Agreement within ten (10) business days after 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 file this instrument in the Real Property Records of Fort Bend County as a lien and/or encumbrance against Newland and/or the Property; and/or

(b) to immediately, without further notice to Newland, cease any and all design and/or construction of the Boulevard Improvements; and/or

(c) to seek specific enforcement of this Agreement.

In the event of County's default under this Agreement, Newland will be entitled to seek specific performance and/or any other remedy available to them at law or in equity.

12. Intentionally Deleted.

13. 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  
ATTN: Richard W. Stolleis, P.E.  
County Engineer  
301 Jackson Street  
Richmond, Texas 77469

If to Newland, to:

Alan F. Bauer  
Senior Vice President, Central Region  
Newland Communities  
10235 W. Little York, Suite 300  
Houston, TX 77040  
Tel. 713-575-9000 Direct. 713-575-9035  
Fax. 713-575-9001

(b) Assignment. This Agreement is not assignable by Newland 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 Newland and/or its authorized representatives.

(p) Intentionally Deleted.

(q) References to Newland. "Newland" as used herein shall mean Newland Real Estate Group, LLC, its officers, directors, agents, representatives, employees,

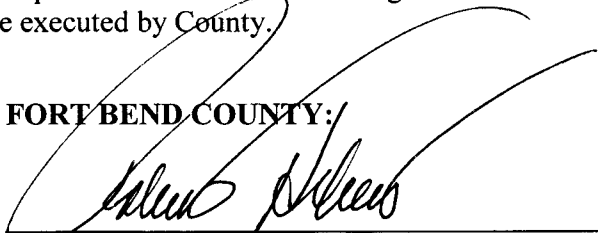
heirs, representatives, legatees, successors, assigns, grantees, contractors, subcontractors, invitees, licensees, trustees and/or any other third party for whom Newland is legally responsible.

(r) Indemnification. The parties agree that the Indemnity provisions set forth in Paragraph 9 herein are conspicuous, and the parties have read and understood the same.

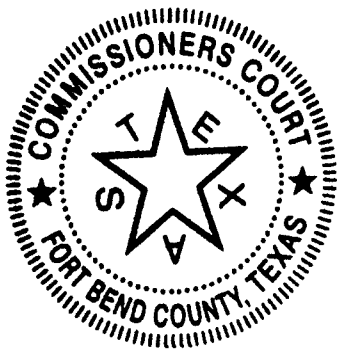
(s) Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

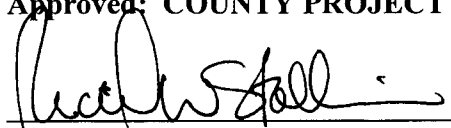
IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date executed by County.

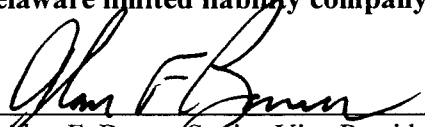
2-5-2013  
Date

**FORT BEND COUNTY:**  
  
Robert E. Hebert, County Judge

Attest:  
  
Dianne Wilson, County Clerk



**Approved: COUNTY PROJECT MANAGER**  
  
Richard W. Stolleis, P.E.  
Fort Bend County Engineer

**NEWLAND REAL ESTATE GROUP, LLC,  
a Delaware limited liability company:**  
  
By: Alan F. Bauer, Senior Vice President

Date: 1/23/13