

STATE OF TEXAS

§
§
§
§
§

COUNTY OF WILLIAMSON

AMENDED DEVELOPMENT AGREEMENT /DEVELOPER PARTICIPATION
AGREEMENT WITH D&M CARMEL CREEK I, LLC. REGARDING
DEVELOPMENT OF HAYBARN LANE AND GREEN HAVEN SUBDIVISION

This is an AMENDED DEVELOPMENT AGREEMENT / DEVELOPER PARTICIPATION 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 pursuant to Section 232.105 of the Texas Local Government Code that Developer shall 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 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 the road construction from the Property's north boundary line to County Road 109 in accordance with the terms of this Agreement;

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; and

WHEREAS, County and Developer previously entered into a Development Agreement regarding the matters described herein (the "original Development Agreement" or "original Agreement") on December 15, 2009 and intend that this Agreement amend and supplant that original 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) to provide for an agreement between County and Developer for sharing of costs of road construction from the Property's north boundary line to County Road 109; and (3) to 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 and the construction of drainage culverts and underground and/or overhead utilities in said right-of-way (limited to necessary utility relocation, without betterment), 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 all costs related to construction of the **Project**, including without limitation material, labor, grading, paving, drainage, utility relocation (limited to necessary utility relocation, without betterment), bonds, engineering, construction management, and other indirect costs related to the acquisition of right-of-way for the road, including screening fencing and landscaping.

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

4. Developer agrees to cause a performance bond for the construction of the the Project to be furnished in accordance with Section 232.105 (d) of the Texas Local Government Code which bond names both Developer and County.

5. Developer agrees to pay the following Project Costs: a) 100% of all Project Costs within the Property's boundaries; b) 50% of the Project Costs from the north boundary line of the Property to County Road 109 up to a maximum of \$225,000.00 inclusive of the \$25,000.00 already deposited by Developer with Williamson County, except and provided that if and when the County has paid its maximum payment obligation of thirty percent (30%) of the total Project Costs of the entire Project as required by Section 232.105(c) Local Government Code, then and in that event, Developer shall be responsible for 100% of all Project costs and the \$ 225,000.00 limit on Developer's payment obligation for Project Costs from the north boundary line of the Property to County Road 109 shall no longer be applicable.

6. County agrees to the following: a) acquire at its sole cost and expense the necessary right of way for that part of the planned road from the north boundary line of the Property to County Road 109 b) pay 50% of the Project Costs from the north boundary line of the Property to County Road 109, provided that County's total participation in Project Costs (as measured by the total cost of all the Project) and its payment obligation under this Agreement shall not exceed thirty percent (30%) of the total Project Costs of the entire Project as required by Section 232.105 (c) Local Government Code; c) pay 100% of every dollar of Project Costs from the north boundary line of the Property to County Road 109 over and above \$450,000.00, to a maximum County payment obligation of thirty percent (30%) of the total Project Costs of the entire Project as required by Section 232.105(c) Local Government Code. The contractor who

constructs the Project shall make billings for the Project Costs within the property boundaries separate from the costs of the Project from the north boundary of the property to County Road 109.

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

8. (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 by October 1, 2010, then and in that event, County agrees to approve Preliminary Plan B-Exhibit B and 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 October 1, 2010.

9. Developer has, as of the date of the execution of this Agreement, already deposited with Williamson County the amount of \$25,000.00. This money shall be transferred into the special account at the County's depository bank in the name of Developer and County for use in connection with this Project. Following notice of acquisition of right of possession to such right-of-way, County shall give Developer written notice of its authorization to proceed with construction of the Project. After Developer has executed a construction contract for construction of the project and after County's written notice to proceed with construction, County shall deposit an amount that constitutes the County's estimated Project Costs payment obligation under this Agreement attributable to costs from the north boundary line of the Property to County Road 109, as determined by unit prices and estimated payments provided by the construction contractor, (the "County Deposit"), into a special account at County's Depository Bank in the names of Developer and County. Developer shall be authorized to draw upon that account for Project Costs attributable to costs from the north boundary line of the Property to County Road 109 upon presentation to County of documentation of such Project Costs attributable to costs from the north boundary line of the Property to County Road 109, and upon such presentation, County shall approve the drawing of funds in payment of those Project Costs. This deposited amount shall be used by Developer for payment of County's obligations under this Agreement for Project Costs attributable to costs from the north boundary line of the Property to County Road 109. County shall pay its remaining obligations under this Agreement, if any, as and when those Project Costs are billed by the construction contractor.

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.

11. Conditional Acceptance. Developer's agreement to the terms and conditions set forth in this Agreement in place of the terms and conditions set forth in the Original Agreement is conditioned upon the County's approval of this Agreement.

SIGNED as of this 20th day of July, 2010.

WILLIAMSON COUNTY

BY: [Signature]
DAN A. GATTIS, County Judge

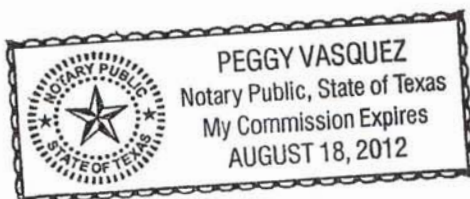
D&M CARMEL CREEK I, LLC
BY: [Signature]
MICHAEL WIENER
Chief Executive/Manager

STATE OF TEXAS
COUNTY OF WILLIAMSON

§
§
§

ACKNOWLEDGMENT

This instrument was acknowledged before me on this the 20th day of July, 2010, by Dan A. Gattis, a person known to me, in his capacity as County Judge of Williamson County.

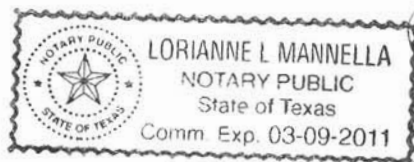


[Signature]
Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF TRAVIS §

ACKNOWLEDGMENT

This instrument was acknowledged before me on this the 14th day of July, 2010, by Michael Wiener as Chief Executive/Manager of D&M CARMEL CREEK I, LLC.



Lorianne L. Mannella
Notary Public, State of TEXAS

