

ORDINANCE NO. 2023-43

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 50 (ZONING) OF THE TOMBALL CODE OF ORDINANCES BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 48.95 ACRES OF LAND LEGALLY DESCRIBED AS BEING ALL OF LOTS 1, 2, & 3 OF THE SHOPPES AT SPRING CREEK COMMONS, SECTION 1. LOT 1, BLOCK 1 OF BROWN-HUFSMITH COMMERCIAL AND APPROXIMATELY 9.98 ACRES BEING A PORTION OF THE J HOUSE SURVEY, ABSTRACT 34 FROM A MIXTURE OF COMMERCIAL (C), GENERAL RETAIL (GR), PLANNED DEVELOPMENT DISTRICT (PD) AND SINGLE FAMILY RESIDENTIAL ESTATE -20 (SF-20-E) TO A PLANNED DEVELOPMENT DISTRICT (PD #19) ZONING. THE PROPERTY IS LOCATED AT THE NORTHEAST CORNER OF BROWN-HUFSMITH ROAD AS WELL AS THE 29700 BLOCK (WEST SIDE) OF QUINN ROAD; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

Whereas, Par Real Estate Holdings LLC., and Ron & Amy Haffner, represented by HMF-Americanna LLC., has requested changing the zoning district classification of 48.95 acres of land legally described as being all of Lots 1, 2, & 3 of the Shoppes at Spring Creek Commons, Sec. 1. Lot 1, Block 1 of Brown-Hufsmith Commercial and approximately 9.98 acres out of the J House Survey, Abstract 34 from Commercial, General Retail, Planned Development, and Single Family Residential Estate -20 to Planned Development District (PD #19). The property is located at the northeast corner of Brown-Hufsmith Road as well as being generally located west of the 29700 block (west side) of Quinn Road, within the City of Tomball, Harris County, Texas (the "Property"), be rezoned; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days after written notice of that hearing was mailed to the owners of land within three hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the requested rezoning; and

Whereas, the public hearing was held before the Planning & Zoning Commission at least forty (40) calendar days after the City's receipt of the requested rezoning; and

Whereas, the Planning & Zoning Commission recommended in its final report that City Council approve the requested rezoning; and

Whereas, the City Council deems it appropriate to grant the requested rezoning.

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

Section 1. The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. The rezoning classification of the Property is hereby changed and is subject to the regulations, restrictions, and conditions hereafter set forth.

Section 3. The Official Zoning Map of the City of Tomball, Texas shall be revised and amended to show the designation of the Property as hereby stated, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 4. This Ordinance shall in no manner amend, change, supplement or revise any provision of any ordinance of the City of Tomball, save and except the change in zoning classification for the Property as described above.

Section 5. The Planned Development (PD) shall adhere to all Planned Development Regulations identified in Exhibit "A" and concept plan(s) made a part hereof for all purposes and the following additional limitation, restriction, and condition:

1. An Automated License Plate Recognition (ALPR) system shall be installed at all entrances to the property from a public roadway.
2. Only one right-turn out only (eastbound) public vehicular access is permitted from the development to Baker Drive.
3. A gated emergency-only access point shall be constructed from the development to Baker Drive.

Section 6. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 7. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON 16th DAY OF OCTOBER 2023.

COUNCILMAN FORD	<u>Yea</u>
COUNCILMAN STOLL	<u>Yea</u>
COUNCILMAN DUNAGIN	<u>Yea</u>
COUNCILMAN TOWNSEND	<u>Yea</u>
COUNCILMAN PARR	<u>Yea</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON 20th DAY OF NOVEMBER 2023.

COUNCILMAN FORD	<u>Yea</u>
COUNCILMAN STOLL	<u>Yea</u>
COUNCILMAN DUNAGIN	<u>Yea</u>
COUNCILMAN TOWNSEND	<u>Yea</u>
COUNCILMAN PARR	<u>Yea</u>

Lori Klein Quinn
LORI KLEIN QUINN, Mayor

ATTEST:

Tracylynn Garcia
TRACYLYNN GARCIA, City Secretary

THE COTTAGE GREEN AT TOMBALL – PLANNED DEVELOPMENT
THE COTTAGE GREEN (HMF) & THE SHOPPES AT THE COTTAGE GREEN AT TOMBALL
NEQ BROWN-HUFSMITH FM249

* The Developer and the City of Tomball are working on a development agreement related to offsite detention/drainage to serve The Cottage Green at Tomball simultaneously with the Planned Development process. As such the approval of both shall be on the same timeline and at no point be considered independent of each other.

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A. Executive Summary

The Cottage Green at Tomball and The Shoppes at The Cottage Green (“The Development”) represent a horizontal multi-family and commercial mixed-use community that aims to add value for all landowners, users, tenants, and the city. This type of development meets several of the goals and objectives in Tomball’s Comprehensive Plan, 2019. Specifically, *Goal 2, Land Use and Development*, lists the following two objectives that precisely points to this Development:

- Objective LU 2.3: Promote development that creates complimentary relationships between differing land uses.
- Objective LU 2.5: Increase housing choice by allowing for a mix of styles, densities, and price ranges located within appropriate locations.

As for location, the Development is located off Tomball Parkway, between Baker Drive and Brown-Hufsmith Road comprising of approximately 39 acres. There is great regional connectivity but also situated in a manner to create a sense of place and being for residents and patrons. Which is a benefit to this type of mixed-use development integrating commercial uses with complimentary residential options. The Cottage Green and The Shoppes takes its design template from a traditional Southern Vernacular style of architecture with a southern beach vibe. The overall project and intent of this Planned Development provides a coordinated design with enhanced amenities, landscaping, and walkability.

The residential portion, The Cottage Green, is a type of Horizontal Multi-Family (HMF) use. It will encompass approximately 25.43 acres. The density is lower than traditional multi-family offerings as the residential and community uses are dispersed over the site. The Cottage Green will provide no more than 285 dwelling units, on one property, in detached cottages, attached patio homes, and sextuplet buildings. Buildings have front porches close to the driveways, picket fences, walkable, in a quaint environment. Because of the unique nature of HMF in general and The Cottage Green in particular, there is no direct zoning district in the Tomball ordinance to accommodate this development genre.

The Cottage Green will provide a housing option that is not readily available in Tomball. It is the best combination of multi-family and single-family development. The management and maintenance will be handled by one owner like a garden-style multi-family complex; however, residents can have their own yards, dedicated parking, patios, and front porches as a

traditional neighborhood. The upscale amenities, such as a resort-style pool, park, pickleball court, fitness center, and gated entry creates a sense of community for the residents. This is a much better alternative to an apartment complex for those who are downsizing and/or those who are upwardly mobile in their housing choices.

Adjacent to The Cottage Green Tomball is a 19.5+ acre commercial development temporarily named The Shoppes at The Cottage Green. The Shoppes development is made up of two parts:

1. Vehicular-oriented commercial (Pad sites) adjacent to Tomball Parkway/249 Frontage Road.
Standard user driven sites to accommodate most typical conditions such as parking and signage facing the main road. Dumpster in the back fully enclosed.
2. Pedestrian-oriented, small-scale neighborhood boutique commercial.
The boutique commercial development will take architectural cues from The Cottage Green with small scale buildings designed to keep the development intimate instead of big box style. This area is focused on the user experience and connectivity with the overall development. Enhanced landscape and additional amenities will separate this development experience from any other standard shopping experience. Secondary users may be added at later phase to enhance the development facing Baker Street with Vehicular-oriented characteristics.

The purpose of this Planned Development is to coordinate, combine, and share the design theme, as well as, actual development requirements. Open space or green space and pervious coverage areas are an important feature of The Cottage Green and Shoppes. These areas (combined definitions) are planned to be at least 40% for The Cottage Green and 20% for The Shoppes. The Cottage Green provides the park areas, green yards at most units, including the landscaped courtyards between buildings, the landscaped parking lots, and extensive vegetative buffer and streetscape surrounding the perimeter. The Shoppes will have a large green amenity space, enhanced landscape beds, lush streetscape, and a 15-foot landscape buffer separating The Cottage Green. However, as a combined development those pervious coverage areas may fluctuate to create the best overall look and feel for residents and patrons. In addition to ensure adequate pervious coverage is met and/or exceeded throughout, the almost 10 acres offsite adjacent detention may count toward open space calculations. A separate development agreement detailing the offsite detention/drainage serving the entire project is being negotiated with the Developer and City of Tomball simultaneous with this Planned Development. Such agreement shall be on a parallel timeline and considered collectively as neither can be effectively approved without the other. It is the intent that the design and development of Cottage Green at Tomball be linked with the afore mentioned detention/drainage agreement for perpetuity.

B. General Provisions

This application was prepared on behalf of HMF Americana, LLC pursuant to the City of Tomball's ordinances and is intended to meet or exceed the standards of those ordinances. Where there is unique design or deficiencies to the ordinance, this Planned Development and its standards shall override. Developments are constantly evolving due to changing consumer expectations and public regulations. Typically, this evolution reflects changing market and regulatory conditions. Thus, it is important that there exists an overall set of policies and standards to provide a framework to help guide these changes. To protect and enhance property values by controlling the scale, design, and compatibility of development, this Planned Development for new construction has been created. The development of this site intends to be consistent with all standards and exhibits referenced/attached hereto. The words contained within this document shall take precedence over images submitted as part of the zoning application package, including renderings and site plans, which have been provided for illustration purposes.

C. Land Uses

Tomball's Future Land Use Plan has designated this area as *Neighborhood Commercial* with three current zoning districts: Commercial, General Retail, and Planned Development #1-2008. The intent outlined in the Comprehensive Plan for this area is for commercial uses that are developed with the appropriate context, scale, and design to complement residential development. These areas should be accessible by both vehicles and pedestrians. The Cottage Green and The Shoppes at Cottage Green are squarely consistent with Tomball's land use designation.

The Development will be composed of multiple land uses that may include commercial, retail, office, recreational, horizontal multi-family, etc. The final composition of the allowed land use shall be dictated by market conditions as related to the commercial development, however, The Cottage Green at Tomball shall be developed as submitted. The overall site plan

for The Development illustrates the mix of uses proposed and variety for horizontal multi-family and commercial areas. The commercial and retail uses may incorporate several commercial reserves for the smaller pad sites along Tomball Parkway. The larger pad sites and anchor stores for retail and restaurants will be in the boutique commercial development. Parking requirements ratios shall be based on Urban Land Institute (ULI) allowing flexibility during peak hours for the different uses to share the overall pool of parking.

D. Permitted Uses

Any uses permitted within the Multifamily Residential District (MF) and General Retail District (GR) listed in the City of Tomball Ordinance use regulations charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively. Conditional uses permit (CUP) will require additional approval from the planning department. Refer to Tomball Ordinance Section 50-81 for approval process.

1. The Cottage Green (Horizontal Multi-family development)

The City of Tomball's permitted uses, as in most municipal codes, define dwelling units by the number of families housed and whether units are attached or detached. The Cottage Green is a new and innovative concept in land utilization so it does not fit in a single-family category, a two-family category, a multi-family category, or any category in between. The Multifamily Residential District (MF) will be used as the base zoning district for the purpose of development guidelines. However, The Cottage Green's unique design for the type and mix of units on a single lot requires alternative dwelling categories. This Planned Development adds three new dwelling unit types and definitions specific to The Cottage Green.

Cottage means one-family detached dwelling unit in a single-story building. Cottages contain two bedrooms less than 1,000 square feet with a private fenced yard, covered porch, and/or covered patio.

Patio Home means two-family attached dwelling units in a single-story building. Patio Homes are attached at the rear of each unit and include a front yard and/or private porch area. These dwelling units are less than 1,000 square feet with one and two-bedroom options.

Veranda Home or Sixtuplet means six-family attached dwelling units in a two-story building. Veranda Homes includes four, one-bedroom units on the first floor less than 650 square feet and two, two-bedroom units on the second floor approximately 1,200+/- square feet. Each unit has a separate entrance with direct access to the walkways and parking areas. Additionally, all Veranda Homes have private, covered patios, balconies, and/or porches. Veranda Homes is situated along the main driveway of the Development.

2. The Shoppes at The Cottage Green (Commercial Development)

In addition, the following uses will be permitted as-of-right: (intended for vehicular-oriented pad site only)
Eating establishment (with drive-in service)
Automobile wash (self-service)

E. Development Guidelines

Unless otherwise outlined in this document, the City of Tomball Ordinance shall govern regulations and requirements for this property. Any change to this document would necessitate a change to the Planned Development and would require either City Planner and/or Community Development Director approval for minor modifications or Planning & Zoning Commission/City Council approval for major changes.

1. The Cottage Green (Horizontal Multi-family development)

A. Lot Standard and Building Setbacks

- | | |
|---|---|
| 1. Density | Not to exceed 12 dwelling units per Net Acre. Net Acre is defined as the minimum lot area, not including the offsite detention acreage. |
| 2. Minimum Lot Area | 25.43 Acres |
| 3. Minimum front yard | The minimum front yard setback from the property line will be at least 30 feet and situated to the south adjacent to Brown-Hufsmith Road. |
| 4. Minimum side yard | The side yards are the east and west boundaries. The side yard setback adjacent to The Polly Carter Community Garden and Trill's property line will be more than 25 feet from the closest building. The additional side yard setback to the east will be at least 60 feet from the buildings to the boundary property line of the single-family homes in the Springwood Subdivision. The western side yard adjacent to the Shoppes will be 15 feet from the property line and the dwellings units will be at least 50 feet from the property line. |
| 5. Minimum rear yard | Rear yard setback is a minimum of 50 feet from the property line adjacent to Tomball Methodist Church to the north. |
| B. Building Requirements | |
| 1. Height Regulations | One story dwelling units and accessory buildings, including garages and maintenance building, not to exceed 20 feet. Two story dwelling units and community buildings, including clubhouse, mail kiosk, and clock tower, not to exceed 35 feet. |
| 2. Building length | Dwelling units, accessory buildings, and community building not to exceed 200 feet in length. |
| 3. Minimum building separation | One-story buildings, Cottages, are at least 6 feet apart on interior sides and minimum 20 feet from each building rear. The front doors of those facing the landscaped courtyards are at least 25 feet apart. All patio homes are one story. The One-Bedroom patio homes are 10 feet apart and the Two-Bedroom patio homes are 3 feet apart. Where there are 2-bedroom Patio Homes, the separation is approximately 3 feet on one side. Two-story buildings, Veranda Homes, are 9 feet apart on interior side and a minimum 15 feet apart from the one-story buildings. This includes private yards, porch, and sidewalks. The Community building is more than 20 feet from any dwelling building. The rear of Garages are at least 10 feet from dwelling buildings. The four bay Garages are 6 feet apart from each other. All buildings will comply with separation standards of the adopted Fire Code. |
| 4. Minimum floor area per dwelling unit | One-bedroom Patio Homes have a minimum floor area of 650 square feet. One-bedroom Veranda Homes have a minimum floor area of 550 square feet. Two-bedroom Cottages and Patio Homes have a minimum floor area of 900 square feet and 890 square feet, respectively. Two-bedroom Veranda Homes have a minimum floor area of 1,150 square feet. All dwelling units include private outdoor living space within the yard, patio, porch, or balcony, adding at least 100 more square feet. |
| 5. Maximum lot coverage | Maximum lot coverage is 42%, which includes 9.98-acre adjacent offsite detention pond. Impervious coverage not to exceed 50%. |

6. Green space; recreational areas

The minimum greenspace and recreation areas will be 50% of the gross platted area. However, each dwelling unit will have private yards, porches, patios, or balconies for personal use. The Community Building, Pool, Dog Park, Pickleball Court, and People Park more than 10,000 square feet of recreation area. Additional recreation and green space will be provided and accessible to residents at the Shoppes.

C. Streets and Driveways

1. Fire easements accessible

The main driveway into the development is 28 feet wide and will be used as a dedicated fire lane easement. All other internal driveways are at least 24 feet. Final design will designate fire lane easements to ensure all buildings are accessible within 150 feet of a marked fire lane.

2. Internal driveways

All internal driveways will be constructed of concrete with curbs and gutters. The main driveway will be at least 28 feet wide and other driveways will be 24 feet. All driveways will be lighted at night with a minimum intensity of two-foot candles' illumination.

3. Gated/secured entrances

There will be three gated entrances onto the property. The primary entrance will be restricted through the commercial development. The other two are along Brown-Hufsmith Road and will be setback at least 25 feet to allow proper stacking.

4. Entrance

The primary entrance is divided with two minimum ingress lanes of 20 feet and less than a maximum of 45 feet in width. The secondary entrances on Brown-Hufsmith Road are 28 feet wide.

5. Parking Spaces

Parking spaces will not be less than 2 per home built. Enclosed garages, under carports spaces, and spaces near each unit along the driveways, count towards the total parking spaces.

6. Parking Location

The parking areas on the main driveway will be separated by a 5-foot-wide grassy area and a 4- or 5-foot walkway. All other parking areas will have a 2-foot grassy area and 4-foot walkway.

Parking spaces, carports, and garages are at least 10 feet from any building. Additionally, they will be at least 30 feet from the front and rear lot lines.

7. Parking Stalls

90 Degree Stalls: Width 9 feet, Depth 18 feet, Aisle 24 feet, Curb Length 9 feet

45 Degree Stalls: Width 9 feet, Depth 27.6 feet, Aisle 28 feet, Curb Length 12.5 feet

2. The Shoppes at The Cottage Green (Commercial Development)

Varied standards are listed below.

A. Lot standard

- | | |
|------------------------------|--------|
| 1. Minimum lot area (sq ft): | 20,000 |
| 2. Minimum lot width (ft): | 100 |
| 3. Minimum lot depth (ft): | 200 |

B. Building Setbacks (When adjacent to an arterial public street)

1. Minimum front yard setback: 35 feet when adjacent to an arterial street, Brown-Hufsmith Road.
2. Minimum side street setback: 25 feet when adjacent to an arterial street, State Highway 249.
3. Minimum side yard setback: 15 feet adjacent to residential to the east which includes appropriate buffer.
4. Minimum rear yard setback: 15 feet adjacent to Baker Road.

C. Building Requirements

1. Building height: 50 feet
2. Building floor area, maximum: 1:1 FAR
3. Building lot coverage, maximum: 50%
4. Impervious (surface lot) coverage, maximum: 80%
5. Outside storage lot coverage, maximum (sf): 5%

F. Landscape Standards

A landscape plan will be created and submitted separately with full construction plans. The development will meet or exceed all City of Tomball landscape standards. Both sets of landscape plans will include the following:

- The scale shown in both written and graphic form.
- Location, size, and species of all trees to be preserved (do not use tree stamps unless they indicate true size and location of trees).
- Where credited trees are proposed, a plan indicating how these existing trees will be protected from damage during construction.
- Location of all plant and landscaping material to be used, including plants, paving, benches, screens, fountains, statues, earthen berms, ponds (to include depth of water), topography of site, or other landscape features.
- Species and common names of all plant materials to be used.
- Size of all plant material to be used (container size, planted height, etc.).
- Spacing of plant material where appropriate.
- North arrow/symbol and a small map showing where the property is located.
- Date of the landscape plan.

1. The Cottage Green (Horizontal Multi-family development)

- a. Landscape area minimum (sq ft) At least 10% of the area will not be covered by buildings and will be landscaped. There will be a total of 171 trees 2" minimum size throughout.
- b. Street side landscape buffer The landscape buffer adjacent to Brown-Hufsmith Road will be at least 10 feet wide.
- c. Front yard At least 15 percent of the front yard, Brown-Hufsmith Road, shall be permanently landscaped area.
- d. Street trees, minimum One large tree shall be required per 40 linear feet (or portion thereof) of street frontage. Large trees shall be a minimum of

three inches in caliper measured 12 inches above the ground, and shall be a minimum of seven feet in height at time of planting. Three smaller trees at 2" caliper will be planted and grouped in between the larger trees to create a natural, aesthetically pleasing arrangement.

2. The Shoppes at The Cottage Green (Commercial Development)

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|--|--|
| a. Green space / recreational areas: | <p><i>Vehicular-oriented commercial</i> - Enhanced landscape beds (plants, shrubs, groundcover, etc.) will be required where required trees are located. 10% of gross platted area shall be open green space and common recreational area.</p> <p><i>Pedestrian-oriented commercial</i> - Match requirements from Vehicular-oriented commercial. Additional amenities are required such as courtyard, lawn, trails, shade structure and outdoor furniture.</p> |
| - b. Landscape area minimum (sq ft): | <ul style="list-style-type: none"> - Sites up to 20,000 sq ft = 5%. - Sites of 20,000 sq ft to 200,000 = 7.5%. - Sites over 200,000 sq ft = 10% of area NOT covered by building or structure. |
| c. Street side landscape buffer: | <ul style="list-style-type: none"> - 15-foot-wide along (SH 249) - All boulevard entrances and other site entrances from SH 249, Baker Dr and Brown-Hufsmith Rd must be furnished with a minimum 5-foot-wide landscape strip and provide one large street tree every 40-linear foot of street frontage. |
| d. Street trees, minimum: | One large tree and three small trees for every 40-linear foot of street frontage. Three smaller trees at 2" caliper will be planted and grouped in between the larger trees to create a natural, aesthetically pleasing arrangement. |
| e. Tree requirements, minimum (in addition to required street trees) | <p>Sites less than 3,000 sqft = 3</p> <p>Sites of 3,001 to 7,000 sqft = 4</p> <p>Sites of 7,001 to 10,000 sqft = 5</p> <p>Sites of 10,001 to 20,000 sqft = 6</p> <p>Sites of 20,001 to 30,000 sqft = 7</p> <p>Sites of 30,001 to 40,000 sqft = 8</p> <p>Sites over 40,000 sqft = per 20,000 sqft = 3</p> |
| f. Parking lot trees, minimum: | One tree shall be planted in the parking area for every (10) parking spaces, for parking lots with more than 20 spaces. Enhanced landscape beds (plants, shrubs, groundcover, etc.) will be required where trees are located. |
| g. Within 15' commercial/multifamily buffer | Enhanced landscaping and iron fencing to be included at vehicular/pedestrian entry of multifamily to promote cohesive |

theme of overall development. One large tree shall be required per 40 linear feet (or portion thereof) within the buffer. Large trees shall be a minimum of three inches in caliper measured 12 inches above the ground, and shall be a minimum of seven feet in height at time of planting. Three smaller trees at 2" caliper will be planted and grouped in between the larger trees to create a natural, aesthetically pleasing arrangement.

G. Parking Lot Landscaping

A landscape plan will be created and submitted separately with full construction plans to include parking lot landscaping. The development will meet or exceed all City of Tomball landscape standards.

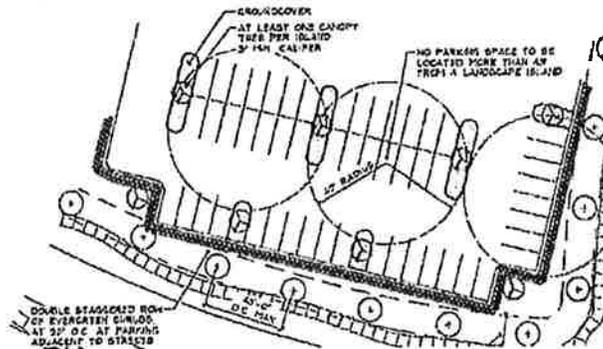
1. The Cottage Green (Horizontal Multi-family development)

A two-foot pervious area will be adjacent to all parking areas between the pedestrian walks and parking stalls. There will also be landscaped islands throughout, especially on either side of the garage and carport bays.

2. The Shoppes at The Cottage Green (Commercial Development)

Parking areas for pad sites must be connected to parking areas of adjacent parcels and structures with a connecting driveway. A continuous double hedge row of shrubs planted with triangular spacing along the parking lot boundary adjacent to a street (major throughfare, throughfare, boulevard entrance, etc.) is required. The shrubs shall be a minimum of five (5) gallon size of thirty-six (36") in height, planted thirty inches (30") on center and maintained at a uniform height of forty-two inches (42").

At areas where monument signage may be installed a temporary interruption in continuity (up to 20') may be warranted for signage visibility. One nine by nineteen-foot (9'x19') landscape island is required for every ten (10) parking spaces. Landscape island may include a 6" perimeter concrete curb within the required 9'x19' area. Each island shall contain a minimum of one (1) three-inch (3") caliper canopy tree with the remaining planted area consisting of a low shrub or groundcover. An 18" strip of gravel contained by steel edging shall be located directly adjacent to any length of parking stall. No sod or hydromulch shall be permitted within the island extents. Each island corner shall consist of a three-foot



(3') radius along the driving aisle. Each bay of parking must be separated from the end drive aisles by a landscape island consisting of the required parking lot island landscaping. A typical parking lot planting scenario can be found below:

Parking lot landscape exhibit

H. Buffering / Fencing

1. The Cottage Green (Horizontal Multi-family development)

- a. **Buffer between Multi-Family and Single-Family** Opaque screen will be erected adjacent to the single-family homes in the Springwood neighborhood. Such screening will include a treated wood fence no less than six feet in height. All buildings are at least 60 feet from the boundary property line of the Springwood neighborhood. Additionally, a 10-foot buffer of landscaping will be added. Such buffer will include one large tree per 40 linear feet (or portion thereof). Large trees shall be a minimum of three inches in caliper measured 12 inches above the ground, and shall be a minimum of seven feet in height at time of planting. Three smaller trees at 2" caliper will be planted and grouped in between the larger trees.
- b. **Materials** All opaque screening along the northern property lines adjacent to the Tomball Methodist Church and Polly Carter Community Garden will be treated wood fencing no less than six feet in height.
- c. **Refuse Area** Three sides will be constructed of a six-foot masonry wall and include an opaque metal gate on the fourth side.
- d. **Buffer between Commercial and Residential** The landscaped buffer of 15 feet wide will be provided on the adjacent commercial development to the west. Within the side yard, a combination of iron fencing, garages, and landscaping will be placed along the residential property line. See landscape standards above for details.

2. The Shoppes at The Cottage Green (Commercial Development)

- a. **Buffer between Commercial and Multi-Family** Where commercial is adjacent to the Cottage Green multifamily, a 15-foot landscape buffer is required to be installed incorporating non-opaque screening, such as wrought iron or metal fencing. One large tree shall be required per 40 linear feet (or portion thereof) within the buffer. Large trees shall be a minimum of three inches in caliper measured 12 inches above the ground, and shall be a minimum of seven feet in height at time of planting. Three smaller trees at 2" caliper will be planted and grouped in between the larger trees. Tree species will vary, including Oak, Pine, and low shrubs to gain vertical screening.
- b. **Materials** All other fencing material may be treated wood, masonry, reinforced concrete, or similar suitable materials without openings, unless in special areas where visibility is encouraged.
- c. **Refuse Area** All refuse containers must be screened on three sides by a minimum 6-foot solid masonry wall and include an opaque metal gate.

I. Sidewalks

This Planned Development anticipates pedestrian paths to enhance movement and access for residents and patrons in both the residential and commercial areas. Residents will have convenient access to the commercial development but connectivity will be restricted from the commercial to the residential by secured, gated entrances. The overall development is designed to promote walkability.

1. The Cottage Green (Horizontal Multi-family development)

- a. Walkways Five-foot sidewalks along the main driveway adjacent to the Community Building and Sextuplet Buildings.
Four-foot sidewalks throughout connecting to separate walkways at each dwelling unit/building.
- b. Parking Areas Four-foot-wide sidewalk connects the parking areas to separate walkways for each dwelling unit.
- c. Materials All sidewalks shall be paved with concrete.

2. The Shoppes at The Cottage Green (Commercial Development)

Sidewalks:

- a. Minimum 5-foot-wide sidewalks shall be provided along all commercial frontage/access points for both mixed-use & pad sites.
- b. Minimum 5-foot-wide primary pedestrian sidewalk to be included as primary pedestrian connection linking commercial pads sites & commercial mixed-use components. This primary pedestrian sidewalk to connect/integrate with primary entry/connection to multifamily component. This primary pedestrian sidewalk to connect/integrate with required SH249 & Brown-Hufsmith Road sidewalks.
- c. All sidewalks shall be paved with concrete for primary connections.

Connectivity:

- a. All commercial and multi-family components must be interconnected with the overall site.
- b. All building entries to be accessible via pedestrian pathways via public roads (SH249, Bakers Dr & Brown-Hufsmith Rd) or as required by the City of Tomball Ordinances.
- c. Crosswalk striping to be provided at all pedestrian crossings of internal/private drives for enhanced safety. Crosswalk striping to be provided at public ROW sidewalk crossings (along SH249 & Brown-Hufsmith Rd).

Materials

- a. Sidewalk material will be limited to one of the following: concrete, concrete pavers, integrally-colored concrete, or stamped concrete.

J. Signage

Detailed plans and specifications of any sign must be submitted for review prior to installation. The sign designs are subject to review and approval by the Developer to ensure consistency with the overall development theme. All signs must be fabricated and installed in compliance with all applicable City of Tomball ordinances as well as the following additional site-specific standards:

- a. Pole signage to be prohibited within the full Cottage Green Development.
- b. Monument signage base material to be masonry. Finishes above base must be of high-quality finishes that are complimentary with the architectural style/finishes prevalent within the overall development. Finishes may include masonry, wood siding (treated), fiber cement siding, & flat metal paneling. The following materials are prohibited: Industrial/corrugated metal, untreated wood.
- c. Monument signs are to be located minimum 10' from property lines facing any public ROW
- d. Monument signs may encroach or partially encroach public utility easements if particular utility easements allow such improvements within.
- e. Monument signs may encroach into ROW landscape setbacks and may interrupt required landscaping improvements for no more than 40' of frontage length.

1. The Cottage Green (Horizontal Multi-family development)

The Cottage Green will have one masonry monument sign at the main entrance within the side yard adjacent to the commercial development. Another masonry monument sign will be at the entrance along Brown-Hufsmith Road leading into the rear of the commercial development. This sign and driveway entrance will give residents direct access to the

gated residential development. All buildings shall provide signage which clearly identifies the numbers (i.e., addresses) of the units within each building. Signage shall be visible from entrances into the complex and/or from vehicular drive aisles within the complex such that each individual unit is easy to locate by visitors, delivery persons, and/or emergency personnel.

2. The Shoppes at The Cottage Green (Commercial Development)

Additional commercial standards include:

- a. Dual-tenant / pad-site monument signage height to be limited to 12' & maximum area limited to 250'.
- b. Multi-tenant / mixed-use monument signage height to be limited to 18' & maximum area limited to 300'.
- c. Individual pad site signage prohibited along SH249. Dual-tenant monument signage required for every 2 adjacent pad sites.
- d. (1) multi-tenant monument sign allowed along SH249 frontage for mixed-use (non-pad) commercial user representation.
- e. (1) multi-tenant monument sign allowed along Brown-Hufsmith Rd frontage for mixed-use (non-pad) commercial user representation.
- f. Additional internal multi-tenant way-finding signage allowed within mixed-use component.

Where guidelines above conflict with City of Tomball regulations, the city code will govern. In general, it is prohibited to use signage which by its location, size, shape, color, lighting, subject or sound, may be harmful to the appearance of the locality, public street, site, view, or constitute a threat to road traffic. Specifically prohibited signs include rotating, trailer, animated, oscillating, iridescent or dayglo painted signs, signs which make noise, incandescent or fluorescent illuminated signs, and laser lights. Also prohibited are "canned" signs constructed of a light box frame with a single panel backlit sign which includes the logo and sign copy applied to the building surface. Other prohibited signs include changeable message banners, flags, and single-pole signages. Pylon signs, must have 2 poles and be architecturally cohesive with the Planned Development architecture style. Balloons, streamers, pennants, bunting, search lights, signs with exposed or flashing lights, signs with moveable parts, or any other such fixtures are deemed to be inconsistent with the intent of this Planned Development and prohibited. The use of exposed neon is discouraged and not acceptable in most cases subject to Developer approval.

For building mounted signs, Tenants shall design as an integral element of the storefront design, with letter form size and location appropriately scaled and proportioned to the overall storefront design. All Tenant sign designs must be submitted and subject to approval by the Developer.

One building identifier will be permitted for each Tenant having an exterior public entrance. The maximum span of the Tenant's sign shall not exceed 75% of the store frontage width. Tenants with 5,000 square feet or less may have building signage not to exceed a maximum of 36" in height and tenants in a lease space greater than 5,000 feet may have signage up to 48" tall. For spaces larger than 10,000 square feet, the signs must be an integral part of the store front design, with letter size and location appropriately scaled and proportioned to the overall store front design. The information on the sign will consist of the name of the Tenant in a typeface of their choice. The use of pictorial logos or symbols may be considered for nationally recognized tenant's trademarked logos. The message will typically appear as one horizontal line of copy. Two lines are allowed if the tenant's name will not fit on one line. All sign designs are subject to review and approval by the Developer.

K. Architectural Criteria

The overall development style mimics a traditional southern vernacular style of architecture with a beach town vibe. These recommendations and standards are meant to foster a sense of design continuity that creates a sense of place in the master planned mixed-use land development. The building façade finishes and materials should include:

- a. Usage of coastal / southern classical materials and finishes are encouraged, including wood siding, fiber cement siding, board and batten, etc. the usage of raw materials and finishes are discouraged (exposed steel (painted), architectural steel, metal cladding, aluminum, composite aluminum panels, corten steel, decorative CMU (Concrete Masonry Unit) blocks, brick masonry, concrete (raw, board-formed, or form-liner concrete)).
- b. A consistent palette of materials appropriate to the regional context should be employed for exterior materials. A

- c. Accent colors and/or painted graphics/art (only as minimal & part of a signage) may be permitted when deemed to add value to overall project and community aesthetic.
- d. Prior to plan submittal, ALL building elevation/material plans will be subject to final review/approval by the developer and/or representative authorized to act on behalf of the developer in accordance with applicable restrictions.

1. The Cottage Green (Horizontal Multi-family development)

The multifamily architectural design style must be compatible with the design intent for the overall project.

2. The Shoppes at The Cottage Green (Commercial Development)

The following Architectural Criteria is intended to make the building designer aware of the architectural context, not to inhibit or limit unique design. The building façade criteria and features should include:

- a. Building facades shall include offsets, changes in building materials, colors, textures, and architectural detailing that creates shade and cast shadows.
- b. Facades greater than 100 feet in length shall incorporate offsets having a minimum depth of at least 2 feet and extending at least 20% of the length of the façade. No uninterrupted length of a façade shall exceed 100 feet. This Regulation applies to all building facades within the PD except for the building rear façade.
- c. Canopies, arcades, or recessed entries shall be provided at pedestrian entrances to the building. Canopies and arcades shall be structural extensions of the building and cover a ground area of at least 20 feet. A recessed entry shall be at least 20 square feet in size.
- d. The front façade of the multi-tenant retail building facing SH 249 and facing Brown-Hufsmith shall be at least 60% transparent by means of storefronts, entrances, and display windows.
- e. Facades of all buildings within the PD shall be of similar architectural design, colors, and materials.
- f. The developer or city planner may approve alternative canopy or façade treatments not specified herein if equal or better than a specified requirement in quality, durability, and appearance and the use thereof will not violate any provision of this article.
- g. Columns should be simple in form and are encouraged to incorporate a traditional Southern Vernacular style of architecture.
- h. All rooftop equipment shall be screened so as not to be visible from the finished elevation of the parking area and common amenity space.

The photos provided below are examples for massing, scale, proportion, and building materials to aid in understanding the intended community style. The following photos reflect the broad architectural style meant to be expressed and not one single image captures the exact look.

Multi-tenant retail & Pad retail -- style inspiration



L. Lighting

This Planned Development provides recommendations for a coordinated family of site lighting and materials for use in open areas. Parking lot lighting must be designed in an attempt to maximize pedestrian and vehicular safety and in accordance with Illuminating Engineering Society of North America (IESNA) recommended standards. Additionally, parking lighting should be shielded with sharp cut-off in order to promote "dark sky" concepts and limit intrusion into adjacent properties and on a house meter. Photometric calculations and drawing documentation are required for each project assuring minimal light trespass into or onto adjacent properties and the sky-dome. All light fixtures must be LED or low-energy / high efficiency and be submitted with cut sheets for developer approval.

Parking Lot Lights:

Color – Black or dark bronze, complimenting metal trims selections in development. Pole Height – ±25'

Base – ±3' tall concrete base.

Additional lighting specifications must be provided per photometric study and site-specific design needs.

M. Amenities

The amenities in the Planned Development intends to create a sense of place and comfort for the residents, patrons, and business owners. Additionally, the well-appointed amenities will add overall value to the City of Tomball.

1. The Cottages Green (Horizontal Multi-family development)

Specific common area amenities within the development will exceed 11,000 square feet. Those items and other amenities that are useful and desirable to residents include the following:

- a. Community Building to house a leasing office, conference room, and public kitchen areas
- b. Fitness center with state-of-the-art equipment
- c. Resort-style pool
- d. Two covered porch areas for lounging, grilling, and a fire pit
- e. Mail kiosk
- f. Pickleball Court
- g. Bark Park with Wash Station
- h. Open lawn area
- i. Decorative accent sculptures
- j. Separate maintenance building
- k. On-site management

For the comfort and convenience of the tenant, every unit has well-appointed amenities including the following:

- a. Private, fenced yards and/or covered porch and patio areas
- b. Lawn maintenance
- c. Nine-foot ceilings with ceiling fans
- d. Energy-efficient and stainless-steel appliances
- e. Paux wood and carpet flooring
- f. In unit clothes washer and dryers
- g. Quartz countertops
- h. Large closets

2. The Shoppes at The Cottages Green (Commercial Development)

The following amenities are required within the *vehicular-oriented commercial development*:

- a. Pedestrian pathways / trails constructed of concrete or pavers (minimum of 5 feet in width) connecting the different developments to each other.
- b. Enhanced landscape beds (plants, shrubs, groundcover, etc.) will be required where required trees are located. 10% of gross platted area shall be open green space and common recreational area.

The following amenities are required within the *Pedestrian-oriented commercial development*:

- a. Pedestrian pathways / trails constructed of concrete or pavers (minimum of 5 feet in width) connecting the different developments to each other.
- b. Enhanced landscape beds (plants, shrubs, groundcover, etc.) will be required where required trees are located. 10% of gross platted area shall be open green space and common recreational area.
- c. Shade structures (minimum 1), along pedestrian pathways or courtyard.
- d. Public plaza / courtyard, composed of architectural concrete or pavers. The courtyard to be partially surrounded by restaurants patio areas.
- e. Lawn, a minimum of 30% (thirty) percent of the designated public plaza / courtyard area.
- f. Furniture, such as benches and / or low masonry seating walls.
- g. Architectural tower / landmark minimum of 30' (thirty) feet of height to visually attract the users to the amenities and shopping experience.

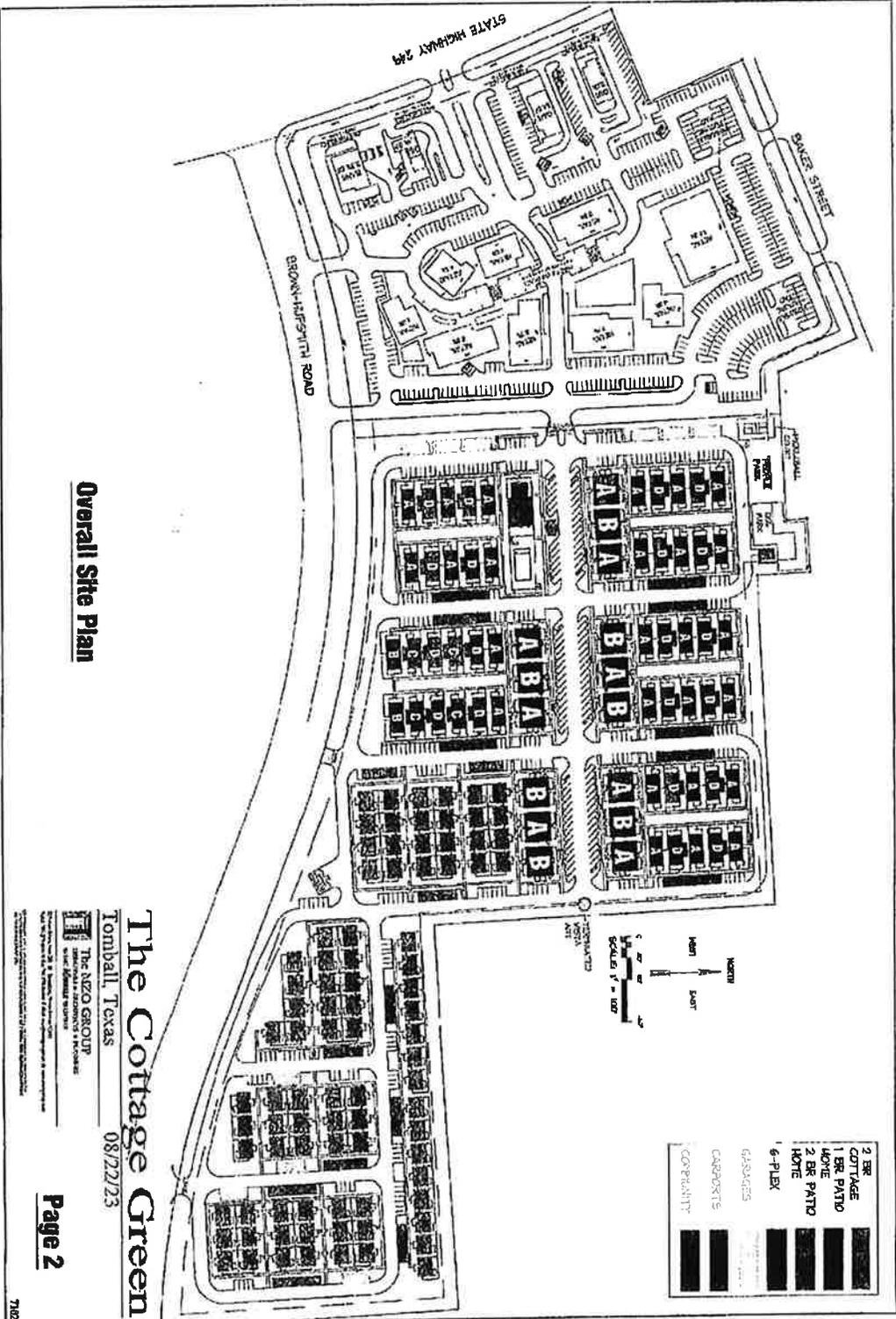
N. Minor Modifications

The following minor modifications of the Planned Development are allowed provided that such modifications shall be reviewed for compliance with the applicable City of Tomball Ordinances, and this will be approved by the City Planner or Community Development Director.

1. The Cottage Green (Horizontal Multi-family development)
 - a. Modifications to dwelling unit offerings between Cottages, Patio Homes, and Veranda Homes.
 - b. Minor adjustment to dwelling unit square footage provided the minimum square footage is consistent with the PD.
 - c. Modifications to the number and location of each dwelling unit provided all are maintained on the residential parcel and do not exceed the density established in the PD.
 - d. Modification of the type and location of parking spaces provided the total number of spaces are maintained.
 - e. Modifications to the exact ingress/egress points as may be required by an engineering review, Traffic Impact Analysis, or City of Tomball code.
2. The Shoppes at The Cottage Green (Commercial Development)
 - a. Modifications to internal driveway patterns.
 - b. Modifications to the location of land use provide that such relocations meet the minimum area and land use regulations set forth within this document.
 - c. Modifications to lot sizes / property line locations, provided that such lots shall meet the minimum area regulations set forth in this document.
 - d. Modifications to the total acreage provided for each land use as set for in the site exhibit area allowed. If needed, signage location can be revised following the standard from this document.
 - e. Central Courtyard patio area shows a general intent to enhance the pedestrian & restaurant/retail customer experience with programmed amenities to further engage the commercial development with place-making, interactive/engaging amenity elements. Within that broad goal, the specific concept design may evolve & change from what is currently included in this document with something greater or equal in quality.

O. Exhibits

Includes all site plans, renderings, and photographic package.



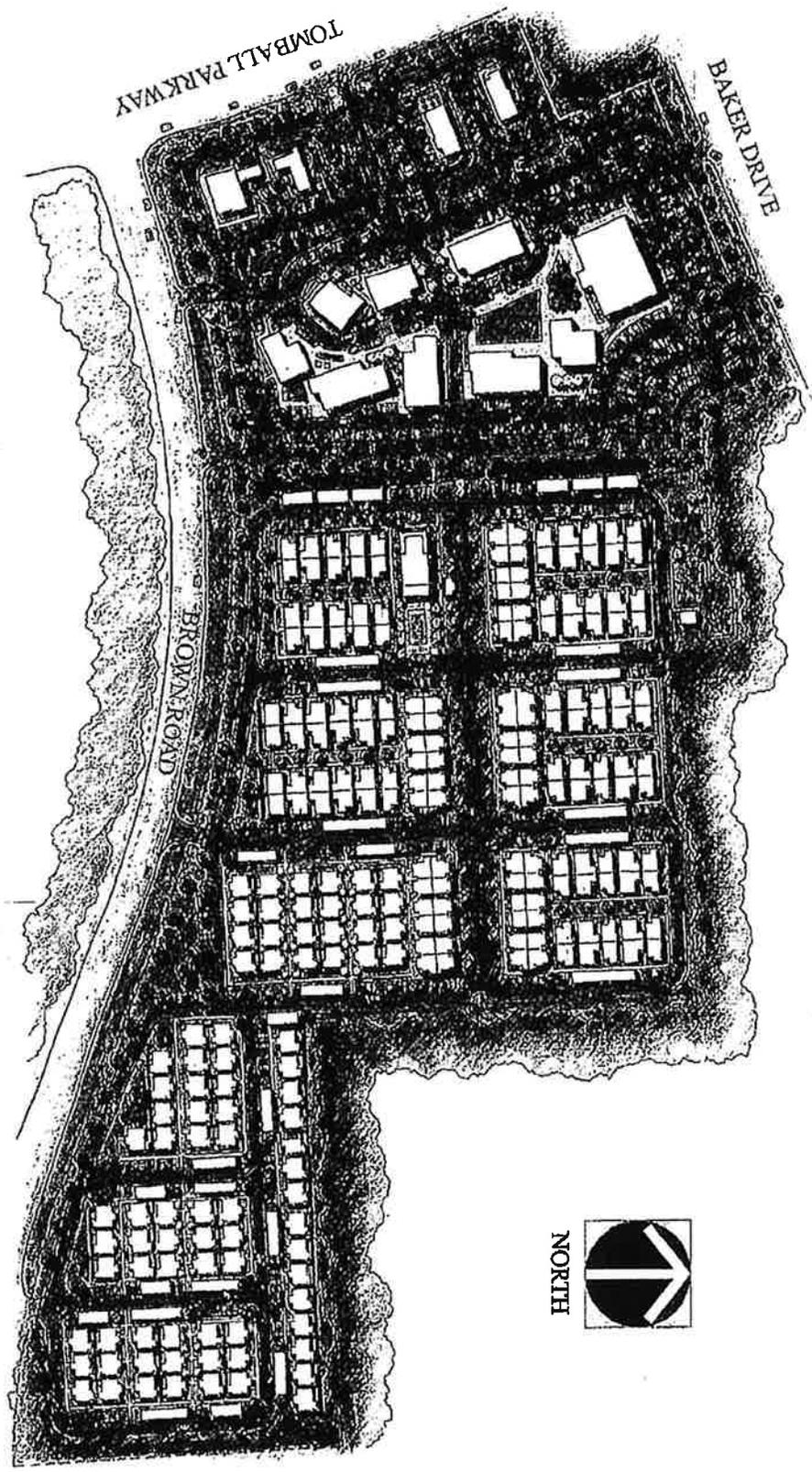
Overall Site Plan

The Cottage Green

Tomball, Texas

08/22/23

The NICO GROUP
 ARCHITECTS & ENGINEERS
 10000 N. FORT WORTH AVENUE, SUITE 1000
 FORT WORTH, TEXAS 76179
 TEL: 817.339.1100 FAX: 817.339.1101
 WWW.NICOGROUP.COM



NORTH



Location: Northeast corner of SH 249 & Brown-Hufsmith Road and west of the 29700 block (west side) of Quinn Road, City of Tomball, Harris County, Texas.

DEVELOPMENT AGREEMENT

THE STATE OF TEXAS

§

COUNTY OF HARRIS

§

§

This Development Agreement (the "Agreement") is executed as of the _____ day of _____, 2023 (the "Effective Date"), by and between the City of Tomball, Texas (the "City"), and HMF Americana, LLC, a Texas limited liability company (the "Developer"), the Developer and City each being referred to herein as a "Party" and collectively as the "Parties".

WHEREAS, Developer is the owner and developer of certain hereinafter described property located within the City; and

WHEREAS, Developer wishes to develop The Shoppes at Cottage Green and The Cottage Green Tomball (collectively, the "Development"); a proposed 48.95-acre planned development, situated at the intersection of Brown-Hufsmith Road and State Highway 249 in the City of Tomball, Harris County, Texas; and

WHEREAS, in order to develop the Property, certain stormwater run-off and collection facilities are required to be constructed and maintained to accommodate stormwater run-off from the Development; and

WHEREAS, during the Development planning stage for the Property, the Developer submitted a request to be allowed to construct certain off-site stormwater run-off and collection facilities to accommodate stormwater run-off from the Development; and

WHEREAS, Section 212.071, et. seq. of the Texas Local Government Code authorizes municipalities to enter into a contract with a developer of a subdivision or land within the municipality to construct public improvements related to the development without complying with the competitive scaled bidding procedures of Chapter 252 of the Texas Local Government Code.

NOW, THEREFORE, for and in consideration of the premises and mutual obligations, covenants, and benefits hereinafter set forth, the Parties agree as follows:

ARTICLE I DEFINITIONS

The following terms and phrases used in this Agreement shall have the meanings ascribed hereto:

- 1.01. "Agreement" shall mean this Agreement, including any written amendments hereto, between the City and the Developer.
- 1.02. "City's M124 Drainage Facilities" shall mean the drainage channel and stormwater detention basin owned by the City, more specifically identified and described in Exhibit "B" attached hereto and made a part hereof.
- 1.03. "Contractor" shall mean the person, firm, corporation, partnership, association, or other entity awarded the contract by the Developer for the construction and installation of the Drainage Facilities, as hereinafter defined, or any part thereof.
- 1.04. "City Engineer" shall mean the City's Director of Engineering, or his designee.
- 1.05. "Property" means the tract of land containing approximately 48.95 acres.

ARTICLE II CONSTRUCTION OF DRAINAGE FACILITIES

- 2.01. Construction of Drainage Facilities. The Developer agrees to construct certain stormwater run-off and collection facilities (the "Drainage Improvements"), in accordance with the provisions of this Agreement, to accommodate stormwater run-off from the Development. The Drainage Improvements shall include construction of a stormwater detention facility on the Ten Acre Tract adjacent to the City's M124 Drainage Facilities (the "Detention Facility"). The Developer agrees to construct such Drainage Improvements in accordance with the Plans and Specifications which shall be reviewed by and approved by the City Engineer. No construction of the Drainage Improvements shall occur until the Developer has received approval of the Plans and Specifications from the City Engineer. No change to the Plans and Specifications shall be made by the Developer without the prior written approval of the City Engineer. The entire cost of construction of the Drainage Improvements shall be the responsibility and obligation of the Developer. The Developer agrees to obtain, at its sole cost and expense, any approvals and/or permits required by any other governmental entity or agency regarding construction of the Drainage Improvements, if any. As to the City, this Agreement shall constitute approval to construct the Drainage Improvements and to use City-owned land or public rights-of-way within the City for access to and construction of the Drainage Improvements. The Developer shall submit Plans and Specifications for the Drainage Improvements to the City Engineer for approval and permitting. The City and Developer shall work together in good faith to coordinate the construction of the Drainage Improvements.
- 2.02. Contracts for Construction. The Developer shall contract with a qualified Contractor to construct the Drainage Improvements in accordance with the Plans and Specifications. The Contractor may be an affiliate of the Developer. The City Engineer shall review and shall approve the Contractor involved in the construction of the Drainage Improvements prior to the award of the contract.
- 2.03. Inspection. The City Engineer shall be entitled to inspect each element and phase of construction of the Drainage Improvements. In the event the City Engineer determines that such construction is not in compliance with the Plans and Specifications, the Developer, upon written notification of such noncompliance, shall require Contractor to correct such noncompliance.
- 2.04. Acceptance of the Drainage Facilities. Upon final completion of construction of the Drainage

Improvements, the Developer shall notify the City Engineer that the Drainage Improvements have been completed and certify that such improvements have been constructed in accordance with the Plans and Specifications. The City Engineer shall, within thirty (30) days after receipt of such notification from Developer, determine if such Drainage Improvements are in accordance with the Plans and Specifications and, if so, notify the Developer in writing of the City's acceptance of the Detention Facility. The Developer agrees to provide, or cause the Contractor to provide, for the benefit of the City, a one-year maintenance bond on the Drainage Facilities, the term of which shall commence on the date of the City's final acceptance of the Detention Facility. Upon approval of the Detention Facility by the City, the Developer shall pay the City's estimated cost of \$60,000.00 to maintain the Detention Facility for a ten-year period and shall convey to the City, and the City shall accept, by special warranty deed in a form approved by the City, the Ten-Acre Tract including the Detention Facility. Upon conveyance of the Ten-Acre Tract and the improvements thereon, the City shall operate and maintain the Detention Facility as part of the City's drainage system and the Developer shall have no further obligation to maintain or contribute funds for the maintenance of the Detention Facility.

2.05. Operation and Maintenance of Detention Facility. The Developer agrees to operate and maintain the Detention Facility, in accordance with the minimum standards and procedures identified in Section 18-287 of the Tomball Code of Ordinances, until the Detention Facility is conveyed to the City in accordance with the provisions of Section 2.04 hereof.

2.06. Performance, Payment and Maintenance Bonds. The Developer shall obtain for the benefit of the City, performance, payment, and maintenance bonds, in amounts required by law for construction of the Drainage Improvements to ensure completion of the improvements, payment of the subcontractors, and to guarantee that the Contractor makes any necessary warranty repairs. Such bonds must be executed by a corporate surety in accordance with Chapter 2253, Texas Government Code. The Developer will transfer all of its right, title and interest to the bonds required by this section to the City concurrently with the conveyance of the Detention Facility as provided by Section 2.04 hereof.

2.07. Insurance. The Contractor(s) that are awarded the contract to construct the Drainage Improvements shall be required to carry Workers' Compensation Insurance on their respective employees, and liability and property damage insurance on their equipment and employees. The liability insurance shall be not less than Five Hundred Thousand Dollars (\$500,000.00) per person and Two Million Dollars (\$2,000,000.00) per occurrence, with property damage insurance of not less than Five Hundred Thousand Dollars (\$500,000.00). In addition, the City shall be provided with Certificates of Insurance, shall be named an additional insured on such Certificates (excluding certificates evidencing worker's compensation insurance), and all insurers shall be required to notify the City in writing at least thirty (30) calendar days prior to the date of cancellation of any such insurance.

2.08. Assumption of Risks and Indemnification. The Developer agrees to, and does hereby, assume any and all risk of claims, demands, liability, or causes of action for flooding, flood damage, or injury to or on the Property, to any development thereon, or to any lessee, occupant, or invitee, on account of, or resulting from, construction of the Drainage Improvements by the Developer or its agents, representatives, employees, Contractors, or subcontractors, and shall protect, indemnify, and hold City harmless therefor as hereinafter provided. **The Developer further agrees to protect, indemnify, and save City harmless from and against all claims, demands, and causes of action of every kind and character arising in favor of any third party on account of, or resulting from, construction of the Drainage Improvements by Developer or its agents, representatives, employees, contractors, or subcontractors. The foregoing indemnity obligations shall not apply to any claims, demands, damages, liabilities or causes of action based on events occurring after the Final Acceptance and conveyance to the City of the Ten Acre Tract.**

2.09. Construction Spoils. The Developer shall, at no cost to the City, remove and dispose of all

clearing, grubbing, utility spoils, and excavated material resulting from construction of the Drainage Improvements.

ARTICLE III
DEVELOPER'S CONSIDERATION FOR CONSTRUCTION
OF THE DRAINAGE IMPROVEMENTS

3.01. Reserve Capacity. Upon the Developer's construction of the Drainage Improvements, and its acceptance or approval by the City as provided in Section 2.04 hereof, there shall be reserved to the Property twenty-seven (27) acre-feet of stormwater detention (the "Reserved Capacity"). Upon completion, acceptance, and approval of the Drainage Improvements, as provided herein, the Developer shall be entitled to use the Reserved Capacity in association with the development of the Property and in satisfaction of the City's requirement for stormwater run-off and detention facilities necessary for obtaining City construction, building, and occupancy permits required for development of the Property. Any additional capacity in the Drainage Improvements in excess of the twenty-seven (27) acre-feet shall be under the sole and exclusive control and ownership of the City. Construction and building permits for improvements to the Property, that, in the opinion of the City Engineer, will increase stormwater run-off in excess of the capacity of the City's current drainage system, shall not be issued by the City until completion, acceptance, and approval of the Drainage Improvements as provided herein. Notwithstanding the foregoing, the City shall issue to Developer a site development permit to allow Developer to perform clearing, grubbing and grading activities on the Property concurrently with the Developer's construction of the Drainage Improvements. The issuance of occupancy permits for the Property shall be contingent upon Developer's completion of the Drainage Improvements.

3.02. No Drainage Impact Fees. In consideration of the Developer's performance hereunder, the City will not impose any drainage impact fee on the Property, or otherwise seek contribution from the Developer or a subsequent owner of the Property, or an interest therein, for the City's M124 Drainage Facilities improvements.

ARTICLE IV
MISCELLANEOUS PROVISIONS

4.01. Assignment. The Developer shall notify the City of its intent to assign this Agreement to any entity owned by, controlled by, or under common control with HMF Americana, LLC, or its principal equity owners and obtain the City's consent to such assignment, such consent shall not be unreasonably withheld. Upon assignment of the Agreement, the assignee will execute and deliver to the City an estoppel certificate assuming all the obligations of Developer hereunder. The City further agrees that Developer and/or such assignee shall have the right to grant to its lender a collateral assignment of this Agreement.

4.02. Amendment or Modification. Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment, or modification in writing only, and by the signatures and mutual consent of the Parties.

4.03. 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 party.

4.04. Remedies Not Exclusive. The rights and remedies contained in this Agreement shall not be exclusive, but shall be cumulative of all rights and remedies now or hereinafter existing, by law or in equity.

4.05. Waiver. The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to

further performance.

4.06. Entire Agreement: Counterparts. This Agreement constitutes the entire agreement between the Parties related to the subject matter of this Agreement and supersedes any and all prior agreements, whether oral or written, dealing with the subject matter of this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

4.07. Venue. This Agreement shall be performable and enforceable in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas.

4.08. Severability. If any term or provision of this Agreement is held to be invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of the terms and provisions of this Agreement shall remain in full force and effect and shall not in any way be invalidated, impaired, or affected.

4.09. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) by delivering the same in person to such party; or (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) by electronic mail; provided a copy of such notice is sent within one (1) day thereafter by another method provided above. The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

If to City: City of Tomball
 401 W. Market Street
 Tomball, Texas 77375
 Attention: City Manager
 Telephone: (281) 351-5484
 Facsimile: (281) 351-6256
 Email: desquivel@tomballtx.gov

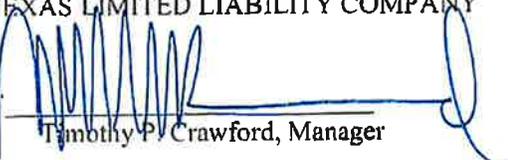
If to Developer: HMF Americana, LLC
 1095 Evergreen Circle, Suite 200-521
 The Woodlands, Texas, 77380
 Telephone: 281-210-7768
 Email: tim@palmettobuilt.com

Executed as of the Effective Date set forth above.

CITY OF TOMBALL, TEXAS

By: 
Name: David Esquivel
Title: City Manager

HMF AMERICANA, LLC,
A TEXAS LIMITED LIABILITY COMPANY

By: 
Timothy P. Crawford, Manager

Exhibits:

Exhibit "A" - Map or Plat of Property

Exhibit "B" - City's M124 Drainage Facilities

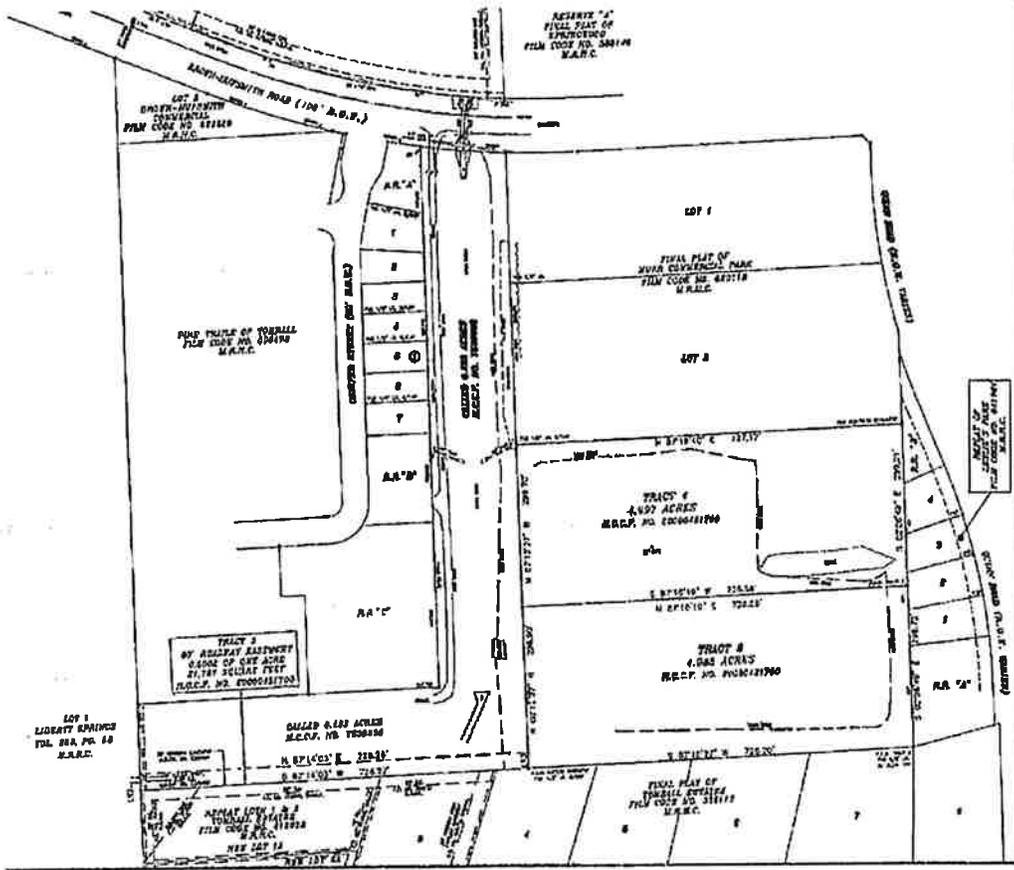
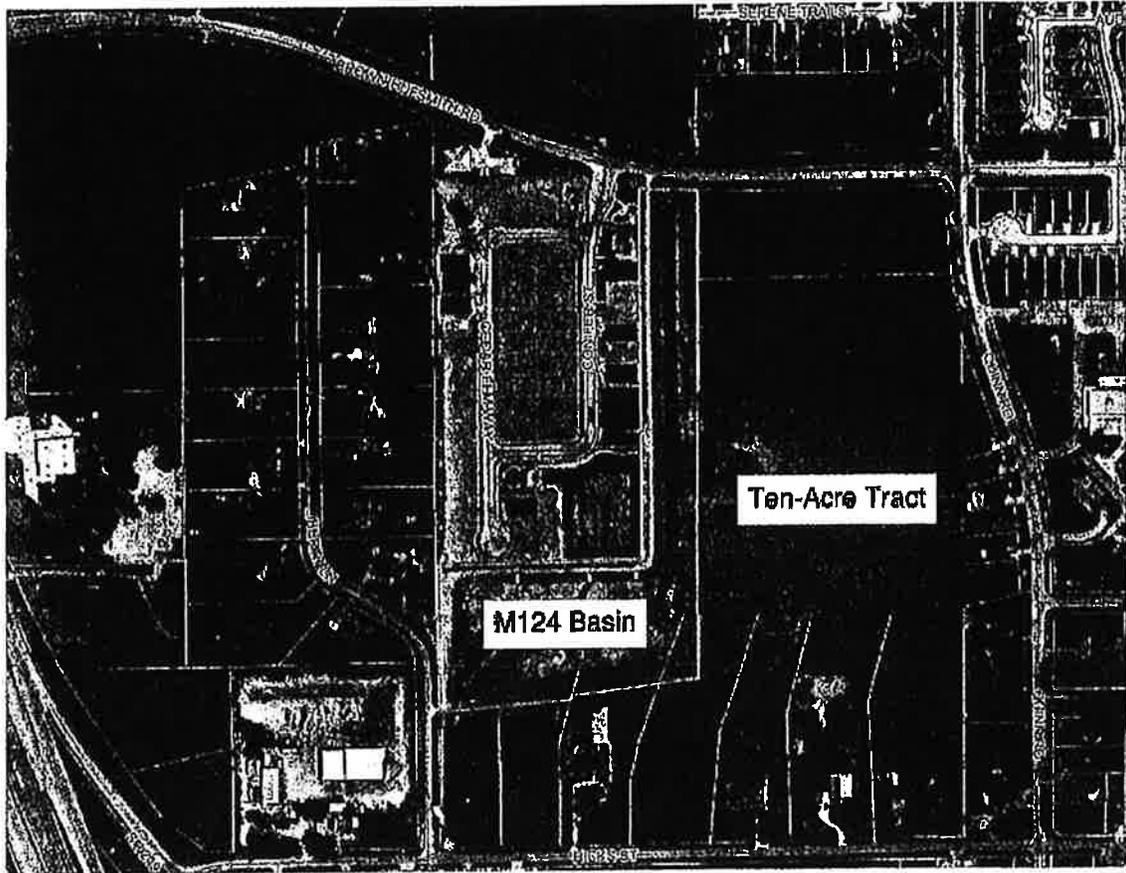


EXHIBIT "B"
City's M124 Drainage Facilities



-END-