

**DEVELOPMENT AGREEMENT**

**THE STATE OF TEXAS**

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**COUNTY OF HARRIS**

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This Development Agreement (the "Agreement") is executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the "Effective Date"), by and between the City of Tomball, Texas (the "City"), and HMF Americana, LLC, a Texas limited liability company (the "Developer"), the Developer and City each being referred to herein as a "Party" and collectively as the "Parties".

WHEREAS, Developer is the owner and developer of certain hereinafter described property located within the City; and

WHEREAS, Developer wishes to develop The Shoppes at Cottage Green and the Cottage Green Tomball (collectively, the "Development"), a proposed 48.96-acre planned development, situated at the intersection of Brown-Hufsmith Road and State Highway 249 in the City of Tomball, Harris County, Texas, as depicted on the map or plat marked as Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, in order to develop the Property, certain stormwater run-off and collection facilities are required to be constructed and maintained to accommodate stormwater run-off from the Development; and

WHEREAS, during the Development planning stage for the Property, the Developer submitted a request to be allowed to construct certain off-site stormwater run-off and collection facilities to accommodate stormwater run-off from the Development; and

WHEREAS, Section 212.071, et. seq. of the Texas Local Government Code authorizes municipalities to enter into a contract with a developer of a subdivision or land within the municipality to construct public improvements related to the development without complying with the competitive scaled bidding procedures of Chapter 252 of the Texas Local Government Code.

NOW, THEREFORE, for and in consideration of the premises and mutual obligations, covenants, and benefits hereinafter set forth, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following terms and phrases used in this Agreement shall have the meanings ascribed hereto:

1.01. "Agreement" shall mean this Agreement, including any written amendments hereto, between the City and the Developer.

1.02. "City's M124 Drainage Facilities" shall mean the drainage channel and stormwater

detention basin owned by the City, more specifically identified and described in Exhibit "B" attached hereto and made a part hereof.

1.03. "Contractor" shall mean the person, firm, corporation, partnership, association, or other entity awarded the contract by the Developer for the construction and installation of the Drainage Facilities, as hereinafter defined, or any part thereof.

1.04. "City Engineer" shall mean the City's Director of Engineering, or his designee.

1.05. "Property" means the tract of land containing approximately 48.96 acres, and being more particularly described on Exhibit "C" attached hereto.

1.06. "Ten-Acre Tract" shall mean the tract of land owned by the Developer, and containing approximately 9.98 acres, and being more specifically identified and described in Exhibit "D" attached hereto and made a part hereof.

## ARTICLE II CONSTRUCTION OF DRAINAGE FACILITIES

2.01. Construction of Drainage Facilities. The Developer agrees to construct certain stormwater run-off and collection facilities (the "Drainage Improvements"), in accordance with the provisions of this Agreement, to accommodate stormwater run-off from the Development. The Drainage Improvements shall include construction of a stormwater detention facility on the Ten Acre Tract adjacent to the City's M124 Drainage Facilities (the "Detention Facility"). The Developer agrees to construct such Drainage Improvements in accordance with the Plans and Specifications which shall be reviewed by and approved by the City Engineer. No construction of the Drainage Improvements shall occur until the Developer has received approval of the Plans and Specifications from the City Engineer. No change to the Plans and Specifications shall be made by the Developer without the prior written approval of the City Engineer. The entire cost of construction of the Drainage Improvements shall be the responsibility and obligation of the Developer. The Developer agrees to obtain, at its sole cost and expense, any approvals and/or permits required by any other governmental entity or agency regarding construction of the Drainage Improvements, if any. As to the City, this Agreement shall constitute approval to construct the Drainage Improvements and to use City-owned land or public rights-of-way within the City for access to and construction of the Drainage Improvements. The Developer shall submit Plans and Specifications for the Drainage Improvements to the City Engineer for approval and permitting. The City and Developer shall work together in good faith to coordinate the construction of the Drainage Improvements.

2.02. Contracts for Construction. The Developer shall contract with a qualified Contractor to construct the Drainage Improvements in accordance with the Plans and Specifications. The Contractor may be an affiliate of the Developer. The City Engineer shall review and shall approve the Contractor involved in the construction of the Drainage Improvements prior to the award of the contract.

2.03 Inspection. The City Engineer shall be entitled to inspect each element and phase of

construction of the Drainage Improvements. In the event the City Engineer determines that such construction is not in compliance with the Plans and Specifications, the Developer, upon written notification of such noncompliance, shall require Contractor to correct such noncompliance.

2.04 Acceptance of the Drainage Facilities. Upon final completion of construction of the Drainage Improvements, the Developer shall notify the City Engineer that the Drainage Improvements have been completed and certify that such improvements have been constructed in accordance with the Plans and Specifications. The City Engineer shall, within thirty (30) days after receipt of such notification from Developer, determine if such Drainage Improvements are in accordance with the Plans and Specifications and, if so, notify the Developer in writing of the City's acceptance of the Detention Facility. The Developer agrees to provide, or cause the Contractor to provide, for the benefit of the City, a one-year maintenance bond on the Drainage Facilities, the term of which shall commence on the date of the City's final acceptance of the Detention Facility. Upon approval of the Detention Facility by the City, the Developer shall convey to the City, and the City shall accept, by special warranty deed in a form approved by the City, the Ten-Acre Tract including the Detention Facility. Upon conveyance of the Ten-Acre Tract and the improvements thereon, the City shall operate and maintain the Detention Facility as part of the City's drainage system and the Developer shall have no further obligation to maintain or contribute funds for the maintenance of the Detention Facility.

2.05. Operation and Maintenance of Detention Facility. The Developer agrees to operate and maintain the Detention Facility, in accordance with the minimum standards and procedures identified in Section 18-287 of the Tomball Code of Ordinances, until the Detention Facility is conveyed to the City in accordance with the provisions of Section 2.04 hereof.

2.06. Performance, Payment and Maintenance Bonds. The Developer shall obtain for the benefit of the City, performance, payment, and maintenance bonds, in amounts required by law for construction of the Drainage Improvements to ensure completion of the improvements, payment of the subcontractors, and to guarantee that the Contractor makes any necessary warranty repairs. Such bonds must be executed by a corporate surety in accordance with Chapter 2253, Texas Government Code. The Developer will transfer all of its right, title and interest to the bonds required by this section to the City concurrently with the conveyance of the Detention Facility as provided by Section 2.04 hereof.

2.07. Insurance. The Contractor(s) that are awarded the contract to construct the Drainage Improvements shall be required to carry Workers' Compensation Insurance on their respective employees, and liability and property damage insurance on their equipment and employees. The liability insurance shall be not less than Five Hundred Thousand Dollars (\$500,000.00) per person and Two Million Dollars (\$2,000,000.00) per occurrence, with property damage insurance of not less than Five Hundred Thousand Dollars (\$500,000.00). In addition, the City shall be provided with Certificates of Insurance, shall be named an additional insured on such Certificates (excluding certificates evidencing worker's compensation insurance), and all insurers shall be required to notify the City in writing at least thirty (30) calendar days prior to the date of cancellation of any such insurance.

2.08. Assumption of Risks and Indemnification. The Developer agrees to, and does hereby,

assume any and all risk of claims, demands, liability, or causes of action for flooding, flood damage, or injury to or on the Property, to any development thereon, or to any lessee, occupant, or invitee, on account of, or resulting from, construction of the Drainage Improvements by the Developer or its agents, representatives, employees, Contractors, or subcontractors, and shall protect, indemnify, and hold City harmless therefor as hereinafter provided. **The Developer further agrees to protect, indemnify, and save City harmless from and against all claims, demands, and causes of action of every kind and character arising in favor of any third party on account of, or resulting from, construction of the Drainage Improvements by Developer or its agents, representatives, employees, contractors, or subcontractors. The foregoing indemnity obligations shall not apply to any claims, demands, damages, liabilities or causes of action based on events occurring after the Final Acceptance and conveyance to the City of the Ten Acre Tract.**

2.09. Construction Spoils. The Developer shall, at no cost to the City, remove and dispose of all clearing, grubbing, utility spoils, and excavated material resulting from construction of the Drainage Improvements.

ARTICLE III  
DEVELOPER'S CONSIDERATION FOR CONSTRUCTION  
OF THE DRAINAGE IMPROVEMENTS

3.01. Reserve Capacity. Upon the Developer's construction of the Drainage Improvements, and its acceptance or approval by the City as provided in Section 2.04 hereof, there shall be reserved to the Property twenty-seven (27) acre-feet of stormwater detention (the "Reserved Capacity"). Upon completion, acceptance, and approval of the Drainage Improvements, as provided herein, the Developer shall be entitled to use the Reserved Capacity in association with the development of the Property and in satisfaction of the City's requirement for stormwater run-off and detention facilities necessary for obtaining City construction, building, and occupancy permits required for development of the Property. Any additional capacity in the Drainage Improvements in excess of the twenty-seven (27) acre-feet shall be under the sole and exclusive control and ownership of the City. Construction and building permits for improvements to the Property, that, in the opinion of the City Engineer, will increase stormwater run-off in excess of the capacity of the City's current drainage system, shall not be issued by the City until completion, acceptance, and approval of the Drainage Improvements as provided herein. Notwithstanding the foregoing, the City shall issue to Developer a site development permit to allow Developer to perform clearing, grubbing and grading activities on the Property concurrently with the Developer's construction of the Drainage Improvements. The issuance of occupancy permits for the Property shall be contingent upon Developer's completion of the Drainage Improvements.

3.02. No Drainage Impact Fees. In consideration of the Developer's performance hereunder, the City will not impose any drainage impact fee on the Property, or otherwise seek contribution from the Developer or a subsequent owner of the Property, or an interest therein, for the City's M124 Drainage Facilities improvements.

ARTICLE IV  
MISCELLANEOUS PROVISIONS

4.01. Assignment. The Developer shall notify the City of its intent to assign this Agreement to any entity owned by, controlled by, or under common control with HMF Americana, LLC, or its principal equity owners and obtain the City's consent to such assignment, such consent shall not be unreasonably withheld. Upon assignment of the Agreement, the assignee will execute and deliver to the City an estoppel certificate assuming all the obligations of Developer hereunder. The City further agrees that Developer and/or such assignee shall have the right to grant to its lender a collateral assignment of this Agreement.

4.02. Amendment or Modification. Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment, or modification in writing only, and by the signatures and mutual consent of the Parties.

4.03. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties hereto and shall not be construed to confer any rights upon any third party.

4.04. Remedies Not Exclusive. The rights and remedies contained in this Agreement shall not be exclusive, but shall be cumulative of all rights and remedies now or hereinafter existing, by law or in equity.

4.05. Waiver. The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.

4.06. Entire Agreement; Counterparts. This Agreement constitutes the entire agreement between the Parties related to the subject matter of this Agreement and supersedes any and all prior agreements, whether oral or written, dealing with the subject matter of this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

4.07. Venue. This Agreement shall be performable and enforceable in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas.

4.08. Severability. If any term or provision of this Agreement is held to be invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of the terms and provisions of this Agreement shall remain in full force and effect and shall not in any way be invalidated, impaired, or affected.

4.09. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) by delivering the same in person to such party; or (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) by electronic mail; provided a copy of

such notice is sent within one (1) day thereafter by another method provided above. The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

If to City: City of Tomball  
401 W. Market Street  
Tomball, Texas 77375  
Attention: City Manager  
Telephone: (281) 351-5484  
Facsimile: (281) 351-6256  
Email: desquivel@tomballtx.gov

If to Developer: HMF Americana, LLC  
1095 Evergreen Circle, Suite 200-521  
The Woodlands, Texas, 77380  
Telephone: 281-210-7768  
Email: tim@palmettobuilt.com

Executed as of the Effective Date set forth above.

CITY OF TOMBALL, TEXAS

By: \_\_\_\_\_  
Name: David Esquivel  
Title: City Manager

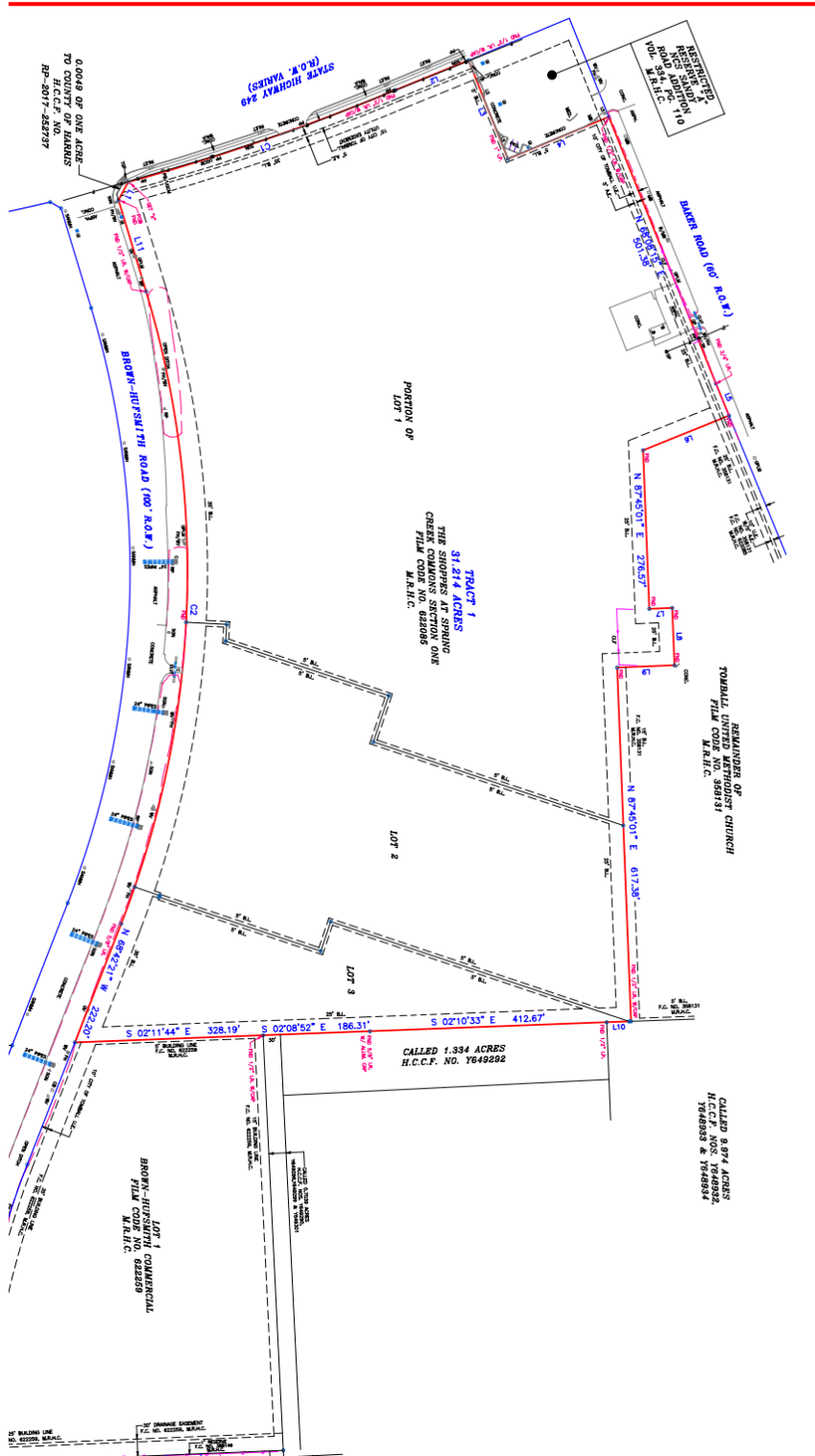
HMF AMERICANA, LLC,  
A TEXAS LIMITED LIABILITY COMPANY

By: \_\_\_\_\_  
Timothy P. Crawford, Manager

Exhibits:

Exhibit "A" - Map or Plat of Property  
Exhibit "B" - City's M124 Drainage Facilities  
Exhibit "C" - Legal Description of the Property  
Exhibit "D" - Legal Description of the Ten Acre Tract

EXHIBIT "A"  
Map or Plat of Property



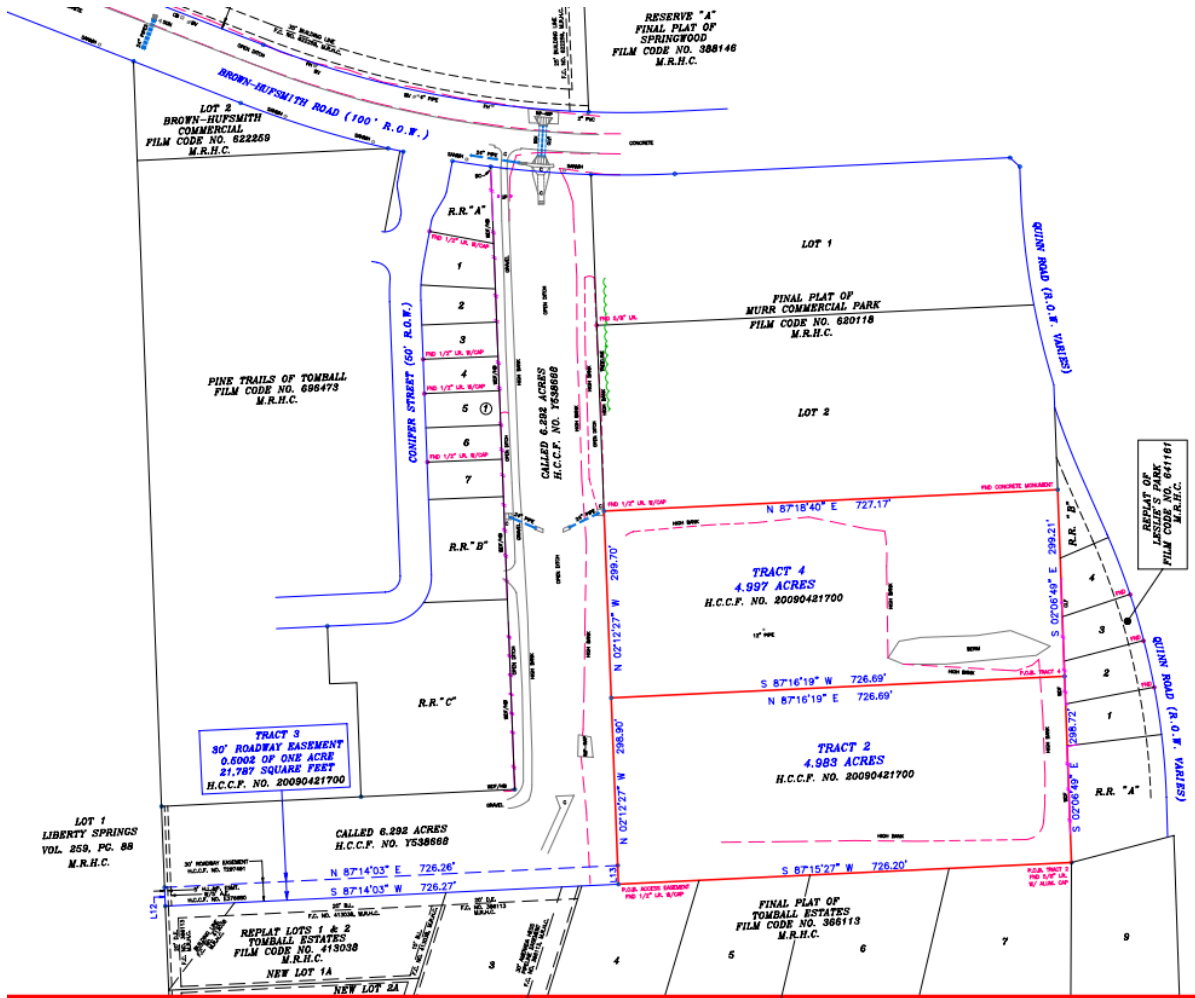




EXHIBIT "B"  
City's M124 Drainage Facilities



EXHIBIT "C"  
Legal Description of the Property

DESCRIPTION  
TRACT 1

31.214 acres of land situated in the Joseph House Survey, Abstract Number 34, City of Tomball, Harris County, Texas, being a portion of that certain Lot 1 and all of those certain Lots 2 and 3 of The Shoppes at Spring Creek Commons Section One, a subdivision as shown on map or plat recorded under Film Code Number 622085 of the Map Records of Harris County, Texas, said 31.214 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod with cap found for the Southeasterly end of a cut-back line between the Northerly right-of-way line of Brown-Hufsmith Road (100 foot right-of-way) and the Easterly right-of-way line of State Highway 249 (right-of-way width varies), for the Southeasterly corner of that certain called 0.0049 of one acre of land conveyed to County of Harris as described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2017-252737;

Thence, N 61°47'36" W, along said cut-back line and along the Northeasterly line of said 0.0049 acre tract, a distance of 35.56 feet to an "X" in concrete set for the Northwesterly end of said cut-back line;

Thence, in a Northwesterly direction, along the Easterly right-of-way line of said State Highway 249, with a curve to the left, having a central angle of 07° 13'55", a radius of 3909.20 feet, an arc length of 493.42 feet, a chord bearing of N 19°00'38" W and a chord distance of 493.10 feet to a 1/2 inch iron rod with cap found for a point of non-tangency;

Thence, N 22° 10'09" W, continuing along the Easterly right-of-way line of said State Highway 249, a distance of 136.96 feet to a 1/2 inch iron rod with cap found for the Southwesterly corner of that certain Restricted Reserve "A" of NCS Sandy Road Addition, a subdivision as shown on map or plat recorded under Volume 334, Page 110 of the Map Records of Harris County, Texas;

Thence, N 68° 11 '30" E, along the Southerly line of said Restricted Reserve "A" of NCS Sandy Road Addition, a distance of 185.02 feet to a 1 inch iron pipe found for the Southeasterly corner of said Restricted Reserve "A" of NCS Sandy Road Addition;

Thence, N 22°38'48" W, along the Easterly line of said Restricted Reserve "A" of NCS Sandy Road Addition, a distance of 190.31 feet to a 1/2 inch iron rod with cap found in the Southerly right-of-way line of Baker Road (60 foot right-of-way), for the Northeasterly corner of said Restricted Reserve "A" of NCS Sandy Road Addition;

Thence, N 68°08'15" E, along the Southerly right-of-way line of said Baker Road, a distance of 501.38 feet to a 3/4 inch iron rod found for an angle point;

Thence, N 67°40'42" E, continuing along the Southerly right-of-way line of said Baker Road, a distance of 60.00 feet to a 5/8 inch iron rod with cap found for corner;

Thence, S 22<sup>0</sup>00'54" E, a distance of 161.57 feet to a 5/8 inch iron rod with cap found for corner;

Thence, N 87<sup>0</sup>45'01" E, a distance of 276.57 feet to a 5/8 inch iron rod with cap found for corner;

Thence, N 02<sup>0</sup>14'59" W, a distance of 40.00 feet to a 5/8 inch iron rod with cap found for corner;

Thence, N 87<sup>0</sup>45'01" E, a distance of 100.00 feet to a 5/8 inch iron rod with cap found for corner;

Thence, S 02<sup>0</sup>14'59" E, a distance of 100.00 feet to a 5/8 inch iron rod with cap found for corner;

Thence, N 87<sup>0</sup>45'01" E, a distance of 617.38 feet to a 1/2 inch iron rod with cap found in the Westerly line of that certain called 9.974 acres of land described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Numbers Y648932, Y648933 and Y648934;

Thence, S 02<sup>0</sup>02'55" E, along the Westerly line of said 9.974 acre tract, a distance of 42.47 feet to a 1/2 inch iron pipe found for the Southwesterly corner of said 9.974 acre tract and the Northwesterly corner of that certain called 1.334 acres of land described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number Y649292;

Thence, S 02<sup>0</sup>10'33" E, along the Westerly line of said 1.334 acre tract, a distance of 412.67 feet to a 5/8 inch iron rod with an aluminum cap found for an angle point;

Thence, S 02<sup>0</sup>08'52" E, continuing along the Westerly line of said 1.334 acre tract and along the Westerly line of that certain called 0.7039 of one acre of land described in deeds and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Numbers Y649290, Y649296, Y649299 and Y649301, a distance of 186.31 feet to a 1/2 inch iron rod with cap found for the Northwesterly corner of that certain Lot 1 of Brown-Hufsmith Commercial, a subdivision as shown on map or plat recorded under Film Code Number 622259 of the Map Records of Harris County, Texas;

Thence, S 02<sup>0</sup>11'44" E, along the Westerly line of said Lot 1 of Brown-Hufsmith Commercial, a distance of 328.19 feet to the Northerly right-of-way line of said Brown-Hufsmith Road, for the Southwesterly corner of said Lot 1 of Brown-Hufsmith Commercial;

Thence, along the Northerly right-of-way line of said Brown-Hufsmith Road, the following courses and distances:

N 68<sup>0</sup>42'21" W, a distance of 222.20 feet to a 5/8 inch iron rod found for a point of curvature to the left;

In a Northwesterly direction, with said curve to the left, having a central angle of 38<sup>0</sup>05'14", a radius of 1690.42 feet, an arc length of 1123.71 feet, a chord bearing of N 87<sup>0</sup>44'58" W and a chord distance of 1 103.13 feet to a 1/2 inch iron rod with cap found for a point of tangency;

S 73°12'25" W, a distance of 166.32 feet to the POINT OF BEGINNING and containing 31.214 acres of land.

#### DESCRIPTION TRACT 2

4.983 acres of land situated in the Joseph House Survey, Abstract Number 34, City of Tomball, Harris County, Texas, being that certain called 4.983 acres of land described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number 20090421700, said 4.983 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod with an aluminum cap found for the Southwesterly corner of that certain Restricted Reserve "A" of the Replat of Leslie's Park, a subdivision as shown on map or plat recorded under Film Code Number 641161 of the Map Records of Harris County, Texas, the Northwesterly corner of that certain Lot 9 of the Final Plat of Tomball Estates, a subdivision as shown on map or plat recorded under Film Code Number 366113 of the Map Records of Harris County, Texas, the Northeasterly corner of that certain Lot 7 of said Final Plat of Tomball Estates and the Southeasterly corner of said 4.983 acre tract;

Thence, S 87° 15'27" W, along the Northerly line of those certain Lots 4 thru 7 of said Final Plat of Tomball Estates, a distance of 726.20 feet to a 1/2 inch iron rod with cap found for the Southeasterly corner of that certain called 6.292 acres of land described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number Y538668;

Thence, N 02° 12'27" W, along the Easterly line of said 6.292 acre tract, a distance of 298.90 feet to the Southwesterly corner of that certain called 4.997 acres of land described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number 20090421700;

Thence, N 87° 16'19" E, along the Southerly line of said 4.997 acre tract, a distance of 726.69 feet to the Westerly line of that certain Lot 2 of said Replat of Leslie's Park, for the Southeasterly corner of said 4.997 acre tract;

Thence, S 02° 06'49" E, along the Westerly line of Lot 1, Lot 2 and Restricted Reserve "A" of said Replat of Leslie's Park, a distance of 298.72 feet to the POINT OF BEGINNING and containing 4.983 acres of land.

#### DESCRIPTION 30' ROADWAY EASEMENT TRACT 3

0.5002 of one acre or 21,787 square feet of land situated in the Joseph House Survey, Abstract Number 34, City of Tomball, Harris County, Texas, being that certain called 0.5002 of one acre of land described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number 20090421700, said 0.5002 of one acre or 21,787 square feet of land being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8 inch iron rod with an aluminum cap found for the Southwesterly corner of that certain Restricted Reserve "A" of the Replat of Leslie's Park, a subdivision as shown on map or plat recorded under Film Code Number 641161 of the Map Records of Han-is County, Texas, the Northwesterly corner of that certain Lot 9 of the Final Plat of Tomball Estates, a subdivision as shown on map or plat recorded under Film Code Number 366113 of the Map Records of Harris County, Texas, the Northeasterly corner of that certain Lot 7 of said Final Plat of Tomball Estates and the Southeasterly corner of that certain

called 4.983 acres of land described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number 20090421700;

Thence, S 87° 15'27" W, along the Northerly line of those certain Lots 4 thru 7 of said Final Plat of Tomball Estates, a distance of 726.20 feet to a 1/2 inch iron rod with cap found for the Southwesterly corner of said 4.983 acre tract, the Southeasterly corner of said 0.5002 acre tract and the POINT OF BEGINNING of the herein described tract of land;

Thence, S 87° 14'03" W, along the Northerly line of Lots 3 and 4 of said Final Plat of Tomball Estates and the Northerly line of that certain New Lot IA of the Replat Lots 1 & 2 Tomball Estates, a subdivision as shown on map or plat recorded under Film Code Number 413038 of the Map Records of Harris County, Texas, a distance of 726.27 feet to the Easterly line of that certain Lot 1 of Liberty Springs, a subdivision as shown on map or plat recorded under Volume 259, Page 88 of the Map Records of Harris County, Texas, for the Northwesterly corner of said New Lot IA;

Thence, N 02° 11 '30" W, along the Easterly line of said Lot 1 , a distance of 30.00 feet to a point for corner;

Thence, N 87° 14'03" E, a distance of 726.26 feet to the Westerly line of said 4.983 acre tract;

Thence, S 02° 12'27" E, along the Westerly line of said 4.983 acre tract, a distance of 30.00 feet to the POINT OF BEGINNING and containing 0.5002 of one acre or 21,787 square feet of land.

#### DESCRIPTION TRACT 4

4.997 acres of land situated in the Joseph House Survey, Abstract Number 34, City of Tomball, Harris County, Texas, being that certain called 4.997 acres of land described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number 20090421700, said 4.997 acres of land being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8 inch iron rod with an aluminum cap found for the Southwesterly corner of that certain Restricted Reserve "A" of the Replat of Leslie' s Park, a subdivision as shown on map or plat recorded under Film Code Number 641161 of the Map Records of Harris County, Texas, the Northwesterly corner of that certain Lot 9 of the Final Plat of Tomball Estates, a subdivision as shown on map or plat recorded under Film Code Number 366113 of the Map Records of Harris County, Texas, the Northeasterly corner of that certain Lot 7 of said Final Plat of Tomball Estates and the Southeasterly corner of that certain called 4.983 acres of land described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number 20090421700;

Thence, N 02°06'49" W, along the Westerly line of Restricted Reserve "A", Lot 1 and Lot 2 of said Replat of Leslie's Park, a distance of 298.72 feet to the Northeasterly corner of said 4.983 acre tract, the Southeasterly corner of said 4.997 acre tract and the POINT OF BEGINNING of the herein described tract of land;

Thence, S 87° 16'19" W, along the Northerly line of said 4.983 acre tract, a distance of 726.69 feet to the Easterly line of that certain called 6.292 acres of land described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number Y538668, for the Northwesterly corner of said 4.983 acre tract;

Thence, N 02° 12'27" W, along the Easterly line of said 6.292 acre tract, a distance of 299.70 feet to a 1/2 inch iron rod with cap found for the Southwesterly corner of that certain Lot 2 of the Final Plat of Murr Commercial Park, a subdivision as shown on map or plat recorded under Film Code Number 620118 of the Map Records of Harris County, Texas;

Thence, N 87° 18'40" E, along the Southerly line of said Lot 2 of the Final Plat of Murr Commercial Park, a distance of 727.17 feet to a concrete monument found in the Westerly line of that certain Restricted Reserve "B" of said Replat of Leslie's Park, for the Southeasterly corner of said Lot 2 of the Final Plat of Murr Commercial Park;

Thence, S 02° 06'49" E, along the Westerly line of Restricted Reserve "B", Lot 2, Lot 3 and Lot 4 of said Replat of Leslie's Park, a distance of 299.21 feet to the POINT OF BEGINNING and containing 4.997 acres of land.

EXHIBIT "D"  
Legal Description of the Ten Acre Tract

DESCRIPTION TRACT 2

4.983 acres of land situated in the Joseph House Survey, Abstract Number 34, City of Tomball, Harris County, Texas, being that certain called 4.983 acres of land described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number 20090421700, said 4.983 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod with an aluminum cap found for the Southwesterly corner of that certain Restricted Reserve "A" of the Replat of Leslie's Park, a subdivision as shown on map or plat recorded under Film Code Number 641161 of the Map Records of Harris County, Texas, the Northwesterly corner of that certain Lot 9 of the Final Plat of Tomball Estates, a subdivision as shown on map or plat recorded under Film Code Number 366113 of the Map Records of Harris County, Texas, the Northeasterly corner of that certain Lot 7 of said Final Plat of Tomball Estates and the Southeasterly corner of said 4.983 acre tract;

Thence, S 87° 15'27" W, along the Northerly line of those certain Lots 4 thru 7 of said Final Plat of Tomball Estates, a distance of 726.20 feet to a 1/2 inch iron rod with cap found for the Southeasterly corner of that certain called 6.292 acres of land described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number Y538668;

Thence, N 02° 12'27" W, along the Easterly line of said 6.292 acre tract, a distance of 298.90 feet to the Southwesterly corner of that certain called 4.997 acres of land described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number 20090421700;

Thence, N 87° 16'19" E, along the Southerly line of said 4.997 acre tract, a distance of 726.69 feet to the Westerly line of that certain Lot 2 of said Replat of Leslie's Park, for the Southeasterly corner of said 4.997 acre tract;

Thence, S 02° 06'49" E, along the Westerly line of Lot 1, Lot 2 and Restricted Reserve "A" of said Replat of Leslie's Park, a distance of 298.72 feet to the POINT OF BEGINNING and containing 4.983 acres of land.

DESCRIPTION  
TRACT 4

4.997 acres of land situated in the Joseph House Survey, Abstract Number 34, City of Tomball, Harris County, Texas, being that certain called 4.997 acres of land described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number 20090421700, said 4.997 acres of land being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8 inch iron rod with an aluminum cap found for the Southwesterly corner of that certain Restricted Reserve "A" of the Replat of Leslie's Park, a subdivision as shown on map or plat recorded under Film Code Number 641161 of the Map Records of Harris County, Texas, the Northwesterly corner of that certain Lot 9 of the Final Plat of Tomball Estates, a subdivision as shown on map or plat recorded under Film Code Number 366113 of the Map Records of Harris County, Texas, the Northeasterly corner of that certain Lot 7 of said Final Plat of Tomball Estates and the Southeasterly corner of that certain called 4.983 acres of land described

in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number 20090421700;

Thence, N 02°06'49" W, along the Westerly line of Restricted Reserve "A", Lot 1 and Lot 2 of said Replat of Leslie's Park, a distance of 298.72 feet to the Northeasterly corner of said 4.983 acre tract, the Southeasterly corner of said 4.997 acre tract and the POINT OF BEGINNING of the herein described tract of land;

Thence, S 87° 16'19" W, along the Northerly line of said 4.983 acre tract, a distance of 726.69 feet to the Easterly line of that certain called 6.292 acres of land described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number Y538668, for the Northwesterly corner of said 4.983 acre tract;

Thence, N 02° 12'27" W, along the Easterly line of said 6.292 acre tract, a distance of 299.70 feet to a 1/2 inch iron rod with cap found for the Southwesterly corner of that certain Lot 2 of the Final Plat of Murr Commercial Park, a subdivision as shown on map or plat recorded under Film Code Number 620118 of the Map Records of Harris County, Texas;

Thence, N 87° 18'40" E, along the Southerly line of said Lot 2 of the Final Plat of Murr Commercial Park, a distance of 727.17 feet to a concrete monument found in the Westerly line of that certain Restricted Reserve "B" of said Replat of Leslie's Park, for the Southeasterly corner of said Lot 2 of the Final Plat of Murr Commercial Park;

Thence, S 02° 06'49" E, along the Westerly line of Restricted Reserve "B", Lot 2, Lot 3 and Lot 4 of said Replat of Leslie's Park, a distance of 299.21 feet to the POINT OF BEGINNING and containing 4.997 acres of land.