

**CITY OF WEATHERFORD
DEVELOPER AGREEMENT WITH CITY PARTICIPATION**

STATE OF TEXAS	§	Subdivision Name: Town Creek Phase II
COUNTY OF PARKER	§	Developer Name: Ms. Marina Sears, Square S Construction and Development

WHEREAS, Ms. Marina Sears, of Square S Construction and Development, hereinafter known as the “Developer” owns the land included in the approved and recorded final plat of the Town Creek Subdivision, Phase II and more particularly described on the attached Exhibit A (the "Property"); and

WHEREAS, the Developer desires to develop the Property, and City ordinances and State laws require the Developer to complete all on-site and off-site public improvements associated with Town Creek Subdivision, Phase II; and

WHEREAS, the City of Weatherford, hereinafter known as the “City” and Developer have determined that the City will benefit from the development of the Town Creek Subdivision, Phase II, including the public improvements on the original construction plans as subsequently amended and approved by the City and that certain amendments and exceptions to the platting procedures, requirements and fees will need to be approved; and

WHEREAS, this Developer Agreement is authorized by Chapter 6 of the City Subdivision Ordinance, and is executed to memorialize the Developer's responsibilities regarding the Public Improvements; **NOW, THEREFORE**,

In consideration of the mutual covenants set forth in this Agreement, the City and the Developer agree as follows:

1. Construction of Improvements.
 - A. Developer Responsibility - The Developer agrees to construct and install, at the Developer's expense, all of the Public Improvements for which Developer is responsible as shown on the original construction plans and specifications as subsequently amended and approved by the City in compliance with applicable City ordinances, standards, and regulations.
 - B. City Responsibility – The City agrees to participate in the permitting and inspection of the construction and installation of Public Improvements as described in paragraph 2. below. Developer shall be responsible for the construction and installation of such public improvements in compliance with applicable City ordinances, standards, and regulations, and in accordance with the construction plans and specifications approved by the City.
2. Development Conditions, Issues and Approvals
 - A. Although the final plat has been approved and recorded, the utilities, streets and other public improvements have not been installed, constructed, inspected and/or accepted. No permits will be issued prior to the construction and acceptance of the public

improvements unless provided for otherwise in this agreement. The Developer may phase the construction of public improvements in a manner acceptable to the City and the City will issue building permits for any phase where the public improvements have been constructed and accepted.

- B. The Developer is responsible for providing updated topography, soil testing and geotechnical reports, drainage calculations, and finished floor elevations two feet above the base flood elevation for any lot within the flood plain. Any public improvement construction plans, including roadways and drainage plans, affected by the updated topography will also need to be updated and approved by the City. The City will be responsible for “camera-ing” the already installed wastewater lines but Developer will be responsible for testing such lines and manholes prior to acceptance.
- C. The City will issue and provide early releases of building permits for single family residences prior to the construction and acceptance of the required public improvements for those lots along Town Creek Circle that currently have paved access to the lot and access to charged fire hydrants. The lots are more specifically described as:
 - 1) Block J, lot 57
 - 2) Block K, lots 1-6
 - 3) Block J, lots 1-10

No final approval or occupancy of single family residences will be allowed prior to the construction and acceptance of the public improvements immediately in front of and adjacent to the lot where the residence is located. The developer will be totally responsible for coordinating the construction, sales and occupancy of a residence with the construction and acceptance of the related public improvements.

- D. Weatherford Electric will not provide pedestals or electric service to individual lots until such time as the roadway has been paved, drainage, water, wastewater and the curb and gutter constructed in front of the lot. Final grading, lot staking, exposing of ends of road crossing and final compaction will also be required. Developer will be allowed individual building permits without electric service but no final approvals, final inspections, or occupancy will be approved until electric service is provided to the lot, at the expense of the developer in accordance with Weatherford Electric Utility policies.
- E. City will allow Developer to require the homebuilders of lots that back up to Hilltop Drive and Eureka Drive to pass the construction of sidewalks on both the front and back of those lots fronting on two streets at the time the residence is constructed. The City will not final or allow occupancy of a house where the required sidewalks have not been constructed by either the developer or the homebuilder. It shall be the responsibility of Developer to notify and coordinate with the homebuilders the construction of the sidewalks.
- F. City agrees to waive all utility (water and wastewater) inspection fees and any other inspection fees that are not reimbursement for third party inspections. Fees will be charged for any expenses incurred by the City for non-utility, third party inspections which includes construction cost of streets and drainage. Staff is willing to discuss charging actual cost of inspection of such facilities.

- G. Developer will coordinate a fence along the rear of lots backing up to Hilltop Drive and Eureka Drive. Along Hilltop, in lieu of a masonry fence, Developer shall require homebuilders to construct a wood fence with masonry columns at regular intervals acceptable to the City and Developer, unless otherwise approved the City Manager. Such fence will be allowed immediately adjacent to the property line on private property and allowed to encroach on any utility easements.
- H. City will be supportive of abandoning or reducing the platted 37.5 foot easement along Hilltop, provided there are no public utilities in such easement. A replat will be required to remove such easement. City hereby agrees to waive replatting application fees and provide early releases of single family building permits in accordance with paragraph C above.
- I. The City will encourage and facilitate the approval of any necessary replatting and public improvement revisions necessary to provide access to an adjacent tract of land of approximately nine acres.

3. **Security for Completion of Improvements.** The Developer agrees to provide and continuously maintain security (the "Security") for the completion of the Developer's portion of the Public Improvements as required in accordance with Chapter 6 of the City Subdivision Ordinance. The Security must be in the amount of 100% of the cost estimate for the Public Improvements approved by the City Engineer, less the amount of City Participation. City ordinances provide that security may not be necessary if construction of all public improvements is completed prior to approval/filing of the final plat. However, in this development, the final plat has already been approved and recorded. Security will be required for any remaining public improvements in a particular phase prior to the issuance of any single family building permits and the amount can be limited to only the public improvements serving those particular houses.

4. **Warranty/Maintenance Bond.** The Developer agrees to correct all defects in materials or workmanship in the Public Improvements constructed by Developer for a period of two years after acceptance by the City. The Developer agrees to provide a maintenance bond in favor of the City in the amount of 100% of the cost of the Public Improvements, including City Participation, for a period of two years after acceptance by the City.

5. **Lien Search Certificate.** The Developer agrees to provide, at the time this Agreement is executed, a Lien Search Certificate prepared and signed by a title company acceptable to the City Attorney. The Lien Search Certificate must identify the Property, must name all owners of the Property, must name all lienholders having liens against the Property, and must be dated no more than 10 days prior to the Effective Date. The Lien Search Certificate must be accompanied by a Consent of Lienholder signed by an authorized representative of each lienholder identified in the Lien Search Certificate. This Agreement will not be accepted without the Lien Search Certificate and the executed Consent of Lien holder, if applicable.

6. **Acquisition of Property Interests.** The Developer agrees to acquire at its expense all rights-of-way, easements and other real property interests needed for the construction of the Public Improvements, including all off-site improvements, in a manner suitable for dedication of the real property interests to the City, unless otherwise specifically addressed in this agreement. The form

of all documents under which real property interests are acquired is subject to approval by the City Attorney. The Developer agrees to record each such document in the official public records of the county in which the Property is located, and to provide a copy of each such recorded document to the City Attorney.

7. **Recording of Plat.** The plat has already been recorded. Upon completion of all of the following, the City will issue permits for the construction of single family residential permits in accordance with this ordinance.

- A. Approval of this Agreement by the City Council.
- B. Submission to City of Lien Search Certificate, and executed Consent of Lienholder for each lienholder on the Property.
- C. Approval of all engineering and public improvement construction plans and provision of security to cover such improvements
- D. Approval of the Security, as needed, by the City Attorney.
- E. Approval by the City Attorney of any conveyance documents for rights-of-way, easements and other real property interests needed for the construction of the Public Improvements.

8. **Conditions of Draw on Security.** The City Engineer may draw upon any Security upon the occurrence of one or more of the following events:

- A. The Developer commenced construction but did not properly construct or complete one or more of the Developer Public Improvements including the amount of City Participation already paid for improvements with such deficiencies, and failed to remedy the construction deficiency within a reasonable cure period;
- B. The Developer did not renew or replace the Security at least 45 days prior to its expiration date; or
- C. The issuer of the Security, or any third party, has acquired all or any portion of the Property through foreclosure or an assignment or conveyance in lieu of foreclosure.

9. **Drawing on the Security; Use of Draws.** The City Engineer may draw upon the Security by submitting a draft to the issuer that complies with the terms governing the draft. The draw may be in any amount up to the full amount of the Security. The City agrees to restrict its use of funds from draws to purposes associated with the construction, maintenance or repair of the Developer Public Improvements, including those improvements involving public participation. The parties agree that by making a draw, the City does not waive its rights to enforce any obligation of the Developer under this Agreement, and the City is not accepting the Developer Public Improvements for ownership and maintenance prior to final completion.

10. **Right of Entry.** The Developer grants to the City and its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property to inspect the construction of the Developer Public Improvements, and to construct, inspect, maintain, and repair any Public Improvements made on the Property by the City.

11. **Remedies.** The remedies available to the City in the event of noncompliance by the Developer with this Agreement are cumulative in nature. These remedies include, but are not limited to, the following:

- A. Refusal to provide or allow utility services to all or any part of the Property.
- B. Refusal to accept all or a portion of the Developer Public Improvements for public ownership or maintenance.
- C. Draws against the Security for construction of the Developer Public Improvements.
- D. Injunction against further sale of tracts of land within the Subdivision.

12. **No Third Party Rights.** No person or entity who or which is not a party to this Agreement has any right of action under this Agreement. Nor does any such person or entity, other than the City (including without limitation a trustee in bankruptcy) have any interest in or claim to any funds drawn by the City on the Security in accordance with this Agreement.

13. **Indemnification.** The Developer covenants to indemnify, save, and hold harmless the City and its respective officers, employees, and agents from, and against, all claims, demands, actions, damages, losses, costs, liabilities, expenses and judgments recovered from or asserted on account of injury or damage to persons or property loss or damage arising in connection with construction performed by or on behalf of the Developer on the Property.

14. **Miscellaneous.**

- A. The Developer may assign its rights and obligations under this Agreement to a purchaser of all or part of the Property, if the Developer delivers written notice of the assignment to the City accompanied by an assignment agreement under which the assignee accepts all of the Developer's obligations under this Agreement and submits new Security for the Public Improvements in a form acceptable to the City Attorney. Any other assignment by a Party of rights or obligations under this Agreement will require the written approval of the other Party.
- B. This Agreement, including appendices and referenced attachments, constitutes the entire agreement between the City and the Developer on this subject and supersedes all other proposals, presentations, representations, and communications, whether oral or written, between the parties. This Agreement may be amended only by a written document that is duly approved and executed by all parties.
- C. In the event any section, subsection, paragraph, sentence, phrase or word is held invalid for any reason, the balance of this Agreement will remain in effect and will be read as if the parties intended at all times not to include the invalid section, subsection, paragraph, sentence, phrase or word.
- D. This agreement shall be governed by the laws of the State of Texas. Exclusive venue for any legal dispute arising under this agreement shall be in Parker County, Texas. The City's execution of and performance under this Agreement will not act as a waiver of any immunity of the City to suit or liability under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

- E. Notices required by this Agreement will be provided by the parties to one another by certified mail, return receipt requested, or by confirmed facsimile transmission, to the following addresses:

To the City:

Director of Planning/Development
City of Weatherford
303 Palo Pinto Street
P.O. Box 255
Weatherford, TX 76086
817-598-4338
Fax:817-598-4487
cfarmer@weatherfordtx.gov

To the Developer:

Ms. Marina Sears
Square S Construction and Development
602 S Main Suite 200
Weatherford, TX 76086
817-938-8812
Fax:817-594-6273
marinasears@hotmail.com

If a party changes its address or facsimile number for notice purposes, it will provide written notice of the new address to the other party within 10 days of the change.

- F. In the event that the performance by either party of any of its obligations under this contract is interrupted or delayed by events outside of their control such as acts of God, war, riot, or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of the events.
- G. This Agreement constitutes a covenant running with the title to the Property, and the provisions of this Agreement are binding on the Developer and on all successors and assigns of the Developer.

[signatures on following page]

SIGNED AND EFFECTIVE on the date signed by the Developer.

DEVELOPER

By: _____
Developer's Signature

Printed Name and Title

STATE OF _____ §

ACKNOWLEDGEMENT

COUNTY OF _____ §

This instrument was acknowledged before me, the undersigned authority, a Notary Public in and for the State of _____, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he or she executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office, this _____ day of _____, 20____.

Notary Public

[SEAL]

My Board Expires on:

CITY OF WEATHERFORD, TEXAS

By: _____
Jerry Blaisdell, City Manager

STATE OF TEXAS §

ACKNOWLEDGEMENT

COUNTY OF PARKER §

This instrument was acknowledged before me, the undersigned authority, a Notary Public in and for the State of _____, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he or she executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office, this _____ day of _____, 2013.

Notary Public

[SEAL]

My Board Expires on:

APPROVED AS TO FORM:

By: _____
Ed Zellers, City Attorney

**Consent of Lienholder to
Subdivision Improvement Agreement**

Subdivision Name:

Developer Name:

Developer Address:

Lienholder Name:

Lienholder Address:

WHEREAS, the Developer is the owner of the property described in the attached and incorporated Exhibit A ("Property"); and

WHEREAS, the Lienholder is the lienholder of the Property under the terms and conditions of the following document(s):

WHEREAS, the Developer has requested that the City of Weatherford (the "City") approve and execute a Subdivision Improvement Agreement with the Developer governing installation of all on-site and off-site public improvements (the "Public Improvements") associated with the Subdivision. **NOW, THEREFORE**,

In consideration of the mutual covenants set forth in this Agreement, the Lienholder agrees to the following:

1. The Lienholder consents to the execution of the Subdivision Improvement Agreement and the rights and obligations of the Developer set out therein.

2. The Lienholder subordinates its lien rights on this Property to the rights and interests of the City under the Subdivision Improvement Agreement, and the Lienholder agrees that any foreclosure by the Lienholder of its liens will not extinguish City's rights and interests in the Subdivision Improvement Agreement.

The undersigned has the authority to bind the Lienholder, and that all corporate acts necessary to bind the Lienholder have been taken.

EXECUTED ON: _____

LIENHOLDER: _____

By: _____
Signature

By: _____
Printed Name and Title

STATE OF _____ §

ACKNOWLEDGEMENT

COUNTY OF _____ §

This instrument was acknowledged before me, the undersigned authority, a Notary Public in and for the State of _____, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he or she executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office, this _____ day of _____, 20____.

Notary Public

[SEAL]

My Board Expires on:

EXHIBIT A Property Description

