

CITY OF AURORA  
SUBDIVISION ORDINANCE

APPENDIX B

DEVELOPER AGREEMENT

**CITY OF AURORA**  
**DEVELOPER AGREEMENT**

**FOR THE**

\_\_\_\_\_ **ADDITION, PHASE** \_\_\_\_\_

**STATE OF TEXAS**            §  
   §  
**COUNTY OF** \_\_\_\_\_ §

**THIS AGREEMENT** entered into on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Aurora, Texas, hereinafter known as the "CITY", and \_\_\_\_\_, Inc. whose address is \_\_\_\_\_, \_\_\_\_\_, Texas, \_\_\_\_\_, hereinafter known as the "DEVELOPER".

**WHEREAS**, the DEVELOPER has requested the CITY to permit the platting and/or development of a tract of land known as \_\_\_\_\_ ADDITION, PHASE \_\_\_\_\_ (the "Subdivision"); and

**WHEREAS**, the CITY has approved such platting and/or development which requires the construction of community facilities and improvements to serve the Subdivision as provided herein; and

**WHEREAS**, this agreement shall operate as a covenant running with the land and be binding upon the DEVELOPER and its representatives, officers, agents, servants, employees, successors and assigns.

**NOW, THEREFORE**, the CITY and DEVELOPER, in consideration of the mutual covenants and agreements contained herein do mutually agree as follows:

**A. ZONING, PLATTING and SITE PLANNING**

All property owned by the DEVELOPER and located within the limits of the Subdivision shall be zoned and platted in accordance with the Zoning Ordinance and the Subdivision Ordinance of the CITY before any Building Permit will be issued. The DEVELOPER shall dedicate, at no cost to the CITY, all street rights-of-way, alleys, drainage easements, floodways, utility easements and other dedications as required by the CITY at the time of platting.

The DEVELOPER shall comply with all requirements in this Agreement as a condition of approval of the project.

## **B. PUBLIC IMPROVEMENTS**

All public improvements, including streets, utilities, drainage, sidewalks, street lighting, street signage, and all other required improvements, shall be provided by the DEVELOPER, at no cost to the CITY, unless otherwise provided herein, in accordance with the Subdivision Ordinance and other Regulations of the CITY, and as approved by the City Engineer or his/her agent. Such improvements shall be installed within all applicable time frames in accordance with the Subdivision Ordinance of the CITY unless otherwise approved herein.

DEVELOPER shall employ a civil engineer licensed to practice in the State of Texas for the design and preparation of plans and specifications for the construction of the public improvements. DEVELOPER shall assume all responsibility for the adequacy and accuracy of the design, plans and specifications. Engineering studies, plan/profile sheets, and other construction documents (hereinafter referred to as "construction plans") prepared by the licensed engineer shall be provided by the DEVELOPER at the time of platting as required by the Subdivision Ordinance. Such documents shall be approved by the City Engineer or his/her agent prior to approval and filing of a Final Plat. Construction of such improvements shall not be initiated until a Pre-Construction Conference has been conducted regarding the proposed construction.

In accordance with the Subdivision Ordinance of the CITY, construction of all public improvements shall be subject to routine review by the City Engineer or his/her agent to evaluate conformance with the construction plans, project specifications and CITY standards. However, such review and evaluation shall not relieve the DEVELOPER, his/her engineer and/or agent of responsibility for design, construction and maintenance of the improvements as set out in this Agreement and other relevant ordinances of the CITY.

Street lighting shall be installed by TXU Electric Company, or its successor, in accordance with a street lighting layout plan provided by TXU Electric Company and approved by the City Engineer or his/her agent. The DEVELOPER shall be responsible for the installation costs of any required street lighting as provided herein.

Upon completion of construction of public improvements as required by this Agreement and the Subdivision Ordinance, the DEVELOPER shall deliver to the CITY the following items of As-Built construction plans of the public improvements constructed or engineered by the DEVELOPER:

1. One FULL set in AutoCAD 14;
2. One FULL MYLAR set;
3. One FULL Blue-Line set;
4. One Blue-Line copy of the executed ("filed") Final Plat sheet;
5. One 11" X 17" copy of the Final Plat Sheet;
6. Two (2) Blue-Line copies of the Water and Sanitary Sewer Layout sheet at a scale of 1:100;
7. One Blue-Line copy of the Water and Sanitary Sewer Layout sheet at a scale of 1:200;
8. One Blue-Line copy of the Storm Drain Layout sheet at a scale of 1:100; and
9. One Blue-Line copy of the Storm Drain Layout sheet at a scale of 1:200.

No building permits (except for Model Homes as identified in Section L: "Construction of Models" of this Agreement) will be issued on any lot in the Subdivision until all public improvements have been installed, inspected and a Letter of Acceptance has been issued.

### **C. CONSTRUCTION BONDS**

Prior to initiating any construction on the Subdivision, the construction contractor(s) for the DEVELOPER shall provide the CITY with one original and one quality copy of the following construction bonds:

1. **PERFORMANCE BOND.** A good and sufficient Performance Bond in an amount equal to one hundred percent (100%) of the total cost of the public improvements, guaranteeing the full and faithful execution of the work and performance of this Agreement and for the protection of the CITY against any improper execution of the work or the use of inferior materials. The Performance Bond shall guarantee completion of the public improvements within one year of execution of this Agreement.
2. **PAYMENT BOND.** A good and sufficient Payment Bond in an amount equal to one hundred percent (100%) of the total cost of the public improvements, guaranteeing payment for all labor, materials and equipment used in the construction of the public improvements.
3. **MAINTENANCE BOND.** A good and sufficient Maintenance Bond in an amount equal to fifty percent (50%) of the total cost of the Infrastructure Improvements [contract (between the DEVELOPER and the Prime Contractor) price plus all change order costs],

guaranteeing the maintenance in good condition of the facilities for a period of two (2) years from and after the date that a Letter of Acceptance is issued from the CITY indicating that the Infrastructure Improvements have been completed by the DEVELOPER and accepted by the CITY.

Each of the above bonds shall be in a form acceptable to the City. Any surety company through which a bond is written shall be duly authorized to do business in the State of Texas, provided that the City, through its Director of Public Works, shall retain the right to reject any surety company for any work under this Agreement regardless of such company's authorization to do business in the State of Texas. Approval by the City shall not be unreasonably withheld or delayed.

#### **D. STREETS**

In conjunction with the platting and development of \_\_\_\_\_ ADDITION, PHASE \_\_\_\_\_, the DEVELOPER shall complete the following:

1. All required Rights-Of-Way shall be dedicated to the CITY at the time of platting.
2. All internal roads shall be fully constructed in accordance with the plans and specifications prepared by the DEVELOPER's engineer, and shall be constructed in conjunction with construction of the development unless otherwise approved herein. Such construction shall be in accordance with the Subdivision Ordinance of the CITY, and plans shall be approved by the City Engineer or his/her agent prior to Final Plat approval and filing.

#### **E. PRO RATA REIMBURSEMENT**

{Insert terms of any agreement.}

#### **F. SIDEWALKS**

1. Sidewalks shall be installed in accordance with the CITY'S Subdivision Ordinance.
2. Sidewalks specifically will be required at the following locations:
  - a.
  - b.
  - c.

Sidewalks indicated in F.(2)a., et. seq. shall be completely constructed within one hundred twenty (120) days of the recording of the Final Plat at the Wise County Courthouse.

#### **G. FENCES**

Fences shall be required and installed as indicated on the Planned Development Site Plan/Zoning Exhibit at the following locations:

- a.
- b.

These required fences shall be completely constructed within ninety (90) days of the recording of the Final Plat at the Wise County Courthouse.

#### **H. GRASSING**

Grassing and/or the required landscaping of the parkways shall extend from the back of curb to the property lines and/or sight visibility easement line and shall be required and maintained appropriately at the following locations:

- 1.
- 2.

This required grassing and/or landscaping shall be completely constructed within one hundred twenty (120) days of the recording of the Final Plat at the Wise County Courthouse. Additionally, this grassing and/or landscaping shall be irrigated in a manner approved by \_\_\_\_\_. The DEVELOPER shall install an irrigation controller approved by the \_\_\_\_\_ as part of this irrigation system. The CITY shall pay for water used for this irrigation.

#### **I. UTILITIES**

1. **WATER.** All required onsite and offsite water mains, valves, fire hydrants and other improvements shall be constructed by the DEVELOPER in accordance with the plans and specifications prepared by the DEVELOPER's engineer and accepted by the CITY prior to the issuance of any Building Permit, unless otherwise approved herein.
2. **SANITARY SEWER.** All required onsite and offsite sanitary sewer mains, manholes and other improvements shall be constructed by the DEVELOPER in accordance with the plans and specifications

prepared by the DEVELOPER's engineer and accepted by the CITY prior to the issuance of any Building Permit, unless otherwise approved herein.

3. DRAINAGE. All required onsite and offsite improvements shall be constructed by the DEVELOPER in accordance with the plans and specifications prepared by the DEVELOPER's engineer and accepted by the CITY prior to the issuance of any Building Permit, unless otherwise approved herein. DEVELOPER agrees to comply with all applicable EPA, TCEQ, and other Federal, State and local requirements relating to the planning, permitting and management of storm water which may be in force at the time that development proposals are being presented for approval by the CITY or which take effect during the construction of the Subdivision. The DEVELOPER hereby agrees to construct the necessary drainage facilities within the Subdivision. These facilities shall be in accordance with the CITY's Subdivision Ordinance, construction plans and specifications to be prepared by the DEVELOPER'S engineer(s), reviewed by the City Engineer, and made part of the final plat as approved by the City Council. The DEVELOPER hereby agrees to comply with all provisions of the Texas Water Code.

#### **J. PUBLIC FACILITIES TO BE PROVIDED BY THE CITY**

The CITY makes no guarantee that water supply or wastewater treatment capacity will be available at any particular time or place, it being fully understood by both parties hereto that the ability of the CITY to supply water and wastewater services is subject to the CITY's water and wastewater system capacity. The CITY shall be the sole judge of the availability of such capacity to supply such water and/or wastewater services, provided, however, that the CITY will use its best efforts to insure that said water supply and wastewater treatment capacity is available.

#### **K. FEES TO BE PAID BY THE DEVELOPER**

1. PLAT FEES. The DEVELOPER hereby agrees to pay the CITY \$\_\_\_\_\_. Payment is due at the time of submittal for Final Plat approval.
2. PARK DEDICATION FEES. The DEVELOPER hereby agrees to pay the CITY \$\_\_\_\_\_ per lot, for a total of \$\_\_\_\_\_. Payment is due prior to Final Plat execution by the City and filing of said Final Plat in the Parker County Plat Records.

3. CONSTRUCTION INSPECTION FEES. The DEVELOPER hereby agrees to pay the CITY construction inspection fees equal to four percent (4%) of the construction costs of infrastructure improvements (sanitary sewer improvements, storm drainage improvements, street improvements and water system improvements) for the Subdivision. Payment is due prior to initiating construction of these infrastructure improvements.
4. STREET NAME SIGNS and TRAFFIC CONTROL DEVICE SIGNAGE. The DEVELOPER is responsible for both material costs and installation costs of all street name signs, traffic control devices and school zone signs, including flashing light school zone signs as required by the City Engineer. All street name signs and traffic control device signage shall meet the current CITY standards and comply with the requirements of the Texas Manual on Uniform Traffic Control Devices at the time of installation. Installation must be completed prior to CITY acceptance of the Subdivision's infrastructure improvements. Traffic Control or regulatory signs shall be installed by the DEVELOPER where required based upon an engineering study performed by the DEVELOPER's engineer.
5. IMPACT FEES. The DEVELOPER hereby agrees to inform the home builder of his/her responsibility to pay the impact fees to the CITY for each specific lot in the Subdivision including the applicable sanitary sewer and water impact fees assessed by both the CITY and the City of Fort Worth prior to obtaining a Building Permit for a specific lot.
6. PUBLIC UTILITIES. The DEVELOPER hereby agrees to pay any public utility companies for their required costs of main installations, for street lighting, etc. for the Subdivision.

**L. GENERAL CONDITIONS**

1. LAW COMPLIANCE. The DEVELOPER hereby agrees to comply with all federal, state and local laws that are applicable to development of the Subdivision.
2. EROSION CONTROL. During initial construction and through final acceptance of the Subdivision DEVELOPER agrees to keep soil erosion contained within the Subdivision boundaries. After the streets have been installed, the DEVELOPER agrees to keep the streets free from soil build-up. The DEVELOPER agrees to use soil

control measures as specified by the TCEQ's Texas Pollutant Discharge Elimination System ("TPDES") program to prevent soil erosion. It will be the DEVELOPER'S responsibility to present to the City Engineer a soil control plan that complies with the TPDES program which will be implemented for the Subdivision. When, in the opinion of the City Engineer or his/her agent, there is sufficient soil build-up on the streets or other drainage areas and notification has been given to the DEVELOPER, the DEVELOPER will have seventy-two (72) hours to clear the soil from the streets or affected areas. If the DEVELOPER does not remove the soil from the streets within the seventy-two (72) hours, the CITY may cause the soil to be removed either by contract or CITY forces and place the soil within the Subdivision at the DEVELOPER'S expense. All expenses must be paid to the CITY prior to acceptance of the Subdivision.

3. PRIVATE AMENITIES. It is understood by and between the CITY and the DEVELOPER that the Subdivision may incorporate a number of unique amenities and aesthetic improvements such as ponds, aesthetic lakes, unique landscaping, walls, and may incorporate specialty signage and accessory facilities. The DEVELOPER agrees to accept responsibility for the construction and maintenance of all such aesthetic or specialty items until such responsibility is turned over to a property owner whose lot encompasses such an amenity. The CITY shall not be responsible for the maintenance or replacement of these items under any circumstances.
4. PUBLIC AMENITIES. The DEVELOPER agrees to accept responsibility for the installation and maintenance of all landscaping and irrigation, as specified on the approved \_\_\_\_\_ Site Plan, of any open spaces or other public improvements within the Subdivision for a period of one year after the date the public improvements are completed and accepted by the CITY. The DEVELOPER shall replace any plants, trees, or grass that die during this one-year period with the same type of plant, tree, or grass that is the same size and in the same stage of growth as the landscaping that died.
5. VENUE. Venue for any action brought hereunder shall be in Wise County, Texas.
6. ASSIGNMENT. This agreement or any part hereof or any interest herein shall not be assigned by the DEVELOPER without the express written consent of the Mayor, which consent shall not be

unreasonably withheld.

#### **M. CONSTRUCTION OF MODELS**

During the course of the construction of the Infrastructure Improvements within the Subdivision, it is understood that the DEVELOPER may want to begin construction of his/her Model Homes. The CITY will allow this if and when the following conditions are met:

1. All water mains and appurtenances are constructed and have passed all required AWWA, TCEQ, and CITY tests; specifically, hydrostatic tests, chlorine tests and "bug" tests;
2. All sanitary sewer mains and appurtenances are constructed and have passed all required TCEQ and CITY tests; specifically, the pressure tests and vacuum tests; and
3. The Fire Chief has approved the street subgrades and their widths in the area of the Model Homes as being sufficient for the CITY's Fire Department to maneuver their apparatus.

#### **N. FINAL ACCEPTANCE OF SUBDIVISION INFRASTRUCTURE**

The CITY will not issue a Letter of Acceptance until the Subdivision's infrastructure improvements are completely constructed (Final Completion) to the satisfaction of the City Engineer or his/her agent. However, upon Substantial Completion, a "punch list" of outstanding items shall be presented to the DEVELOPER'S contractor(s) indicating those outstanding items and their deficiencies that need to be addressed for Final Completion of the Subdivision.

Upon issuance of a Letter of Acceptance, title to all infrastructure facilities and improvements mentioned herein above shall be vested in the CITY and the DEVELOPER hereby relinquishes any right, title or interest in and to such improvements or any part thereof. It is understood and agreed that the CITY shall have no liability or responsibility in connection with such infrastructure improvements until the Letter of Acceptance is issued.

#### **O. WAIVER**

The DEVELOPER expressly acknowledges that by entering into this Agreement, the DEVELOPER, its successors, heirs, assigns, vendors, grantees, trustees, and/or representatives, shall never construe this contract as waiving any of the requirements of the Zoning Ordinance or Subdivision Ordinance or any other ordinance of the CITY.

**P. HOLD HARMLESS AGREEMENT**

**APPROVAL BY THE CITY ENGINEER OR OTHER CITY EMPLOYEE OF ANY PLANS, DESIGNS OR SPECIFICATIONS SUBMITTED BY THE DEVELOPER PURSUANT TO THIS AGREEMENT SHALL NOT CONSTITUTE OR BE DEEMED TO BE A RELEASE OF THE RESPONSIBILITY AND LIABILITY OF THE DEVELOPER, HIS/HER ENGINEER, EMPLOYEES, OFFICERS OR AGENTS FOR THE ACCURACY AND COMPETENCY OF THEIR DESIGN AND SPECIFICATIONS. SUCH APPROVAL SHALL NOT BE DEEMED TO BE AN ASSUMPTION OF SUCH RESPONSIBILITY AND LIABILITY BY THE CITY FOR ANY DEFECT IN THE DESIGN AND SPECIFICATIONS PREPARED BY THE DEVELOPER'S ENGINEER, HIS/HER OFFICERS, AGENTS, SERVANTS OR EMPLOYEES, IT BEING THE INTENT OF THE PARTIES THAT APPROVAL BY THE CITY ENGINEER SIGNIFIES THE CITY'S APPROVAL ON ONLY THE GENERAL DESIGN CONCEPT OF THE IMPROVEMENTS TO BE CONSTRUCTED. IN THIS CONNECTION, THE DEVELOPER SHALL FOR A PERIOD OF TWO (2) YEARS AFTER THE ACCEPTANCE BY THE CITY OF THE COMPLETED CONSTRUCTION PROJECT, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM ANY LOSS, DAMAGE, LIABILITY OR EXPENSE ON ACCOUNT OF DAMAGE TO PROPERTY AND INJURIES, INCLUDING DEATH, TO ANY AND ALL PERSONS WHICH MAY ARISE OUT OF ANY DEFECT, DEFICIENCY OR NEGLIGENCE OF THE DEVELOPER'S ENGINEER'S DESIGNS AND SPECIFICATIONS INCORPORATED INTO ANY IMPROVEMENTS CONSTRUCTED IN ACCORDANCE THEREWITH, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF THE CITY, ITS OFFICERS, AGENTS, OR EMPLOYEES, AND THE DEVELOPER SHALL DEFEND AT HIS/HER OWN EXPENSE ANY SUITS OR OTHER PROCEEDINGS BROUGHT AGAINST THE CITY, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES OR ANY OF THEM, ON ACCOUNT THEREOF, AND SHALL PAY ALL EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE FEES AND EXPENSES OF ATTORNEYS) AND SATISFY ALL JUDGMENTS WHICH MAY BE INCURRED BY OR RENDERED AGAINST THEM OR ANY OF THEM IN CONNECTION HEREWITH.**

**THE DEVELOPER, ITS SUCCESSORS, ASSIGNS, VENDORS, GRANTEEES, AND/OR TRUSTEES DO HEREBY FULLY RELEASE AND AGREE TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM ALL CLAIMS, SUITS, JUDGMENTS, AND DEMANDS OF ANY NATURE WHATSOEVER, FOR PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING DEATH, RESULTING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT**

**OR THE CONSTRUCTION OF INFRASTRUCTURE IMPROVEMENTS AND FACILITIES IN THE SUBDIVISION OR THE FAILURE TO SAFEGUARD THE CONSTRUCTION WORK, OR ANY OTHER ACT OR OMISSION OF THE DEVELOPER RELATED THERETO, WHICH ACCRUE PRIOR TO ACCEPTANCE OF THE IMPROVEMENTS BY THE CITY, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES.**

**Q. AMENDMENTS**

This Agreement may be changed or modified only with the written consent of both the DEVELOPER and the City Council of the CITY.

**R. REVOCATION**

In the event the DEVELOPER fails to comply with any of the provisions of this Agreement, the CITY shall be authorized to cease issuance of any further Certificates of Occupancy or Building Permits on property owned by the DEVELOPER, and the CITY shall be further authorized to file this instrument in the Mechanic's Lien records of Wise County as Mechanic's Lien against the DEVELOPER'S property; and in the alternative, the CITY shall be authorized to levy an assessment against the DEVELOPER'S property for public improvements in accordance with applicable state law.

**S. CONTINUITY**

This Agreement shall be a covenant running with the land and shall be binding upon the DEVELOPER, its successors, heirs, assigns, grantees, trustees and/or representatives.

**T. SEVERABILITY**

The provisions of this Agreement are severable and, in the event any word, phrase, sentence, paragraph, section or other provision of this Agreement, or the application thereof to any person or circumstance, shall ever be determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect and the application thereof to any other person or circumstance shall not be affected thereby. The invalid, illegal or unenforceable provision shall be rewritten by the parties to this Agreement to accomplish the parties' original intent as nearly as possible.

**U. TERMINATION AND RELEASE**

Upon the satisfactory completion by the DEVELOPER and final acceptance by the CITY of all requirements of this Agreement, this Agreement shall terminate and the CITY will execute a release of covenant to the DEVELOPER, its assigns, successors, grantees, trustees and/or representatives and the CITY shall file said release in the Wise County Deed Records.

**V. MULTIPLE ORIGINALS**

This Agreement may be executed in multiple originals.

**In Witness whereof**, each of the parties hereto has caused this Agreement to be executed by its undersigned duly authorized representative as of the date herein above first mentioned.

**NAME OF DEVELOPER**

for the

\_\_\_\_\_ **Addition**

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

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

Date: \_\_\_\_\_

**CITY OF AURORA**

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

Mayor

Date: \_\_\_\_\_

ATTEST:

**{City Seal}**

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

\_\_\_\_\_, City Secretary

**ACKNOWLEDGMENT**

**STATE OF TEXAS**       §  
  §  
**COUNTY OF \_\_\_\_\_** §

BEFORE ME, the undersigned authority in and for \_\_\_\_\_  
County, Texas, on this day personally appeared  
\_\_\_\_\_ known to me to be the same person and  
officer whose name is subscribed to the foregoing instrument and acknowledged  
to me that he/she is the duly authorized \_\_\_\_\_ of  
\_\_\_\_\_, a \_\_\_\_\_ corporation, and that he/she  
executed the same for the purposes and consideration therein expressed, and in  
the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of  
Texas

\_\_\_\_\_  
Type or Print Notary's Name

My Commission Expires: