

STATE OF TEXAS	§	DEVELOPMENT AGREEMENT
	§	
	§	WITH D&M CARMEL CREEK I, LLC.
	§	
COUNTY OF WILLIAMSON	§	REGARDING DEVELOPMENT OF
	§	
	§	HAYBARN LANE AND
	§	
	§	GREEN HAVEN SUBDIVISION

This is a DEVELOPMENT AGREEMENT by and between WILLIAMSON COUNTY, TEXAS ("County") and D&M CARMEL CREEK I, LLC, a Texas limited liability company ("Developer").

WHEREAS, Developer is the owner of that certain tract of land described as the Green Haven Preliminary Subdivision, a 51.297 acre tract, more particularly described by metes and bounds in the Preliminary Plan A described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"), and

WHEREAS, County and Developer desire to cooperate to construct Haybarn Lane in accordance with County regulations as a 70-foot wide collector road through the Property and extending north offsite to County Road 109, a/k/a Limmer Loop; and to allow the County to inspect said road at all pertinent phases; and

WHEREAS, County desires and intends that the development of Haybarn Lane pursuant to this Agreement shall be for the public purpose of developing a public collector road as part of its area Transportation Plan to serve this area of Williamson County and to eventually provide transportation mobility from County Road 109/Limmer Loop to Highway 79; and

WHEREAS, County and Developer agree that Developer shall pay for all costs of the development of Haybarn Lane through the Property, as depicted in Exhibit A, and that County and Developer shall share in the costs of Property acquisition and the road

construction from the Property's north boundary line to County Road 109 in accordance with the terms of this Agreement; and

WHEREAS, County and Developer desire to reach an agreement regarding the approval for filing of the proposed Plat A ("Preliminary Plan A") or Plat B ("Preliminary Plan B") of the proposed GREEN HAVEN SUBDIVISION in accordance with the provisions of this Development Agreement.

NOW THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the County and Developer hereby agree as follows:

**A. PURPOSE**

The purpose of this Agreement is (1) to provide for the development of Haybarn Lane as a public arterial/collector road through the Property and from the north boundary line of the Property to County Road 109 as part of the County's transportation plan for this area and for the public purpose of promoting transportation mobility for this part of Williamson County(2) provide for an agreement between County and Developer for sharing of costs on the property acquisition and road construction from the Property's north boundary line to County Road 109; (3) provide for an understanding and agreement regarding the approval for filing of Plats A (Preliminary Plan A) or B (Preliminary Plan B).

**B. OBLIGATIONS, TERMS AND CONDITIONS**

1. The Project is herein defined as the construction of approximately 3100 lineal feet of two-lane, 22-foot wide pavement with 6-foot paved shoulders in a 70-foot right-of-way in accordance with County regulations/specifications, through the Property and from the north boundary line of the Property to County Road 109 and the acquisition of necessary right-of-way for that part of the planned road from the north boundary line of the Property to County Road 109.

2. The Project Cost is herein defined as right-of-way acquisition and all costs of construction, including material, labor, grading, paving, drainage, utility relocation and other indirect costs related to the acquisition of right-of-way for the road, including screening fencing and landscaping.

3. Developer agrees to pay all Project Costs for the development of Haybarn Lane through the Property as depicted in Exhibit A.

4. Developer agrees to pay fifty-percent (50%) of the costs of the property acquisition and road construction (Project Costs) from the Property's north boundary line

to County Road 109, up to a maximum amount of two-hundred twenty-five thousand dollars (\$225,000.00). County shall pay fifty-percent (50%) of such Project Costs until the point in time, if any, that Developer has paid Developer's maximum payment obligation of \$225,000.00; and then after that point, County shall pay one hundred percent (100%) of all such Project Costs relative to the project from the Property's north boundary line to County Road 109,.

5. The Developer will comply with any and all requirements of Chapters 232 and 262 of the Local Government Code, to the extent applicable.

6. (A) Following execution of this Agreement, the County shall post an item on the next available Commissioner's Court agenda to consider approval of Preliminary Plan A (Plat A-Exhibit A to this Agreement) , and the previously submitted Plat B (Preliminary Plan B-Exhibit B to this Agreement) shall not be approved and will be expressly denied by Commissioner's Court Order.

(B) In the event that the County's acquisition of right-of-way, by purchase or condemnation, for the development of Haybarn Lane, as described in this Agreement (from the Property's north boundary line to County Road 109) is unsuccessful and the County's condemnation action is legally dismissed (with prejudice) for any reason, or for any other reason County has failed to acquire the Haybarn Lane right-of-way prior to July 1, 2010, then and in that event, County agrees to approve Preliminary Plan B-Exhibit Band to revoke the approved Preliminary Plan A-Exhibit A at the next available Commissioner's Court meeting for which an agenda item can be legally posted after July 1, 2010.

7. Developer shall initially deposit in the name of Williamson County the amount of twenty-five thousand dollars (\$25,000.00) in a Williamson County bank mutually approved by the parties within fifteen (15) business days of the execution of this Agreement. County shall be authorized to draw on this account and shall draw on this account for Developer's share of Project Costs for the acquisition of Haybarn Lane right-of-way and construction of Haybarn Lane from the north boundary line of the property to County Road 109. Following acquisition of the right-of-way for Haybarn Lane from the north boundary line of the property to County Road 109 by the County, and within 15 days written notice to Developer that the County has given its general contractor authorization to proceed with construction of Haybarn Lane, Developer shall deposit the remaining two hundred thousand dollars (\$200,000.00) in the aforescribed Williamson County bank. County shall be authorized to draw on this account and shall draw on this account for Developer's share of the Project Costs for any right-of-way acquisition costs and construction costs of the Haybarn Lane road improvements, as provided in this agreement. County shall furnish Developer supporting documentation for each withdrawal(s).

#### **C. MISCELLANEOUS PROVISIONS**

1. Actions Performable. The County and the Developer agree that all actions to be performed under this Agreement are performable in Williamson County, Texas.

2. Governing Law. The County and Developer agree that this Agreement has been made under the laws of the State of Texas in effect on this date, and that any interpretation of this Agreement at a future date shall be made under the laws of the State of Texas.

3. Severability. If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

4. Complete Agreement. This Agreement represents a complete agreement of the parties and supersedes all prior written and oral matters related to this agreement. Any amendment of this Agreement must be in writing and signed by all parties.

5. Exhibits. All exhibits attached to this Agreement are incorporated by reference and expressly made part of this Agreement as if copied verbatim.

6. Notice. All notices; requests or other communications required or permitted by this Agreement shall be in writing and shall be sent by (1) telecopy, with the original delivered by hand or overnight carrier, (ii) by overnight courier or hand delivery, or (iii) certified mail, postage prepaid, return receipt requested, and addressed to the parties at the following addresses:

County:

Dan A. Gattis, Williamson County Judge  
710 Main Street, Suite 101  
Georgetown, TX 78626

Developer:

Michael Wiener  
118 South Beverly Drive, Suite 215  
Beverly Hills, California 90212

7. Force Majeure. Developer and the County agree that the obligations of each party shall be subject to force majeure events such as natural calamity, fire or strike.

8. Assignment. This Agreement may be assigned by the Developer only with the prior written approval of the County.

9. Sign License. County agrees to license approximately 3000 square feet of Haybarn Lane right-of-way at the intersection of Haybarn Lane and County Road 109 to Developer on terms customary to such agreements in Williamson County Texas for residential subdivision sign monumentation identifying the Green Haven residential subdivision project. The square feet of the area to be licensed shall be adjusted as deemed necessary by the County for sight distance, drainage or other related considerations.

10. Signature Warranty Clause. The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the County and Developer, respectively.

SIGNED as of this 15<sup>th</sup> day of December, 2009.

**WILLIAMSON COUNTY**

BY: \_\_\_\_\_

DAN A. GATTIS, County Judge

**D&M CARMEL CREEK I, LLC**

BY: \_\_\_\_\_

MICHAEL WIENER  
Chief Executive/Manager

**STATE OF TEXAS**

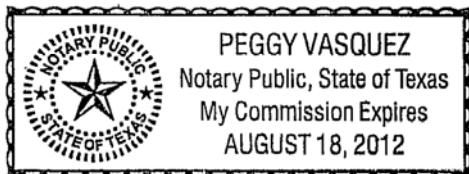
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**COUNTY OF WILLIAMSON**

**ACKNOWLEDGMENT**

This instrument was acknowledged before me on this the 15<sup>th</sup> day of December, 2009, by Dan A. Gattis, a person known to me, in his capacity as County Judge of Williamson County.

\_\_\_\_\_  
Notary Public, State of Texas



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On 12/10/09 before me, Sheedeh Malekpour - a Notary Public

personally appeared Michael Wiener



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature Sheedeh Malekpour

Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

**ACKNOWLEDGMENT**

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by Michael Wiener as Chief Executive/Manager of D&M CARMEL CREEK I, LLC.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_





STATE OF TEXAS  
COUNTY OF WILLIAMSON  
I, the undersigned, being a duly qualified and licensed Surveyor in and for the County of Williamson, State of Texas, do hereby certify that the foregoing is a true and correct copy of the original of the same as the same appears in the records of the County Clerk of Williamson County, Texas.

DAVIDSON & ASSOCIATES, INC.  
Surveyors  
1101 North Loop West  
Suite 1100  
Dallas, Texas 75208  
(214) 750-1000



NOTICE TO THE PUBLIC  
The undersigned, being a duly qualified and licensed Surveyor in and for the County of Williamson, State of Texas, do hereby certify that the foregoing is a true and correct copy of the original of the same as the same appears in the records of the County Clerk of Williamson County, Texas.

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