

PARK DEVELOPMENT AGREEMENT

THIS PARK DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of January, 2021, by and between the City of Seguin, Texas (the "City") and Bitterblue, Inc. (the "Developer"), as follows:

WHEREAS, the Developer is the owner of certain real property located within the City, being an approximate 50.61 acre tract of land out of the John Sowell Survey Abstract 35, 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 east of the State Highway 123 Bypass and south of Nolte Farms Drive 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 reasonably 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 Nolte Farms Subdivision Unit 1 Plat, private parkland upon completion of certain park improvements as set forth herein; and

WHEREAS, the Developer has agreed to dedicate approximately 1.8 acres of parkland as a private park (the "Park"), to be maintained by the Nolte Farms Homeowners Association (the "HOA") through an instrument reasonably acceptable to the City in accordance with the City's Unified Development Code (the "UDC") and which parkland is identified in Exhibit "A" in the Current Layout; and

WHEREAS, the City has agreed that per the required park development fee, the Developer has agreed to make at a minimum, Seventy-Nine Thousand Two Hundred Dollars (\$79,200.00) in improvements to the Park as set forth in this Agreement and as identified in Exhibit "B" in the Nolte Farms Park Plan; and

WHEREAS, the Developer has agreed to pay the parkland fee-in-lieu of land dedication and development required by the Developer in accordance with the UDC as a condition for private parkland dedication and development is Forty-Four Thousand Dollars (\$44,000.00), due and payable in stages as hereafter described; 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 after the development is complete, park maintenance shall be the responsibility of the home owner's association that will be established with the first plat; and

WHEREAS, the City has requested and the Developer has agreed that certain conditions shall be embodied into this Agreement which when executed shall be filed in the Deed Records of Guadalupe County, Texas; 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, the City and the Developer covenant and agree as follows:

1. The Developer shall dedicate for park uses in accordance with the UDC for private parks, to be maintained in perpetuity by the HOA through an instrument reasonably acceptable to the City a minimum of 1.76 acres of land, which is identified in Exhibit "A" in the Current Layout.

2. Per the park development fee requirement in the UDC, the Developer shall pay for the construction of, at a minimum, Seventy-Nine Thousand Two Hundred Dollars (\$79,200.00) in improvements to the Park as outlined in Section 3.

3. The Developer shall construct the following as identified in Phase 1 of the development as depicted in Exhibit "B" in the Nolte Farms Park Plan:

- Loop Walkway
- Benches
- Park Signage
- Covered Playscapes
- Open-air Pavilion
- Estimated Cost - \$218,000.00

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

4. 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) as such exist at the time of construction. In addition, Developer will use commercially reasonable 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 in Phase 3 of the development until these items have been completed.

5. Within ninety (90) days of completion of all the improvements listed in Section 3, the Developer shall provide construction receipts to the City that total, at a minimum, Seventy-Nine Thousand Two Hundred Dollars (\$79,200.00).

6. As the final plats for each phase is completed and approved, Developer may in its discretion elect to make minor changes to the size and required improvements of the Park, but the final dedication of total parkland will be, at a minimum, 1.76 acres and

amenities constructed, at a minimum, of Seventy-Nine Thousand Two Hundred Dollars (\$79,200.00) in accordance with the UDC. The Park improvements as outlined in Section 3 above are based on costs as of the signing of this 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 request a change to the current Nolte Farms Park Plan, the City agrees to work with the Developer to correct said issue as long as the required minimum improvements costs for the Park as outlined above are maintained. Any changes to the Nolte Farms Park Plan need to be approved (which approval shall not be unreasonably withheld) in writing by the Director of Parks and Recreation or designee.

7. The Developer has agreed that the parkland fee in lieu of land dedication owed by the Developer to the City in accordance with the UDC as a condition for private parkland dedication and development is Forty-Four Thousand Dollars (\$44,000.00), due and payable in phases as hereinafter set forth. This payment could change if the total unit count changes in accordance with the UDC. Such payment in lieu of land dedication as a condition for private parkland dedication and development shall be made at or prior to the recordation of the final plat for each of the three phases of the development in accordance with the unit count of each phase. The payments shall become due and payable with the recording of the plat associated with the phases of development as follows:

- Phase 1 with 75 units - \$18,750.00
- Phase 2 with 54 units - \$13,500.00
- Phase 3 with 47 units - \$11,750.00

8. The Developer shall provide for perpetual maintenance of all private park areas through dedication of the Park to the HOA through an instrument reasonably acceptable to the City, for the Park and required improvements. Developer shall file, at the time of platting, an instrument reasonably acceptable to the City, covenants and restrictions which shall provide, at a minimum, for the perpetual maintenance of the Park facilities and trail as herein set forth.

9. In the case of a change in the development of the Property by the Developer, changes that are approved by the City, or the UDC requirements that may affect part or all of this Agreement, this Agreement can and will be amended by written instrument duly executed by the City and the Developer, in form and substance reasonably acceptable to the City and the Developer, to incorporate the approved changes.

10. 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.

11. 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: Bitterblue, Inc.
 11 Lynn Batts Lane #100
 San Antonio, TX 78218
 Attn: Lloyd Denton

With a copy to: Kruger Carson PLLC
 711 Navarro, Ste. 230
 San Antonio, TX 78205
 Attn: Bradley S. Carson
 Email: Brad@krugercarson.com

12. 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.

13. 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.

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

15. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, this 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.

16. This Agreement shall be filed in the deed records of Guadalupe County, Texas; and shall be binding upon the parties, their successors and assigns except for any owner of a single-family lot with a house on the Property. Upon any sale or other transfer of ownership rights in the Property except for the sale of a platted single-family lot, 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.

17. This 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. The Developer warrants and represents that the individual executing this Agreement on his/her/its behalf has full authority to execute this Agreement and bind the Developer to fully perform this Agreement.

18. 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.

19. 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 the Developer, regarding the Developer's rights under Texas and federal law. The 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 the 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.) The 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, the 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.

20. 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 the Developer's responsibility for park improvements for the Property. The 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. The 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 the 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 the Developer acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. **Except to the extent caused by the City's failure to perform its obligations under this Agreement, or the City's negligence or willful misconduct, 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: Steve Parker

Title: City Manager, City of Seguin

STATE OF TEXAS §
COUNTY OF GUADALUPE §

Before me, the undersigned authority, on this day personally appeared Steve Parker, City Manager for the City of Seguin, Texas, and acknowledged that he executed the same for the purposes and consideration herein expressed. on behalf of said city.

Given under my hand and seal of office this _____ day of January 2021.

Notary Public, State of Texas

DEVELOPER:

BITTERBLUE, INC.

By: _____

Name: _____

Title: _____

STATE OF TEXAS §
COUNTY OF BEXAR §

Before me, the undersigned authority, on this day personally appeared Steve Parker, City Manager for the City of Seguin, Texas, and acknowledged that he executed the same for the purposes and consideration herein expressed. on behalf of said city.

Given under my hand and seal of office this _____ day of January 2021.

Notary Public, State of Texas