

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is dated effective the _____ day of March, 2018, by and between THE CITY OF BROKEN ARROW, OKLAHOMA, an Oklahoma Municipal Corporation (together with its successors and assigns, the "City," which term, when used in such context shall also mean and refer to the area within the territorial limits of the City), NEW BEDFORD LAKES, LLC, an Oklahoma limited liability company ("") and NEW BEDFORD PARK, LLC, an Oklahoma limited liability company and Glenn Shaw and Charles L. Ramsay, Jr., collectively referred to herein as the "Developers."

WITNESSETH:

WHEREAS, the Developers and their affiliated entities own approximately 551 acres of land in the City of Broken Arrow; and

WHEREAS, a portion of this land is located along 37th Street between East Omaha Street (East 51st Street South) and East Albany Street (East 61st Street South) as depicted on the attached Exhibit "A" (the "Development Land"); and

WHEREAS, the Developers intend to develop the Development Land, or parts thereof, for residential and other suitable uses in accordance with the City of Broken Arrow's Comprehensive Plan, Zoning Ordinance, the Land Subdivision Code, Engineering Design Criteria Manual and other city codes (the "Applicable Codes"); and

WHEREAS, the City desires to facilitate the development of the area in and around certain of the Development Land to promote the City's growth and, as described herein, to provide parks and recreation facilities for the City's residents; and

WHEREAS, the Developers previously dedicated real property and easements to the City for location of a sanitary sewer lift station, sanitary sewer mains, a portion of the right-of-way for

the construction of 37th Street, easements for the location of various utilities, and temporary construction easements; and

WHEREAS, specifically, these dedications consisted of the following:

- a. approximately 4.5 acres for placement of sanitary sewer lines and a lift station;
and
- b. approximately 9.12 acres for construction of the sanitary sewer lines and lift station; and
- c. approximately 3.206 acres of permanent right-of-way for the construction of 37th street; and
- d. approximately 2.52 acres for construction of 37th street; and
- e. right-of-way along 101st street between Lynn Lane and County Line Road; and
- f. approximately 26.73 acres for a regional detention pond across from Broken Arrow High School; and
- g. right-of-way along East Albany Street, between Lynn Lane and County Line Road; and

WHEREAS, Developers' estimate of the value of the above-referenced dedications, including the loss of developable land, is \$1,261,815.00; and

WHEREAS, in conjunction with the referenced dedications, City Staff entered into negotiations with Developers for donation of portions of the Development Land for construction of a regional detention facility (the "Detention Facility"); and

WHEREAS, said Detention Facility will benefit the residents of the City by reducing peak stormwater flows, facilitating future development in the area, and maximizing other developable land; and

WHEREAS, as Staff negotiated for location and construction of the Detention Facility, it was contemplated that location of a park (the “Park”) at this location would be beneficial to the citizens of Broken Arrow and would complement the proposed Detention Facility; and

WHEREAS, location of a Park in the Development Land is in accordance with the City of Broken Arrow Parks and Recreation Master Plan; and

WHEREAS, in furtherance of these objectives, in 2011 and 2014, the voters approved issuance of General Obligations Bonds for both the Detention Facility and the Park; and

WHEREAS, 37th Street runs north and south along the section line and is considered a section line road, but presently no roadway exists between East Albany Street and East Omaha Street; and

WHEREAS, construction of 37th Street between East Albany Street and East Omaha Street and as approved by the voters in 2014, will provide significant connectivity between north and south Broken Arrow, and would, in particular, facilitate citizen access to the retail area and public education facilities located along the Creek Turnpike and 37th Street; and

WHEREAS, in furtherance of the above stated goals and approval of the voters, the City entered into a construction contract with Paragon Contractors, LLC, for construction of 37th Street pursuant to the 2014 General Obligation Bond Issue that authorized funding for the design and construction of 37th Street; and

WHEREAS, the City recognizes that the aforementioned projects will have additional and direct economic benefits within and near the City, in Wagoner and Tulsa Counties and in the State through, including without limitations, providing a stimulus for other development, providing regional stormwater detention for present and future development, and providing necessary connectivity; and

WHEREAS, in connection with such reasonable expectations and following extensive negotiations with Developers, the City has determined that it is necessary and appropriate for the City to provide the following in exchange for the dedication of real property, right-of-way and easements necessary for the construction of 37th Street between Omaha Street and Albany Street, the Detention Facility, and the Park:

1. Construct, or cause to be constructed, a Detention Facility in the general area depicted on Exhibit "B," in accordance with plans designed by AAB Engineering and in an amount not to exceed \$1,335,885.13; and
2. Construct, or cause to be constructed, 37th Street from East Albany Street to East Omaha Street as a two (2) or more lane street; and
3. Construct, or cause to be constructed, a Park surrounding the regional detention facility in the general area as depicted on Exhibit "B"; and
4. Allow utilization of the Regional Facility for stormwater detention for the Tracts Identified as A, B, and C on the attached Exhibit "A," as well as for the remainder of detention required in the Silverleaf Subdivision.
5. Allow the filing of the Final Plat and provide for the offset of fee-in-lieu for the Tucson Village Project on property described on Exhibit C (the "Tucson Village Property").

WHEREAS, said dedications of Developers as set forth in the above recital are estimated to be valued in excess of \$516,000.00, said acquisition costs being insufficient to purchase the necessary real property, right-of-way and easements and complete the projects as set forth in the General Obligation Bond proceeds; and

WHEREAS, having been induced by the offer of such incentives, and contingent therein, Developers agree to the dedication of necessary right-of-way for the construction of 37th Street from East Albany Street to East Omaha Street and all appurtenances required therein, approximately 10 acres of real property for construction of the Detention Facility, and approximately 30 acres of real property for construction of the Park, and, if determined by Developers to be necessary for the proper development of the Development Land adjacent to the Detention Pond and the Park, the construction of box culverts to facilitate construction of interior streets by developers; and

WHEREAS, the proposed funding sources for the aforementioned projects are the 2011 and 2014 General Obligation Bond issues, savings from named General Obligation Bond projects, the stormwater capital improvement fund, and all other legal funding sources as the Council may decide; and

WHEREAS, the City deems it appropriate to approve the execution and delivery of this Agreement in the interest of providing for the implementation of the aforementioned projects and have determined such actions are in the best interests of the City and the health, safety, and welfare of the City and residents within and near the City.

NOW, THEREFORE, in consideration of the covenants and mutual obligations herein set forth and other consideration, the sufficiency of which the parties hereby acknowledge, the parties hereto hereby covenant and agree as follows:

ARTICLE I
DEFINITIONS

"Agreement" and such terms as "herein," "hereof," "hereto," "hereby," "hereunder," and the like shall mean and refer to this Agreement, and any and all permitted supplements, modifications and/or amendments hereto.

"Applicable Codes" shall mean Oklahoma State Statutes, Federal laws, the City of Broken Arrow's Comprehensive Plan, Zoning Ordinance, the Land Subdivision Code, Engineering Design Criteria Manual and other city, state or federal laws or codes (the "Applicable Codes"); and

"City" shall mean The City of Broken Arrow, Oklahoma, an Oklahoma municipal corporation, and, as the case may be, shall mean and refer to such agency, department or instrumentality of the City as may have, or shall have been charged with, primary responsibility for any given Agreement-subject activity. The term "City", when used in such context, shall also mean and refer to the area within the territorial limits of the City.

"City Engineer" shall mean the Director of Engineering and Construction for the City of Broken Arrow.

"City Council" shall mean the Council of the City.

"Detention Facility" shall mean the regional detention facility to be located on the Development Land and to be dedicated by the Developers and built in accordance with the terms and provisions of this Agreement.

"Development Land" shall mean certain real property located in Wagoner County, State of Oklahoma as described above.

“Park” shall mean the City Park to be located on the Development Land as indicated by Exhibit B, to be dedicated by the Developers and built in accordance with the terms and provisions of this Agreement.

"Project" shall mean construction of 37th Street, the Detention Facility, the Park, and placement of the box culverts in a mutually agreeable location to be determined by the parties.

ARTICLE II OBLIGATIONS OF DEVELOPER

2.1 Right-of-Way, Easements and Deeds of Dedication. Developers previously executed and provided to the City Deeds necessary for right-of-way, easements and real property for the construction of 37th Street between East Albany Street and East Omaha Street. Developer shall execute and provide to the City all Deeds and other conveyance documents necessary for construction of the Park and Detention Facility for the general area depicted on Exhibit “B.” These Deeds will be prepared by the City Engineer and executed by the Developers within six (6) months of the effective date of this Agreement.

2.2 Construction of Residential Development and other Related Uses. Developers shall construct on the Development Land, single-family residential developments, commercial developments and related uses, all in accordance with the City of Broken Arrow's Applicable Codes.

2.3 Platting and Zoning. Developers shall plat and zone the Development Land in accordance with the City of Broken Arrow's Applicable Codes.

2.4 Box Culverts. In the event Developers determine that they are necessary and appropriate for the development of the Development Land in the adjacent area, Developers shall place box culverts that are ancillary to the Detention Pond and to facilitate construction of interior streets by

Developers in the Development Land. These box culverts shall be of a size approved by the City Engineer, designed, and constructed in a manner that crossing access is maintained during flooding conditions based on City, Federal Emergency Management Authority (FEMA) and U.S. Army Corps of Engineers standards.

ARTICLE III OBLIGATIONS OF THE CITY

3.1 Construction of 37th Street. The City will construct 37th Street from Albany Street to Omaha Street. The road will be constructed to accommodate a minimum of two lanes of traffic, with center turn lanes as necessary to access the Development Land Construction. The Street Project will include box culverts designed to back the water into the proposed regional detention facility.

3.2 Park. On the approximate 30 acres generally depicted in the area shown on Exhibit "B," the City will construct the Park consisting of playground equipment and parking lot. Construction of the park will be accomplished utilizing the design prepared by Planning Design Group as a guide and will be completed in phases. The estimated time for completion is June 1, 2021. The parties agree that funding for the Park will be from existing General Obligation Bond proceeds and shall not exceed \$548,715.00.

3.3 Construction of a Regional Detention Facility. The City will construct the Detention Facility generally depicted in the approximate area shown on Exhibit "B." The fill material from construction of the detention facility will be stockpiled in an area owned by Developers as agreed to by the parties and as approved by the City Engineer. Construction of the Detention Facility will be accomplished with City funds using the engineering design prepared by AAB Engineering, as a guide, and will be a wet pond. Developers shall have the ability to utilize the Detention Facility for stormwater detention for the Tracts Identified as A, B, and C on the attached Exhibit "A," as

well as for the remainder of detention required for the undetained portions of the Silverleaf Subdivision. The City will be responsible for obtaining a 404 permit for construction of the Detention Facility.

3.4 Credit for Fee-in-Lieu of Detention. The City will allow the Tucson Village Property, and the future remaining development on the property described on Exhibit A to proceed without the payment of fees-in-lieu of detention.

3.5 Approvals by Federal and State Agencies. In the event the City encounters delays in obtaining permits or approvals required by Federal and State agencies to construct the road, the Detention Facility or the Park, the estimated completion dates shall automatically be extended.

3.6 City Approvals. The City agrees that any approvals it is required to make under this Agreement shall not be unreasonably withheld or delayed.

ARTICLE IV INDEMNIFICATION PROVISIONS

4.1 Indemnification. It is expressly understood and agreed between the parties that Developers are performing their obligations hereunder, and are acting as independent contractors and not as an agent or representative of the City, and that the City assumes no responsibility or liability in connection with Developers' obligations and undertakings under this Agreement to third parties, and further that Developers agree to indemnify and hold harmless the City, as well as its respective officers, agents and employees, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage, or other harm for which recovery of damages is sought, suffered by any person or persons that may arise out of or be occasioned by any of the terms or provisions of this Agreement, or by any negligent act or omissions of Developers or their officers, agents, associates, employees, or contractors, in the performance of Developers' obligations under this Agreement.

ARTICLE V GENERAL PROVISIONS

5.1 Conflict of Interest; Representatives not individually Liable. No official or employee of the City shall voluntarily acquire any ownership interest in any legal entity which is a party to this Agreement. No official or employee of the City shall be personally liable to Developers in the event of any default or breach by the City or for any amount to become due to Developers under this Agreement.

5.2 Applicable Law, Severability and Entire Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State governing agreements made and fully performed in Oklahoma. If any provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or surviving portion(s) of such provision, and each other provision of this Agreement, shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the City and Developers with respect to the subject matters of this Agreement, there being no terms, conditions, warranties or representations with respect to the subject matter other than as contained herein.

5.3 Third Parties. Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any other persons, as third-party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights express or implied, upon any other person.

5.4 No Partnership or Joint Venture Created. This Agreement specifically does not create any partnership or joint venture between the parties hereto, or render any party liable for any of the debts or obligations of any other party.

5.5 Formalities and Authority. The parties hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

5.6 Notices and Demands. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and certified with return receipt requested; by delivering the same in person to such party; or by electronic transmission or facsimile. Notice given in accordance herewith shall be effective upon mailing, delivery, and electronic transmission or facsimile at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

to Developers:

Charles L. Ramsay, Jr.
6118 South Florence Place East
Tulsa, Oklahoma 74136
Telephone: (918) 261-5200
Facsimile: (918) 299-7787

L. Glenn Shaw
1420 West Kenosha
Broken Arrow, OK 74012
Telephone: (918) 261-5100
Facsimile: (918) 258-4466

to the City:

City Manager
The City of Broken Arrow
220 South First Street
Broken Arrow, Oklahoma 74012

with copies to:

City Attorney
City of Broken Arrow, Oklahoma
200 South First Street
Broken Arrow, Oklahoma 74012

or to such other address, within the United States, with respect to a party as that party may from time to time designate in writing and forward to the others as provided in this Section. A copy of any notice, demand or other communication under this Agreement given by a party under this Agreement to any other party under this Section shall be given to each other party to this Agreement.

5.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

5.8 Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

5.9 Further Assurances. Each party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to the consummation of the matters or completion of the undertakings set forth herein, as may be reasonably requested by any other party to consummate more effectively the purposes or subject matter of this Agreement.

5.10 Attorneys' Fees. In the event of any controversy, claim or dispute between the parties affecting or relating to the subject matter or performance of this Agreement, the prevailing party

shall be entitled to recover from the non-prevailing party all of its reasonable expenses, including reasonable attorneys' fees.

5.11 Construction of this Agreement. Each party hereby acknowledges that it and its legal counsel have reviewed and, as the case may be, revised this Agreement and 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 or any exhibits or amendments hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by its duly authorized official(s), on the date first above written

THE CITY OF BROKEN ARROW,
a municipal corporation

ATTEST: (S E A L)

By: _____
Mayor

By: _____
City Clerk

Reviewed as to form and legality this 20th day of February 2018.

Municipal Counselor

NEW BEDFORD PARK, LLC
And NEW BEDFORD LAKES, LLC (DEVELOPERS):

By: _____
Charles L. Ramsay, Manager

By: _____
L. Glenn Shaw, Manager

Charles L. Ramsay, Jr., Individually

L. Glenn Shaw, Individually

[illegible]

Before me, the undersigned, a Notary Public in and for said County and State on the ____ day of _____, 2018, personally appeared Charles L. Ramsay, Jr., Manager of NEW BEDFORD PARK, LLC, and NEW BEDFORD LAKES, LLC, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said limited partnership for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.

(S E A L)

Notary Public
My commission expires:
My number is:

[illegible]

Before me, the undersigned, a Notary Public in and for said County and State on the ____ day of _____, 2018, personally appeared L. Glenn Shaw, Manager of NEW BEDFORD PARK, LLC., and NEW BEDFORD LAKES, LLC to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said limited partnership for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.

(S E A L)

Notary Public
My commission expires:
My number is:

[illegible]

Before me, the undersigned, a Notary Public in and for said County and State on the ____ day of _____, 2018, personally appeared Charles L. Ramsay, Jr., to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.

(S E A L)

Notary Public
My commission expires:
My number is:

[illegible]

Before me, the undersigned, a Notary Public in and for said County and State on the ____ day of _____, 2018, personally appeared L. Glenn Shaw, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.

(S E A L)

Notary Public
My commission expires:
My number is:

EXHIBIT A

EXHIBIT B

EXHIBIT C