

ORDINANCE NO. O-2019-009

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS, CREATING A PLANNED DEVELOPMENT DISTRICT (PD-1) OVERLAY ZONING DISTRICT IN A RURAL RESIDENTIAL (RU) BASE ZONING DISTRICT ON PROPERTY COMMONLY KNOWN AS PARKSIDE MAGNOLIA EAST APPROXIMATELY 48 ACRES LOCATED AT THE CORNER OF SPUR 149 AND FM 1488 IN THE CITY OF MAGNOLIA AND COUNTY OF MONTGOMERY, TEXAS, IN ORDER TO DEVELOP A MIXED-USE COMMUNITY INCLUDING COMMERCIAL, MULTIFAMILY AND LIGHT INDUSTRIAL USES; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

* * * * *

WHEREAS, Article 11-3 of Chapter 11 of the City of Magnolia ("City") Unified Development Code (UDC) allows for the creation of a Planned Development District (PD) Overlay Zoning District; and,

WHEREAS, Parkside Magnolia East, LLC ("Applicant") and property owner, is requesting a PD Overlay Zoning District ("PD-1") be created on property commonly known as **Parkside Magnolia East**, including approximately 48 acres which is physically located immediately south of FM 1488 and east of Spur 149 in the City of Magnolia and County of Montgomery County, Texas; and

WHEREAS, Rural Residential land uses are permitted under RU "Rural Residential" zoning district. The purpose of the PD-1 is to overlay the RR with zoning designation Auto-Urban Commercial (AC) with Mixed residential as shown in attached Exhibit 1, to promote and support quality development of land. The goals of the application include promoting market driven uses; and to ensure high quality development while providing adequate flexibility. The PUD will provide long-term predictability with respect to the regulator requirements, development standards and the construction of public and private improvements that may include commercial, retail, recreational, light industrial and multi-family.

WHEREAS, a PD overlay is a prerequisite before approval of a final plat for PD-1: and,

and infrastructure standards, allowing flexibility in the development standards for specific uses on a specific site; and,

WHEREAS, City Staff finds the proposed PD-1 for a AC development is compatible with the properties in the immediate vicinity, which include a large commercial development with a HEB grocery store that is currently planned for the area immediately west of PD-1, an agricultural tract of land located northwest of PD-1 and Magnolia High school located west of PD-1; and,

WHEREAS, in accordance with Section 11-3-4.02 of the UDC, the Planning Commission may recommend approval and City Council may grant the approval of the rezoning request; and,

WHEREAS, at its meeting of April 25, 2019 the Planning Commission voted to recommend approval of the request; and,

WHEREAS, Staff recommends approval of the PD-1 with conditions as provided in the attached Exhibit A; and,

WHEREAS, after notice and conduct of a public hearing, the City Council of the City of Magnolia, Texas, deems it in the public interest to grant Applicant's request for a Planned Development (PD-1) Overlay Zoning District in a Rural Residential (R-1?) base zoning district on property commonly known Parkside- -**Magnolia East, including approximately 48 acres** which is physically located immediately south of FM 1488 and east of Spur 149 in the City of Magnolia and County of Montgomery County, Texas as subject to the conditions set forth in the attached Exhibit 1.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS:

Section 1. The findings and recitations set out in the preamble to this Ordinance are found to be true and correct, and they are adopted by the City Council and made a part hereof for all purposes.

Section 2. Subject to certain conditions set forth in the attached Exhibit 1, and the development agreement attached as Exhibit 2, the Applicant is hereby granted a Planned Development (PD) Overlay Zoning District in a Rural Residential (R-1) base zoning district in order to develop a Mixed Use development with general commercial, retail, light industrial, recreational and multi-family residential in the City and County of Montgomery, Texas. The

Planned Development is PD-1 and shall be so designated on the City zoning Map.

Section 3. This Planned Development (PD-1) Overlay Zoning District is subject to the conditions contained in the attached Exhibit 1 and Exhibit 2 (Development Agreement between the City and Parkside Magnolia East, LLC):

Section 4. Granting of the PD-1 zoning district shall not relieve the developer from complying with all other applicable sections of the UDC and other Codes and Ordinances of the City of Magnolia, unless such relief is specified in the approved PD-1 plan attached as Exhibit 1 and the Development Agreement attached as Exhibit 2.

- a. The City staff shall initiate a case to revoke the PD-1 if construction does not commence according to Exhibits 1 and 2;
- b. The applicant shall adhere to all comments and/or conditions received from City departments. Should conformance with the comments/conditions require alterations to the project, as approved, the case must be returned to the Planning Commission for additional review and approval. Failure to comply with all comments/conditions may result in penalties and/or revocation of this PD-1.
- c. Any change or revisions to the adopted PD-1 Plan shall require an amendment to this ordinance and Exhibit 1, which requires review by the Planning Commission and City Council. Minor additions and modifications to the approved PD-1 plan meeting the criteria set forth in UDC may be approved by City Staff; and
- d. The applicant shall submit for approval all plans to the City for compliance with all City codes.

Section 4. The zoning classification for this property shall be changed to (AC) Zoning, PD overlay and shall be designated as PD-1 on the zoning maps of the City of Magnolia, subject to the conditions set forth above.

Section 5. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable. If any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by a final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

Section 6. All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

Section 7. The City Council finds, determines and declares that a sufficient written notice was posted, and this Ordinance was passed in accordance with the Open Meetings Act This Ordinance shall be and become effective from and after its adoption and publication in accordance with the applicable provisions of the State codes and the UDC.

PASSED, APPROVED and ADOPTED by the City Council of the City of Magnolia,
Montgomery County, Texas on this the 14th day of May 2019.



CITY OF MAGNOLIA, TEXAS

A handwritten signature in black ink, appearing to read "JMR", written over a horizontal line.

Todd Kana, Mayor

ATTEST:

A handwritten signature in black ink, appearing to read "Lynne George", written over a horizontal line.

Lynne George, CPM, TRMC
City Secretary

Exhibit 1 to Ordinance Creating PD-1

±48.0 ACRE FM 1488 TRACT

**Planned Development
District (PD)**

PREPARED BY:

META
PLANNING + DESIGN

24275 Katy Freeway, Suite 200
Katy, TX 77494

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I. INTRODUCTION

This application was prepared on behalf of Parkside Magnolia East, LLC pursuant to the City of Magnolia's development ordinances and is intended to meet or exceed the standards of those ordinances. The purpose of the Planned Development District ("PD") is to promote and support quality development of land and to provide for a superior design on lots or buildings. The goals of the application include promoting market driven uses; and to ensure high quality development while providing adequate flexibility. The PD will provide long-term predictability with respect to the regulatory requirements, development standards and the construction of public and private improvements. The PD will provide an appropriate balance between the intensity of development and the ability to provide adequate supporting public facilities and services.

The ±48 Acre FM 1488 Tract PD District is a commercial and mixed-use project located within the City of Magnolia, Montgomery County, Texas. The property consists of approximately 48.0 acres of land and is physically located immediately south of FM 1488 and east of Spur 149. The Area Location Map (Exhibit A) located in the Exhibits section of this document illustrates the location of the ±48 Acre FM 1488 Tract. In addition to the ±48 acres, there is an additional ±46 acre tract immediately east of the site that may be considered for future phases of the development.

A strong community character will be achieved within the proposed development by administering high quality architectural and design standards.

II. EXISTING CONDITIONS

SITE DESCRIPTION

The property upon which the ±48 Acre FM 1488 Tract will be located is generally vacant. There is an existing pond on the east side of the tract. A drill site and a Houston Lighting and Power Company easement are located on the western side of the site, but the remainder of the tract is undeveloped. The property is bordered by Spur 149 on the west and FM 488 on the north.

Exhibit B shows an aerial photo of the Site. Exhibits C and D provide a legal description and boundary survey for the property.

SURROUNDING LAND USE

Generally, the surrounding land use is undeveloped acreage with scattered residential primarily with the City of Magnolia ETJ. A large commercial development, including an HEB grocery store, is currently planned for the area immediately west of the site, along Spur 149 and FM 1488. Slyfield Farm, a horse farm and track, is located just northwest of the tract, on the north side of FM1488. Magnolia High School is west of the site, further west along FM 1488.

The surrounding area can be seen on the Area Map and the Project Aerial map (Exhibit A and B).

III. PURPOSE AND INTENT

The ±48 Acre FM 1488 Tract PD promotes development cohesiveness, while encouraging a variety of uses including general commercial, retail and multi-family residential.

Development Guidelines for the project will be created and will include architectural standards, construction standards, sign standards, and landscaping requirements. Parkside Capital, LLC, the General Partner, has a successful history of creating and implementing Development Guidelines and Concept Plans across its portfolio and developments. The Development Guidelines will be consistent with the intent of the city and meet or exceed the city's development regulations. These standards will apply to all commercial and/or multi family projects inside the PD.

The planning strategies used within the project will ensure its economic feasibility, desirability and quality, by providing flexible land use controls, and thoughtful architectural and aesthetic guidelines.

IV. PROJECT / PLAN DESCRIPTION

LAND USE

The ±48 Acre FM 1488 Tract will be composed of multiple land uses that may include commercial, retail, recreational, multi family, etc. The final composition of the allowed land uses shall be dictated by market conditions.

The Concept Plan (Exhibit D) for ±48 Acre FM 1488 Tract illustrates the mix of uses proposed and the potential for a variety of multi-family and commercial areas. The commercial and retail uses may incorporate several commercial reserves for larger retail and anchor stores and also smaller pad sites for retail and restaurants. FM 1488 and Spur 149 will provide the primary access to this area.

If demanded by market conditions, a multi-family residential component may be developed within the PD in areas that provide adequate access.

LAND USE / REGULATORY COMPLIANCE

In order to implement the concept plan as currently proposed, each of the proposed land uses has been assigned zoning categories consistent with compatible zoning regulations. The assigned zoning designation is as follows:

Zoning Designation	Acreage	% Of Gross Acreage
Auto-Urban Commercial (AC) with Mixed Residential. Commercial, Retail, Office, Hotel, Mixed-Use, Multi Family, etc.	48.00 acres	100%

PERMITTED USES

The following land uses are permitted anywhere throughout the tract so long as all other development regulations listed within this document are met:

Alcoholic Beverage Sales, Offsite Consumption
Alcoholic Beverage Sales, Onsite Consumption
Animal Veterinary Services
Apartments
Assisted Living/Congregate Care Facilities
Automobile Repairs
Automobile Washes
Automobile Rental and Service Establishments
College/University/Vocational School
Commercial Retail
Daycare Center
Event Facility
Farmers' Market
Fueling/Charging Stations
General Professional/Medical Office
Heavy Retail/Home Center
Heavy Retail, Lumberyards and Equipment
Heavy Truck or recreational vehicle leasing
Hospital/Clinic/Walk-In Clinic
Indoor Recreation/Personal Fitness
Industrial Uses
Institutional Uses/ Governmental Uses
Library
Mixed Use
Nursery, Retail
Office
Overnight Accommodations (Hotel, Motel, Inn)
Post Office
Public Assembly
Public Safety Facility
Restaurant (No drive through or with drive through)
Vending Kiosks/ATM
Wholesale retail

DEVELOPMENT GUIDELINES

Unless otherwise outlined in this document, the City of Magnolia Unified Development Code in place at the time this document is adopted shall apply to this PD. Any change to the below guidelines and/or other applicable regulations shall require a variance granted by the City of Magnolia Planning and Zoning Commission.

Commercial

- 1) Lot Size
 - i. Minimum lot width – Sixty (60) feet measured at the building line.
 - ii. Minimum lot depth – 100 feet
- 2) Building Setbacks
 - i. Minimum front yard setback – Twenty five (25) feet
 - ii. Minimum side yard setback – Zero (0) feet
 - iii. Minimum corner yard setback – Ten (10) feet
 - iv. Minimum rear yard setback – Ten (10) feet
- 3) Building Height
 - i. Building heights must be in compliance with the below standards:
 - i. Pad Site – No building may exceed thirty five (35) feet in height.
 - ii. Commercial Anchor Tenant- No building may exceed sixty (60) feet in height
- 4) Building Form and Design
 - i. All buildings shall incorporate unique architectural elements thru the use of building articulation, multiple materials and/or similar architectural techniques. Specific standards will be established and enforces through the Design Guidelines established by the Developer.
- 5) Building Materials
 - i. The following materials shall meet the masonry requirement:
 - i. Stone
 - ii. Brick
 - iii. Concrete (including tilt wall)
 - iv. Hollow clay tile
 - v. Concrete Masonry Unit (CMU)
 - vi. Glass block
 - vii. Portland cement stucco
 - ii. The following non-masonry materials are permitted, as building accent finishes:
 - i. Cementitious Fiber
 - ii. EIFS
 - iii. Architectural metal panels
 - iv. Glass
 - iii. Nationally or regionally recognized chains will be permitted to use trademarked “trade dress” specific materials not listed above (metal roofing and/or siding, wood siding, etc.)
 - iv. All color selections shall be harmonious with adjacent development within the site and consistent with first rate commercial development in the area.
- 6) Parking
 - i. Parking ratios shall comply with those specified in the applicable Unified Development Code.
 - ii. Shared parking is permitted subject to a public document agreement between the participating owners. Shared parking shall meet the minimum parking ratio requirements.
 - iii. Parking Dimensions
 - 1) All standard parking stalls shall be a minimum of nine (9) feet in width by eighteen (18) feet in length
 - 2) Parallel (0) degree parking spaces shall be a minimum of eight (8) feet in width by twenty (20) feet in length.

7) Open Storage

- i. Open storage is permitted within the parking lot immediately adjacent to the building for temporary seasonal sales, or temporary promotional events not to exceed more than one per six months for purposes of open storage
- ii. No permits are required for temporary storage

8) Landscape Requirements

- i. Landscaping Requirements will comply with the standards set in the City of Magnolia Unified Development Code at the time the PD is approved.

Multi Family

1) Lot Size

- i. Minimum five (5) acres

2) Building Setbacks

- i. Minimum front yard setback – Twenty-five (25) feet
- ii. Minimum side yard setback – Ten (10) feet
- iii. Minimum corner yard setback – Ten (10) feet
- iv. Minimum rear yard setback – Ten (10) feet

3) Building

- i. No building may exceed sixty (60) feet in height. Any building that exceeds this height maximum is subject to City approval.

4) Parking

- ii. There shall be one (1) parking space per unit. Parking Dimensions shall be:
 - 1) All standard parking stalls shall be a minimum of nine (9) feet in width by eighteen (18) feet in length
 - 2) Parallel (0) degree parking spaces shall be a minimum of eight (8) feet in width by twenty (20) feet in length.

5) Building Form and Design

- i. All buildings shall incorporate unique architectural elements thru the use of building articulation, multiple materials and/or similar architectural techniques. Specific standards will be established and enforced through the Design Guidelines established by the developer.

6) Building Materials

- i. The following materials shall meet the masonry requirement:
 - 1) Stone
 - 2) Brick
 - 3) Concrete Masonry Unit (CMU)
 - 4) Glass block
 - 5) Portland cement stucco
- iii. The following non-masonry materials are permitted, as building accent finishes:
 - 6) Cementitious Fiber
 - 7) EIFS
 - 8) Architectural metal panels
 - 9) Glass
- ii. All color selections shall be harmonious with adjacent development within the site and consistent with first rate commercial development in the area.

7) Landscape Requirements

- i. Landscaping Requirements will comply with the standards set in the City of Magnolia Unified Development Code at the time the PD is approved.

SIGNAGE

Specific standards will be established and enforced through the Design Guidelines established by the developer. The Design Guidelines shall be subject to review and approval by the City.

STORM WATER MANAGEMENT

All storm water management, drainage systems and drainage plans will adhere to the Montgomery County requirements, standards and criteria and all such storm water plans and drainage plans must be either approved by or issued a letter of no objection by the Montgomery County Engineer's Office with concurrence from the City of Magnolia Engineer.

PLATTING

All platting will adhere to Montgomery County requirements. All property within this PD is permitted to be platted as one reserve through the City of Magnolia and later subdivided into smaller reserves via metes and bounds without further platting requirements. Any seller subdividing any portion of the property within the PD shall notify the City of Magnolia upon such subdivision.

GREEN SPACE/RECREATIONAL AREAS & MAXIMUM LOT COVERAGE

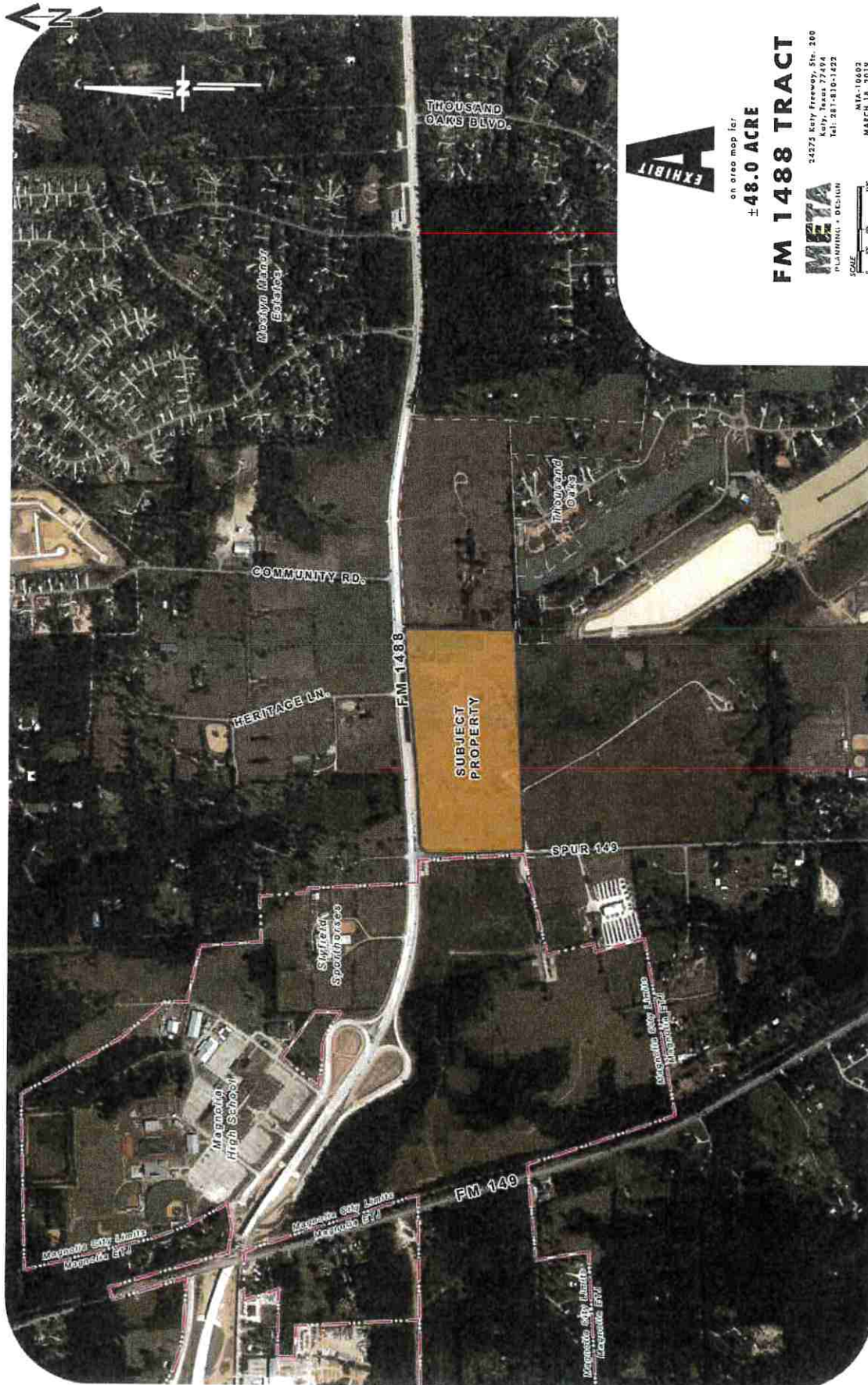
The PD shall provide green space totaling a minimum of 20% of the gross acreage of the PD. In calculating the minimum required green space, the following areas may be included: buffer yards, onsite and offsite detention ponds that accommodate storm water for the property contained within the PD, easements, landscape islands and other landscape reserves and setbacks, common area lawns and landscaping, community swimming pools and surrounding paved deck area, community tennis courts, and other common recreational areas.

In addition, it is required that not more than 80% of a lot being developed as a multi family project be covered with buildings, driveways or sidewalks unless approved otherwise at the time of site plan approval by the planning and zoning commission and the city council. All green space, recreation areas (pools, tennis courts, etc.), landscaped buffers, parking lot landscape/islands shall not be included in the 80% lot coverage.

A lot coverage requirement shall not apply to commercial projects.

PHASING / DEVELOPMENT SCHEDULE

Phasing for the project will be determined by market conditions. All phases will take into consideration access, compatible uses and all other regulations listed within this document. Additional land may be added to the PD in the future so long as all regulations remain consistent across the entirety project.



on area map far

±48.0 ACRE

FM 1488 TRACT

META

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

MTA-10602
MARCH 18 2019

[illegible]

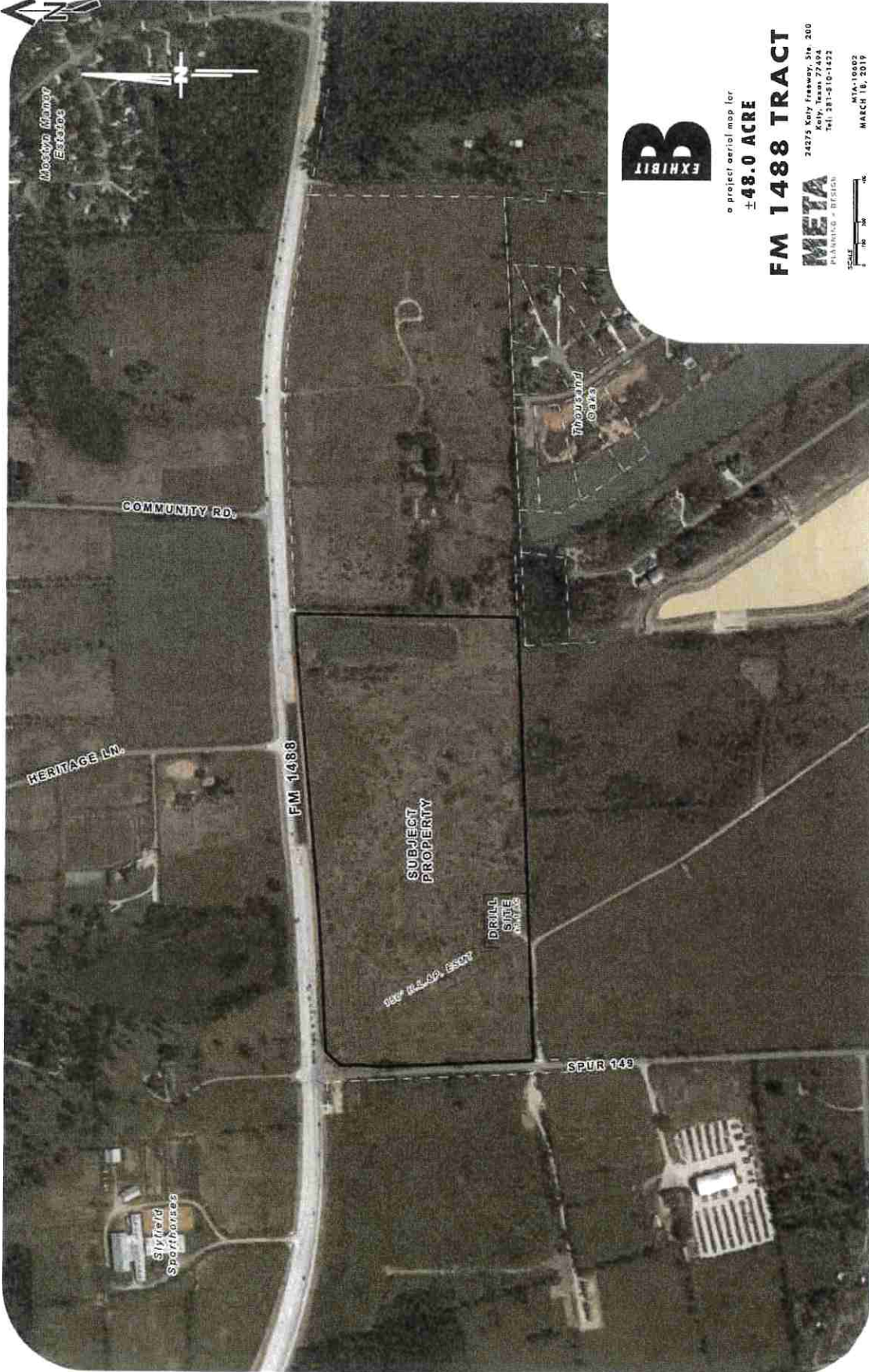


EXHIBIT B

a project aerial map for
±48.0 ACRE

FM 1488 TRACT

WETA
PLANNING • DESIGN

SCALE
0 10 20 30 40 50 60 70 80 90 100
FEET

DATE: MARCH 18, 2019

24275 Kelly Freeway, Ste. 200
Katy, Texas 77450
Tel: 281-510-1222

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WETA PLANNING AND DESIGN, INC. 24275 KELLY FREEWAY, STE. 200, KATY, TEXAS 77450

DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF MAGNOLIA, TEXAS,
AND
PARKSIDE MAGNOLIA EAST, LLC

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is made and entered into as of May 14, 2019, by THE CITY OF MAGNOLIA, TEXAS (the "City"), a general law municipality in Montgomery County, Texas, acting by and through its governing body the City Council of Magnolia, Texas; and PARKSIDE MAGNOLIA EAST, LLC, a Texas limited liability company ("Developer").

RECITALS

Developer owns approximately 48 acres of land in Montgomery County, Texas, described by metes and bounds in **Exhibit A** attached hereto (the "Property"), and desires to develop a quality mixed-use community including commercial, multifamily, and light industrial uses within the Property.

Development of the Property requires an agreement providing for long-term foreseeability in regulatory requirements and development standards by the City regarding the Property and anticipated sales tax revenue to the City.

The City and Developer agree that the development of the Property can best proceed pursuant to a single development agreement.

It is the intent of this Agreement to establish certain restrictions and commitments imposed and made in connection with the development of the Property.

The City and Developer have determined that they are authorized by the Constitution and laws of the State of Texas to enter into this Agreement and have further determined that the terms, provisions, and conditions hereof are mutually fair and advantageous to each.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the City and Developer agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Terms. Unless the context requires otherwise, and in addition to the terms defined above, the following terms and phrases used in this Agreement shall have the meanings set out below:

"Bonds" means the District's bonds, notes, or other evidences of indebtedness issued from time to time for the purpose of purchasing, constructing, acquiring, operating, repairing, improving, or extending the Facilities, payment of Connection Charges, and for such other purposes permitted or provided by state law, whether payable from ad valorem taxes, the proceeds of one or more future bond issues, or otherwise, and including any bonds, notes, or similar obligations issued to refund such bonds.

"City" means the City of Magnolia, Texas.

"City Building Code" means the uniform building, fire, electrical, plumbing, and mechanical codes adopted by the City, if any, including any amendments, deletions, or additions thereto, whether now or in the future, and as may be updated from time to time by the City.

"City Council" means the City Council of the City or any successor governing body.

"Comprehensive Plan" means the City Comprehensive Plan adopted April 9, 2013, and not including any future amendments or changes.

"Connection Charge" means the amount commonly referred to as the "impact fee" to be paid to the City for water and wastewater capacity for each improvement within the District as more fully detailed in the Utility Agreement.

"County" means Montgomery County, Texas.

"Designated Mortgagee" means, whether one or more, any mortgagee or security interest holder that has been designated to have certain rights pursuant to Article V hereof.

"Developer" means Parkside Magnolia East, LLC, and any successor or assign to the extent such successor or assign engages in development activities within the Property, except as limited by Section 8.04 herein.

"District" means Montgomery County Municipal Utility District No. 108.

"District Assets" means (i) all rights, title, and interests of the District in and to the Facilities, (ii) any Bonds of the District which are authorized but have not been issued by the District, (iii) all rights and powers of the District under any agreements or commitments with any persons or entities pertaining to the financing, construction, or operation of all or any portion of the Facilities and/or the operations of the District, (iv)

all cash and investments, and amounts owed to the District, and (v) all books, records, files, documents, permits, funds, and other materials or property of the District.

"District Obligations" means (i) all outstanding Bonds of the District, (ii) all other debts, liabilities, and obligations of the District to or for the benefit of any persons or entities relating to the financing, construction, or operation of all or any portion of the Facilities or the operations of the District, and (iii) all functions performed and services rendered by the District for and to the owners of property within the District and the customers of the services provided from the Facilities.

"Facilities" means and includes the water distribution, wastewater collection, and drainage and detention systems, park and recreational facilities, and road facilities constructed or acquired or to be constructed or acquired by the District to serve lands within and near its boundaries, and all improvements, appurtenances, additions, extensions, enlargements, or betterments thereto, including any pro rata interest or share in such facilities, together with all contract rights, permits, licenses, properties, rights-of-way, easements, sites, and other interests related thereto.

"General Plan" means the plan for development of the Property, a copy of which is attached to this Agreement as **Exhibit B**, as it may be revised from time to time in accordance with Section 3.02.

"PD-1" means the planned development to be considered and/or approved by the City on May 14, 2019 or any City council meeting thereafter setting forth the guidelines and development requirements for the Property, as may be amended from time to time.

"Person" means any individual, partnership, association, firm, trust, estate, public or private corporation, or any other legal entity whatsoever.

"Planning and Zoning Commission" means the Planning and Zoning Commission of the City.

"Property" means the real property described in **Exhibit A** attached herto.

"Sign Ordinance" means Chapter 6 of the City's Unified Development Code.

"TCEQ" means the Texas Commission on Environmental Quality and its successors.

"Thoroughfare Plan" means the Thoroughfare Plan set forth in Chapter 4 of the Comprehensive Plan, and not including any future amendments or changes.

"Unified Development Code" means the City's Unified Development Code adopted by the City on October 13, 2015 by Ordinance No. O-2015-018.

"Utility Agreement" means the Utility Agreement dated January 12, 2016, between the City and the District, as may be amended.

ARTICLE II REPRESENTATIONS

Section 2.01 Representations of the City. The City hereby represents to the Developer that:

(a) The City is duly authorized, created and existing in good standing under the laws of the State and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

(b) The City has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof (i) have been duly authorized and (ii) does not constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

(c) This Agreement has been duly authorized, executed and delivered by the City and, constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms.

(d) The execution, delivery and performance of this Agreement by the City does not require the consent or approval of any Person which has not been obtained.

Section 2.02 Representations of Developer. Developer hereby represents to the City that:

(a) Developer is duly authorized, created and existing under the laws of the State of Texas, is qualified to do business in the State of Texas and is duly qualified to do business wherever necessary to carry on the operations contemplated by this Agreement.

(b) Developer has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to Developer or any provisions of Developer's articles of incorporation and by-laws, and (ii) does not

constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of Developer under any agreement or instrument to which the Developer is a party or by which Developer or its assets may be bound or affected.

(c) Developer has sufficient capital to perform its obligations under this Agreement.

(d) This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of Developer, enforceable in accordance with its terms.

(e) The petition for the creation of a municipal utility district, the petition for consent to the creation of a municipal utility district, and the petition for annexation to the City that have been previously submitted to the City have been duly authorized, executed and delivered.

(f) The execution, delivery and performance of this Agreement by the Developer does not require the consent or approval of any Person which has not been obtained.

ARTICLE III GENERAL PLAN AND PLATTING

Section 3.01 Introduction. The Property is to be developed as a quality mixed-use project, including commercial, multifamily, and light industrial uses. The land uses within the Property shall be typical of a quality mixed-use community, including commercial, multifamily, and light industrial uses.

Section 3.02 General Plan and Amendments. The City and Developer acknowledge that the attached General Plan is the preliminary concept plan for the development of the Property for mixed-use development. The parties acknowledge and agree that the General Plan will be revised and refined by Developer as Developer continues its investigation of and planning for the Property and prepares a feasible and detailed plan for development of the Property, provided that in no case shall the General Plan be revised or refined to contradict any of the requirements of this Agreement or subsequently approved variances, and provided that no revision or refinement to the General Plan shall limit or otherwise affect any right or obligation of either Developer or the City pursuant to this Agreement until such revision or refinement is approved by the City and Developer. The City approves the General Plan in the form attached hereto, and finds it generally consistent with the PD-1, as well as the Comprehensive Plan and the Thoroughfare Plan.

Section 3.03 Platting. Developer shall be required to plat the Property in accordance with this section. Consistent with the provisions of the PD-1, all platting will adhere to Montgomery County requirements; provided however that the City will review and approve such plat. In addition thereto, the entirety of the Property is permitted to be platted as one reserve and later subdivided into smaller reserves via metes and bounds without further platting requirements. The Developer agrees that consistent with the requirements set forth in PD-1, any seller subdividing any portion of the property within PD-1 shall notify the City upon such subdivision. Notwithstanding anything in this Section to the contrary, so long as the plat meets the requirements of (1) the PD-1; and (2) this Agreement, the City shall approve the plat.

Section 3.04 Property Subject to the Agreement. This Agreement hereby includes the Property which is located entirely within the corporate boundaries of the City. The City recognizes and understands that the construction of the Facilities necessary to serve the Property shall be completed by the District. In consideration thereof, the City hereby agrees that upon receipt of the necessary petition, the City shall consent to the annexation of the Property into the boundaries of the District. The City also recognizes that the additional property or portions thereof described on Exhibit C (the "Additional Property") may be purchased by the Developer at a future point in time. The City hereby agrees that upon receipt of the appropriate petition(s) related to the Additional Property, it will adopt consent ordinances consenting to: (i) the annexation of the Additional Property into the City's corporate boundaries; and (ii) thereafter, the annexation of the Additional Property into the District's boundaries. Once the Additional Property is annexed into the boundaries of the District, it shall be deemed to be included in the definition of "Property" as set forth in this Agreement.

ARTICLE IV

DESIGN AND CONSTRUCTION STANDARDS AND APPLICABLE ORDINANCES

Section 4.01 Regulatory Standards and Development Quality.

(a) One of the primary purposes of this Agreement is to provide for quality development of the Property and foreseeability as to the regulatory requirements applicable to the development of the Property throughout the development process. Feasibility of the development of the Property is dependent upon a predictable regulatory environment and stability in the projected land uses. In exchange for Developer's performance of the obligations under this Agreement to develop the Property in accordance with certain standards as set forth in the PD-1 and to provide the overall quality of development described in this Agreement, the City agrees to the extent allowed by law that it will not impose or attempt to impose any moratoriums on building or growth within the Property.

(b) By the terms of this Agreement, the City and Developer hereby establish development and design rules and regulations which will ensure a quality, unified development, yet afford Developer predictability of regulatory requirements throughout the term of this Agreement. Accordingly, development of the Property shall be consistent with the General Plan, the PD-1, and guidelines established by this Agreement. The City and Developer agree that any City ordinance heretofore or hereafter adopted, that addresses matters that are governed by this Agreement shall not be enforced by the City within the Property, and that the provisions of this Agreement together with the PD-1 (as may be amended from time to time) otherwise govern development of the Property.

Section 4.02 PD-1 Generally. The Property and development thereon is subject to a PD-1 approved by the City setting forth the guidelines and development requirements related to the Property. In the event of a conflict between the development standards contained in this Agreement and the PD-1, the PD-1 shall control. The Parties recognize and understand that subject to both Planning and Zoning Commission and City Council approval, the PD-1 may be amended from time to time. In the event that the PD-1 is amended at a future point in time, all references to the PD-1 in this Agreement shall automatically be adjusted and interpreted to mean the PD-1 then in effect, as amended. Notwithstanding anything in this Section to the contrary, the Parties understand that the Developer intends to apply for a waiver of Section 8-2-1.02 Land Clearing and Tree Preservation contained in the Unified Development Code.

Section 4.03 Water/Wastewater/Drainage Services.

(a) The plan for the water distribution system; wastewater collection and treatment system; and stormwater control and drainage system to serve the Property shall be developed in accordance with the General Plan. Developer will make provisions for public water distribution, wastewater collection and treatment, and drainage services for the Property through public utility facilities to be provided by the District. The City will provide water and wastewater service to the Property in accordance with the Utility Agreement.

(b) Developer may enter into a reimbursement agreement with the District to seek reimbursement for the costs of the water, wastewater, and stormwater facilities referenced in this Section 4.03, as well as, to the extent allowed by law, roads and park and recreational facilities.

Section 4.04 Private Improvements/Inspections. Buildings and other private improvements within the Property shall be constructed in accordance with the PD-1 where applicable, the Unified Development Code where applicable, and in accordance with the City Building Codes when not otherwise addressed in the PD-1 or the Unified

Development Code. Buildings and other private improvements within the Property will be inspected by City inspectors, who will perform all inspections on such buildings and other private improvements. Prior to receiving a permit for buildings and other improvements within the Property, the builder of the structure or building shall pay the Connection Charge to the City. Such builder, its successors and assigns, shall have the right to review inspection records and accounts for a period of three (3) years following issuance of the certificate of occupancy for such structure or building or other private improvements.

Section 4.05 Landscaping and Greenspace Requirements. Requirements relating to parklands, recreational facilities, open space, or landscaping shall be governed by the requirements set forth in the PD-1. The City acknowledges and agrees that Developer may make provisions for public park and recreational facilities to serve the Property to be owned, financed, developed, and maintained by the District, to the extent authorized by state law. Developer and the City agree that any such amenities may be conveyed by the District to the City for ownership and operation and will become the responsibility of the City upon such conveyance. In the event that the District retains ownership and operation of the public park and recreational facilities, such amenities will not become the responsibility of the City unless and until the City dissolves the District, in which case the amenities owned by the District will become the property of the City. To the extent Developer makes provisions for private park and recreational facilities that may be available only to residents of the Property, such amenities (i) will be conveyed to a property owner's association for ownership and operation, and (ii) shall not be the responsibility of the City even after the City dissolves the District.

Section 4.06 Fire Protection Services. All of the Property is located in Montgomery County Emergency Services District No. 10, a taxing authority that provides fire protection services to the Property. The City shall have no obligation to provide fire protection services to the Property, unless and until Montgomery County Emergency Services District No. 10 ceases to provide fire protection services to the Property.

Section 4.07 Police Protection Services. All of the Property will be located within the corporate boundaries of the City. The City will provide the Property with the same level of police protection service as the remainder of the City.

Section 4.08 Traffic Study. Developer shall not be required to complete a traffic study for the Property.

Section 4.09 Signs. The Sign Ordinance contained in the Unified Development Code applies to signs located on the Property; provided, however, that PD-1 provides that the City and the Developer may otherwise agree that signage be governed by

design guidelines established by the developer and agreed to by the City. The design guidelines shall be subject to review and approval by the City.

ARTICLE V PROVISIONS FOR DESIGNATED MORTGAGEE

Section 5.01 Notice to Designated Mortgagee. If designated pursuant to Section 5.03, any Designated Mortgagee shall be entitled to receive simultaneous notice of any notice that is required to be delivered to Developer pursuant to the terms of this Agreement.

Section 5.02 Right of Designated Mortgagee to Cure Default. Any Designated Mortgagee shall have the right, but not the obligation, to cure any default in accordance with the provisions of Section 5.03 and Article VII.

Section 5.03 Designated Mortgagee.

(a) At any time after execution and recordation in the Real Property Records of Montgomery County, Texas, of any mortgage, deed of trust, or security agreement given and executed by Developer encumbering the Property or any portion thereof, Developer (i) shall notify the City in writing that such mortgage, deed of trust, or security agreement has been given and executed by Developer, and (ii) may change Developer's address for notice pursuant to Section 9.01 to include the address of the Designated Mortgagee to which it desires copies of notice to be mailed.

(b) At such time as a release of any such lien is filed in the Real Property Records of Montgomery County, Texas, and Developer gives notice of the release to the City as provided herein, all rights and obligations of the City with respect to the Designated Mortgagee under this Agreement shall terminate.

(c) The City agrees that it may not exercise any remedies of default hereunder unless and until the Designated Mortgagee has been given thirty (30) days written notice and opportunity to cure (or commences to cure and thereafter continues in good faith and with due diligence to complete the cure) the default complained of. Whenever consent is required to amend a particular provision of this Agreement or to terminate this Agreement, the City and Developer agree that this Agreement may not be so amended or terminated without the consent of such Designated Mortgagee; provided, however, consent of a Designated Mortgagee shall only be required to the extent the lands mortgaged to such Designated Mortgagee would be affected by such amendment or termination.

(d) Upon foreclosure (or deed in lieu of foreclosure) by a Designated Mortgagee of its security instrument encumbering the Property, such Designated Mortgagee (and its affiliates) and their successors and assigns shall not be liable under this Agreement for any defaults that are in existence at the time of such foreclosure (or deed in lieu of foreclosure). Furthermore, so long as such Designated Mortgagee (or its affiliates) is only maintaining the Property and marketing it for sale, and is not actively involved in the development of the Property, such Designated Mortgagee (and its affiliates) shall not be liable under this Agreement. Upon foreclosure (or deed in lieu of foreclosure) by a Designated Mortgagee, any development of the Property shall be in accordance with this Agreement.

(e) If the Designated Mortgagee or any of its affiliates and their respective successors and assigns, undertakes development activity, the Designated Mortgagee shall be bound by the terms of this Agreement. However, under no circumstances shall such Designated Mortgagee ever have liability for matters arising either prior to, or subsequent to, its actual period of ownership of the Property, or a portion thereof, acquired through foreclosure (or deed in lieu of foreclosure).

ARTICLE VI PROVISIONS FOR DEVELOPER

Section 6.01 Vested Rights. Upon the mutual execution of this Agreement, the City and Developer agree that the rights of all parties as set forth in this Agreement shall be deemed to have vested, as provided by Texas Local Government Code, Chapters 43 and 245 and Section 212.172(g).

Section 6.02 Waiver of Actions Under Private Real Property Rights Preservation Act. Developer hereby waives its right, if any, to assert any causes of action against the City accruing under the Private Real Property Rights Preservation Act, Chapter 2007, Texas Government Code (the "Act") or other state law, that the City's execution or performance of this Agreement or any authorized amendment or supplements thereto may constitute, either now or in the future, a "Taking" of either Developer's, or their respective grantee's, or a grantee's Successor's "Private Real Property," as such terms are defined in the Act. Provided, however, that this waiver does not apply to, and each Developer and their respective grantees and successors do not waive their rights under the Act to assert a claim under the Act for any action taken by the City beyond the scope of this Agreement which otherwise may give rise to a cause of action under the Act.

Section 6.03 Developer's Right to Continue Development. The City and Developer hereby acknowledge and agree that, subject to Section 8.04 of this Agreement, Developer may sell a portion of the Property to one or more Persons who shall be bound by this Agreement and perform the obligations of Developer hereunder. In the event that there is more than one Person acting as a Developer hereunder, the

acts or omissions of one Developer which result in that Developer's default shall not be deemed the acts or omissions of any other Developer, and a performing Developer shall not be held liable of the nonperformance of another Developer. In the case of nonperformance by one or more Developers, the City may pursue all remedies against such nonperforming Developer as set forth in Section 7.04 hereof, but shall not impede the planned or ongoing development activities nor pursue remedies against any other Developer.

ARTICLE VII MATERIAL BREACH, NOTICE AND REMEDIES

Section 7.01 Material Breach of Agreement.

(a) It is the intention of the parties to this Agreement that the Property be developed in accordance with the terms of this Agreement and that Developer follow the development plans as set out in the General Plan and PD-1. The parties acknowledge and agree that any substantial deviation from the General Plan in the form attached hereto and the concepts of development contained therein and any substantial deviation by Developer from the material terms of this Agreement would frustrate the intent of this Agreement, and therefore, would be a material breach of this Agreement. By way of example, a major deviation from the General Plan or PD-1 would be:

1. Developer's failure to develop the Property in compliance with the approved General Plan or PD-1 as from time to time amended; or Developer's failure to secure the City's approval of any material or significant modification or amendment to the General Plan or PD-1; or
2. Failure of Developer to substantially comply with a provision of this Agreement or a City ordinance applicable to the Property.

(b) The parties acknowledge and agree that any substantial deviation by the City from the material terms of this Agreement would frustrate the intent of this Agreement and, therefore, would be a material breach of this Agreement. By way of example, a substantial deviation from the material terms of this Agreement would be:

1. The imposition or attempted imposition of any moratorium on building or growth on the Property, except as allowed by this Agreement, or required because of circumstances beyond the City's control;
2. An attempt by the City to modify, amend, or control the General Plan or PD-1 except as permitted by this Agreement;

3. An attempt by the City to unreasonably withhold approval of a plat of land within the Property that complies with the requirements of this Agreement; or

4. An attempt by the City to zone the Property in a manner that does not permit development consistent with the General Plan or PD-1.

(c) In the event that a party to this Agreement believes that another party has, by act or omission, committed a material breach of this Agreement, the provisions of this Article VII shall provide the sole remedies for such default, unless otherwise specifically provided herein.

Section 7.02 Notice of Developer's Default.

(a) The City shall notify Developer and each Designated Mortgagee in writing of an alleged failure by Developer to comply with a provision of this Agreement, which notice shall specify the alleged failure with reasonable particularity. The alleged defaulting Developer shall, within thirty (30) days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure or, in a written response to the City, either present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.

(b) The City shall determine (i) whether a failure to comply with a provision has occurred; (ii) whether such failure is excusable; and (iii) whether such failure has been cured or will be cured by the alleged defaulting Developer or a Designated Mortgagee. The alleged defaulting Developer shall make available and deliver to the City, if requested, any records, documents or other information necessary to make the determination without charge.

(c) In the event that the City determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the City, or that such failure is excusable, such determination shall conclude the investigation.

(d) If the City determines that a failure to comply with a provision has occurred and that such failure is not excusable and has not been or will not be cured by the alleged defaulting Developer or a Designated Mortgagee in a manner and in accordance with a schedule reasonably satisfactory to the City, then the City Council may take any appropriate action to enforce this agreement at law or in equity.

Section 7.03 Notice of City's Default.

(a) Any Developer shall notify the City in writing of an alleged failure by the City to comply with a provision of this Agreement, which notice shall specify the alleged failure with reasonable particularity. The City shall, within 30 days after receipt of such notice or such longer period of time as that Developer may specify in such notice, either cure such alleged failure or, in a written response to each Developer, either present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.

(b) Developer shall determine (i) whether a failure to comply with a provision has occurred; (ii) whether such failure is excusable; and (iii) whether such failure has been cured or will be cured by the City. The City shall make available and deliver to Developer, if requested, any records, documents or other information necessary to make the determination without charge.

(c) In the event that Developer determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to Developer, or that such failure is excusable, such determination shall conclude the investigation.

(d) If Developer determines that a failure to comply with a provision has occurred and that such failure is not excusable and has not been or will not be cured by the City in a manner and in accordance with a schedule reasonably satisfactory to Developer, then Developer may take any appropriate action to enforce this agreement at law or in equity.

Section 7.04 Remedies.

(a) In the event of a determination by the City that Developer has committed a material breach of this Agreement the City may, subject to the provisions of Section 7.02, file suit in a competent jurisdiction in Montgomery County, Texas, and seek either (i) specific performance, (ii) injunctive relief, (iii) an action under the Uniform Declaratory Judgment Act, or (iv) termination of this Agreement as to the breaching Developer (but not as to any other non-breaching Developer).

(b) In the event of a determination by a Developer that the City has committed a material breach of this Agreement, Developer may, subject to the provisions of Section 7.03, file suit in a court of competent jurisdiction in Montgomery County, Texas, and seek (i) specific performance, (ii) injunctive relief, (iii) an action under the Uniform Declaratory Judgment Act, or (iv) termination of this Agreement as to such Developer.

(c) Neither party shall be liable for any monetary damages of the other party for any reason whatsoever, including punitive damages, exemplary damages, consequential damages, special damages, lost profits, future lost profits, or attorneys' fees.

ARTICLE VIII BINDING AGREEMENT, TERM, AMENDMENT, AND ASSIGNMENT

Section 8.01 Beneficiaries. This Agreement shall bind and inure to the benefit of the City and Developer, its successors and assigns. In addition to the City and Developer, Designated Mortgagees, and their respective successor or assigns, shall also be deemed beneficiaries to this Agreement. The terms of this Agreement shall constitute covenants running with the land comprising the Property and shall be binding on all future developers and other landowners. This Agreement and all amendments hereto (including amendments to the General Plan) shall be recorded in the deed records of Montgomery County, Texas. This Agreement, when recorded, shall be binding upon the parties hereto and their successors and assigns permitted by this Agreement and upon the Property. Notwithstanding anything to the contrary contained herein, the City agrees that Developer's rights to assignment under this Agreement include Developer's right to assign this Agreement to a separate entity to be created for the purpose of developing the Property.

Section 8.02 Term. This Agreement shall be effective upon the mutual execution of this Agreement (the "Effective Date") and shall terminate 25 years from the Effective Date; provided, however, that the expiration of this Agreement shall not terminate the application of PD-1 to the Property. The Parties recognize and understand that development of the Property shall also be subject to the terms of the Utility Agreement.

Section 8.03 Termination. In the event this Agreement is terminated as provided in this Agreement or is terminated pursuant to other provisions, or is terminated by mutual agreement of the parties, the parties shall promptly execute and file of record, in the County Real Property Records, a document confirming the termination of this Agreement, and such other documents as may be appropriate to reflect the basis upon which such termination occurred. At any time after 25 years from the Effective Date, the City may file in the County Real Property Records a unilaterally executed document confirming the termination of this Agreement.

Section 8.04 Assignment or Sale by Developer. Any Person who acquires the Property or any portion of the Property shall take the Property subject to the terms of this Agreement. The terms of this Agreement are binding upon Developer, its successors and assigns, as provided in Section 8.01 above; provided, however, notwithstanding anything to the contrary herein, Developer's assignee shall not acquire the rights and obligations of Developer unless Developer expressly states in the deed of

conveyance or by separate instrument placed of record that said assign is to become Developer for purposes of this Agreement and notice is sent by Developer to the City and any Designated Mortgagee. Any contract, agreement to sell land, or instrument of conveyance of land which is a part of the Property shall recite and incorporate this Agreement as binding on any purchaser or assignee. For sake of clarity, the Parties understand that the obligations set forth in this Section are intended to run with the conveyance of the Property itself as necessary to bind the Developer, its successors, and assigns, to the provisions set forth both in this Agreement as well as the PD-1. However, this obligation shall remain a Developer obligation and not be imposed on individual tenants within the resulting development.

Section 8.05 Amendment. This Agreement may be amended only upon written amendment executed by the City and the Developer who owns the property affected by the amendment. In the event either Developer sells any portion of the Property, such Developer may assign to such purchaser the right to amend this Agreement as to such purchased property by written assignment and notice thereof to the City. Such assignment shall not grant such purchaser the authority to amend this Agreement as to any other portions of the Property.

ARTICLE IX MISCELLANEOUS PROVISIONS

Section 9.01 Notice. The parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications ("Notice") required to be given by one party to another by this Agreement shall be given in writing addressed to the party to be notified at the address set forth below for such party, (a) by delivering the same in Person, (b) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified; (c) by depositing the same with FedEx or another nationally recognized courier service guaranteeing next day delivery, addressed to the party to be notified, or (d) by sending the same by telefax with confirming copy sent by mail. Notice deposited in the United States mail in the manner herein above described shall be deemed effective from and after three (3) days after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of Notice, the addresses of the parties, until changed as provided below, shall be as follows:

City:	City of Magnolia
	18111 Buddy Riley Blvd.
	Magnolia, Texas 77354
	Attn: City Secretary
	Facsimile: (281) 259-7811

With copy to: Mr. Leonard Schneider
Liles Parker PLLC
2261 Northpark Dr., Suite 445
Kingwood, TX 77339
Facsimile: (713) 456-2079

Developer: Mr. Brett Walker
Parkside Capital, LLC
3003 W. Alabama St.
Houston, Texas 77098
Facsimile: (713) 773-5556

With copy to: Allen Boone Humphries Robinson LLP
Attn: David Oliver
3200 Southwest Freeway, Suite 2600
Houston, Texas 77098
Facsimile: (713) 860-6665

The parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least 5 days written notice to the other parties. A Designated Mortgagee may change its address in the same manner by written notice to all of the parties. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday or legal holiday.

Section 9.02 Severability by Court Action. Unless the court applies Section 9.03, if any provision of this Agreement or the application thereof to any Person or circumstance 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.

Section 9.03 Invalid Provisions. If any provision of this Agreement or the application thereof to any Person or circumstance is prohibited by or invalid under applicable law, it shall be deemed modified to conform with the minimum requirements of such law, or, if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any such other provision being prohibited or invalid.

Section 9.04 Waiver. Any failure by a party hereto to insist upon strict performance by the other party of any provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

Section 9.05 Applicable Law and Venue. The construction and validity of this Agreement shall be governed by the laws of the State of Texas without regard to conflicts of law principles. Venue shall be in Montgomery County, Texas.

Section 9.06 Reservation of Rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws, including sovereign immunity, except to enforce any rights and remedies under this Agreement.

Section 9.07 Further Documents. The parties agree that at any time after execution of this Agreement, they will, upon request of another party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request in order to effectuate the terms of this Agreement.

Section 9.08 Incorporation of Exhibits and Other Documents by Reference. All Exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

Section 9.09 Effect of State and Federal Laws. Notwithstanding any other provision of this Agreement, Developer, its successors or assigns, shall comply with all applicable statutes or regulations of the United States and the State of Texas, as well as any City ordinances to the extent not in conflict with this Agreement, and any rules implementing such statutes or regulations.

Section 9.10 Authority for Execution. The City hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with City ordinances. Developer hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the organizational documents of the entity.

Section 9.11 Force Majeure. In the event any party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as

reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply resulting in an inability to provide water necessary for operation of the water and wastewater systems hereunder, and any other inability of any party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care.

Section 9.13 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.

Section 9.14 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 other than the Consent Ordinance between the City and the District. If any provisions of the Consent Ordinance appear to be inconsistent or in conflict with the provisions of this Agreement, then the provisions contained in this Agreement shall be interpreted in a way which is consistent with the Consent Ordinance.

Section 9.15 Modification. This Agreement shall be subject to change or modification only with the mutual written consent of the City and the District.

Section 9.16 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.

Section 9.17 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.

Section 9.18 Conflict with Other Agreements. The Parties recognize and understand that development of the Property is subject to the Utility Agreement, as well as applicable City codes and ordinances, which may at times be in conflict. Due to

the foregoing, the Parties hereby agree that as set forth in Section 4.02 above, in the event of a conflict between the development standards contained in this Agreement and the PD-1, the PD-1 shall control. Further, in the event of a conflict between this Agreement and the Utility Agreement: (i) the Utility Agreement shall control as it relates to the Facilities to serve the Property; and (ii) this Agreement shall control as it relates to Developer's development of the Property.

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement to be effective as of the Effective Date.

CITY OF MAGNOLIA, TEXAS

By: [Signature]
City Administrator
MAYOR

ATTEST:

By: [Signature]
Lynne George, City Secretary

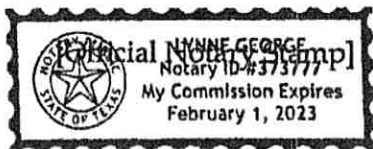
APPROVED AS TO FORM:

By: [Signature]
City Attorney

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §


This instrument was acknowledged before me on the 14th day of May, 2019, by ~~Paul Mendes, City Administrator~~ of the City of Magnolia, Texas.
Todd Kana, Mayor

[Signature]
Notary Public, State of Texas



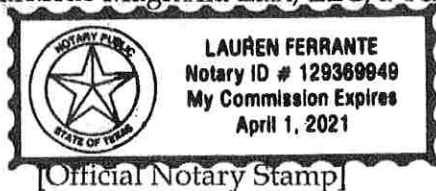
PARKSIDE MAGNOLIA EAST, LLC, a
Texas limited liability company

By: Parkside Capital, LLC
Its: Manager

By: 
Brett F. Walker
Vice President

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me, the undersigned authority, this 7 day of May, 2019, by Brett F. Walker, Vice President of Parkside Capital, LLC, a Texas limited liability company, on behalf of said limited liability company as Manager of Parkside Magnolia East, LLC, a Texas limited liability company.




Notary Public, State of Texas

Exhibits:

- A Property
- B General Plan
- C Additional Property

Exhibit A
PROPERTY DESCRIPTION

Being 48.00 acres of land in the Hampton Trifonn Survey, Abstract 556, Montgomery County, Texas, and being a portion of the residue of the 100 acre tract described in the deed from Eddie E. Jones, et al., to E. J. Damuli recorded under Volume 326, Page 238 of the Official Public Records of Real Property of Montgomery County, Texas and more particularly described by metes and bounds as follows with bearings based on the Texas Coordinate System of 1983, Central Zone:

BEGINNING at a 5/8-inch iron rod with cap stamped "HOVIS" found for the southwest corner of the herein described tract, being the northwest corner of the 107.715 acre tract described in the deed from DIANNE ELIZABETH DORSETT and MARTHA L. BURT to BBO EQUITY PARTNERS, LLC recorded in Document No. 2017-015767 of the Official Public Records of Real Property of Montgomery County, Texas, and being in the east right-of-way line of Spur 149 (60-foot wide at this point) (as occupied — no recording information found);

THENCE North 02° 44' 01" West - 728.29 feet, with the east right-of-way line of said Spur 149 and the west line of the herein described tract to a 5/8-inch iron rod with TxDOT aluminum cap found for an angle point;

THENCE North 06° 00' 02" East - 92.60 feet, continuing with the east right-of-way line of said Spur 149 to a 5/8-inch iron rod with TxDOT aluminum cap found for an angle point;

THENCE North 02° 55' 15" West - 83.97 feet, to the south end of a cutback at the intersection of the east right-of-way line of said Spur 149 with the south right-of-way line of said F.M. 1488 (width varies);

THENCE North 42° 01' 29" East - 93.34 feet, to the north end of said cutback;

THENCE with the south right-of-way line of said F.M. 1488 and the north line of the herein described tract the following courses and distances:

North 86° 59' 16" East - 377.62 feet to the beginning of a curve to the left;

in a northeasterly direction, with said curve to the left, having a central angle of 02° 18' 21", a radius of 11,534.16 feet, an arc length of 464.18 feet and a chord bearing and distance of North 85° 00' 06" East - 464.15 feet to a 5/8-inch iron rod with TxDOT aluminum cap found for the end of said curve;

North 84° 40' 56" East - 781.68 feet to a 5/8-inch iron rod with TxDOT aluminum cap found for the beginning of a curve to the right;

in a northeasterly direction, with said curve to the right, having a radius of 11,304.16 feet, a central angle of 02° 08' 13", a chord bearing and distance of North 85° 45' 02" East - 424.68 feet, and an arc distance of 424.60 feet to a 5/8-inch iron rod with cap stamped "IDS" set for the northeast corner of the herein described tract;

THENCE South 00° 31' 18" West - 1043.41 feet, across said residue tract, to a 5/8-inch iron rod with cap stamped "IDS" set for the southeast corner of the herein described tract and being on the north line of said 107.715 acre tract;

THENCE South 87° 35' 32" West - 2067.22 feet, with the north line of said 107.715 acre tract, to the POINT OF BEGINNING and containing 48.00 acres of land

Exhibit B
GENERAL PLAN

Exhibit C
ADDITIONAL PROPERTY

**METES AND BOUNDS DESCRIPTION
OF 46.66 ACRES OF LAND
IN THE HAMPTON TILLONS SURVEY, A-556
MONTGOMERY COUNTY, TEXAS**

Being 46.66 acres of land in the Hampton Tillons Survey, Abstract 556, Montgomery County, Texas, and being a portion of the residue of the 100 acre tract described in the deed from Eddie E. Jones, et al., to E. J. Damuth recorded under Volume 326, Page 238 of the Official Public Records of Real Property of Montgomery County, Texas and more particularly described by metes and bounds as follows with bearings based on the Texas Coordinate System of 1983, Central Zone:

BEGINNING at a 1-Inch iron pipe found for the northeast corner of the 10.003 acre tract of land (Property No. 2) described in the deed to Winslow Family Trust and recorded in Montgomery County Clerk's File Number 2009-007415, and being an angle point in the west line of the 64.137 acre tract (Property No. 2), described in the same deed, and being the southeast corner of the herein described tract;

THENCE South 86°54'18" West - 314.20 feet (called North 89°39'30" East, 314.37 feet per M.C.C.F. No. 2009007415) with the north line of said 10.003 acre tract to the northeast corner of Lot 2, Block 3 of Thousand Oaks Section Four, the subdivision plat thereof recorded under Cabinet Z, Sheet 211 of the Montgomery County Map Records, being the northwest corner of said 10.003 acre tract, from which a found 5/8 inch iron rod (bent) against a power pole bears South 35°40'16" West - 0.46 feet;

THENCE South 86°59'36" West - 1345.30 feet (called North 89°39'10" East - 1344.96 feet per Cabinet Z, Sheet 211) with the north line of said Thousand Oaks Section Four subdivision, passing at 354.56 feet a found 5/8-inch iron rod with cap, passing at 607.99 feet a 5/8-Inch iron rod with cap stamped "SURVEYOR 3996" for the northeast corner of Tall Oaks Way (60 feet wide) (a private road), passing at 1146.74 feet the northeast corner of Lot 16, Block 2 of said Thousand Oaks Section Four, being the northwest corner of Unrestricted Reserve "B" of said Thousand Oaks Section Four, from which a found 5/8-Inch iron rod with cap bears South 52°29'13" West, 1.65 feet and continuing to a found 3-Inch steel post in the east line of the 107.715 acre tract described in the deed from DIANNE ELIZABETH DOGGETT and MARTHA L. BURT to BBQ EQUITY PARTNERS, LLC recorded in Document No. 2017-015767 of the Official Public Records of Real Property of Montgomery County, Texas, and being the most northerly northwest corner of said Thousand Oaks Section Four subdivision;

THENCE North 06°37'48" East - 29.83 feet, with the east line of said 107.715 acre tract, to a 5/8-inch iron rod with cap stamped "HOVIS" found for the northeast corner of said 107.715 acre tract;

THENCE South 87°35'32" West (called South 89°49'16" East per M.C.C.F. No. 2008104044) - 310.88 feet, with the north line of said 107.715 acre tract to a 5/8-inch iron rod with cap stamped "IDS" set for the southwest corner of the herein described tract;

THENCE North 00°31'18" East - 1043.41 feet, across said residue tract, to a 5/8-inch iron rod with cap stamped "IDS" set for the northwest corner of the herein described tract and being on the south right-of-way line of F.M. 1488 (width varies) and being on the arc of a curve to the right, from which point a 5/8-inch iron rod with TxDOT aluminum cap marking the beginning of said curve, and bears with said curve, having a radius of 11,384.16 feet, a central angle of 02° 08' 13", a chord bearing and distance of South 85° 45' 02" West - 424.58 feet, and an arc distance of 424.60 feet;

THENCE in an easterly direction, with the south right-of-way line of said F.M. 1488 and said curve to the right, having a radius of 11,384.16 feet, a central angle of 00° 10' 12", a chord bearing and distance of North 86° 54' 15" East - 33.80 feet, and an arc distance of 33.80 feet to a 5/8-inch iron rod with TxDOT aluminum cap found for the end of said curve;


THENCE North 86°59'16" East - 843.93 feet, continuing with the south right-of-way line of said F.M. 1488, to a 5/8-inch iron rod (bent) found for the beginning of a curve to the right;

THENCE in a southeasterly direction, continuing with the south right-of-way line of said F.M. 1488 and said curve to the right, having a radius of 2789.79 feet, a central angle of 11° 36' 51", a chord bearing and distance of South 87° 12' 18" East - 564.54 feet, and an arc distance of 565.51 feet to a 5/8-inch iron rod with TxDOT aluminum cap (bent) found for the end of said curve;

THENCE South 81°23'53" East - 523.37 feet, continuing with the south right-of-way line of said F.M. 1488, to a point in the west line of said 64.137 acre tract of land;

THENCE South 00°11'22" West - 912.78 feet (called South 03°30'34" West, 946.67 feet per Montgomery County Clerk's File Number 2009-007415), with the west line of said 64.137 acre tract to the **POINT OF BEGINNING** and containing 46.66 acres of land.

Prepared by:
IDS Engineering Group
Job No. 2024-014-51-531
March 9, 2018


Michael L. Swan
Registered Professional Land Surveyor
Texas Registration Number 5551

