

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is entered into between **Name of Development Company and State** (the “Developer”) and the City of Denton, a Texas home-rule municipal corporation (the “City”) as of the Effective Date as provided below.

### Introductory Provisions

Developer is the owner of and is currently developing a portion of a 263.76-acre, more or less, tract of land for residential use known as Eagle Creek which is located in the **Name of** Survey, Abstract No. **XXX**, City of Denton, Denton County, Texas (the “Project”). The Project consists of seven hundred and sixty-three (763) residential lots and forty (40) homeowners association (“HOA”) open space lots, and one (1) park land dedication lot (“Park Land Lot”) totaling 41.211 acres; and

Developer will improve and dedicate **#** acres to the City of Denton as park land for public use. The Park Land Lot, more particularly depicted on Exhibit “A” attached hereto, will be dedicated as park land by Special Warranty Deed, Exhibit “B” and shall be recorded in the Plat Records of Denton County, Texas upon approval by the City of Denton; and

**(If needed)** Developer will grant a Public Access Easement to the City of Denton via an Easement Agreement approved by the City and substantially in the form attached hereto as Exhibit “C”, which shall be recorded in the Deed Records of Denton County, Texas; The Easement Property will give the City the right for the benefit of the general public to enter upon the Easement to allow the use of the 10 foot wide concrete sidewalk to access the City-owned Park property directly to the East of the Project; and

The amount of park land dedication required by Chapter 22, Article III, Section 22-37 of the City’s Code of Ordinances for the Project is **#** non flood plain acres or **#** flood-plain acres (the “Park Land Dedication Requirement”); and

The park development fees required by Chapter 22, Article III, Section 22-39 of the City’s Code of Ordinances for the Project total **\$\$\$\$\$**. The Developer will construct and install trails, benches, and other improvements pursuant to the agreed upon Conceptual Master Plan attached hereto as Exhibit “D” (the “Park Improvements”) and intends to dedicate the Park Improvements to the City, for which the City intends to reimburse to Developer the park development fees assessed and collected by the City for the Project at the time of building permit applications in accordance with Section 22-39 of the City’s Code of Ordinances (“Park Development Fees”); and

Developer and the City enter into this Agreement to confirm their agreement that, among other terms, (a) the Developer’s dedication of the Park Land Lot to the City, (b) the City’s acceptance of the Park Land Lot, to satisfy the park land dedication requirement in Chapter 22, Article III, Section 22-37 of the City’s Code of Ordinances. (c) the Developer will grant to City a Public Access Easement (d) the agreement to reimburse Developer with Park Development Fees received from the Project property for Developer’s construction of Park Improvements

## A. Agreements

For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Dedication of the Park Land Lot. Developer will dedicate the Park Land Lot shown on Exhibit A to the City. The City and the Developer will work cooperatively to process Developer's dedication of the Park Land Lot.

Developer shall provide a cash deposit or other alternative financial guarantee in a form approved by City in the amount of \$ (the "Deposit"). City may withhold approval of the final plat of the Project until Developer has delivered the Deposit. City shall reimburse the Deposit amount to Developer, without interest, upon dedication of the Park Land Lot as provided herein. If Developer fails to properly convey the Park Land Lot as provided herein, City shall apply the Deposit against any outstanding fees, including park dedication fees, owed by Developer, and City may keep any remainder. City's receipt and retention of all or any portion of the Deposit shall not constitute a waiver of any of City's rights or remedies at law or in equity.

No later than 30 days after Developer's completion of construction of the Park Improvements as provided herein, developer will dedicate the Park Land Lot to City by conveying a Special Warranty Deed in substantially the same form as attached hereto as Exhibit "B". The City and Developer shall prepare, execute, and record all documents related to the dedication and conveyance of the Park Land Lot at the Developer's sole expense. The dedication of the Park Land Lot fulfills Developer's total park land dedication requirements for the Project, in satisfaction of Chapter 22, Article III, Section 22-37 of the City's Code of Ordinances.

The Developer's dedication of the Park Land Lot under this Agreement is based on the type of development (single family) and the anticipated number of residential units to be developed on the Project. The Park dedication required by this Agreement for the Project was determined with the formula  $2.5 \text{ acres} \times \# \text{ units} \times 2.8 \text{ persons}$  divided by 1,000 for 5.341 acres of land for residential property. Floodplain can be dedicated at 3 to 1 ratio. The total park land dedication is # acres, of which # acres is within the floodplain.

The parties acknowledge that the size of the Park Land Lot exceeds the required land dedication. City accepts the additional # acres in lieu of fees in satisfaction of the park dedication required for the Project, in accordance with Chapter 22, Article III, Section 22-39 of the City's Code of Ordinances. Developer expressly acknowledges and agrees that both the execution of this Agreement and the transfer of the additional Park Land Lot is made voluntarily by the Developer and not as a requirement of the City under its Code of Ordinances, and Developer waives any claim related thereto that it may have under any theory of law against the City.

2. Park Development Fees & Reimbursement. Park development fees for the Project would amount to \$ for # homes at \$ per single family unit pursuant to the Park Development Fees Requirement of Chapter 22, Article III, Section 22-39 of the City's Code of Ordinances. Park development fees shall be imposed at the time of building permit application and City will not issue building permits for the Project until Developer pays the park development fees in full. Within ninety (90) days of the date on which Developer completes the construction of the Park Improvements on the Park Land Lot as per the agreed upon Conceptual Master Plan, Exhibit "D", the City shall reimburse Developer in an amount not to exceed **Replace with new \$ TWO HUNDRED TWENTY-TWO THOUSAND THIRTY-THREE DOLLARS (\$222,033.00)** ("Reimbursement Amount"), without interest, for the Park Improvements in accordance with the terms of this Section. Actual Park Improvement Costs that exceed the Reimbursement Amount will be the sole cost of the Developer and Developer waives any claim to payment therefor that it may have under any theory of law against the City. The City shall reimburse the Developer up to the Reimbursement Amount solely with Park Development Fees paid to the City from the Project property. In no event will Developer be entitled to reimbursement for Park Improvements in excess of the Reimbursement Amount or from any source of revenue other than Park Development Fees received by the City from development permits on properties located within the Project.
3. **(If needed)** Public Access Easement Within thirty (30) days of the effective date of this Agreement, Developer will grant a Public Access Easement to the City of Denton via an Easement Agreement approved by the City and substantially in the form of Exhibit "C", which shall be recorded in the Deed Records of Denton County, Texas upon final execution. Developer or its successors in interest to the Property shall at all times provide public access to the 10-foot-wide sidewalk on the premises that connect a public right-of-way to the trail connection on the edge of the Project. Developer shall abstain from erecting any gates, fences, or other obstacles that would prevent the public from using the Public Access Easement.
4. **(If needed)** Maintenance of Public Access Easement The City of Denton will not be responsible for maintenance of the sidewalk, or pathways located on the Public Access Easement. The Developer shall maintain such driveways, sidewalks, and pathways located inside the Public Access Easement to standards acceptable to the City of Denton. If Developer, or its successor in interest allows any sidewalk or pathway within the Public Access Easement to fall into disrepair or become unusable or inaccessible, City may enter and repair such sidewalk or pathway at Developer's or its successor in interest's expense.
5. Park Name. Naming of the Park will be directed by Resolution Number R20-1001, as amended, which outlines the naming policy guidelines for City buildings, facilities, land, or any portion thereof.
6. Park Master Plan. Developer has worked cooperatively with the City to produce an agreed-upon Master Plan for the Park. The agreed upon Conceptual Master Plan is

herein attached as Exhibit “D”. The Developer is expected to complete the items that are referenced in the Park Improvements Cost Estimate, Exhibit “E”. If any changes occur, the Master Plan document must be approved by the Director of Parks and Recreation.

7. Construction and Location of Park Improvements. Developer will complete the construction of the Park Improvements on the Park Land Lot, as per the agreed upon Park Masterplan, Exhibit “D”, and which Park Improvements include # feet (10 ft wide) of concrete walking trail, benches, and directional signage. The Developer will match the City of Denton Parks and Recreation trail, bench, and signage construction standards and irrigation specifications provided by City. The Developer will complete all agreed upon construction of the Park by August 31, 2024. If said park development is not completed prior to the deadline the Developer shall request an extension in writing to the Director of Parks and Recreation.
8. Cost of Park Improvements. Developer will commit to build the Park per the total cost and design identified on Exhibit “E”. An Estimate of the costs of the Park Improvements is contained in Exhibit “E” attached to this Agreement and incorporated herein by reference for all purposes. Upon written request therefor, Developer shall provide invoices to the City to establish the actual cost for the construction and installation of the Park Improvements (the “Actual Park Improvement Cost”). The City, in its sole discretion will determine if the Actual Park Improvement Costs are reasonable; provided, however, any actual costs or invoice amounts which are no more than five percent (5%) above the amount for such item(s) shown on the estimate attached hereto as Exhibit “D” shall be deemed reasonable for purposes hereunder.
9. Waivers. The parties hereby agree:
  - A. Nothing in this Agreement shall be considered an illegal impact fee or exaction. The Developer agrees and stipulates that all terms of Local Government Code Section 212.904 have been met by the City and that the requirement for Developer to dedicate the Park.
  - B. Developer and its related entities, successors, and assigns release and discharge the City, its past and present employees, officers, council members, attorneys, and other agents, contractors, and representatives from any and all claims, demands, controversies, and causes of action for breach of contract, takings, exactions, claims under Texas Local Government Code Chapter 395, and claims under the Private Real Property Rights Preservation Act, Texas Government Code Chapter 2007, and all claims for reimbursements and monies that relate to this Agreement.
  - C. Developer waives any right to appeal the requirement to construct and dedicate the Park in accordance with the terms of this Agreement pursuant to Section 22-42 of the City’s Code of Ordinances.
10. **Indemnification. DEVELOPER SHALL INDEMNIFY, SAVE, AND HOLD HARMLESS THE CITY, ITS ELECTED OFFICIALS, OFFICERS, AGENTS, ATTORNEYS, AND EMPLOYEES (COLLECTIVELY, THE**

**“INDEMNITEES”) FROM AND AGAINST: (I) ANY ADMINISTRATIVE OR INVESTIGATIVE PROCEEDING BY ANY GOVERNMENTAL AUTHORITY DIRECTLY OR INDIRECTLY RELATED TO A CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION, ARISING FROM DEVELOPER’S PERFORMANCE OF ITS OBLIGATIONS HEREUNDER; (II) ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION WHICH DIRECTLY OR INDIRECTLY CONTESTS OR CHALLENGES THE LEGAL AUTHORITY OF THE CITY OR DEVELOPER TO ENTER INTO THIS AGREEMENT; (III) ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION BROUGHT BY AN ASSIGNEE OF DEVELOPER RELATED TO APPROVAL OF AN ASSIGNMENT BEING WITHHELD BY THE CITY; AND (IV) ANY AND ALL LIABILITIES, LOSSES, COSTS, OR EXPENSES (INCLUDING ATTORNEY’S FEES AND DISBURSEMENTS) THAT ANY INDEMNITEES SUFFER OR INCUR AS A RESULT OF ANY ACTION OR OMISSION OF INDEMNITEES PURSUANT TO THIS AGREEMENT; PROVIDED, HOWEVER, THAT DEVELOPER SHALL HAVE NO OBLIGATION UNDER THIS PARAGRAPH TO THE CITY WITH RESPECT TO ANY OF THE FOREGOING ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY OR THE BREACH BY THE CITY OF THIS AGREEMENT.**

B. Miscellaneous

1. This Agreement contains the full and complete agreement of the parties hereto, and all prior negotiations and agreements pertaining to the subject matter hereof, are expressly merged in this Agreement. Each party hereto disclaims any reliance on any facts, promises, undertakings, or representations (oral or written) made by any other party, or his agent or attorneys, prior to or contemporaneous to the date of execution of this Agreement.
2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns.
3. All parties acknowledge that this Agreement is the result of substantial negotiation between the parties. All parties further acknowledge that each party and its legal counsel have reviewed, revised, and contributed to this Agreement; so that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement, nor any amendments or exhibits thereto.
4. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

5. All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

To City:

City Manager  
City of Denton  
City Hall  
215 E. McKinney  
Denton, Texas 76201

To Developer:

Developer Designee Name  
Developer Name  
### Street Address  
City, State Zip

6. This Agreement shall be construed under the laws of the State of Texas and is fully performable in Denton County, Texas. Exclusive venue for any suit to enforce the terms and conditions of this Agreement shall be a court of competent jurisdiction in Denton County, Texas.
7. This Agreement may be executed in multiple counterparts, by one or more signatories, separately and each of such counterparts shall be deemed an original for all purposes, and all such signed counterparts shall constitute but one and the same instrument.

Signed to be effective the \_\_\_\_ day of \_\_\_\_\_, 2022 (the "Effective Date").

*[signatures on following page]*

DEVELOPER:  
Developer Company Name

By: \_\_\_\_\_  
Developer Signatory Name

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

CITY OF DENTON:

By: \_\_\_\_\_  
Sara Hensley  
City Manager  
215 E. McKinney  
Denton, Texas 76201

ATTEST:  
ROSA RIOS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

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

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

\_\_\_\_\_  
SIGNATURE                      PRINTED NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DEPARTMENT

ACKNOWLEDGMENTS

STATE OF TEXAS }

COUNTY OF DENTON }

The foregoing Development Agreement was executed before me on the \_\_\_\_ day of \_\_\_\_\_, 2022 by Sara Hensley, City Manager of the City of Denton, a Texas home-rule municipal corporation, on behalf of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name  
My commission expires: \_\_\_\_\_  
My commission is in \_\_\_\_\_ County.

STATE OF TEXAS }

COUNTY OF DENTON }

The foregoing Development Agreement was executed before me on the \_\_\_\_ day of \_\_\_\_\_, 2022 by **Developer Signatory Name**, the **Developer company name** of \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name  
My commission expires: \_\_\_\_\_  
My commission is in \_\_\_\_\_ County.



EXHIBIT "A"  
FINAL PLAT

EXHIBIT "B"

SPECIAL WARRANTY DEED

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

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**SPECIAL WARRANTY DEED**

STATE OF TEXAS           §  
  §                   **KNOW ALL MEN BY THESE PRESENTS**  
COUNTY OF DENTON     §

That **Developer Name.**, a Delaware corporation (herein called "Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration to Grantor in hand paid by the **City of Denton**, a Texas Home Rule Municipal Corporation (herein called "Grantee"), having a mailing address of 215 E. McKinney Street, Denton, Texas 76201, the receipt and sufficiency of which are hereby acknowledged and confessed, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY, unto Grantee all of that certain approximate 41.21-acre tract or parcel of real property, together with appurtenances thereon and improvements thereto, including all right, title and interest in all adjacent public streets and public rights-of-way (if any), more particularly described as:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN FOR ALL PURPOSES (the "Property").

SUBJECT, HOWEVER, TO THE FOLLOWING EXCEPTIONS:

- (a) the lien of all ad valorem real estate taxes and assessments not yet due and payable as of the Effective Date, subject to proration between the parties;
- (b) local, state and federal laws, ordinances or governmental regulations, including but not limited to, building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property;
- (c) easements for utilities and road rights of way;
- (d) any existing oil and gas leases relating to the Property to the extent same are still in effect, however, no drilling or surface operation shall be permitted on the Property;
- (e) any discrepancies, conflicts or shortages in the area of boundary recitations which a survey of the Property would reflect;
- (f) any item that appears in the public records of the County where the Property is located.

Grantor, subject to the limitation of such reservation made herein, reserves, for themselves, their heirs, devisees, successors, and assigns all oil, gas, and other minerals in, on, and under and that may be produced from the Property. Grantor, their heirs, devisees, successors, and assigns shall not have the right to use or access the surface of the Property, in any way, manner, or form, in connection with or related to the reserved oil, gas, and other minerals, and/or related to exploration and/or production of the oil, gas and other minerals reserved herein, including without limitation, use or access of the surface of the Property for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the reserved oil, gas, and other minerals, and/or related to the exploration or production of same.

As used herein, the term “other minerals” shall include oil, gas, and all associated hydrocarbons and shall exclude (i) all substances that any reasonable extraction, mining, or other exploration and/or production method, operation, process, or procedure would consume, deplete, or destroy the surface of the Property; and (ii) all substances which are at or near the surface of the Property. The intent of the parties hereto is that the meaning of the term “other minerals” as utilized herein, shall be in accordance with that set forth in *Reed v. Wylie*, 597 S.W.2d 743 (Tex. 1980).

As used herein, the term “surface of the Property” shall include the area from the surface of the earth to a depth of five hundred feet (500’) below the surface of the earth and all areas above the surface of the earth.

Grantor hereby assigns to Grantee, without recourse or representation, any and all claims and causes of action that Grantor may have for or related to any defects in, or injury to, the Property.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee and Grantee’s successors and assigns forever; and Grantor does hereby bind Grantor and Grantor’s successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee and Grantee’s successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise.

*[Signature page follows]*

EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the "Effective Date").

**GRANTOR:**

**Forestar (USA) Real Estate Group Inc.,**  
a Delaware corporation

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

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

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

**ACKNOWLEDGMENT**

THE STATE OF TEXAS    §  
  §  
COUNTY OF \_\_\_\_\_§

This instrument was acknowledged before me on \_\_\_\_\_, 2022, by \_\_\_\_\_, the \_\_\_\_\_ of **Developer name** on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas  
My commission expires: \_\_\_\_\_

**Upon Filing Return To:**

City of Denton  
Capital Projects – Real Estate  
401 N. Elm Street  
Denton, Texas 76201

**Property Tax Bills To:**

City of Denton Finance Department  
215 E. McKinney Street  
Denton, Texas 76201s