

Common (Reciprocal) Access Agreement

(Current as of 07-07-09)

State of Texas,
County of Harris.

As a condition for Plat of the _____ Subdivision as approved by the City Council of the City of Tomball, Texas, on _____, the property owners hereby agree to share a common _____ wide driveway along _____ Street as evidenced by this Agreement and Easement:

DATE: _____.

First Party: _____

First Party Address: _____

Second Party: _____

Second Party Address: _____

First Party's Lienholder: _____

First Party's Lienholder's Address: _____

Second Party's Lienholder: _____

Second Party's Lienholder's Address: _____

First Party's Property:

PARCEL A

Subdivision Name: _____ Lot No.: _____ Block No.: _____

Recorded in: Volume _____ Page _____ Harris County

Address: _____

Current uses: _____

Second Party's Property:

PARCEL B

Subdivision Name: _____ Lot No.: _____

Block No.: _____

Recorded in: Volume _____ Page _____ Harris County

Address: _____

Current uses: _____

Easement Purpose: For providing free and uninterrupted pedestrian and vehicular ingress to and egress from, and access across and between the First Party's Property and the Second Property's Property as follows:

Consideration: Good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties.

Reservations from Conveyance of First Party's Property: NONE.

Exceptions to Warranty of First Party's Property: NONE.

Reservations from Conveyance of Second Party's Property: NONE.

Exceptions to Warranty of Second Party's Property: NONE.

First Party, for the Consideration and subject to the Reservations from Conveyance of First Party's Property and Exceptions to Warranty of First Party's Property, grants, sells, and conveys to Second Party and Second Party's heirs, successors, and assigns an easement to, over and across the First Party's Property for the Easement Purpose and for the benefit of all or any portion of Second Party's Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the easement, rights, and appurtenances to Second Party and Second Party's heirs, successors, and assigns forever. First Party binds First Party and First Party's heirs, successors, and assigns to warrant and forever defend the title to the easement, rights and appurtenances in Second Party and Second Party's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the easement, rights, or appurtenances, or any part thereof, except as to the Reservations from Conveyance of First Party's Property and Exceptions to Warranty of First Party's Property, to the extent that such claim arises by, through, or under First Party but not otherwise.

Second Party, for the Consideration and subject to the Reservations from Conveyance of Second Party's Property and Exceptions to Warranty of Second Party's Property, grants, sells, and conveys to First Party and First Party's heirs, successors, and assigns an

easement to, over and across the Second Party's Property for the Easement Purpose and for the benefit of all or any portion of First Party's Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the easement, rights, and appurtenances to First Party and First Party's heirs, successors, and assigns forever. Second Party binds Second Party and Second Party's heirs, successors, and assigns to warrant and forever defend the title to the easement, rights and appurtenances in First Party and First Party's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the easement, rights, or appurtenances, or any part thereof, except as to the Reservations from Conveyance of Second Party's Property and Exceptions to Warranty of Second Party's Property, to the extent that such claim arises by, through, or under Second Party but not otherwise.

Terms and Conditions: *The following terms and conditions apply to the Easement granted by this agreement-*

1. *Character of Easement.* The Easements are appurtenant to and run with the Properties, and all and any portions thereof, whether or not the Easements are referenced or described in any conveyance of all or such portion of the Properties, or any portion thereof. The Easements are nonexclusive and irrevocable. The Easements are for the benefit of the Parties, and the heirs, successors and assigns of the Parties who at any time own the Properties or any interest therein (as applicable, the "Holders"), and for the City of Tomball, Texas, as described below.

2. *Duration of the Easement.* The duration of the Easement shall be perpetual.

3. *Use and location of Easements.* The Parties and other Holders will be entitled to exercise direct access to and between the Properties without interference except as set forth in this agreement and to use all access areas and driveways in exercising the Easements. A Holder's invitees will not be entitled to park on the other Holder's Property, but will be permitted to walk or drive across or otherwise traverse the Properties to obtain ingress to or egress from the other Properties.

4. *Nonexclusiveness of Easements.* The Easements are nonexclusive, and each of the Parties reserves for itself and its heirs, successors, and assigns the right to use all or part of the Easements in conjunction with any other Holder and the right to convey to others the right to use all or part of the Easements in conjunction with the Holders, as long as such further conveyance is subject to the terms of this agreement.

5. *Maintenance of Easement Property.* All access ways and driveways located on the Properties must be maintained at a level of appearance and utility consistent with that for similarly used properties in the neighborhood in which the Properties are located. Each Holder will be solely responsible for the costs of maintaining the access ways and driveways located on that Holder's Property.

6. *Rights Reserved.* Each Party reserves for that Party and that Party's heirs, successors, and assigns the right to continue to use and enjoy the surface of their Property for

purposes that do not unreasonably interfere with or interrupt the use or enjoyment of the Easements.

7. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

8. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns; provided, further, however, that this Agreement is intended for the benefit of the Parties hereto, and is not intended to confer upon any person other than the Parties hereto any rights or remedies hereunder.

9. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in Harris County, Texas.

10. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

11. *Integration.* This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.

12. *Legal Construction.* If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

13. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal

delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

14. *Recitals.* Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement.

15. *Time.* Time is of the essence.

Designated Third Party Beneficiary. The Parties designate the public and the City of Tomball, Texas, as a beneficiary of this Agreement. The violation of this agreement may result in revocation of a Certificate of Occupancy, fine, or both, in accordance with the Comprehensive Zoning Ordinance.

Signed and agreed to, this the ____ day of _____, _____.

First Party/Parcel A Owner Name

Second Party/Parcel B Owner Name

Parcel A Owner's Signature

Parcel B Owners' Signature

Acknowledgments for Owners:

State of Texas,
County of Harris.

This instrument was acknowledged before me on _____ by _____.

Seal

Notary Public in and for the State of Texas.

State of Texas,
County of Harris.

This instrument was acknowledged before me on _____ by _____.

Seal

Notary Public in and for the State of Texas.

State of Texas,
County of Harris.

This instrument was acknowledged before me on _____ by _____.

Seal

Notary Public in and for the State of Texas.

Consent and Subordination by Lienholders

Lienholders, as the holders of liens on the Properties, consent to the above grants of Easements, including the terms and conditions of the grants and Lienholders subordinate their liens to the rights and interests of Holders, so that a foreclosure of the liens will not extinguish the rights and interests of Holders.

Acknowledgements for Lienholders

State of Texas,
County of Harris.

This instrument was acknowledged before me on _____ by _____.

Seal

Notary Public in and for the State of Texas.

State of Texas,
County of Harris.

This instrument was acknowledged before me on _____ by _____.

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