

AGREEMENT FOR DEVELOPER-PROVIDED PRIVATE LOCAL PARK

This Agreement for Developer-Provided Private Local Park (“**Agreement**”), dated this _____ day of _____, 20____, is by and between the City of Oklahoma City (the “**City**”) and _____, a _____ (the “**Developer**”).

WITNESSETH:

WHEREAS, the City of Oklahoma City has and continues to develop and expand the public infrastructure systems of its parks system; and

WHEREAS, new development increases the impact upon and demand for the parks infrastructure systems, and so long as new development continues to occur the functional nexus between development and these impacts and demands upon the parks infrastructure system will continue to accrue, expand, and/or increase; and

WHEREAS, on April 26, 2016, the **City** adopted development fees to partially fund the capital improvement costs for increases to or expansion of the functional capacity of its parks system; and

WHEREAS, parks development fees will be used to expand or increase the functional service capacity of the parks public infrastructure system including the parks system and the trail system; and

WHEREAS, the Oklahoma City Parks Master Plan establishes park standards; and

WHEREAS, increased or expanded functional parks service capacity may be achieved through new or existing parks, or a combination thereof; and

WHEREAS, the **City** intends to meet the needs of new residents by constructing and expanding regional parks infrastructure, provided, however, the **City** acknowledges that the construction and expansion of local parks aids in reducing and satisfying regional park demand; and

WHEREAS, Oklahoma City Municipal Code Chapter 38, section 38-1 which establishes the parks development fees and also establishes an opportunity for developers to defray the impact of their development upon the parks infrastructure system by participating in the expansion of local park capacity through the construction of a developer-provided private local park within their development in exchange for which, upon completion thereof, the development would qualify for a partial exemption from the parks development fee as provided in the ordinance and herein; and

NOW, THEREFORE, the **City** and the **Developer** hereby agree as follows:

1. DEVELOPMENT

The **Developer** will build the development (“**Development**”) as set forth in the attached legal description and preliminary plat, which are attached hereto as **Attachment “A”** and incorporated herein by reference. The preliminary plat, final plat, and any revision to such plats, must be signed by the **Parks and Recreation Director**.

2. DEVELOPER-PROVIDED PRIVATE LOCAL PARK

The **Developer** must construct or provide the private local park(s) to relieve the impact of that **Development** on the functional service capacity of the public infrastructure system within the designated service area(s) or benefit area(s) as described and provided in **Attachment “B”** attached hereto and incorporated herein by reference (“**Developer-Provided Private Local Park**”). The Developer must construct the developer-provided private local park amenities listed on **Attachment “C”** attached hereto and incorporated herein by reference; provided however, the Parks and Recreation Director, or his designee, is authorized by the City, at his sole discretion, to amend **Attachment “C”** provided such amendment complies with the then current Oklahoma City Municipal Code Chapter 38-1 requirements. Upon execution of this **Agreement**, the properties within the **Development** will tentatively qualify for a partial exemption (“**Existing Local Park Exemption**”) to the parks system portion of the parks development fee as set forth in Chapter 60, the General Schedule of Fees; provided, however, failure to fulfill the terms and conditions of this **Agreement** shall void all partial exemption for all lots and all lots will be assessed at the full parks development fee rate. Notwithstanding the aforementioned potential for an Existing Local Park Exemption, the **Developer** or property owner must pay the trails system portion and the non-exempt parks system portion of the parks development fee for the new, expanded and modified developments in the **Development**.

3. PARK COMPLETION ASSURANCE

The **Developer** must provide park completion assurance, as provided and/or required in this paragraph three (3), as a guarantee of completion of the **Developer-Provided Private Local Park** in accordance with the Oklahoma City Municipal Code and this **Agreement** and as a guarantee of payment of any parks development fees determined to be due and owing.

A. Should the **Developer** fail to construct and complete the **Developer-Provided Private Local Park** in accordance with this **Agreement** before fifty (50%) percent of the total number of platted lots on **Attachment “A”** have received building permits, then no further building permits will be issued for the **Development** unless and until the **Developer** has completed the **Developer-Provided Private Local Park** or the **Developer** has provided park completion assurance as set forth in section (1) below.

(1) The park completion assurance will be in the amount of one hundred

and fifty (50%) percent of the estimated construction cost of the **Developer-Provided Private Local Park** as stated in this **Agreement**. For the purposes of establishing the amount of the park completion assurance, the **City** and **Developer** agree the **Developer** will accompany the park completion assurance with an estimate of the then current **Developer-Provided Private Local Park** construction costs, including all labor, materials, goods, services, permits and other associated construction costs, prepared and sealed by a licensed Landscape Architect, Architect, or Civil Engineer. The park completion assurance must guarantee the **Developer** or its surety will immediately construct and complete the **Developer-Provided Private Local Park** as described on **Attachment "B"** in accordance with this **Agreement**. The park completion assurance will be in the form of either: (a) a subdivision bond or (b) a performance bond. Upon receipt and approval of the park completion assurance bond, further building permits will subsequently be issued for the **Development** provided the **Developer** has completed the **Developer-Provided Private Local Park** prior to the issuance of sixty (60%) percent of the platted lots or within twelve (12) months of receipt and approval of the park completion assurance bond, whichever comes first.

(2) Should the **Developer** not construct and complete the **Developer-Provided Private Local Park** before sixty (60%) percent of the then platted lots within the **Development** have received a building permit or within twelve (12) months of receipt and approval of the park completion assurance bond, whichever comes first, then the **City** will suspend issuance of building permits for the **Development** until the **Developer-Provided Private Local Park** is constructed and completed in accordance with this **Agreement**. In addition, the **City** may, in its sole option, enforce the park completion assurance bond by either: (a) demanding and requiring the surety to construct and complete the **Developer-Provided Private Local Park** within six (6) months of demand by the Parks and Recreation Director or (b) the **City** may cause the **Developer-Provided Private Local Park** to be constructed and completed by the **City** or by **City** contractors at the Developer and/or the surety's expense.

(3) Should the **Developer** or the surety not complete construction of the **Developer-Provided Private Local Park** as provided in this **Agreement** or should the **City** cause the **Developer-Provided Private Local Park** to be constructed, then the **City** may recover and collect from the **Developer** and/or the surety: (a) **City** administrative costs and expenses related to the construction or completion of the **Developer-Provided Private Local Park**, (b) **City** and its contractor's costs and expenses for construction or completion of the **Developer-Provided Private Local Park**, (c) any administrative costs, attorney

fees, court costs, and litigation costs to enforce the park completion assurance, and (d) any parks development fees determined to be due and owing.

(4) Provided, however, upon the request and demonstration of good cause by the **Developer**, the Development Services Director may, in his or her sole discretion, grant an extension of the time for the **Developer** to construct and complete the **Developer-Provided Private Local Park** until sixty-five (65%) percent of the then platted lots within the subdivision have received building permits before the park completion assurance is enforced as stated above. In addition, the **City** may suspend issuance of building permits for the **Development** until the **Developer-Provided Private Local Park** is constructed and completed in accordance with this **Agreement**.

4. **MAINTENANCE OF DEVELOPER-PROVIDED PRIVATE LOCAL PARK**

A. The **Developer** will provide for the maintenance of the **Developer-Provided Private Local Park**. The **Developer** must include a covenant on the preliminary plat, final plat, and any revision to such plats, establishing the persons or entity responsible for the maintenance of the **Developer-Provided Private Local Park**. The **Developer** must include the following in the preliminary plat, final plat, and any revision to such plats, for the **Development** either expressly included on the plat or in a document incorporated by reference into the plat:

“The **Developer** has agreed to construct a **Developer-Provided Private Local Park**. Should the **Developer-Provided Private Local Park** not be timely constructed, then the **City** will suspend issuance of building permits in this **Development** pending compliance with the **Agreement**. In addition, the **City** may recover parks development fees from any property owner or subsequent purchaser in accordance with the Oklahoma City Municipal Code. The **Developer-Provided Private Local Park** must be maintained in a clean and safe condition and in accordance with the Oklahoma City Municipal Code by the (*developer/ homeowners association/ property owner’s association*) without cost, expense or charge to the **City**. Should the (*developer/ homeowners association/ property owner’s association*) fail to maintain this **Developer-Provided Private Local Park** and any park public infrastructure system, improvements, or amenities therein in a clean and safe condition and in accordance with the Oklahoma City Municipal Code, then each property owner in this **Development** does hereby waive its right to protest or object to the creation of an assessment district and irrevocably agree and consent to the creation by the **City** of an assessment district to fund and finance the current and future operation, maintenance and repair of the **Developer-Provided Private Local Park** and any public park infrastructure system, improvements, and amenities therein or other substitute infrastructure, improvements or amenities as determined by the

Parks and Recreation Director. Provided, however, the **City** does not and will not have any obligation to create an assessment district or to provide funds, labor, equipment or resources for operation or maintenance of the **Developer-Provided Private Local Park**, now or in the future.”

B. The **Developer** will expressly state: (1) this **Agreement**, (2) the obligations and assents as stated in **subparagraph A** above, and (3) the **Developer’s** exercise of this exemption on each preliminary plat, final plat, and any revision to such plats, to notify property owners and their successors of their obligations and assents. No preliminary plat, final plat, and any revision to such plats, for this **Development** will be approved by the **City** without such notes, covenants, and notices.

5. **PARKS DEVELOPMENT FEE RETROACTIVE APPLICATION**

Should the **Developer** fail to perform the required actions in this **Agreement** then the local park exemption will not apply and the full parks development fees will be immediately and retroactively due and owing from the **Developer** and/or the surety for all lots in the **Development** at the rate applicable at the time of the certificate of occupancy, and no further certificates of occupancy will be issued for the **Development** until all parks development fees due and owing are paid in full.

6. **ONLY ADJUSTMENT**

The local park exemption, if any, granted hereby shall be the only adjustment provided to the **Developer** or for the **Development**. No other or additional adjustment, refund, or credit will or may be granted, carried over or transferred to that or a different development, a subsequent development, a subsequent change to the **Development**, to the **Developer**, or against a parks development fee for a different system. Any modification to:

- A. the preliminary plat, or
- B. between the preliminary plat and the final plat, or
- C. or any revision to the final plat,

for this **Development that changes to number of lots** or the **Developer-Provided Private Local Park** as described on **Attachment “A” or “B”** will require an amendment to this **Agreement**.

7. **AMENDMENTS**

This **Agreement** may only be amended by written approval of both parties. The **Parks and Recreation Director** is hereby authorized, but not required, to execute amendments to this **Agreement**.

8. **INDEPENDENT STATUS**

A. The parties hereby acknowledge and agree **Developer** is an independent entity and not an agent or employee of the **City** in performing the duties in this **Agreement**. The parties do not intend, and will not hold out that there exists, any corporation, joint venture, undertaking for a profit or other form of business venture or any employment relationship among the parties.

B. The parties further acknowledge this **Agreement** creates no duty or obligation on the part of the **City** to the **Developer's** successors or assigns or to any person or entity with or subsequently obtaining or attaining any property or property interest in the **Development** under this **Agreement** and none shall be deemed to be created or implied.

9. VALIDITY

The invalidity or unenforceability of any provision of this **Agreement** shall not affect the validity or enforceability of any other provisions of this **Agreement**, which shall remain in full force and effect.

10. NO WAIVER

The failure or neglect of any party hereto to insist, in any one or more instances, upon the strict performance of any of the terms or conditions of this **Agreement**, or waiver by any party of strict performance of any of the terms or conditions of this **Agreement**, shall not be construed as a waiver or relinquishment in the future of such term or condition, but such term or condition shall continue in full force and effect.

11. NO ASSIGNMENT WITHOUT CONSENT

The parties agree the **Developer** may not assign this **Agreement**, in whole or in part, without the prior written consent of the **City**, in its sole discretion. The **Parks and Recreation Director** is specifically authorized to approve an assignment of this **Agreement**, upon request of the **Developer** and clear demonstration by the **Developer** that the assignee has the financial ability, experience and performance history to timely perform all the obligations, duties and covenants in this **Agreement**.

12. RECORDATION

The parties hereby agree this **Agreement** provides for the payment of parks development fees and the opportunity for exemption from such fees, but also permits, upon the failure of the **Developer** to timely complete certain duties and obligations, the assessment and collection of parks development fees from any or all property within the **Development** even after transfer of such property. As such this **Agreement** will be filed of record in the county wherein this **Development** is situated as notice to all subsequent purchasers of the potential assessment of parks development fees and assessments.

13. VENUE AND APPLICABLE LAW

Developer and **City** hereby agree that any dispute, legal proceeding or action which may arise between or among them arising out of or in connection with this **Agreement** shall be

adjudicated before a court, state or federal, located in Oklahoma County, Oklahoma. In addition, the **Developer** and the **City** each hereby submit to the exclusive personal jurisdiction of the courts of the State of Oklahoma located in Oklahoma County, Oklahoma and of the Federal District Court for the Western District of Oklahoma, located in Oklahoma City, with respect to any action or legal proceeding commenced by any party. The **Developer** irrevocably waives any objection they now or hereafter may have respecting the venue of any such action or proceeding brought in such a court or respecting the fact that such court is an inconvenient forum, relating to or arising out of this **Agreement**, and consents to the service of process in any such action or legal proceeding by means of registered or certified mail, return receipt requested, in care of the address set forth in the notice provision of this paragraph. This **Agreement** shall be construed and enforced in accordance with the laws of the State of Oklahoma.

14. DESCRIPTIVE HEADINGS

The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this **Agreement**.

15. COUNTERPARTS

This **Agreement** may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

16. ENTIRE CONTRACT

This **Agreement** constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. Provided, however, nothing in this **Agreement** shall be deemed to waive, revise or modify any duty, obligation or responsibility of the **Developer** under the Oklahoma City Municipal Code, and any supplement or amendment thereto.

17. TIME IS OF ESSENCE

Both the **Developer** and the **City** expressly agree that time is of the essence with respect to this **Agreement**, and the time for performance of each task or duty shall be made a part of the **Agreement** and shall be strictly observed and enforced.

18. NOTICES

Any notice, request, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if hand delivered, or sent by facsimile transmission (upon confirmation of receipt), or if sent by certified mail (upon the sooner of the expiration of three (3) days after deposit in United States post office facilities properly addressed with first class postage prepaid or acknowledgment of receipt). All notices and payments to a

party will be sent to the addresses set forth below or to such other address or person as such party may designate by notice to each other party hereunder:

To Developer:

Telephone _____

Facsimile _____

To City:

The City of Oklahoma City
Attention: City Clerk
200 North Walker Ave, 2nd Floor
Oklahoma City, Oklahoma 73102
Telephone: (405) 297-2391
Facsimile: (405) 297-3121

and

Oklahoma City Parks and Recreation Department
Attention: Melinda McMillan-Miller
420 W. Main Street, Second Floor
Oklahoma City, Oklahoma 73102
Telephone: (405) 297-3882
Facsimile: (405) 297-3882

19. EFFECTIVE

This **Agreement** shall become effective upon execution by the **City** or the **Parks and Recreation Director** on behalf of the **City**.

20. NONDISCRIMINATION

In connection with the performance of work and/or services under this **Agreement**, **Developer** agrees as follows:

A. **Developer** shall not discriminate against any employee or applicant for employment because of age, race, creed, color, religion, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). **Developer** shall take action to ensure that employees or applicants for employment are treated without regard to their age, race, creed, color, religion, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or

recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship. **Developer** shall agree to post, in conspicuous places, available to employees and applicants for employment, notices provided by the City Clerk of the City of Oklahoma City setting forth provisions of § 25-41 of the Oklahoma City Municipal Code, 2011.

B. In the event of **Developer's** noncompliance with this nondiscrimination clause, the **City** may declare **Developer** ineligible for further contracts or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by **Developer**.

C. **Developer** agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this **Agreement**.

21. ANTI-COLLUSION

Developer warrants that it has not employed or retained any company or person other than a bona fide employee working solely for **Developer** to solicit or secure this **Agreement**. **Developer** further warrants that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for **Consultant**, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this **Agreement**.

22. SUBDIVISION OR PERFORMANCE BOND

Should **Developer** be required pursuant to the Oklahoma City Municipal Code or this Agreement to provide and maintain: (a) a subdivision bond or (b) a performance bond, to ensure completion of the **Developer-Provided Private Local Park** and/or payment of development fees, the bonds must be executed by a surety company licensed to do business in the State of Oklahoma; having an "A-" or better rating by A.M. Best or Standard and Poors; and included on the list of surety companies approved by the Treasurer of the United States. The bond must be in a form and format acceptable to the **Parks and Recreation Director**. The bonds shall be in force for the full term of this **Agreement**.

23. TERM

The term of this **Agreement** shall be from its Effective Date until **City** inspection of the completed **Developer-Provided Private Local Park** and the written acknowledgement of the completion of the **Developer-Provided Private Local Park**, as provided in this **Agreement** and the Oklahoma City Municipal Code, by the **Parks and Recreation Director** or by the **City**.

24. CONFLICT

In the event of a conflict between the requirements of the Oklahoma City Municipal Code and this Agreement, the parties agree that the Oklahoma City Municipal Code will control.

25. PARKS AND RECREATION DIRECTOR

As used in this **Agreement**, the **Parks and Recreation Director** shall mean the Director of the Oklahoma City Parks and Recreation Department.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.

This **Agreement** was approved by the **Developer** this ____ day of _____,
20____.

By _____

Print Name _____

As _____

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 20____
by _____ as the _____
of Developer, _____.

Notary Public

My Commission Expires: _____

My Commission No. _____

This **Agreement** was approved by the Parks and Recreation Director as authorized by Oklahoma City Municipal Code Chapter 38, Section 38-1 this ____ day of _____, 20 ____.

By _____

Print Name _____

As _____

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 20____ by _____ as the Director of Parks and Recreation Department of the City of Oklahoma City.

Notary Public

My Commission Expires: _____

My Commission No. _____

This **Agreement** was approved by the City of Oklahoma City this ____ day of _____, 20____.

Attest:

City Clerk

Mayor

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 20____
by _____ as the Mayor of the City of Oklahoma
City.

Notary Public

My Commission Expires: _____

My Commission No. _____

Reviewed for form and legality.

Assistant Municipal Counselor

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**ATTACHMENT “A”
DEVELOPMENT
LEGAL DESCRIPTION**

**ATTACHMENT “A”
DEVELOPMENT
COPY OF THE PRELIMINARY PLAT**

ATTACHMENT “B”
DEVELOPER-PROVIDED PRIVATE LOCAL PARK
ESTIMATED CONSTRUCTION COST

For the purposes of establishing the amount of the park completion assurance, the **City** and **Developer** agree the estimated **Developer-Provided Private Local Park** construction cost is _____ dollars (\$ _____) and the park completion assurance will be in the amount of _____ dollars (\$ _____) which is one hundred and fifty (150%) percent of the estimated construction cost of the **Developer-Provided Private Local Park**.

**ATTACHMENT “B”
DEVELOPER-PROVIDED PRIVATE LOCAL PARK**

**CONCEPTUAL PARK PLANS
SHOWING IMPROVEMENTS AND LOCATION MAP
WITHIN PRELIMINARY PLAT**

ATTACHMENT “C”
DEVELOPER-PROVIDED PRIVATE LOCAL PARK AMENITIES LIST

- ☐ Playground Equipment Structures
- ☐ Park Shelters or Multiple Pavilions
- ☐ Informal Practice Fields or Multiple Open Spaces
- ☐ Individual Sitting Areas and Picnic Tables
- ☐ Walking Paths
- ☐ Clubhouse
- ☐ Pool
- ☐ Outdoor Fitness Workstations or Exercise Facilities
- ☐ Splash Pads or Spray Pool
- ☐ Other amenities provided (Requested by the Developer and approved by the Parks and Recreation Director):
