

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DETENTION CAPACITY EASEMENT AGREEMENT

This Detention Capacity Easement Agreement ("Easement Agreement") is made between Poarch/Swinbank LLC, a Texas limited liability company ("P/S") and Fort Bend County, Texas, a body politic of the State of Texas ("Grantee").

RECITALS

- a. P/S is the owner of a 100-acre, more or less, tract of land that is described by metes and bounds on **Exhibit A** attached hereto and made a part hereof (the "P/S Land").
- b. In connection with the FM 1093/Westpark Extension Phase I project in Fort Bend County, Texas (the "Road Extension Project"), Grantee needs storm water detention in a volume sufficient under all regulatory requirements, calculated as **123.79** acre-feet of storage, to serve the storm water detention needs for the Road Extension Project as completed (the "Needed Capacity").
- c. P/S owns a detention pond (the "Detention Pond") that is located on the P/S Land, as described in the Sprint Regional Detention Pond Drainage Study prepared by Provident Engineers, Inc., as revised June 2015 (corrected) (the "Drainage Study") as same may be modified or updated as set forth in Paragraph 3. below, and P/S is in a position to, and is willing to, provide the Needed Capacity in the Detention Pond, (which currently has **467.99** acre-feet of available capacity), in accordance with the terms of this Easement Agreement.
- d. Grantee joins in the execution of this Easement Agreement to evidence its agreement to the terms and provisions hereof.

AGREEMENT:

In consideration of the premises and Ten Dollars and other good and valuable consideration as set forth in that certain Agreement Regarding Consideration for Detention Capacity dated of even date herewith between P/S and Grantee (the "Detention Capacity Consideration"), which shall be paid by Grantee to P/S at the time of execution of this Easement Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Detention Capacity. P/S hereby TRANSFERS, BARGAINS, GRANTS, SELLS, CONVEYS and ASSIGNS to Grantee (i) a perpetual non-exclusive easement (the "Detention Easement") in and to the Detention Pond for the purpose of providing

storm water detention capacity for the Road Extension Project in a volume of up to 123.79 acre-feet, (same being the Needed Capacity).

2. Maintenance of the Detention Pond. As between P/S and Grantee, P/S shall have the sole responsibility, at no cost to Grantee (other than the Detention Capacity Consideration), for maintaining and repairing the Detention Pond in a manner that assures that the Needed Capacity shall be available for use by Grantee in the Detention Pond.
3. Non-Exclusive Provisions. P/S reserves the right to use and enjoy the Detention Pond and the land upon which same is constructed and maintained (together with the balance of the P/S Land) for any purposes as long as such use and enjoyment does not unreasonably interfere with the rights herein granted to Grantee and as long as the Needed Capacity in favor of Grantee is maintained and made available in the Detention Pond at all times. Subject to the limitations set forth in the preceding sentence of this Easement Agreement, P/S specifically reserves the right to use, and to convey or transfer to others the right to use, other or additional detention or water storage capacity in the Detention Pond, and the right to expand, enlarge or otherwise modify the Detention Pond. P/S shall provide Grantee with an update to Drainage Study prepared by an engineer selected by P/S reflecting any proposed modification of the Detention Pond no later than thirty (30) days prior to the start of construction of any such modification to insure that Grantee's rights granted hereunder are preserved.
4. Effect of Invalidation. If any term or condition of this Easement Agreement is held to be invalid or unenforceable by any court or other body with appropriate jurisdiction, the invalidity or unenforceability of such term or condition shall not affect the validity of the remaining terms and conditions of the Easement Agreement.
5. Term of Easement. The term of the Detention Easement shall be perpetual.
6. Successors and Assigns. The rights, interest and obligations of Grantee or Grantor under this Easement Agreement may be sold, assigned or transferred by Grantee or Grantor without any approval or consent of the other party to this Easement Agreement. This Easement Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns and shall run with the land affected hereby. This Detention Easement is a covenant running with the Land binding on all future owners of the P/S Land.
7. Title Warranty. TO HAVE AND TO HOLD the Detention Easement for the Needed Capacity, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, its successors and assigns, forever; and P/S does hereby bind P/S and P/S's successors and assigns to WARRANT AND FOREVER DEFEND, all and singular, the Detention Easement for the Needed Capacity unto Grantee, and its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through and under P/S but not otherwise, subject to all matters of record and all matters that a true and correct survey or a visual inspection of the Detention Pond or the P/S Land would reveal, to the extent same are currently in existence and affect the Detention Pond or the P/S Land; provided, however, that P/S

warrants and represents to Grantee that there are no deed of trust liens or any other consensual liens affecting the Detention Pond or the P/S Land.

8. Notices. Any notice required or permitted to be given under this Easement Agreement shall be in writing, and shall be deemed to have been given when delivered by hand delivery, or when deposited in the United States Post Office, registered or certified mail, postage prepaid, return receipt requested, if mailed. Notices shall be addressed as follows:

If to Grantee:

Fort Bend County, Texas
Attn: County Engineer
301 Jackson Street
Richmond, Texas 77469

If to P/S:

Poarch/Swinbank LLC
Attn: Donald Poarch
1041 Conrad Sauer Road
Houston, Texas 77043
Telephone: 713-984-1473
Email: dpoarch@thesprintcompanies.com

or such other address as either party from time to time shall specify in writing to the other in the manner set forth above.

9. Limitations. P/S shall have no liability or responsibility for constructing or arranging for any drainage lines or other facilities (i) to transport storm water from the Road Extension Project into the Detention Pond, or (ii) from the Detention Pond to allow outflow drainage from the Detention Pond other than any outflow lines or facilities that currently exist. The Detention Easement shall be used for the purpose of serving the detention capacity needs of the Road Extension Project only, and no other projects of Grantee without the prior written consent of P/S.
10. Default. In the event there is a breach by P/S with respect to any of the provisions of this Easement Agreement or its obligations under it, including preservation of Grantee's rights to its Needed Capacity and maintenance of the Detention Pond, Grantee shall give P/S written notice of such breach. After receipt of such written notice, P/S shall have forty-eight (48) hours in which to cure any such breach, if such breach constitutes an emergency, or ten (10) days if such breach does not constitute an emergency. Should P/S fail to cure breach, upon the expiration of forty-eight (48) hours or ten (10) days (as the case may be) of P/S's receipt of notice, Grantee shall have the right to enter upon the Land and make such modifications to the Detention Pond to prove the Needed Capacity or otherwise take any and all necessary actions necessary to cure such breach, and seek reimbursement from P/S for any and all expenses reasonably related to curing the breach.

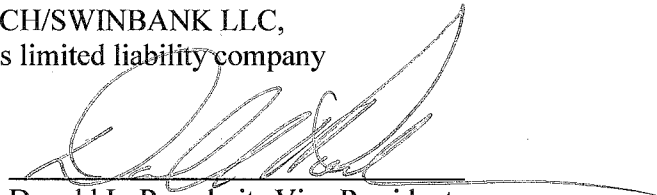
In the event of Grantee's default under this Easement Agreement, P/S will be entitled to seek any remedy in which may be available to P/S at law or in equity, including the right to seek reasonable attorney's fees and court costs.

- 11. Counterparts. This Easement Agreement may be executed in one or more counterparts, all of which taken together shall constitute a single instrument and the pages of which may be aggregated to form a single document.

Executed on the dates of the acknowledgments below, to be effective when executed and acknowledged by both parties hereto.

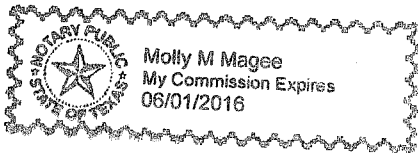
POARCH/SWINBANK LLC,
a Texas limited liability company

By:


Donald L. Poarch, its Vice President

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on 20th day of October, 2015, by Donald L. Poarch, Vice President of Poarch/Swinbank LLC, a Texas limited liability company, on behalf of said limited liability company.



Molly M. Magee
Notary Public

MOLLY M. MAGEE
Printed Name of Notary

My Commission expires: 6/1/2016

GRANTEE:

FORT BEND COUNTY, TEXAS,
a body politic of the State of Texas

By: 
Robert E. Hebert, County Judge

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on 3rd day of November, 2015, by Robert E. Hebert, in his/her capacity as County Judge of Fort Bend County, Texas, a body politic of the State of Texas, on behalf of said body politic of the State of Texas.


Notary Public

Luisa M Bowers
Printed Name of Notary

My Commission expires: 9-7-16

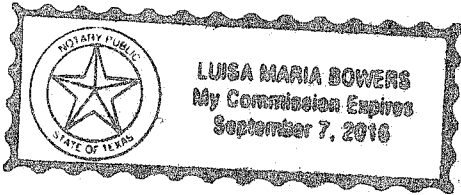


EXHIBIT A

Metes and Bounds Description of P/S Land

METES AND BOUNDS DESCRIPTION
100 ACRES (4,356,000 SQUARE FEET)

ALL THAT CERTAIN 100 ACRES (4,356,000 SQUARE FEET) OF LAND SITUATED IN THE JOHN FOSTER SURVEY, ABSTRACT NO. 574, FORT BEND COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN CALLED 692.2157 ACRE TRACT (GROSS) IN A DEED A TRUST AND SECURITY AGREEMENT EXECUTED BY HOUSTON ENTERPRISES, INC., TO JAMES E. FRAYER, TRUSTEE, JANUARY 15, 1988, RECORDED UNDER VOLUME 2086, PAGE 2504 OF THE DEED RECORDS OF FORT BEND COUNTY, TEXAS, SAID 100 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point in the centerline of an 80 foot wide county road (Fulshear-Gaston Road) which the North 40 feet is recorded under Volume 458, Page 487 of the Deed Records of Fort Bend County, Texas and being the Southwest corner of the John Foster Survey, Abstract No. 574 (formerly known as the Brooks and Burlason Survey No. 16) and the Southeast corner of the R.H. Kuykendahl Survey, Abstract No. 274 and the Southwest corner of the said 692.2157 acre tract and hereof;

THENCE, North $00^{\circ}09'19''$ West, with the corner line between the said John Foster Survey, Abstract No. 574 and the R.H. Kuykendahl Survey, Abstract No. 274 at 40.00 feet pass a found 1" iron pipe at an existing fence corner on the north line of the aforesaid 80 foot wide county road and being the Southeast corner of a 106.0889 acre tract as conveyed unto Covey Trails Development Co., Inc., a Texas Corporation as recorded under Volume 771, Page 138 of the Deed Records for Fort Bend County, Texas, and continuing with an existing fence line, a total distance of 3470.67 feet to a found 1" iron pipe on the South railroad easement Right-of-Way line of Southern Pacific Transportation Company (successor to the San Antonio and Arkansas River Railway Company) as reserved under Volume 578, Page 164 of the Deed Records of Fort Bend County for the Northeast corner of said 106.0889 acre tract and the Northwest corner of said 692.2157 acre tract and hereof;

THENCE, North $88^{\circ}39'01''$ East, with the South railroad easement Right-of-Way line and the North line of said 692.2157 acre tract, a distance of 1341.47 feet to a set 5/8 inch iron rod for the Northeast corner hereof;

THENCE, South $0^{\circ}09'19''$ East, a distance of 3525.67 feet to a set 5/8 inch iron rod on the North 80 foot wide county road, and continuing for a total of 3665.67 feet to the centerline of the said 80 foot wide county road and the South line of said 692.2157 acre tract for the Southeast corner hereof;

THENCE, North $89^{\circ}57'39''$ West, with the centerline of the aforesaid 80 foot wide county road and the South line of the said 692.2157 acre tract, a distance of 1238.15 feet to the **POINT AND PLACE OF BEGINNING** and containing 100 acres of land of which 1.1570 acres lays in the aforesaid 80 foot wide county road and having a net acreage of 98.8430 acres of land.

SEE ATTACHED EXHIBIT