

ORDINANCE NO. O-2020-017 ANNEXING TERRITORY

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS, ANNEXING THE HEREINAFTER DESCRIBED TERRITORY TO THE CITY OF MAGNOLIA, MONTGOMERY COUNTY, TEXAS, AND EXTENDING THE BOUNDARY LIMITS OF SAID CITY SO AS TO INCLUDE SAID HEREINAFTER DESCRIBED PROPERTY WITHIN SAID CITY LIMITS, AND GRANTING TO ALL THE INHABITANTS OF SAID PROPERTY ALL THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS AND BINDING SAID INHABITANTS BY ALL OF THE ACTS, ORDINANCES, RESOLUTIONS, AND REGULATIONS OF SAID CITY; AND ADOPTING A SERVICE PLAN.

* * * * *

WHEREAS, §43.0671 of the Texas Local Government Code, authorizes the annexation of territory, subject to the laws of this state.

WHEREAS, an offer of a development agreement pursuant to §43.016 of the Texas Local Government Code has been waived by the landowner.

WHEREAS, a written agreement for the provisions of services has been negotiated and entered into pursuant to §43.0672 of the Texas Local Government Code.

WHEREAS, the procedures prescribed by the Texas Local Government Code, and the laws of this state have been duly followed with respect to the following described territory, to wit:

Being a 1.2± acre tract of land out of a 236.34 acre tract, 145.33 acre tract, and 757.06 acre tract described in a deed dated September 30, 2016 from 1488 Corp, to Audubon Magnolia Development, LLC, recorded under Official Public Records of Montgomery County (O.P.R.M.C.) No. 2016095007, situated in the John Scott Survey, Abstract No. 511, Tyler Owen Survey, Abstract No. 409, John Dorsey Survey, Abstract No. 172, and the Charles Frazier Survey, Abstract No. 206, Montgomery County, Texas and more particularly described in the petition with metes and bounds attached hereto as Exhibit "A" and shown on Exhibit "B".

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

Section 1. That the heretofore described property is hereby annexed to the City of Magnolia, Montgomery County, Texas, and that the boundary limits of the City of Magnolia be and the same are hereby extended to include the above described territory within the city limits of the City of Magnolia, and the same shall hereafter be included within the territorial limits of said city, and the inhabitants thereof shall hereafter be entitled to all the rights and privileges of

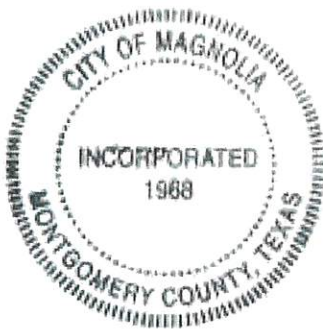
other citizens of the city of Magnolia and they shall be bound by the acts, ordinances, resolutions, and regulations of said city.

Section 2. A written agreement for the provisions of services service plan for the area is hereby adopted and attached as Exhibit "C".

Section 3. A written refusal and waiver of a development agreement is attached hereto as Exhibit "D".

The City Secretary is hereby directed to file with the County Clerk of Montgomery County, Texas, a certified copy of this ordinance.

PASSED by an affirmative vote of all members of the City Council, this 9th day of June 2020.



Todd Kana, Mayor

ATTEST:

Lynne George, TRMC, CPM
City Secretary

Return to:
City of Magnolia
18111 Buddy Riley Blvd.
Magnolia, TX 77354



Exhibit A

2020 ANNEXATION - PARCEL #1

STATE OF TEXAS }
COUNTY OF MONTGOMERY }

BEING A PARCEL OF LAND FOR ANNEXATION by the City of Magnolia, situated in Montgomery County, Texas. Said annexation parcel being more particularly described as follows:

BEGINNING at a point at the intersection of the south line of the existing City Limits of the City of Magnolia, as described in Magnolia City Ordinance 2014-009, with the northeasterly right-of-way line of State Highway 249;

THENCE in a northwesterly direction with the northeasterly State Highway 249 right-of-way line to a point at the intersection of the northeasterly right-of-way line of State Highway 249 with the southerly right-of-way line of F. M. Highway 1488;

THENCE in an easterly direction with the southerly right-of-way line of F. M. 1488, pass the southwest corner of the existing City Limits of the City of Magnolia, as described in Magnolia City Ordinance 2016-029, and continuing for an additional distance of 5.00 feet to a point;

THENCE in a southerly direction departing the southerly right-of-way line of F. M. Highway 1488, 5.00 feet perpendicular distance to a point;

THENCE in a westerly direction along a line 5.00 feet southerly of and parallel to the southerly right-of-way line of F. M. Highway 1488 to a point 5.00 feet perpendicular distance to the northeasterly right-of-way line of State Highway 249;

THENCE in a southeasterly direction along a line 5.00 feet northeasterly of and parallel to the northeasterly right-of-way line of State Highway 249 to a point in the south line of said existing City Limits of the City of Magnolia (Ordinance 2014-009);

THENCE in a westerly direction with the south line of said existing City Limits to the City of Magnolia (Ordinance 2014-009) to the Place of Beginning.

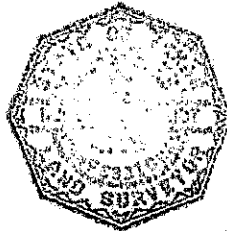
Notes:

1. This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.
2. This description is accompanied by a plat of even date herewith.
3. This survey is valid only if it bears the seal and original signature of the surveyor.

April 29, 2020

Robert C. Schmidt

Robert C. Schmidt, TX RPLS No. 4705



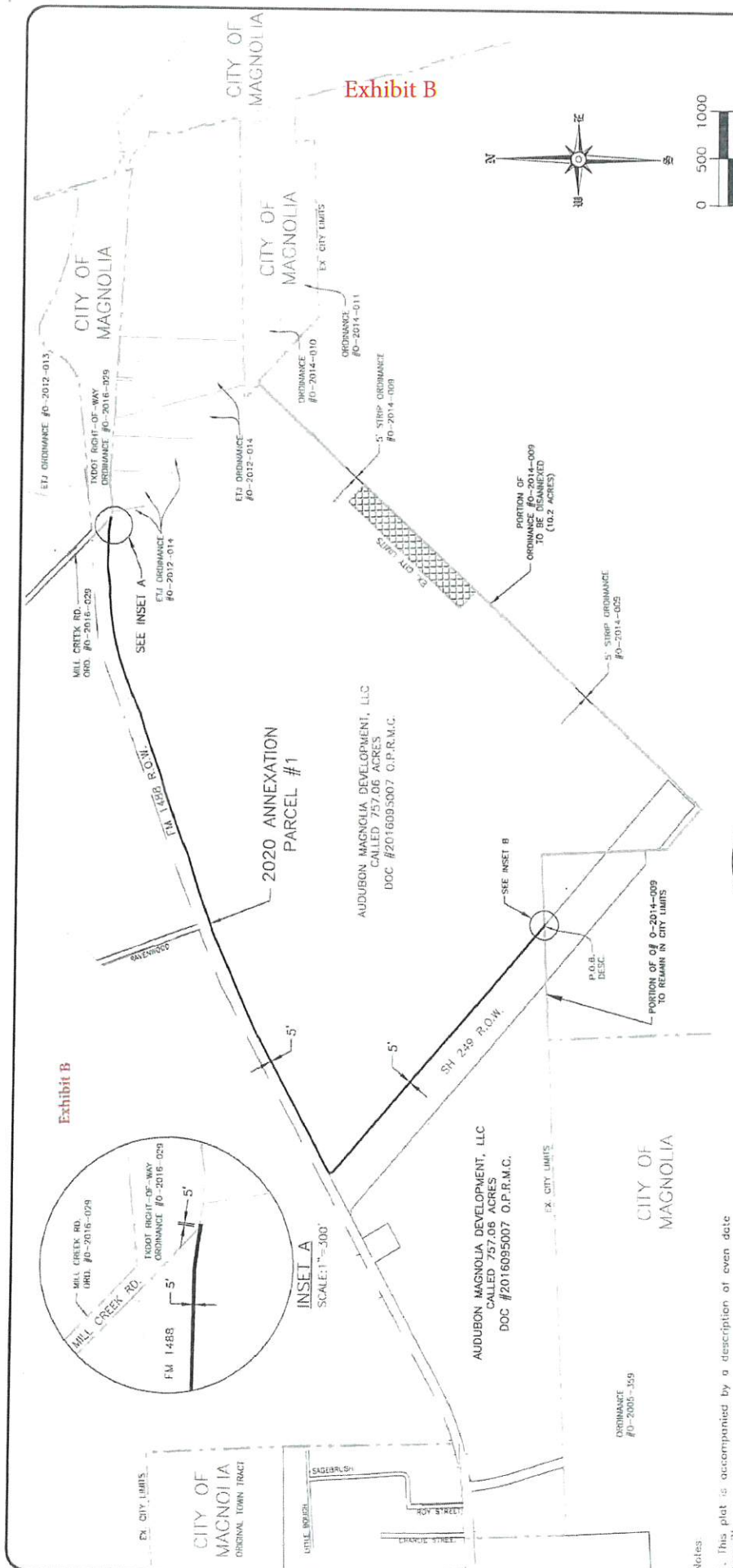
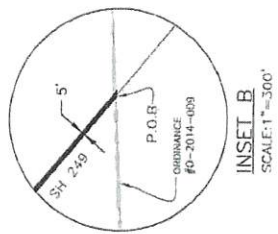
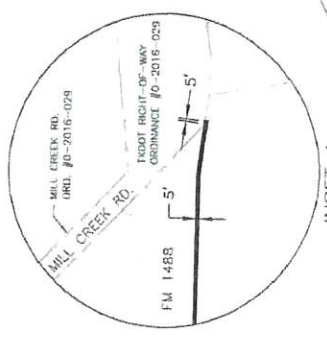
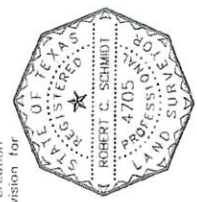


Exhibit B



Notes:
1. This plat is accompanied by a description of even date herewith.

2. This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



Robert C. Schmidt, P.L.S.
 Robert C. Schmidt, P.L.S.
 Texas Registered Professional
 Land Surveyor No. 4705
 April 29, 2020

PLAT SHOWING CITY OF MAGNOLIA
 2020 ANNEXATION PARCEL #1
 MONTGOMERY COUNTY, TEXAS



Strand Associates, Inc.
 1500 N. Highway
 Suite 100, P.O. Box 100
 (936) 236-7327
 TIRE No. F-1005
 TRPLS No. 1000000

S:\BCE\3900-3999\3919\052\Area\2020 FV249 & FM1488 Annexation\Exhibit for Strp.dwg

EXHIBIT C

MUNICIPAL SERVICE AGREEMENT

This Municipal Service Agreement (this "Agreement") by and between the City of Magnolia, Texas (the "City") and Audubon Magnolia Development, LLC, a Texas limited liability company ("Audubon"), is made to be effective as of May 12, 2020 (the "Effective Date"). The City and Audubon are each referred to individually in this Agreement as a "Party" and, collectively, as the "Parties."

RECITALS

A. Audubon owns the real property described in **Exhibit "A"** attached hereto and incorporated herein for all purposes (the "New Annexation Strip") which is the subject of that certain Petition Requesting Annexation by Area Landowners submitted to the City by Audubon on the Effective Date in which Audubon requested annexation of the New Annexation Strip into the corporate limits of the City.

B. The City makes available to the land within its corporate limits the following services (each a "Service" and, collectively, the "Services"): (i) fire suppression and prevention services, (ii) police patrol and protection services, (iii) building inspection and building code enforcement services, (iv) planning and zoning services, including regulation of development and land use, (v) library services, (vi) health code enforcement services, (vii) street maintenance services, (viii) storm water management services, (ix) street lighting services, (x) traffic engineering devices and devices (xi) water and sanitary sewer services, (xii) solid waste collection services, and (xiii) any other applicable municipal services provided in accordance with the City's established policies governing extension of municipal services to newly annexed areas.

C. Pursuant to the requirements of Texas Local Government Code Section 43.0672, as amended (the "Code"), the City must, after receipt of the Petition and prior to annexation of the New Annexation Strip into its corporate limits, negotiate and enter into a written agreement with Audubon regarding provision of the Services in the area. Such written agreement must include: (i) a list of each Service the municipality provides on the effective date of the annexation, and (ii) a schedule that includes the period within which the municipality will provide each service that is not provided on the effective date of the annexation. The municipality is not required to provide a service that is not included in the agreement.

D. In connection with the City's annexation of the New Annexation Strip into its corporate limits, the City and Audubon desire to enter into this Agreement in order to: (i) fulfill the requirements of the Code, (ii) memorialize their agreement that, as of the Effective Date, the City does not provide any of the Services to the New Annexation Strip, and (iii) memorialize their agreement that, no Services will be provided by the City to the New Annexation Strip after the Effective Date.

E. The Parties have determined that they are each independently authorized to enter into this Agreement and the Parties acknowledge that they are proceeding in good faith and in reliance upon the purposes, intent, effectiveness and enforceability of this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises and the mutual agreements, covenants, benefits and obligations set forth and contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Audubon contract and agree as follows:

Section 1 Recitals. The recitals set forth above are declared true and correct and are hereby incorporated as part of this Agreement.

Section 2 Services. The Parties acknowledge and agree that, except to the extent provided in that certain Land Use Planning and Cooperation Agreement by and between the City and Audubon, dated effective as of November 8, 2011, as the same has been and may be amended, supplemented or otherwise modified from time to time (the "Land Use Agreement"), and in that certain Wholesale Water Supply and Sanitary Sewer Agreement by and among the City, Audubon, Montgomery County Municipal Utility District No. 130, Montgomery County Municipal Utility District No. 131 and Montgomery County Municipal Utility District No. 154A, dated effective as of January 13, 2015, as the same has been and may be amended, supplemented or otherwise modified from time to time (the "Wholesale Agreement"): (i) as of the Effective Date, the City does not provide any of the Services to the New Annexation Strip, and (ii) on and after the Effective Date, the City shall not provide any of the Services to the New Annexation Strip.

Section 3 Land Use Agreement and Wholesale Agreement. The City expressly acknowledges and agrees that: (i) the New Annexation Strip is subject to the Land Use Agreement and the Wholesale Agreement, (ii) following annexation of the New Annexation Strip, the City's future regulation of the Annexation Property shall be pursuant to, limited by and in furtherance of, the Land Use Agreement and the Wholesale Agreement, (iii) for purposes of the Land Use Agreement, the New Annexation Strip is part of the property comprising the "Property" (as defined in the Land Use Agreement) and is on equal footing with all other parts of such "Property," (iv) for purposes of the Wholesale Agreement, the New Annexation Strip is part of the property comprising the "Property" (as defined in the Wholesale Agreement) and is on equal footing with all other parts of such "Property," and (v) both the Land Use Agreement and the Wholesale Agreement continue in full force and effect.

Section 4 Term. This Agreement shall be deemed to commence on the Effective Date, and shall continue in full force and effect until terminated by mutual consent of the Parties.

Section 5 Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section or other part of this Agreement to the other persons or circumstances shall not be affected thereby.

Section 6 Merger. This Agreement, together with the Exhibit attached hereto constitute the entire agreement among the Parties relative to the subject matter hereof. There have been and are no agreements, covenants, representations or warranties among the Parties other than

those expressly stated or provided for herein. In the event that the terms of this Agreement conflict with any of the Prior Agreements, the terms of this Agreement shall prevail.

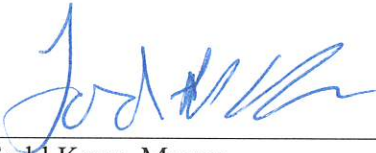
Section 7 Modification. This Agreement may only be modified or amended by a written instrument executed by both of the Parties.

Section 8 Texas Law to Apply; Venue. This Agreement has been executed in the State of Texas and shall be construed in accordance with and governed by the laws of the State of Texas and the laws of the United States of America. Venue shall be in Montgomery County, Texas.

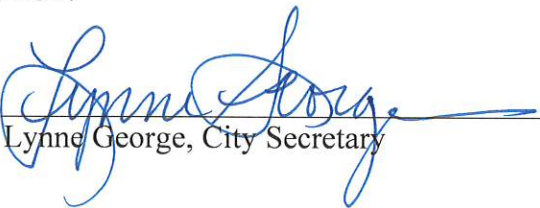
[Signature Pages Follow]

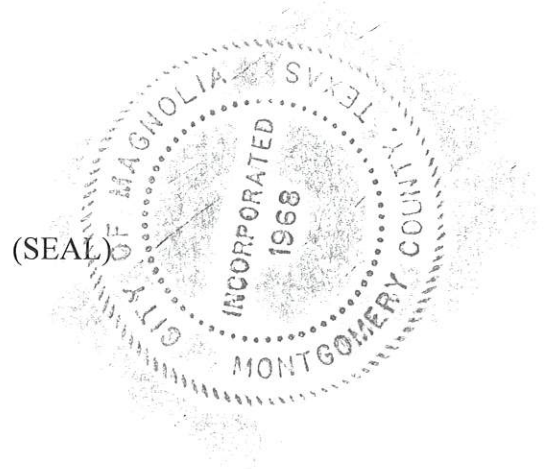
IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

CITY OF MAGNOLIA, TEXAS

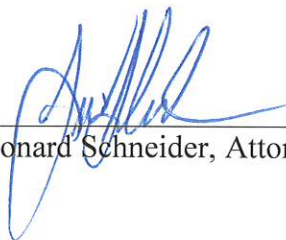
By: 
Todd Kana, Mayor

ATTEST:

By: 
Lynne George, City Secretary

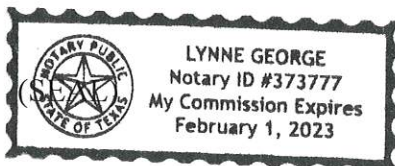


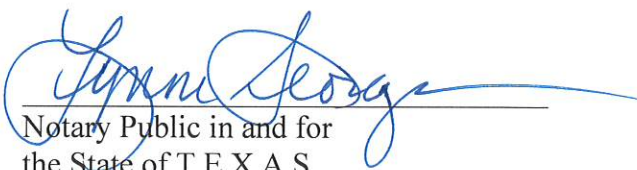
APPROVED AS TO FORM:

By: 
Leonard Schneider, Attorney for the City

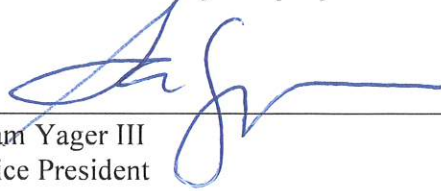
THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on this 9th day of June, 2020, by Todd Kana, Mayor of the City of Magnolia, Texas.




Notary Public in and for
the State of T E X A S

AUDUBON MAGNOLIA DEVELOPMENT, LLC,
a Texas limited liability company

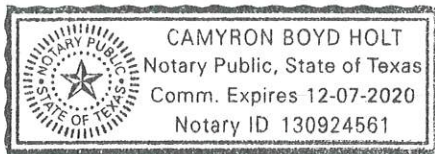
By: 
Sam Yager III
Vice President

THE STATE OF TEXAS

§
§
§

COUNTY OF HARRIS

This instrument was acknowledged before me on June 5, 2020, by Sam Yager III, Vice President of Audubon Magnolia Development, LLC, a Texas limited liability company, on behalf of said limited liability company.



(SEAL)


Notary Public, in and for
the State of Texas

Exhibit "A"

New Annexation Strip



Exhibit A

2020 ANNEXATION - PARCEL #1

STATE OF TEXAS)
COUNTY OF MONTGOMERY)

BEING A PARCEL OF LAND FOR ANNEXATION by the City of Magnolia, situated in Montgomery County, Texas. Said annexation parcel being more particularly described as follows:

BEGINNING at a point at the intersection of the south line of the existing City Limits of the City of Magnolia, as described in Magnolia City Ordinance 2014-009, with the northeasterly right-of-way line of State Highway 249;

THENCE in a northwesterly direction with the northeasterly State Highway 249 right-of-way line to a point at the intersection of the northeasterly right-of-way line of State Highway 249 with the southerly right-of-way line of F. M. Highway 1488;

THENCE in an easterly direction with the southerly right-of-way line of F. M. 1488, pass the southwest corner of the existing City Limits of the City of Magnolia, as described in Magnolia City Ordinance 2016-029, and continuing for an additional distance of 5.00 feet to a point;

THENCE in a southerly direction departing the southerly right-of-way line of F. M. Highway 1488, 5.00 feet perpendicular distance to a point;

THENCE in a westerly direction along a line 5.00 feet southerly of and parallel to the southerly right-of-way line of F. M. Highway 1488 to a point 5.00 feet perpendicular distance to the northeasterly right-of-way line of State Highway 249;

THENCE in a southeasterly direction along a line 5.00 feet northeasterly of and parallel to the northeasterly right-of-way line of State Highway 249 to a point in the south line of said existing City Limits of the City of Magnolia (Ordinance 2014-009);

THENCE in a westerly direction with the south line of said existing City Limits to the City of Magnolia (Ordinance 2014-009) to the Place of Beginning.

Notes:

1. This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.
2. This description is accompanied by a plat of even date herewith.
3. This survey is valid only if it bears the seal and original signature of the surveyor.

April 29, 2020

Robert C. Schmidt

Robert C. Schmidt, TX RPLS No. 4705



Exhibit D

PETITION REQUESTING ANNEXATION BY AREA LANDOWNERS

TO THE MAYOR OF THE GOVERNING BODY OF THE CITY OF MAGNOLIA, TEXAS:

The undersigned owner of the tract of land described in Exhibit "A" hereto, which is vacant and without residents, or on which fewer than three qualified voters reside, hereby waive the requirement to be offered a development agreement pursuant to Section 43.016 of the Texas Local Government Code, and petition your honorable Body to extend the present city limits so as to include as part of the City of Magnolia, Texas, the territory described in Exhibit "A" hereto.

We certify that the above described tract of land is contiguous and adjacent to the City of Magnolia, Texas, and that this petition is signed and duly acknowledged by each and every person having an interest in said land.

Dated this 12th day of May, 2020.

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PETITIONER:

AUDUBON MAGNOLIA DEVELOPMENT, LLC,
a Texas limited liability company

By: 
Sam Yager III
Vice President

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 12th day of May, 2020, by Sam Yager III of Audubon Magnolia Development, LLC, a Texas limited liability company, on behalf of said limited liability company.


Notary Public, in and for
the State of Texas

(SEAL)



The undersigned, being the holder of liens against the property described in the foregoing Petition hereby acknowledges and consents to said Petition.

TEXAS CAPITAL BANK, a national banking association

By: *D. Poole*
Name: _____
Title: _____

Danielle E. Poole
Vice President

THE STATE OF TEXAS

§

COUNTY OF HARRIS

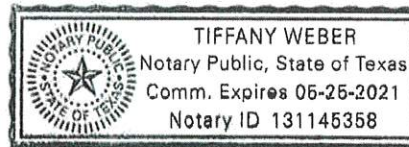
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This instrument was acknowledged before me on this the 11th day of May, 2020, by Danielle E. Poole, Vice President of Texas Capital Bank, a national banking association, on behalf of said national banking association.

Tiffany Weber
Notary Public, in and for
the State of Texas

(SEAL)





2020 ANNEXATION - PARCEL #1

STATE OF TEXAS)
COUNTY OF MONTGOMERY)

BEING A PARCEL OF LAND FOR ANNEXATION by the City of Magnolia, situated in Montgomery County, Texas. Said annexation parcel being more particularly described as follows:

BEGINNING at a point at the intersection of the south line of the existing City Limits of the City of Magnolia, as described in Magnolia City Ordinance 2014-009, with the northeasterly right-of-way line of State Highway 249;

THENCE in a northwesterly direction with the northeasterly State Highway 249 right-of-way line to a point at the intersection of the northeasterly right-of-way line of State Highway 249 with the southerly right-of-way line of F. M. Highway 1488;

THENCE in an easterly direction with the southerly right-of-way line of F. M. 1488, pass the southwest corner of the existing City Limits of the City of Magnolia, as described in Magnolia City Ordinance 2016-029, and continuing for an additional distance of 5.00 feet to a point;

THENCE in a southerly direction departing the southerly right-of-way line of F. M. Highway 1488, 5.00 feet perpendicular distance to a point;

THENCE in a westerly direction along a line 5.00 feet southerly of and parallel to the southerly right-of-way line of F. M. Highway 1488 to a point 5.00 feet perpendicular distance to the northeasterly right-of-way line of State Highway 249;

THENCE in a southeasterly direction along a line 5.00 feet northeasterly of and parallel to the northeasterly right-of-way line of State Highway 249 to a point in the south line of said existing City Limits of the City of Magnolia (Ordinance 2014-009);

THENCE in a westerly direction with the south line of said existing City Limits to the City of Magnolia (Ordinance 2014-009) to the Place of Beginning.

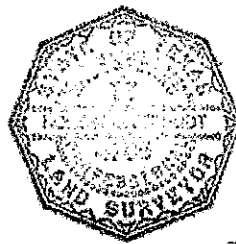
Notes:

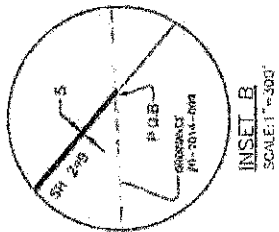
1. This document was prepared under 22 TAC §003.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.
2. This description is accompanied by a plat of even date herewith.
3. This survey is valid only if it bears the seal and original signature of the surveyor.

April 29, 2020

Robert C. Schmidt

Robert C. Schmidt, TX RPLS No. 4705





2. This document was prepared under 27 IAC §683.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the original configuration of the boundary of the political subdivision for which it was prepared.



SA
STRAND
ASSOCIATES

[illegible]

April 23, 2020

FILED FOR RECORD
06/30/2020 02:02PM

Mark Tumbull

COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS,
COUNTY OF MONTGOMERY

I hereby certify that this instrument was filed in the file number
sequence on the date and time stamped herein
by me and was duly RECORDED in the Official Public
Records of Montgomery County, Texas.

06/30/2020



Mark Tumbull

County Clerk
Montgomery County, Texas