

PARK DEVELOPMENT AGREEMENT

THIS PARK DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2015, by and between the City of Seguin, Texas (the "City") and Cal Sierra Financial, Inc. (the "Developer"), as follows:

WHEREAS, Developer is the owner of certain real property located within the City, being approximately 123.82 acres tract of land situated in the JD Clements Survey Abstract 11, City of Seguin, Guadalupe County, Texas as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference for all purposes allowed by law (the "Property"), and desires to construct certain improvements thereon; and

WHEREAS, the Property is generally located between of State Hwy 46 North and Huber Rd in the City of Seguin, Texas; and

WHEREAS, in order to meet, in part, the City requirements for parkland dedication, the Developer shall convey parkland, through an instrument acceptable to the City, whose covenants and restrictions will be filed in the Official Records of Guadalupe County in conjunction with the approval of the Butte Meadows Subdivision Unit 1 Plat, private parkland upon completion of certain park improvements; and

WHEREAS, the Developer has agreed to dedicate 6.55 acres of parkland as four separate private parks, to be maintain by the Butte Meadows Home Owners through an instrument acceptable to the City, accordance with the City's Unified Development Code (the "UDC") and which park land is identified in Exhibit "A" as Lot P-1, Lot P-2, Lot P-3, and Lot P-4; and

WHEREAS, the City has agreed that per the required the park development fee the Developer is to make at a minimum, Two Hundred Forty Five Thousand Five Hundred Dollars (\$245,500) in improvements to the Parks as set forth in this Agreement, and

WHEREAS, the City has agreed that the parkland fee in lieu of dedication and development owed by the Developer to the City be utilized within The Butte Meadows subdivision for a trail/sidewalk system with the Developer making, at a minimum, One Hundred Ten Thousand Four Hundred Seventy-five Dollars (\$110,475.00) in improvements as set forth in this Agreement; and

WHEREAS, the Developer has agreed to accept full responsibility for the development and maintenance of the tracts as set forth in this Agreement; and

WHEREAS, the City has requested and the Developer has agreed that certain conditions shall be embodied into this Park Development Agreement which when executed shall be filed in the Deed Records of Guadalupe County; and

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Developer covenant and agree as follows:

1. The Developer shall dedicate for park uses in accordance with the City UDC private parks, to be maintain by the Butte Meadows Home Owners through an instrument acceptable to the City, approximately 6.55 acres of land which is identified in Exhibit "A."
2. Per the park development fee requirement, the Developer shall construct at a minimum Two Hundred Fort Five Thousand Five Hundred Dollars (\$245,500) in improvements to the parks as outlined in section 3 and 4 below.
3. The Developer shall construct on the 0.88 acre parcel (Lot P-1 – Park Area 1) and 0.60 acre parcel (Lot P-2 – Park Area 2) two (2) benches with trellises, two (2) trash receptacles, two (2) bike racks, landscaping and irrigation as identified in Exhibit "B" in Phase 1 of the development as identified in Exhibit "A". The Developer will complete Park Area 1 and Park Area 2 prior to the completion of 100 homes. Failure by the Developer to timely complete the improvements, as set forth above, to the parkland shall result in the City withholding certificates of occupancy to any developed houses or building permits for future construction.
4. The Developer shall construct on the 0.67 acre parcel (Lot P-3 – Park Area 3) and 4.40 acre parcel (Lot P-4 – Park Area 4) two (2) playscapes, two (2) picnic tables with shade cover, five (5) benches with trellises, five (5) trash receptacles, five (5) bike racks, landscaping, and irrigation as identified in Exhibits "C and D" in Phases 8 and 15 of the development as identified in Exhibit "A." The playscapes shall be of a size and type sufficient to serve the entire development. The Developer will complete Park Area 3 and Park Area 4 prior to the completion of 300 homes. Failure by the Developer to timely complete the improvements to the parkland shall result in the City withholding certificates of occupancy to any developed houses or building permits for future construction.
5. Within thirty (30) days of completion of all of the improvements listed in Section 3 and 4, the Developer shall provide construction receipts to the City that total, at a minimum, Two Hundred Forty Five Thousand Five Hundred Dollars (\$245,500).
6. As the Final Plats for each phase is completed and approved there may be minor changes to the size of the four (4) purposed parks but the final dedication of total parkland will be for approximately 6.55 acres per the UDC.
7. In lieu of paying the City a total sum of One Hundred Ten Thousand Four Hundred Seventy-five Dollars (\$110,475.00) in satisfaction of the Developer's obligation for the private parkland development in accordance with the UDC, the Developer shall construct, at a minimum, a total sum of One Hundred Ten Thousand Four Hundred Seventy-five Dollars (\$110,475.00) in improvements to include the following:

- a. The Developer will complete the trail/sidewalk system from the subdivision's south boundary line to the subdivision's north boundary line and preliminarily running from Park Area 2 (Lot P-2) to Butte Meadows Blvd. per Exhibit "A". Prior to the completion of 100 homes, a trail/sidewalk system plan will be completed to establish the location, extent and construction timeline. Below is a preliminary plan.
- b. A five (5) foot concrete multi-use sidewalk within Lot T-3 along the south property line from Park Area 2 (Lot P-2) east to the Detention Lot and north to Park Area 4 (Lot P-4) as identified in Exhibit "A". The sidewalk will continue east along the south property line towards Huber Road.
- c. A five (5) foot concrete multi-use sidewalk within Lot T-7 from Seguin Parkway. north to Butte Meadows Blvd. as identified in Exhibit "A"
- d. A five (5) foot concrete multi-use trail/sidewalk within Lot T-6 from Butte Meadows Blvd. north to the north property line within Lot T-5 as identified in Exhibit "A".
- e. Within thirty (30) days of completion of all of the improvements listed in Section 4 (b-d), the Developer shall provide construction receipts to the City that total, at a minimum, One Hundred Ten Thousand Four Hundred Seventy-five Dollars (\$110,475.00).

8. The Developer shall provide for maintenance of all areas through an instrument acceptable to the City, for the Parks and the multi-use trail/sidewalks constructed as part of the Developer constructing, at a minimum, a total sum of Three Hundred Fifty Six Thousand Two Hundred Fifty Dollars (\$356,250) in improvements on Lots P-1, P-2, P-3, P-4, T-3, T-5, T-6 and T-7 as identified in Exhibit "A". Further, Developer shall file, at the time of platting, an instrument acceptable to the City, covenants and restrictions which shall provide, at a minimum, for the perpetual maintenance of the park facilities as herein set forth.

9. The Park and Trail/Sidewalk System improvements as outlined in sections 3, 4 and 7 above are based on costs as of the signing of this Park Development Agreement, though the improvements are scheduled for construction at a later date. If there is an increase in costs for said improvements, that would warrant the Developer to purpose a change to the current Park and Trail/Sidewalk System improvement plans, the City agrees to work with the developer to correct said issue, as long as the required minimum improvements costs for the Park and Trail/Sidewalk System as outlined above are maintained.

10. In the case of changes to the Property by the Developer, changes that are approved by the City, the UDC requirements may affect part or all of this Agreement, in

the event of the aforementioned changes this Agreement can and will be amended as the case may be, to incorporate the approved changes.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Guadalupe County, Texas. Venue for any action arising under this Agreement shall lie in Guadalupe County, Texas.

12. Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the City: The City of Seguin, Texas
 P. O. Box 591
 Seguin, Texas 78156
 Attn: City Manager's Office

If to Developer: Cal Sierra Financial, Inc.
 P. O. Box 3449
 Merced, CA 5344

13. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

14. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

15. A telecopied facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein.

16. The City Council shall authorize the City Manager of the City of Seguin to execute this Agreement on behalf of the City.

17. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

18. This Agreement shall be filed in the deed records of Guadalupe County, Texas; and shall be binding upon the parties, their successors and assigns. Upon any sale or other transfer of ownership rights in the Property, the Developer or the then Owner of the Property shall notify the City in writing of such sale or transfer within ten (10) business days of such sale or transfer.

19. The Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. Developer warrants and represents that the individual executing this Agreement on his/her/its behalf has full authority to execute this Agreement and bind Developer to fully perform this Agreement.

20. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to mediation.

21. Developer has been represented by legal counsel in the negotiation of this Agreement and been advised, or has had the opportunity to have legal counsel review this Agreement and advise Developer, regarding Developer's rights under Texas and federal law. Developer hereby waives any requirement that the City retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the City as a condition of approval for the development of this Property are roughly proportional or roughly proportionate to the proposed development's anticipated impact. (These exactions may include but are not limited to the making of dedications or reservations of land, the payment of fees, the construction of facilities, and the payment of construction costs for public facilities.) Developer specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with Tex. Loc. Gov't Code § 212.904. However, notwithstanding the foregoing, Developer hereby releases the City from any and all liability under Tex. Loc. Gov't Code § 212.904 regarding or related to the cost of those municipal infrastructure improvements required for the development of the Property.

22. It is the intent of this Agreement that the provision for the dedication of private parkland and the land upon and across which the multi-use trail/sidewalk and other park amenities, if any, will be constructed herein constitutes a proportional allocation of Developer's responsibility for park improvements for the Property. Developer hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code. Developer further releases City from any and all claims based on excessive or illegal exactions; it being agreed that Developer's park contribution(s) (after receiving all contractual offsets, credits and reimbursements) is roughly proportional or roughly proportionate to the demand that is placed on the park system by Developer's Property. Developer further acknowledges that the benefits of zoning and platting have been accepted with full knowledge of potential claims and causes of action, which may be raised now and in the future, and Developer acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. **Developer shall indemnify and hold harmless City from any claims and suits by Developer or Developer's successors and assigns brought pursuant to this Agreement or the claims or types of claims described in this paragraph.**

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date first above written.

THE CITY:

THE CITY OF SEGUIN, TEXAS

By: _____

Name: Douglas G. Faseler

Title: City Manager, City of Seguin

Notary Public, State of Texas

My Commission Expires:

DEVELOPER:

Cal Sierra Financial, Inc.

By: _____

Name: _____

Title: _____

Notary Public, State of Texas

My Commission Expires:
