

## **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 Butte Land Partners, LLC (the "Developer"), as follows:

**WHEREAS**, Developer is the owner of certain real property located within the City, being approximately 124.17 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 Hiddenbrooke Subdivision Unit 1 Plat, private parkland upon completion of certain park improvements; and

**WHEREAS**, the Developer has agreed to dedicate at a minimum of 5.00 acres of parkland as four separate private parks, to be maintained by the Hiddenbrooke 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 Lot 917, Lot 912, Lot 911, and Lot 909; and

**WHEREAS**, the City has agreed that per the required the park development fee the Developer has agreed to make at a minimum, One Hundred Eighty-Seven Thousand Five Hundred Dollars (\$187,500.00) 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 One Hundred Twelve Thousand Five Hundred Dollars (\$112,500.00); 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's UDC for private parks, to be maintained in perpetuity by the Hiddenbrooke Home Owners Association through an instrument acceptable to the City a minimum of 5.00 acres of land, which is identified in Exhibit "A."

2. Per the park development fee requirement, the Developer shall construct at a minimum One Hundred Eighty-Seven Thousand Five Hundred Dollars (\$187,500.00) in improvements to the parks as outlined in Sections 3, 4, 5 and 6 below.

3. The Developer shall construct on Lot 917 (0.562 acre parcel) the following as identified in Phase 1 of the development in Exhibit "A":

- Playscape (5-12 year olds)
- 16x16 shade structure
- BBQ Grills / Picnic Tables
- Benches
- Concrete walks
- Shade Trees
- Open play field
- Landscape/Irrigation
- Estimated Cost - \$55,000

The Developer will complete park improvements listed above on Lot 917 in Phase 1 of the development prior to any building permits being issued for Phase 2 of the development.

4. The Developer shall construct on Lot 912 (1.570 acre parcel) the following as identified in Phase 2 of the development in Exhibit "A":

- 16x16 shade structure
- Playscape (5-12 year olds)
- Swings
- BBQ Grills / Picnic Tables
- Benches
- Concrete walks
- Shade Trees
- Multi-use Field
- Landscape/Irrigation
- Estimated Cost - \$75,000

The Developer will complete park improvements listed above on Lot 912 in Phase 2 of the development prior to any building permits being issued for Phase 3 of the development.

5. The Developer shall construct on Lot 911 (2.457 acre parcel) the following as identified in Phase 3 of the development in Exhibit "A":

- 1/4 mile - Concrete walks
- Native Grasses/Wildflowers
- Shade Trees
- Landscape
- Estimated Cost - \$60,000

The Developer will complete park improvements listed above on Lot 912 in Phase 3 of the development prior to any building permits being issued for Phase 4 of the development.

6. The Developer shall construct on Lot 909 (1.312 acre parcel) the following as identified in Phase 3 of the development in Exhibit "A":

- Multi-use Field
- Shade Trees
- Landscape

The Developer will complete park improvements listed above on Lot 909 in Phase 3 of the development prior to any building permits being issued for Phase 4 of 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 meet all Americans with Disabilities Act requirements (ADA). In addition, will use commercially reasonable best efforts to obtain 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, to be submitted to the City within ninety (90) 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 all the improvements listed in Sections 3, 4, 5 and 6, the Developer shall provide construction receipts to the City that total, at a minimum, One Hundred Eighty-Seven Thousand Five Hundred Dollars (\$187,500.00).

9. As the Final Plats for each phase is completed and approved, there may be minor changes to the size and amenities of the four (4) purposed parks, but the final dedication of total parkland will be, at a minimum, 5.00 acres and amenities constructed, at a minimum, of One Hundred Eighty-Seven Thousand Five Hundred Dollars (\$187,500.00) in accordance with the UDC. The Park improvements as outlined in sections 3, 4, 5, and 6 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 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. Any 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 One Hundred Twelve Thousand Five Hundred Dollars (\$112,500.00) for the 500 units. This payment could change if the total unit count changes in accordance with the UDC. 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 four phases of the development in accordance with the unit count of each phase. The payments are as follows per phase:

- Phase 1 with 140 units - \$31,500
- Phase 2 with 126 units - \$28,350
- Phase 3 with 142 units - \$31,950
- Phase 4 with 92 units - \$20,700

11. The Developer shall provide for perpetual maintenance of all Park areas through an instrument acceptable to the City, for the Parks and the multi-use trail/sidewalks constructed as part of the Developer constructing. Furthermore, 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.

12. 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.

13. 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.

14. 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:       Butte Land Partners, LLC  
                                  410 N. Seguin Ave.  
                                  New Braunfels, Texas 78130

15. 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).

16. 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.

17. An emailed or 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 fully perform this Agreement.

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. 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.

\_\_\_\_\_  
Naomi J. Manski  
Notary Public, State of Texas

My Commission Expires:

\_\_\_\_\_

**DEVELOPER:**

Butte Land Partners, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

This instrument was acknowledged before me on this \_\_\_\_ day of June, 2018 by  
\_\_\_\_\_.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Notary Public, State of Texas

My Commission Expires:

\_\_\_\_\_