

PARK DEVELOPMENT AGREEMENT

THIS PARK DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2018, by and between the City of Seguin, Texas (the "City") and WBW Development Group, LLC (the "Developer"), as follows:

WHEREAS, Developer is the owner of certain real property located within the City, being approximately 266.9 acres tract of land situated in the A. Mansola Survey Abstract No. A-29, 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 south of FM 725, and west of State Hwy. 46 North 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 Final Plat for Arroyo Ranch Phase I, private parkland upon completion of certain park improvements; and

WHEREAS, the Developer's current approved preliminary plat anticipates approximately 1,100 units, and all amounts herein are premised upon and calculated in accordance with that density being built; and

WHEREAS, the Developer has agreed to dedicate at a minimum of 11.00 acres of parkland, to be maintained in perpetuity by the Arroyo Ranch Home Owners Association through an instrument acceptable to the City, accordance with the City's Unified Development Code (the "UDC") and which parkland is identified in Exhibit "A" Parks Masterplan as Tract A, Tract E, Tract F, and Tract G; and

WHEREAS, the City has agreed that per the required park development fee the Developer has agreed to make at a minimum, Four Hundred Twelve Thousand Five Hundred Dollars (\$412,500) in improvements to the Parks as set forth in this Agreement; and

WHEREAS, the Developer has agreed that the parkland fee in lieu of dedication and development owed by the Developer to the City in accordance with the UDC as a condition for private parkland dedication and development is Two Hundred Forty-Seven Thousand Five Hundred Dollars (\$247,500); and

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

responsibility being transferred to the Arroyo Ranch Home Owners Association in accordance with the governing documents; 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's UDC for private parks, to be maintained in perpetuity by the Arroyo Ranch Home Owners Association through an instrument acceptable to the City a minimum of 11.00 acres of land, which is identified in Exhibit "A".

2. Per the park development fee requirement, the Developer shall construct Four Hundred Twelve Thousand Five Hundred Dollars (\$412,500) for the whole development, in improvements to the parks as outlined in Sections 3, 4, 5 and 6 below. This number is based upon the preliminary plat approved by the City and said number may change in accordance with any amendments to the preliminary and final plats as approved by the City. Notwithstanding the provisions of Sections 3, 4, 5 and 6 below, the Developer shall reserve the right to construction the improvements in a different order, so long as the cumulative cost of improvements delivered meets or exceeds the minimum amount required by this Agreement and the phases of the development.

3. The Developer shall construct on Tract A (an 8.51-acre parcel of which 4.22 acres will be considered parkland in accordance with the UDC) and Tract E (an 8.98-acre parcel of which 2.84 acres will be considered parkland in accordance with the UDC) the following as identified in Phase 1 of the development in Exhibit "A":

- Pond A Trail system, including trailheads, access ramps and trail crossings that, to the extent reasonably practical given the terrain, are compliant with the then existing standards under the Americans with Disabilities Act.
- Pond B Trail system, including trailheads, access ramps and trail crossings that, to the extent reasonably practical given the terrain, are compliant with the then existing standards under the Americans with Disabilities Act
- Four (4) Picnic Pavilions (12'x12') with Picnic Tables
- Benches, trashcans
- Walkways/trails (paved, five feet wide at a minimum) that, to the extent reasonably practical given the terrain, are compliant with the then existing standards under the Americans with Disabilities Act
- Estimated Cost - \$112,000

The Developer will complete park improvements listed above on Tract A and Tract E in Phase 1 of the development prior to, and as a requirement for, any building permits being issued for the 301st unit in the development.

4. The Developer shall construct on Tract F (a 1.89-acre parcel considered parkland in accordance with the UDC) the following as identified in Phase 2 of the development in Exhibit "A":

- Playscape (5-12 year-olds)
- Amenity Trail system, including trailheads, access ramps and trail crossings that, to the extent reasonably practical given the terrain, are compliant with the then existing standards under the Americans with Disabilities Act
- Walkways/trails (paved, five feet wide at a minimum) that, to the extent reasonably practical given the terrain, are compliant with the then existing standards under the Americans with Disabilities Act
- Estimated Cost - \$41,000

The Developer will complete park improvements listed above on Tract F in Phase 2 of the development prior to, and as a requirement for, any building permits being issued for the 401st unit in the development.

5. The Developer shall construct on Tract F (a 1.89-acre parcel considered parkland in accordance with the UDC) the following as identified in Phase 3 of the development in Exhibit "A":

- Swimming pool and pavilion
- Parking lot for pool complex
- Landscape
- Estimated Cost - \$200,000

The Developer will complete park improvements listed above on Tract F in Phase 3 of the development prior to, and as a requirement for, any building permits being issued for the 701st unit in the development.

6. The Developer shall construct on Tract G (a 14.9-acre parcel of which 6.47 acres will be considered parkland in accordance with the UDC) the following as identified in Phases 4 and 5 of the development in Exhibit "A":

- Channel Trail system, including trailheads, access ramps and trail crossings
- Three (3) Picnic Pavilions (12'x12') with Picnic Tables
- Benches, trashcans
- Walkways/trails (paved, five feet wide at a minimum)
- Estimated Cost - \$59,500

The Developer will complete park improvements listed above on Tract G in Phases 4 and 5 of the development prior to, and as a requirement for, any building permits being issued for the 901st unit in the development.

7. All Park/Open Space and playground equipment shall be in accordance with the U.S. Consumer Products Safety Commission, Publication 325, as currently amended, and with the exception of the trails beyond the trailhead and access ramps, shall meet all Americans with Disabilities Act requirements (ADA). In addition, an inspection report that is prepared by the Texas Department of Licensing and Regulation (TDLR) or their contracted reviewer for compliance with the Architectural Barriers Act, codified as Article 9102, Texas Civil Statutes, as amended, for park amenities shall be submitted to the City within sixty (60) days after completion of all park amenities. Failure by the Developer to timely complete the improvements, inspections, etc. to the parkland, as set forth above, shall result in the City withholding building permits for future construction.

8. Within ninety (90) days of completion of the improvements listed in Sections 3, 4, 5 and 6, the Developer shall provide construction receipts to the City that total, at a minimum, Four Hundred Twelve Thousand Five Hundred Dollars (\$412,500).

9. As the Final Plat for each phase is completed and approved, there may be minor changes to the size and amenities of the four (4) park areas, but the final dedication of total parkland will be, at a minimum, 11.00 acres and amenities constructed, at a minimum, Four Hundred Twelve Thousand Five Dollars (\$412,500) per unit in accordance with the UDC. Should the Preliminary Plat be amended or the Final Plats, as filed, reflect different numbers, the amount of dedication and required improvements will be changed to reflect those amounts. The Park improvements as outlined in sections 3, 4, 5, and 6 above are based on estimated 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 and/or a change in total unit counts that would warrant the Developer to propose a change to the current Park Masterplan, the City agrees to work with the developer to correct said issue as long as the required minimum improvements costs for the Parks as outlined above are maintained in accordance with the UDC. Any material changes to the Parks Masterplan needs to be approved in writing by the Director of Parks and Recreation or designee.

10. The Developer has agreed that the parkland fee in lieu of dedication and development owed by the Developer to the City in accordance with the UDC as a condition for private parkland dedication and development is Two Hundred Twenty-Five Dollars (\$225) per unit, or Two Hundred Forty-Seven Thousand Five Hundred Dollars (\$247,500) for the 1,100 units shown on the approved Preliminary Plat. This payment could change if the total unit count changes in accordance with the UDC and the final plats as filed. Such payment in lieu of dedication and development as a condition for private parkland dedication and development shall be made at or prior to the recordation of the final plat(s) for each of the seven phases of the development in accordance with the unit count of each phase. The current payments are as follows per phase:

The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

17. 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.

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

19. 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.

20. 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.

21. 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 perform this Agreement fully.

22. 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.

23. The 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.

24. 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

This instrument was acknowledged before me on this ____ day of June, 2018 by Douglas G. Faseler.

Notary Public, State of Texas

My Commission Expires:

DEVELOPER:

WBW DEVELOPMENT GROUP, LLC

By: _____

Name: _____

Title: _____

This instrument was acknowledged before me on this ____ day of July, 2018 by Weldon Bruce Whitis.

Notary Public, State of Texas

My Commission Expires:
