

# Memo

**To:** Zoning Commission

**From:** Doug Kneupper, City Engineer



**CC:**

**Date:** October 7, 2021

**Re:** Brookwater Subdivision, Master Plan and PUD Zoning

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**Background:** Jerry LeBlanc with Binnacle Development has had several meetings with City staff to discuss the proposed single-family residential development. The project will be on 50-acres of undeveloped land that is on the east side of FM 2004, between Mainland City Centre and GCDD 2's Ditch 6 channel. The project will include a combination of 50', 60', and 70' wide lots. The variety of lot sizes will be balanced and mixed within each section. The city's vision and long-range plan suggests that a variety of housing products be developed to serve the needs of the community and attract new families to the city. Generally lot sizes and the inclusion of amenities have a beneficial effect on the types of homes being developed.

There is no single zoning district to accommodate this variety in lots sizes, so staff and the developer have chosen to pursue a Planned Unit Development (PUD). Under this zoning designation a variety of lot sizes can be arranged along with amenities such as landscaped, decorative fencing, entryways, parks, and open spaces.

**Staff Analysis / Recommendation:** In reviewing the Masterplan, the total lot yield will be approximately 201 lots. The breakdown into lot size categories is as follows:  
50' lots – 42%      60' lots – 41%      70' lots – 17%

The Brookwater project is intended to be annexed into GCMUD 79. This is a relative new Utility District created for the Central Park subdivision.

An important component to a viable residential development is providing parks and meaningful open spaces. The park shown is of adequate size and located somewhat central to the development. The park amenities should be introduced to the subdivision relatively early, and the features and amenities provided in the park identified in an exhibit in the PUD. Staff's recommendation is for the Recreation Site to be fully developed with the platting of the 2<sup>nd</sup> section or the plat that creates the 80<sup>th</sup> lot; whichever comes first (this will allow some time for home construction before the full park amenity is available to residents). In addition to the main entry monument, there will be masonry fencing for lots visible from FM 2004, and along the boundary of the overall tract within the 300' Gateway Overlay District. Another aspect of this project is that home construction will have brick, stone and masonry façade in accordance with current city standards.

The developer's application alludes to the creation of a Homeowner's Association that will be responsible for maintenance of parks and common areas. The HOA document will also need to provide strong language regarding the HOA's ability to keep the subdivision clean, attractive, and sustainable by abating nuisance and property maintenance type issues.

Roadway access into Brookwater will be from a new boulevard / collector road off FM 2004 that aligns with 30<sup>th</sup> Ave. and will provide adequate access for the initial phases of the subdivision. The project plan shows a roadway connection into a future residential development to the east. Ultimately this roadway connection will provide good access and circulation through this subdivision and the future subdivision to the east.

Water and sewer facilities are available for this project. A 12-inch water line is across FM 2004 with more than adequate supply. A sewer trunk main is adjacent to the south boundary of this project and a sewer collection line will be extended north into Brookwater.

Drainage of the development will be directly into the adjacent channel. GCDD 2 will provide review and oversight regarding the overall drainage outfall capacity into their Ditch 6 system.

The Planning Board reviewed this request at their September 21<sup>st</sup> meeting and is recommending approval. The Zoning Commission's decision along with the Planning Board recommendation will be forwarded to Mayor and City Commission for their final consideration. These documents provide the pathway for the developer to move forward with the project and submit preliminary plats and construction plans for developing the residential sections.

City staff has reviewed this PUD application and Masterplan. There are no objections to what has been presented.

Reviewed by?  
SK 8-20-21  
no objections

**Planned Unit District**

**For**

**Brookwater**

**Development**

Prepared For

Binnacle Development

c/o Jerry Leblanc

Planner:  
META Planning + Design

Engineer:  
IDS Engineering Group

June 2021

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## **INTRODUCTION**

This planned development document was prepared pursuant to the City of Texas City ordinances related to Planned Unit District (PUD). The purpose of the PUD is to encourage flexibility in the use and development of land to promote the most appropriate uses; to provide a high level of amenities; and to provide flexibility in the development of land subject to the development standards coordinated with the necessary public services and facilities.

The Brookwater PUD is a residential project that is bounded on the north by Moses Bayou, on the west by FM 2004, and a City of Texas City drainage easement on the south. Exhibit A, the Area Location Map, illustrates the location of the subject property.

### **I. SITE INVENTORY ANALYSIS**

#### **A. Physical Opportunities and Constraints**

Consistent with property in the region, the project is relatively flat with elevations ranging from approximately twenty-two (22) feet on the west to sixteen (16) feet on the east. The site is densely vegetated on the south side of the tract and cleared on the north side of the tract. Existing physical constraints affecting development of the property include the following:

- A drainage ditch that directly outfalls into Moses Bayou, and a twenty (20) foot wide sewer and water easement lies along the south boundary of the property in a west-east direction.
- FM 2004 is adjacent and runs parallel to the western boundary of the project.
- Moses Bayou is adjacent and runs along the north boundary of the property in a west-east direction.

The existing site constraints can be seen on Exhibit B, Project Aerial Map, and Exhibit C, Project Survey included in this document.

#### **B. Surrounding Land Use**

Land uses surrounding the project are dominated by undeveloped property with some single-family residential. The area to the east and north of the project remains largely undeveloped. The area to the south is the former Mall of the Mainland, which is large shopping center with parking and connected shopping centers. The area to the west consists of the subdivision Park Place South, a community of large lot single-family residential homes.

The surrounding land uses can be seen on Exhibit A, Area Location Map located in the Exhibits section of this document.

### **II. PROJECT DESCRIPTION**

#### **A. Land Use**

The project will be comprised of standard single-family residential. The proposed uses are illustrated on Exhibit D, Conceptual Land Use Plan included within this document.

Exhibit D illustrates a collection of individual parcels formed by the various constraints (existing and proposed) associated with the subject property including easements, drainage facilities and a street system. The primary access point to the project will be from FM 2004, via a short west-east boulevard entrance. Exhibit D is preliminary and subject to change, with prior approval from City Planning Board. All lot counts, acreages, and final street and lot configuration may be modified so long as all applicable regulations listed in

the PUD are adhered to.

The standard single-family residential development in the project will consist of lot sizes that range in width from 50 feet to 70 feet and in square footage from  $\pm 6,000$  square feet to over  $\pm 8,000$  square feet. The residents in this area will enjoy the benefit of a neighborhood park and a sidewalk system that provides safe, convenient pedestrian access to the park from the various residential parcels. The individual residential cells will be developed with the varying lot sizes as market conditions dictate and may be moved or adjusted as necessary to allow for flexibility in response to changes in economic and market conditions as well as engineering issues. The project number of residential units for the project is approximately 201 lots.

**Composition of Land Use**

Land Use Category	Acreage	% Of Gross Acreage
<b>CONSTRAINTS</b>		
Texas City Sewer and Water Easement	$\pm 0.4$	0.8%
<b>COMMUNITY ELEMENTS</b>		
Park	$\pm 0.9$	
Open Space and Landscape Reserves	$\pm 1.0$	
<b>SINGLE-FAMILY RESIDENTIAL</b>		
	$\pm 48.3$	95.4%
<b>TOTALS</b>		
	$\pm 50.6$	100%

**Note:** Acreage is approximate and subject to change. Final calculations will be determined at the time of the final plat.

**B. Phasing**

It is anticipated that the residential portion of the project will begin construction approximately 12 months after City Council approval and will be developed in multiple phases over a 2-to-5-year period. The intersection of FM 2004 and the proposed boulevard entrance will serve as the primary access point for the initial phase. Extensive landscaping and project monumentation are planned for this intersection. The boulevard entrance and its related utilities will be constructed in concurrence with the first phase of residential development. The timing of future phases will be dependent upon market driven forces and may vary from the estimates specified in this section.

**C. Street and Circulation System**

The primary access point to the project will be via a west-east boulevard entrance from FM 2004, an existing major roadway in Texas City that is maintained by the Texas Department of Transportation (TxDOT).

**D. Parks and Open Space**

Open space accounts for approximately 3.8% ( $\pm 1.9$  acres) of the gross acreage within the overall project. The parks and open space plan for the project are illustrated on Exhibit D, Conceptual Land Use Plan Exhibit included within this document.

The City of Texas City parks and open space requirement, ordinance 159.031, states that one half acre of park land for every 100 proposed dwelling units be dedicated to the City for the use of parks. Based upon the estimated number of dwelling units, the project will be required to provide  $\pm 1.0$  acres of park land. Compliance with the Parks and Open Space Requirements for land dedication will be accomplished by the

contribution of ±0.9 acres of land designated as a park and +/-0.2 acres of landscaped reserves. The Homeowners Association will be responsible for maintaining the park as well as all landscaped areas and open spaces utilized by the residents as amenity spaces.

The roadway medians and landscape reserves within the project, shall be landscaped, irrigated and maintained by the homeowner’s association that will be created for the project. The park and its’ adjacent areas will be maintained by the homeowner’s association that serves the project. The area adjacent to FM 2004 shall be planted with an appropriate TxDOT wildflower and native grass mix for the region. The area adjacent to the residential area shall be maintained at the same schedule used for the roadway medians and landscape reserves in the project.

**III. ZONING**

**A. Existing and Surrounding Zoning Districts**

The existing zoning district for the subject property is Single Family Residential (A). The surrounding undeveloped properties to the east and north also share the same zoning classification. The zoning district designations for the project as well as the surrounding area are illustrated on Exhibit E, Existing Zoning District Map included within this document.

**B. Proposed Zoning**

Each of the proposed land uses have been assigned zoning district categories consistent with the current Texas City Zoning Ordinance regulations as of the date of this document. Exceptions and/or variances to these standards are noted below. The proposed zoning district for the project will be District I, Planned Unit Development with a mix of zoning district categories that are compatible with the proposed land uses. The proposed zoning district categories incorporate District A, Single Family Residential, and District O, Open Space. The zoning district designations for each parcel within the project are illustrated on Exhibit F, Proposed Zoning District Map included within this document.

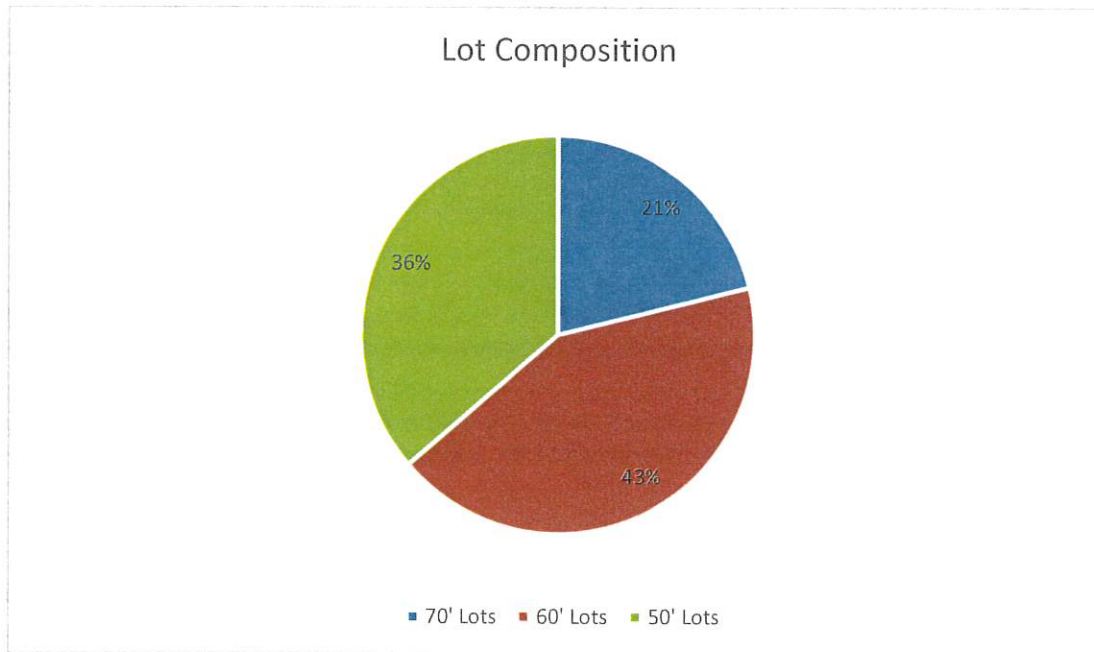
**Composition of Zoning District**

Zoning District Designation	Acreage	% Of Gross Acreage
Single Family Residential (A)	±50.2 acres	100%
<b>TOTAL</b>	<b>±50.2 acres</b>	<b>100%</b>

Zoning Districts shall be regulated based on the total gross acreage of the project. The zoning district and/or land uses may be altered, but will be subject to approval from the Planning and Zoning Commission or City Council. The percentage land use area change is required to ensure the success of the development by maintaining the flexibility to modify land use sizes in response to changes in economic and market conditions. This ability to vary the percentage of land use will allow the project to remain competitive in the real estate market over the life of the project and the ability to make adjustments as necessary to accommodate specific end users in a timely manner.

Land uses may be relocated within the boundaries of the PUD, provided they are in compliance with the acreage restrictions referred to above and otherwise conform to the Texas City regulations for such changes. The Brookwater PUD will comply with the Zoning Ordinance standards as outlined for each zoning district unless otherwise noted. The land uses permitted will be based upon those zoning district categories that are permitted in the Zoning Ordinance unless otherwise noted. The Brookwater PUD will comply with the Subdivision Ordinance unless otherwise noted.

Within the Single Family Residential (A) zoning district, the minimum lot area allowed shall be 6,000 square feet with a total gross average lot area of no less than 6,000 square feet, Furthermore, the width of the lots shall be measured at the front building setback line only instead of the right of way line for all residential lots, regardless of lot size. A minimum of 15% of the lots will be 70' lots, with the remaining composition split between 50' and 60' lots. This is approximate and actual lot mix will be determined at future date, based on City approval.



**Note: Lot composition classification is based on linear front foot.**

#### **IV. UTILITIES**

##### **A. Water Distribution System**

The proposed water distribution system to serve Brookwater will be through connections to existing City water lines within an existing Sewer and Water Easement on the south boundary of the development. The water line within the easement is an 12" line (per the City's GIS map).

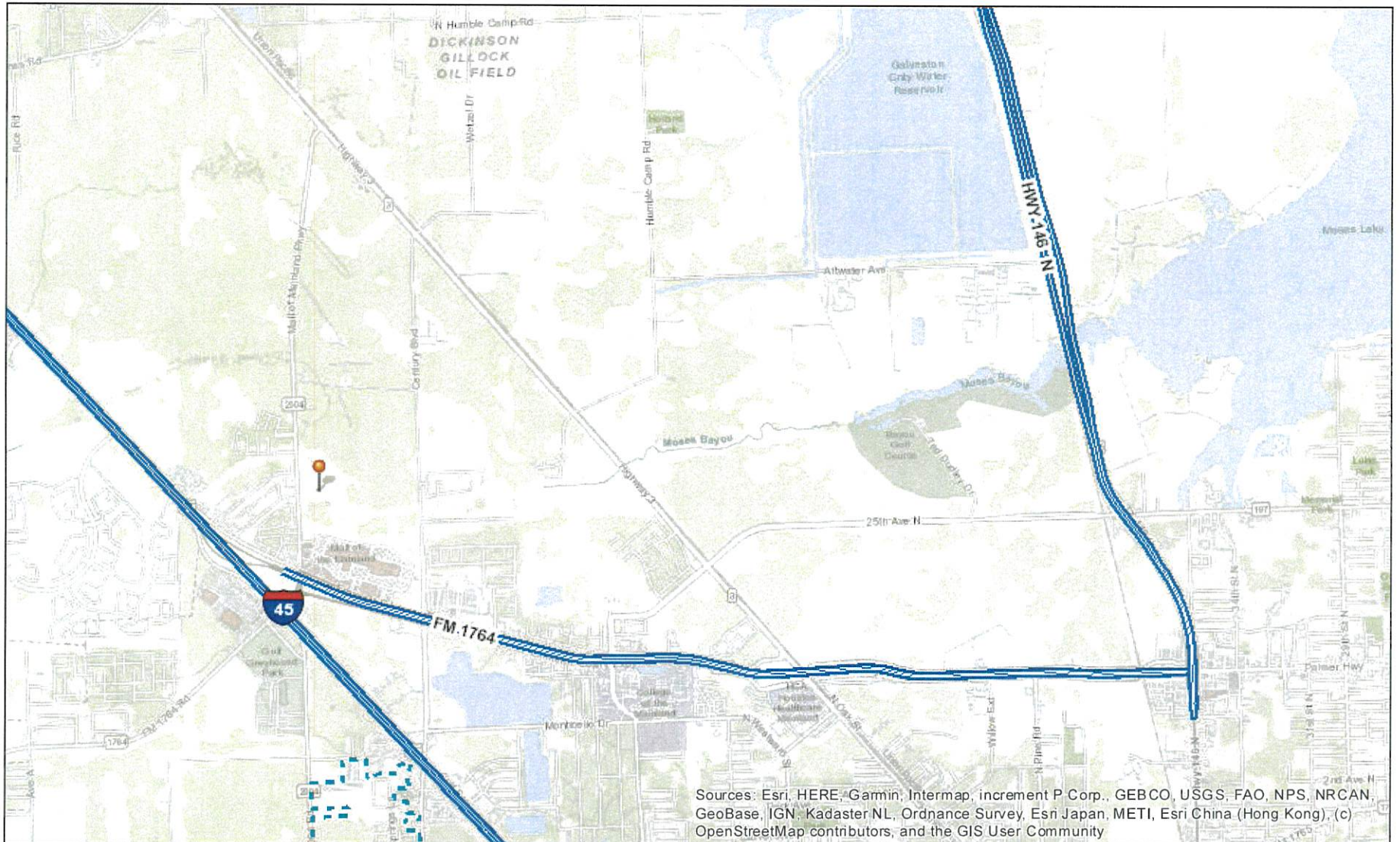
##### **B. Sanitary Sewer Collection System**

The proposed sanitary sewer collection system to serve Brookwater will be through connections to existing City sewer lines within an existing Sewer and Water Easement on the south boundary of the development. The sewer line within the easement is an 24" line (per the City's GIS map).

##### **C. Storm Drainage System**

The proposed storm sewer drainage system would provide for an internal system composed of inlets and pipes that drain to Moses Bayou to the north and the drainage ditch that connects to Moses Bayou on the south.

A drainage memorandum will be submitted to the City and Galveston County Drainage District #2 for approval of flows going to Moses Bayou on the north and the drainage ditch to the south. The memorandum will show that we meet the requirements set by the Drainage District.



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

## Vicinity Map

Print Date: 4/12/2021 3:29:06 PM IDS Engineering Group

1 inch = 4,054 feet



Disclaimer: This web site represents the information that has been made available for the use of this system and does not necessarily include the most complete and/or accurate data. IDS Engineering Group does not warrant its accuracy or completeness. Verification should be done as necessary.

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## Brookwater Aerial Exhibit

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1 inch = 507 feet

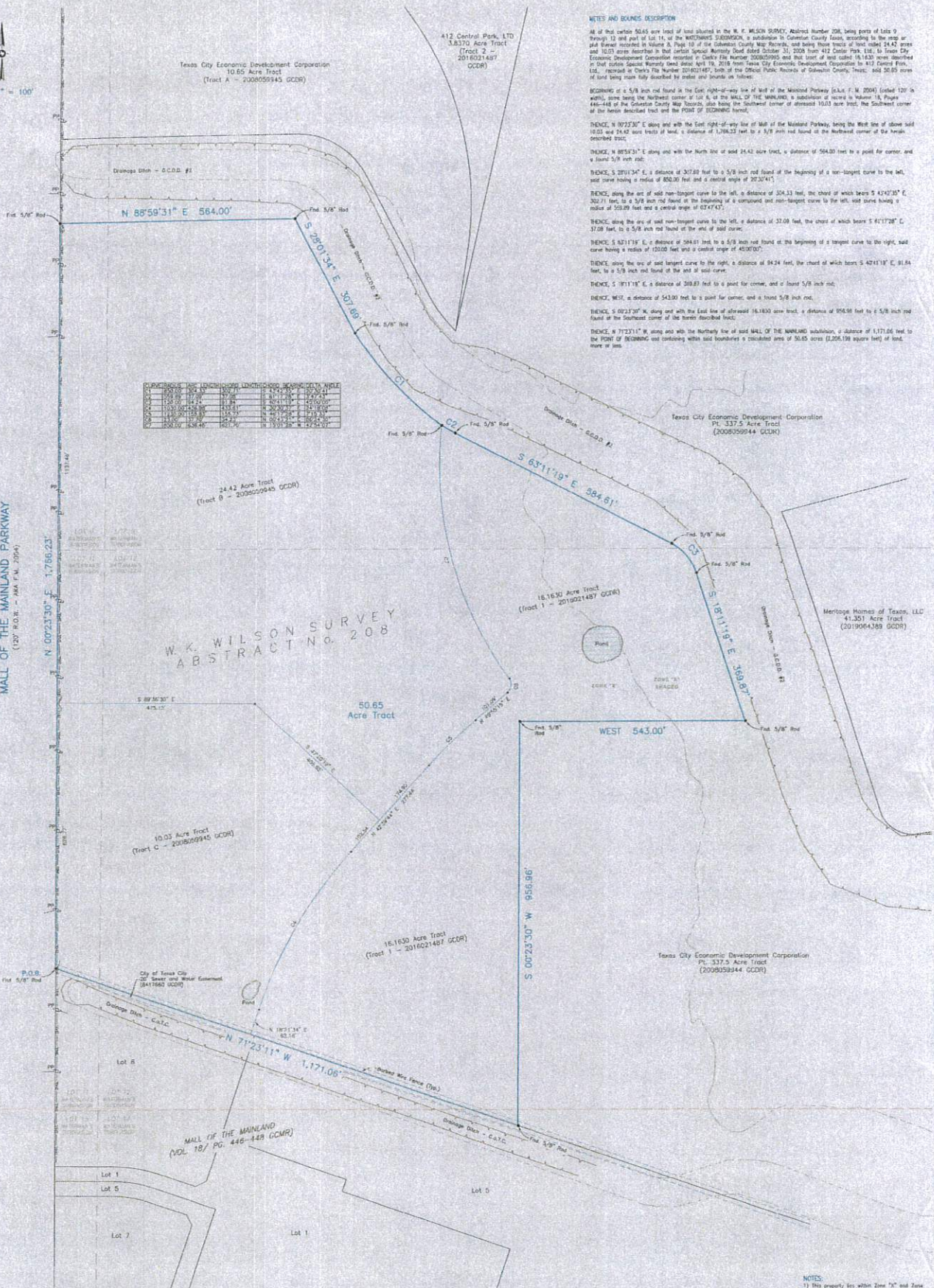


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SCALE 1" = 100'

MALL OF THE MAINLAND PARKWAY  
(120' R.O.W. - A.M.A.P.M. 2004)



**NOTES AND BOUNDARY DESCRIPTION**

All of this certain 50.65 acre tract of land situated in the W. K. WILSON SURVEY, Abstract Number 208, being parts of Lots 9 through 12 and part of Lot 14, of the WATERMAN'S SUBDIVISION, a subdivision in Galveston County, Texas, according to the map or plat thereof recorded in Volume 8, Page 10 of the Galveston County Map Records, and being those tracts of land called 54.42 acres and 10.03 acres described in that certain Special Warranty Deed dated October 31, 2008 from 412 Cedar Park, Ltd. to Texas City Economic Development Corporation recorded in County Map Records 180200905 and that tract of land called 16.1630 acres described in that certain Special Warranty Deed dated April 19, 2010 from Texas City Economic Development Corporation to 412 Cedar Park, Ltd. recorded in County Map Records 2010011407, both of the Official Public Records of Galveston County, Texas; and 50.65 acres of land being more fully described by notes and bounds on file:

BEARING of a 5/8 inch red flag found at the East right-of-way line of Mall of the Mainland Parkway (S.L.S. F.M. 2004) (called 120' in width), same being the Northwest corner of Lot 6, of the MALL OF THE MAINLAND, a subdivision of record in Volume 18, Pages 446-448 of the Galveston County Map Records, also being the Southeast corner of aforesaid 10.03 acre tract, the Southwest corner of the herein described tract and the POINT OF BEGINNING hereof.

THENCE, N 07°25'30" E along with the East right-of-way line of Mall of the Mainland Parkway, being the West line of above said 10.03 and 24.42 acre tracts of land, a distance of 1,098.33 feet to a 5/8 inch red flag found at the Northeast corner of the herein described tract.

THENCE, N 08°53'31" E along with the North line of said 24.42 acre tract, a distance of 564.20 feet to a point for corner, and a found 5/8 inch red flag.

THENCE, S 20°01'34" E, a distance of 307.89 feet to a 5/8 inch red flag found at the beginning of a non-tangent curve to the left, said curve having a radius of 850.00 feet and a central angle of 20°32'41".

THENCE, along the arc of said non-tangent curve to the left, a distance of 304.33 feet, the chord of which bears S 42°04'30" E, 302.71 feet, to a 5/8 inch red flag found at the beginning of a compound and non-tangent curve to the left, said curve having a radius of 550.00 feet and a central angle of 62°14'47".

THENCE, along the arc of said non-tangent curve to the left, a distance of 33.08 feet, the chord of which bears S 41°17'28" E, 37.08 feet, to a 5/8 inch red flag found at the end of said curve.

THENCE, S 63°11'19" E, a distance of 384.61 feet to a 5/8 inch red flag found at the beginning of a tangent curve to the right, said curve having a radius of 150.00 feet and a central angle of 40°07'00".

THENCE, along the arc of said tangent curve to the right, a distance of 84.24 feet, the chord of which bears S 42°41'13" E, 81.84 feet, to a 5/8 inch red flag found at the end of said curve.

THENCE, S 11°11'19" E, a distance of 369.87 feet to a point for corner, and a found 5/8 inch red flag.

THENCE, WEST, a distance of 543.00 feet to a point for corner, and a found 5/8 inch red flag.

THENCE, S 00°23'30" W, along with the East line of aforesaid 16.1630 acre tract, a distance of 956.96 feet to a 5/8 inch red flag found at the Southeast corner of the herein described tract.

THENCE, N 71°23'11" W, along and with the Northwesterly line of said MALL OF THE MAINLAND, a distance of 1,171.08 feet to the POINT OF BEGINNING and containing within said boundaries a residential area of 36.45 acres (3,208,198 square feet) of land, more or less.


**NOTES:**

- 1) This property lies within Zone "X" and Zone "C" shaded, per FRM Panel 48157010405, dated August 15, 2010, as established by the Federal Emergency Management Agency.
- 2) This property is subject to any restrictions of record as established by the City, Field, or Subdivision Covenants and restrictions, may also be subject to easements and setbacks for utility services and power lines as individually recorded or established by SOA (see your power company).
- 3) Bearings based on Measurement of East, R.O.W. set at F.M. 2004.
- 4) Fidelity National Title Insurance Company (agent), Strategic Management Agency, LLC of No. 04-7855-107653200087-5A Issue Date: July 26, 2009
- 5) Exceptions from Coverage: Item 10c. Serviced well subject to an unrecorded agreement/assignment granted to White Oil Pipe Line Company recorded in Volume 221, Page 499 of the Official Records of Galveston County, Texas; Item 10d. Serviced tract subject to pipeline Hamble Pipe Line Company, by instrument(s) recorded in Volume 537, Page 211 of the Official Records of Galveston County, Texas.

Survey of a 50.65 acre tract of land situated in the W. K. WILSON SURVEY, Abstract Number 208 in Galveston County, Texas, being parts of Lots 9 through 12 and part of Lot 14, of WATERMAN'S SUBDIVISION, a subdivision in Galveston County, Texas, according to the map or plat thereof recorded in Volume 8, Page 10, of the Map Records in the Office of the County Clerk of Galveston County, Texas, and tract being more particularly described by notes and bounds hereon.

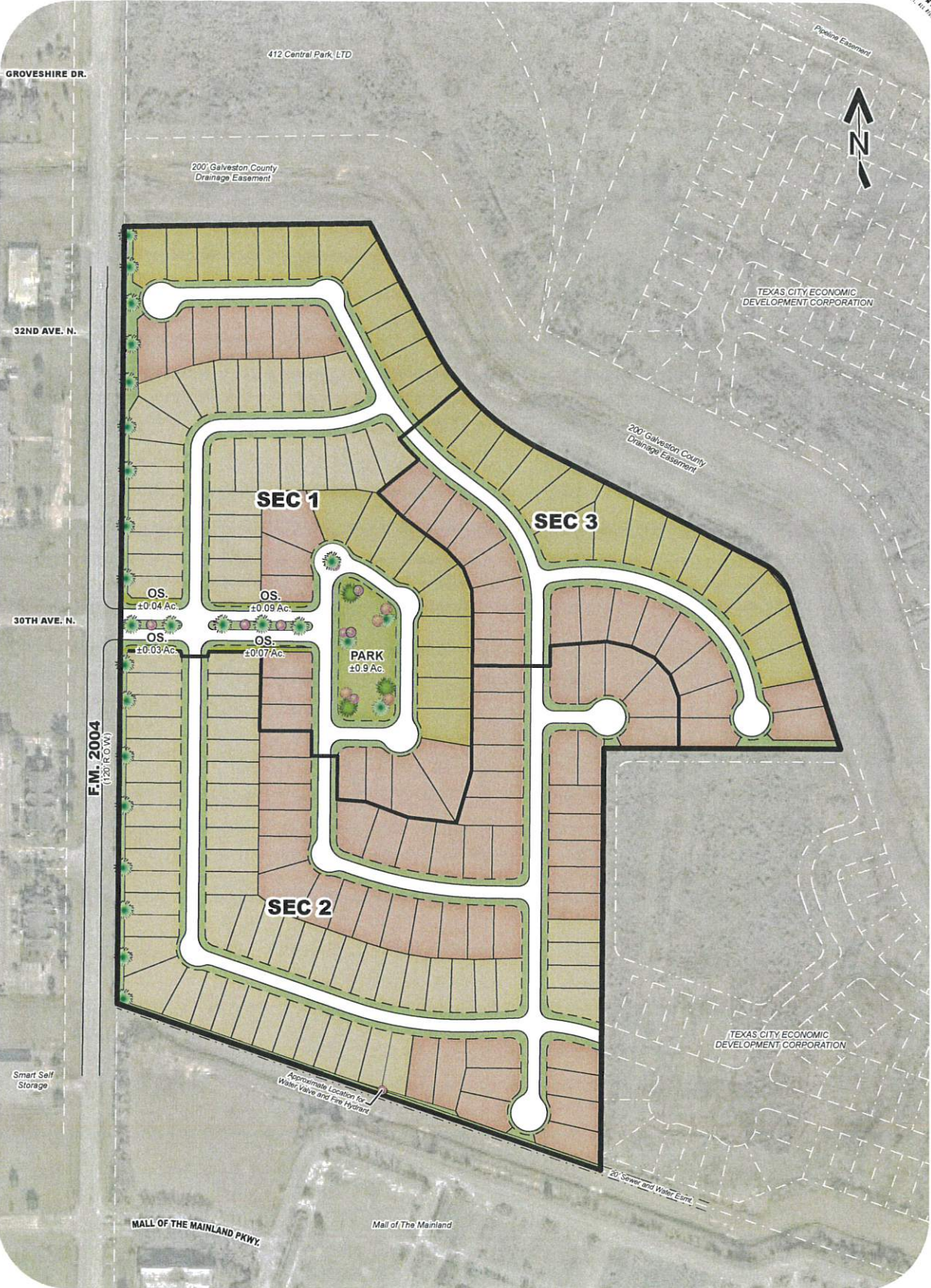
I hereby certify that on the above date, the herein described property, together with improvements located thereon, was surveyed by the general and under my direction, and that this map, together with dimensions as shown hereon, accurately represents the facts as found on the ground this date.

*Stephen C. Bliskey*  
 Stephen C. Bliskey  
 Registered Professional  
 Land Surveyor No. 53856

  
 SURVEY DATE: June 19, 2020  
 FILE NO.: 7548-2000-0014-05  
 BOOK: 180  
 PAGE: 23

**High Tide**  
 Land Surveying, L.L.C.

LEAGUE CITY OFFICE  
 Registration No. 1118058  
 10215 6th Street  
 www.hightidesurveying.com  
 170 INDUSTRIAL BLVD. SUITE 100 LEAGUE CITY, TEXAS 77583  
 281-471-0211 (2014) / 281-471-0212



**LOT SUMMARY (APPROXIMATE)**

	TYP. 50'x120'	84 LOTS	42 %
	TYP. 60'x120'	82 LOTS	41 %
	TYP. 70'x120'	35 LOTS	17 %

**TOTAL 201 LOTS**

\* LOT COUNTS, PERCENTAGES AND LOT SIZES ARE APPROXIMATE.  
 FINAL CALCULATIONS WILL BE DETERMINED ON FINAL PLAT.

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a schematic development plan for  
**BROOKWATER**  
 ± 50.6 ACRES OF LAND  
 prepared for  
**BINNACLE DEVELOPMENT**



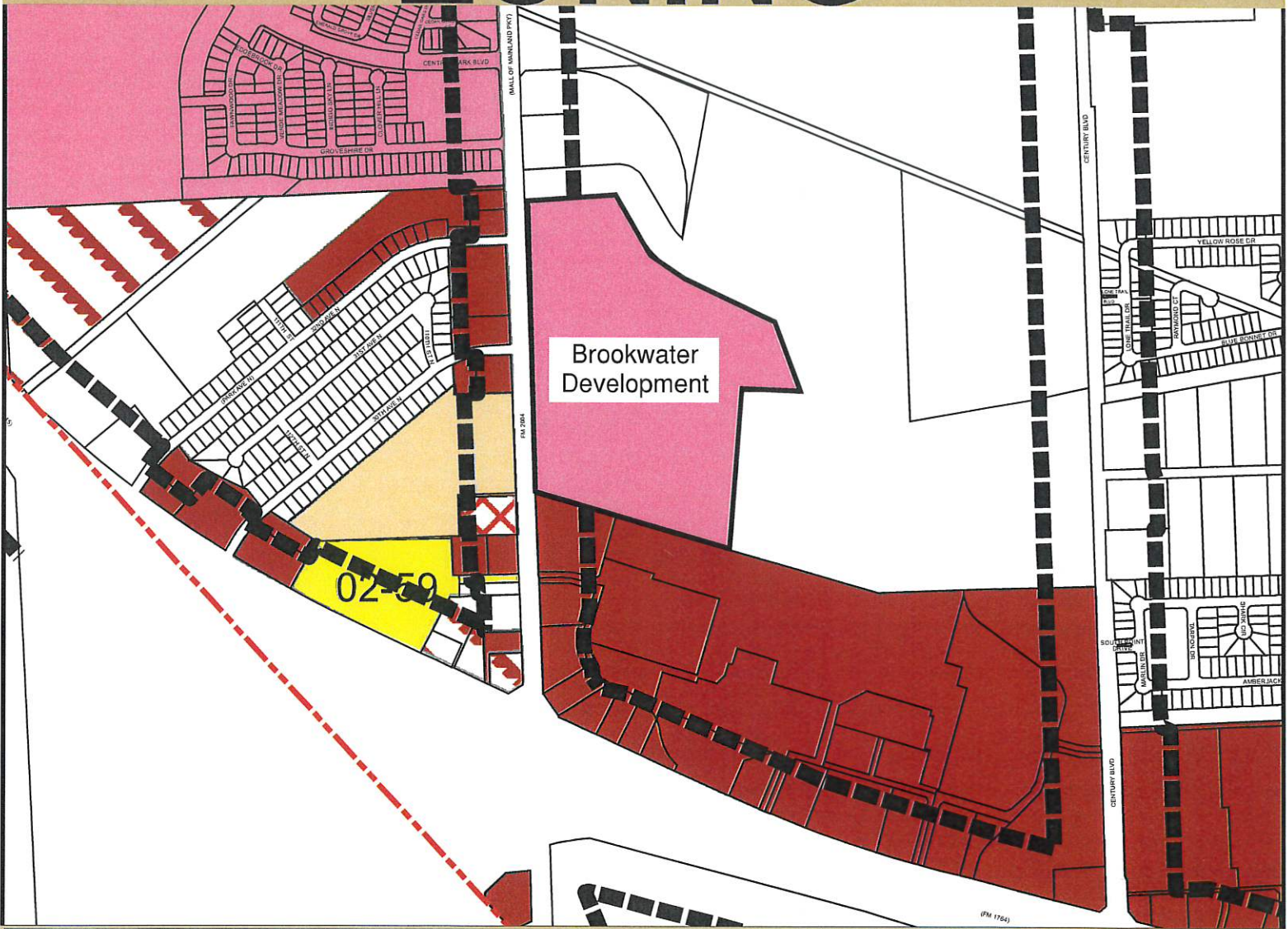
24275 Katy Freeway, Ste. 200  
 Katy, Texas 77494  
 Tel: 281-810-1422



MTA-1-586  
 JUNE 09, 2021

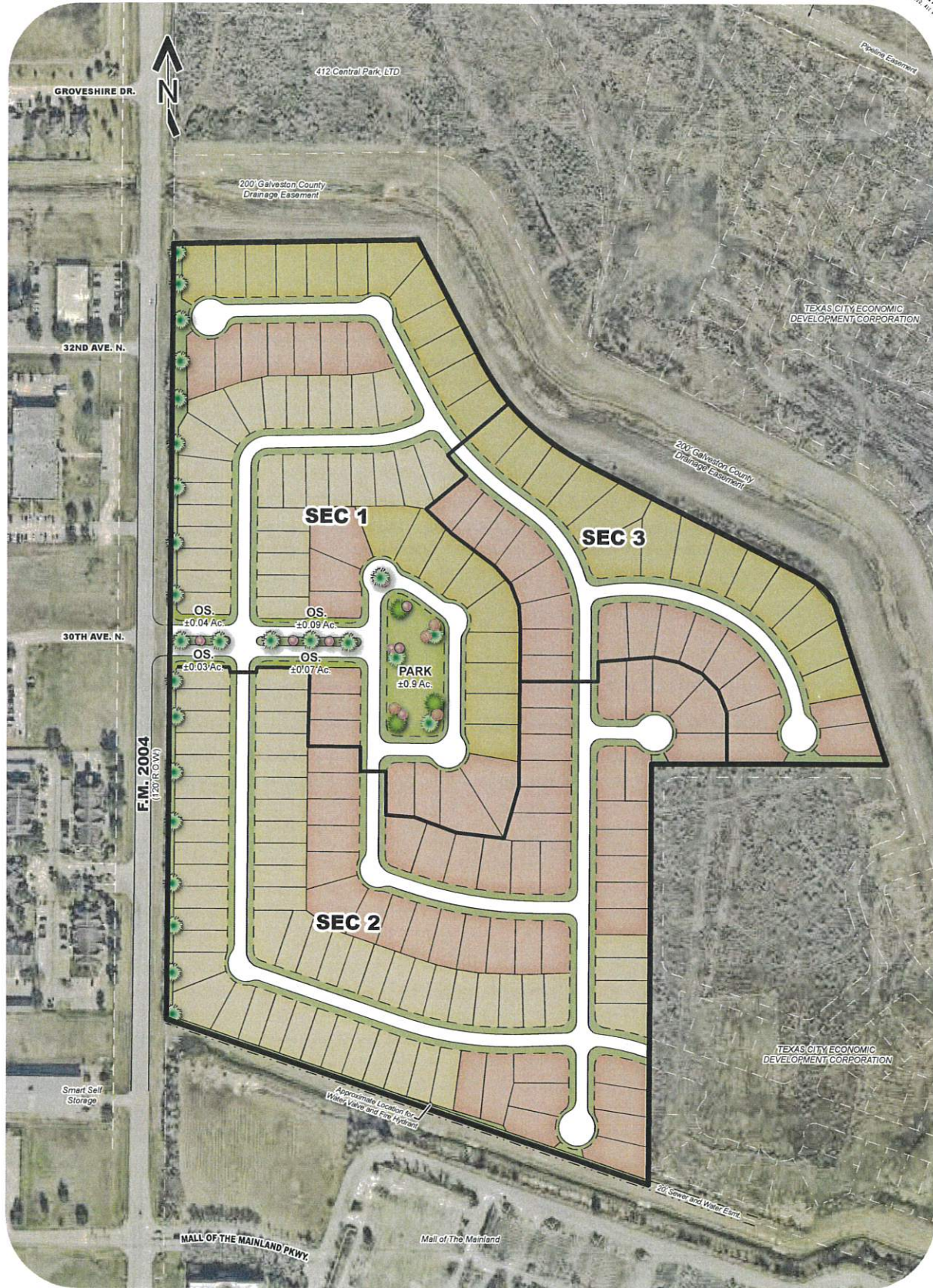


# CITY OF TEXAS CITY ZONING



## Legend

<b>ZONING</b>	B	D-1	E-3	G	O	PUD
<b>ZONE</b>	C	E	E-4	G-2	O-P	S-P
A-1	C-1	E-1	F	H	P-I	I.B.D
A-2	D	E-2	F-1	I	CIMU	L.G.D



**LOT SUMMARY**

50'x120'	84 LOTS	42%
60'x120'	82 LOTS	41%
70'x120'	35 LOTS	17%

**TOTAL 201 LOTS**

**PARKS / OPENSACE**

Park	±0.9 Ac
OpenSpace	±.19 Ac

**TOTAL ±1.09 Ac**

a master plan for  
**BROOKWATER**

**±50.6 ACRES OF LAND**

prepared for  
**BINNACLE DEVELOPMENT**



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MTA-1-586  
 MARCH 12, 2021

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30TH AVE. N.

F.M. 2004  
(120' R.O.W.)

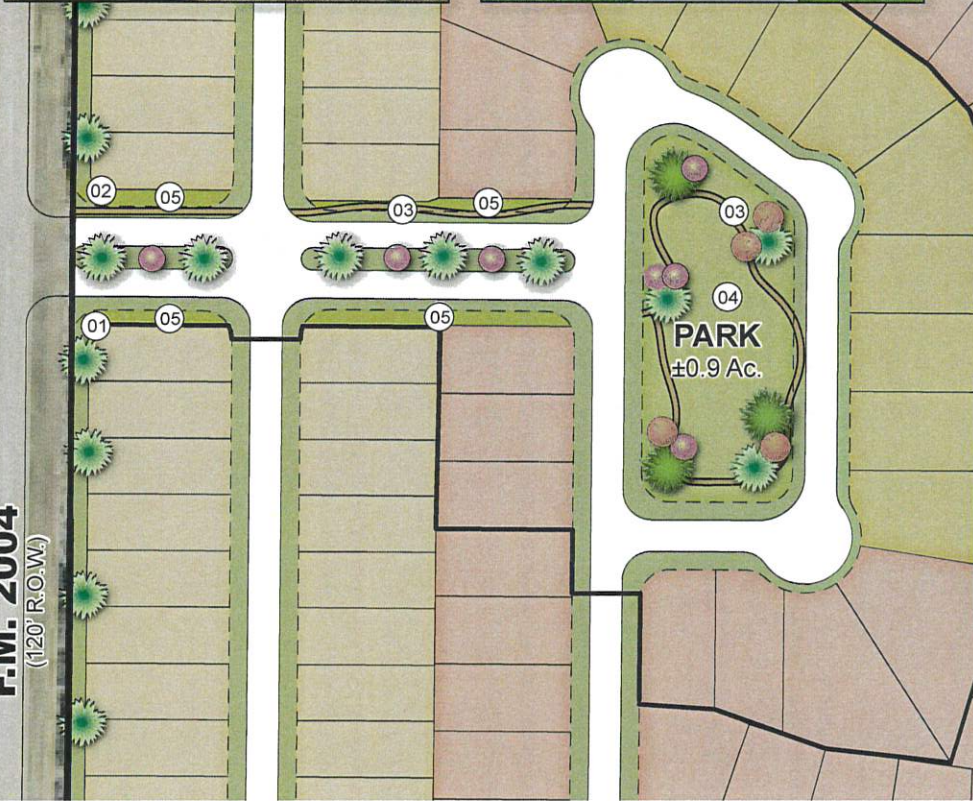


**LEGEND**

- 01 Main Entry Monument
- 02 Column with Logo Element & Decorative Iron Fencing
- 03 Sidewalk; Min 5 ft width
- 04 Picnic Feature, Splash Pad & Playground
- 05 Open Space

**Notes:**

- 1) Walkway layout locations are approximate and may vary due to field conditions and/or design changes
- 2) Walkways are constructed in conjunction with adjacent roadways



a park plan for  
**BROOKWATER**  
± 50.6 ACRES OF LAND  
prepared for  
**BINNACLE DEVELOPMENT**

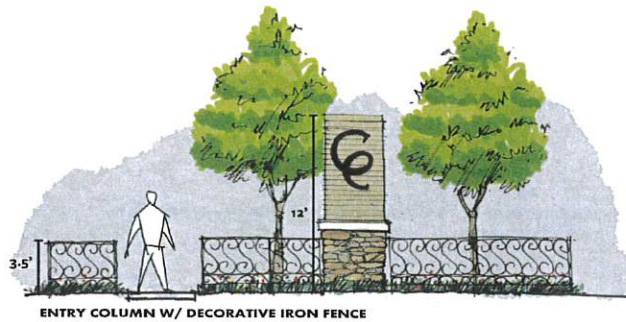


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MARCH 12, 2021

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ENTRY COLUMN W/ DECORATIVE IRON FENCE



ENTRY MONUMENT



**BROOKWATER | ENTRY CONCEPT - ELEVATION**

Texas City, TX | Prepared For: Tojias Engineering Management | June 5, 2019



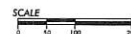
**PROPOSED DEVELOPER MASONRY FENCE\***

\*Developer Masonry Fence to be installed along Central Park West Blvd., along FM 2004 and along additional land within the boundary of the Gateway Overlay District boundary. Color, Pattern, and Size of the fence may vary.

a park plan for  
**BROOKWATER**  
 ± 50.6 ACRES OF LAND  
 prepared for  
**BINNACLE DEVELOPMENT**



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 Tel: 281-810-1422



MTA-I-586  
 MARCH 12, 2021

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Reviewed by:  
JK 8-20-21  
no objections

## **DEVELOPMENT AGREEMENT**

This DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into as of June, 2021, by and between THE CITY OF TEXAS CITY, TEXAS, a municipal corporation and home-rule city of the State of Texas (the "City"), and TEXAS CITY 51, LLC, a Texas limited liability company (the "Developer").

### **ARTICLE I. RECITALS:**

1.01 Developer intends to acquire an approximately 51-acre tract of real property located in Galveston County, Texas, more fully described on Exhibit "A" attached hereto and incorporated herein (the "Property"), and the City will approve its application for a planned unit development (the "PUD") for the Property attached on Exhibit "B".

1.02 Developer intends to utilize the Property to develop approximately 201 single-family residential lots in accordance with PUD, the zoning code and all applicable City codes and ordinances.

1.03 The City has determined that agreeing to the terms set forth in this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business in the City.

1.04 The terms "City", "Developer", "District", "PUD", and "Property" shall have the meanings provided for them in the Recitals herein above. Except as may be otherwise defined, or the context clearly requires otherwise, capitalized terms and phrases used in the Agreement shall have the meanings as follows:

### **ARTICLE II. AGREEMENT:**

NOW, THEREFORE, for good and valuable consideration and the mutual covenants set forth herein, Developer and the City contract and hereby agree as follows:

2.01 Access. The development of the Property requires access from FM 2004. Developer agrees to construct the entrance to the Property.

2.02 PUD Creation and Galveston County Municipal Utility District No. 79 Annexation. Developer will petition the City to create a PUD and annexation into Galveston County Municipal Utility District No 79 (the "MUD"). The City will, within 30 days after such petition, create said PUD, will consent to the annexation of the Property into said PUD, consent to annexation into MUD, and will execute all such documentation and take all such action as may be reasonably requested by Developer, PUD, or MUD in connection therewith. The use and development of the Property before and after annexation shall conform with the PUD and to development standards reasonably necessary to Developer.

2.03 Infrastructure. The City will reserve sufficient utility capacity to serve all the single-family residences constructed within the PUD. Upon completion of construction of the utilities

and streets (the “Infrastructure”) per City standards, the City will accept, own, and maintain the Infrastructure.

### **ARTICLE III. OBLIGATIONS OF THE DEVELOPER**

3.01 Maintenance of certain improvements. The Developer agrees to form one or more property owners’ association(s), which shall have as one of their stated purposes to permanently maintain through assessments all lakes, ponds, and other detention facilities, parks and recreation facilities, landscaping, and monumentation developed as part of the Project (the “Non-City Improvements”). The Developer acknowledges and agrees that the Non-City Improvements will be maintained by the by the property owners' association(s) serving the Property, as appropriate, and the City shall never have the responsibility to own, operate or maintain the Non-City Improvements.

3.02 Dry Utilities. The Developer agrees that all dry utilities, such as electric, gas, telephone, and cable, shall be placed underground throughout the Property; provided, however, that “three-phase” power lines may be elevated and may be placed in easements along the perimeter of the Property to serve the Property. Unless otherwise approved by the City and the Developer and unless no reasonable alternative is available to the power provider for the location of said poles, no elevated three-phase power or larger poles may be placed along any major roads or highways. The Developer agrees that the public street light poles throughout the Project shall be galvanized metal or concrete; provided, however, the Developer may use light poles made out of material that is of a higher quality than concrete, as reasonably determined by the City. Decorative and specialty light poles are acceptable on private property and along private streets; provided, however, that the City shall never be responsible for maintenance of such light poles.

3.03 Development Covenants. The Developer agrees to adopt deed restrictions and other restrictive covenants, and promulgate the Developer's guidelines regarding development standards, consistent with the PUD, the Zoning Code and any relevant City ordinances and regulations. The Developer will provide copies of its residential deed restrictions and residential development covenants to the City for review and comment by the Mayor or his designee no later than prior to the approval of the first residential development covenants for review and comment no later than prior to the approval of PUD. The Developer agrees to require Sub- developers to abide by the Developer's development standards and provide for enforcement mechanisms for restrictive covenants.

3.04 Notice. Developer agrees to provide notice to the Mayor or his designee of any material proposed changes, amendments or revisions to the PUD, the property, or the Project prior to taking any action on such changes.

3.05 Building Regulations. A residential structure shall consist of a minimum of 60% brick, stone, or masonry. For residential structures adjacent to FM 2004 and within 300 feet of FM 2004, 100% of the total exterior walls which may be seen from any public thoroughfare shall be constructed of brick, stone or masonry.

**ARTICLE IV.  
TERM AND DEFAULT**

4.01 Term. This agreement shall be in effect as of the date set forth on the first page, hereof, and shall terminate 50 years thereafter, unless terminated earlier as specifically provided herein.

4.02 Default.

- (a) A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.
- (b) Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged of the failure and shall demand performance. No breach of the Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within 30 days of such notice. Upon a breach of this Agreement, the non-defaulting Party shall be entitled to specific performance. Regardless of any other provision, neither Party shall be entitled to recover money damages for breach of this Agreement or a tort related to this Agreement. Except as otherwise set forth herein, no action taken by a party pursuant to the provisions of this Section pursuant to the provisions of any other section of this Agreement shall be deemed to constitute an election of remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party or in equity. Each of the parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other party.

**ARTICLE V.  
MISCELLANEOUS PROVISIONS**

5.01 Approvals and consents. Approvals or consents required or permitted to be given under this Agreement shall be evidenced by an ordinance, resolution or order adopted by the governing body of the appropriate party or by a certificate executed by a person, firm or entity previously authorized to give such approval or consent on behalf of the party. Approvals and consents shall be effective without regard to whether given before or after the time required for giving such approvals or consents.

5.02 Address and notice. Any notice to be given under this Agreement shall be given in writing, addressed to the party to be notified as set forth below, and may be given either by depositing the notice in the United States mail postage prepaid, registered or certified mail, with return receipt requested; by messenger delivery; or by telecopy. Notice deposited by mail shall be effective three days after posting. Notice given in any other manner shall be effective upon receipt by the party to be notified. For purposes of notice, the addresses of the parties shall be as follows:

If to the City, to:

City Engineer - City of Texas City  
7800 Emmett F. Lowry Expy  
Texas City, Texas 77591  
Attn: Doug Kneupper  
Email: dkneupper@texascitytx.gov

With a copy to:

City Attorney - City of Texas City  
928 5<sup>th</sup> Ave. N.  
Texas City, Texas 77590  
Attn: Kyle Dickson  
Email: \_\_\_\_\_

If to the Developer, to:

Texas City 51, LLC  
11529 Wincrest  
Dickinson, TX 77539 Attn: Jerry LeBlanc, Jr.  
Email: jleblanc@binnacledevelopment.com

With a copy to:

Hoover Slovacek LLP  
5151 Westheimer, Suite 1200  
Houston, Texas 77056  
Attn: Greg A. Savage  
Email: savage@hooverslovacek.com

The parties shall have the right from time to time to change their respective addressees by giving at least 10 days' written notice of such change to the other party.

5.03 Assignment. This Agreement is assignable. If all or any portion of the Property is transferred, sold or conveyed, the Developer shall give notice immediately to the City of the name, address, phone number and contact person of the person or entity acquiring an interest in the

Property. This Agreement shall run with the land and shall be binding on and inure to the benefit of the Developer's successors and assigns.

5.04 Nonwaiver of Rights. By entering this Agreement, neither Developer nor the City waive any rights granted under any laws, nor do they make any admissions regarding the subject matter of this Agreement. Each party specifically reserves any and all rights to pursue any action or remedy to protect its interests and rights

5.05 Reservation of Rights. All rights, powers, privileges and authority of the parties hereto not restricted or affected by the express terms and provisions hereof are reserved by the parties and, from time to time, may be exercised and enforced by the parties.

5.06 Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Galveston County, Texas.

5.07 Merger. This Agreement embodies the entire understanding between the parties and there are no representations, warranties, or agreements between the parties covering the subject matter of this Agreement.

5.08 Modification; Exhibit. This Agreement shall be subject to change or modification only with the mutual written consent of the City and the Developer. The exhibits attached to this Agreement are incorporated by this reference for all purposes.

5.09 Captions. The captions of each section of this Agreement are inserted solely for convenience and shall never be given effect in construing the duties, obligations or liabilities of the parties hereto or any provisions hereof, or in ascertaining the intent of either party, with respect to the provisions hereof.

5.10 Interpretations. This Agreement and the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.

5.11 Severability. If any provision of this Agreement or the application thereof to any person or circumstances is ever judicially declared invalid, such provision shall be deemed severed from this Agreement and the remaining portions of this Agreement shall remain in effect.

5.12 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 parties.

5.13 Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. Telefaxed or scanned-emailed copies of this signed Agreement shall be binding and effective as an original.

5.14 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.

5.15 Incorporation of Recitals. The Recitals above are incorporated herein as if repeated verbatim.

*- Signature Page to Follow -*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first given above.

**CITY OF TEXAS CITY, TEXAS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TEXAS CITY 51, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A" TO DEVELOPMENT AGREEMENT**

Legal Description

All of that certain 50.65 acre tract of land situated in the **W. K. WILSON SURVEY**, Abstract Number **208**, being parts of Lots 9 through 12 and part of Lot 14, of the **WATERMAN'S SUBDIVISION**, a subdivision in Galveston County Texas, according to the map or plat thereof recorded in Volume 8, Page 10 of the Galveston County Map Records, and being those tracts of land called 24.42 acres and 10.03 acres described in that certain Special Warranty Deed dated October 31, 2008 from 412 Center Park, Ltd., to Texas City Economic Development Corporation recorded in Clerk's File Number 2008059995 and that tract of land called 16.1630 acres described in that certain Special Warranty Deed dated April 19, 2016 from Texas City Economic Development Corporation to 412 Central Park, Ltd., recorded in Clerk's File Number 2016021487, both of the Official Public Records of Galveston County, Texas; said 50.65 acres of land being more fully described by metes and bounds as follows:

**BEGINNING** at a 5/8 inch rod found in the East right-of-way line of Mall of the Mainland Parkway (a.k.a. F. M. 2004) (called 120' in width), same being the Northwest corner of Lot 6, of the **MALL OF THE MAINLAND**, a subdivision of record in Volume 18, Pages 446-448 of the Galveston County Map Records, also being the Southwest corner of aforesaid 10.03 acre tract, the Southwest corner of the herein described tract and the **POINT OF BEGINNING** hereof;

**THENCE**, N 00°23'30" E along and with the East right-of-way line of Mall of the Mainland Parkway, being the West line of above said 10.03 and 24.42 acre tracts of land, a distance of 1,766.23 feet to a 5/8 inch rod found at the Northwest corner of the herein described tract;

**THENCE**, N 88°59'31" E along and with the North line of said 24.42 acre tract, a distance of 564.00 feet to a point for corner, and a found 5/8 inch rod;

**THENCE**, S 28°01'34" E, a distance of 307.69 feet to a 5/8 inch rod found at the beginning of a non-tangent curve to the left, said curve having a radius of 850.00 feet and a central angle of 20°30'41";

**THENCE**, along the arc of said non-tangent curve to the left, a distance of 304.33 feet, the chord of which bears S 43°42'35" E, 302.71 feet, to a 5/8 inch rod found at the beginning of a compound and non-tangent curve to the left, said curve having a radius of 559.89 feet and a central angle of 03°47'43";

**THENCE**, along the arc of said non-tangent curve to the left, a distance of 37.09 feet, the chord of which bears S 61°17'28" E, 37.08 feet, to a 5/8 inch rod found at the end of said curve;

**THENCE**, S 63°11'19" E, a distance of 584.61 feet to a 5/8 inch rod found at the beginning of a tangent curve to the right, said curve having a radius of 120.00 feet and a central angle of 45°00'00";

**THENCE**, along the arc of said tangent curve to the right, a distance of 94.24 feet, the chord of which bears S 40°41'19" E, 91.84 feet, to a 5/8 inch rod found at the end of said curve;

**THENCE**, S 18°11'19" E, a distance of 369.87 feet to a point for corner, and a found 5/8 inch rod;

**THENCE**, WEST, a distance of 543.00 feet to a point for corner, and a found 5/8 inch rod;

**THENCE**, S 00°23'30" W, along and with the East line of aforesaid 16.1630 acre tract, a distance of 956.96 feet to a 5/8 inch rod found at the Southeast corner of the herein described tract;

**THENCE**, N 71°23'11" W, along and with the Northerly line of said **MALL OF THE MAINLAND** subdivision, a distance of 1,171.06 feet to the **POINT OF BEGINNING** and containing within said boundaries a calculated area of 50.65 acres (2,206,199 square feet) of land, more or less.