

PARK DEVELOPMENT AGREEMENT

THIS PARK DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2016, by and between the City of Seguin, Texas (the "City") and The Village of Mill Creek (the "Developer"), as follows:

WHEREAS, Developer is the owner of certain real property located within the City, being approximately 133.169 acres situated in the A.M. Esnaurrizar Survey A-20, City of Seguin, Guadalupe County, Texas as more particularly described in Exhibit "1" 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 east of State Highway 46 and north of Rudeloff Road in the City of Seguin, Texas; and

WHEREAS, in order to meet, in part, the City requirements for parkland dedication, the Developer has agreed to donate a combination of dedicated public parkland and to improve the dedicated public park in conjunction with the approval of the subdivision plat; and

WHEREAS, the Developer has agreed to dedicate 2.21 acres of parkland as a public park, to be maintained by the City, in accordance with the City's Code of Ordinances and which park land is identified in Exhibit "1"; and

WHEREAS, the City has agreed that the parkland fee in lieu of 2.21 acres of parkland dedication owed by the Developer to the City be utilized within The Village of Mill Creek subdivision with the Developer making, a sum total of Eighty-Eight Thousand-Four Hundred Dollars (\$88,400.00) in public parkland improvements as set forth in this Agreement; and

WHEREAS, the Developer has agreed to accept full responsibility for the development of the public park 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. To partially satisfy the City's parkland dedication ordinance, the Developer shall dedicate approximately 2.21 acres of land to be used exclusively as a public park and as identified in Exhibit "1".
2. In order to complete the parkland dedication requirement and in lieu of paying the City a sum total sum of Eighty-Eight Thousand-Four Hundred Dollars (\$88,400.00) as a

fee-in-lieu of dedication, the Developer shall construct, at a minimum, a total sum of Eighty-Eight Thousand-Four Hundred Dollars (\$88,400.00) in public park improvement as identified in Exhibit "2" to include the following:

- a. The Developer shall construct on the 2.21 acre of dedicated public parkland a playscape and swing set with an artificial grass fall zone, picnic pavilion, two (2) picnic tables, two (2) park benches, and barbeque grill.
- b. The public park improvements shall be of size and quality as depicted in the corresponding site plan provided by Park Place Recreation Design with all park improvements connected to the neighborhood sidewalk system with a 5 foot sidewalk that meets ADA requirements for public access.
- c. Within thirty (30) days of completion of all of the public park improvements listed in subparagraphs a-b above, the Developer shall provide construction receipts to the City that total, at a minimum, Eighty-Eight Thousand-Four Hundred Dollars (\$88,400.00) to receive full credit for improvements.
- d. The required public park improvements can be modified as necessary by the Developer, with written approval of the City, in order to stay within the park improvement budget of Eighty-Eight Thousand-Four Hundred Dollars (\$88,400.00).

3. Developer shall complete the park before any permits are issued to construct houses in the area marked as "B" on the attached Exhibit "1".

4. 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.

5. 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: Peter Greenblum
 P.O. Box 171374
 San Antonio, TX 78217

6. 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).

7. 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.

8. 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.

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

10. 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.

11. This Agreement shall be filed in the deed records of Guadalupe County, Texas; and shall be binding upon the parties, their successors and assigns.

12. 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.

13. 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.

14. 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.

15. 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:

Peter Greenblum

By: _____

Name: _____

Title: _____

Notary Public, State of Texas

My Commission Expires:
