

**CITY OF KILLEEN § CITY/OWNER AGREEMENT-IN-PRINCIPAL
COUNTY OF BELL § TO OVERSIZE SELECTED STREET
STATE OF TEXAS § INFRASTRUCTURE IN ASSOCIATION
 § WITH THE LANDING AT CLEAR CREEK
 § PHASE IV SUBDIVISION**

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the **CITY OF KILLEEN** is authorized by law to approve development plats within its corporate limits and its extraterritorial jurisdiction; and

WHEREAS, **WBW DEVELOPMENT GROUP, LLC - SERIES 018**, has submitted and obtained final plat approval of **THE LANDING AT CLEAR CREEK PHASE IV**, a subdivision development, by the City Council of Killeen; and

WHEREAS, the Killeen Code of Ordinances requires the completion of certain public improvements in connection with development to safeguard the health, safety and general welfare of the community; and

WHEREAS, said improvements promote the orderly and planned development of public infrastructure within the City, and are intended to overcome the detrimental effects of inadequate and over-taxed public infrastructure; and

WHEREAS, the City has identified the need for an east-west Minor Arterial Street within The Landing at Clear Creek development; and

WHEREAS, said improvements are defined by the City’s adopted Thoroughfare Plan; and

WHEREAS, the benefits of the public improvements are to the Owner, the City, and the Public; and

WHEREAS, the City’s purposes in entering into this Agreement are to encourage development in an equitable manner, and to minimize the City’s costs associated with the design and construction of transportation and drainage system public infrastructure; and

WHEREAS, the parties to this Agreement wish to provide for the protection of the rights and interests of the respective parties and to document for posterity a record of their agreement so that the public interest of the citizens of the City of Killeen is well served;

NOW, THEREFORE, AND IN CONSIDERATION OF, the mutual covenants and obligations herein expressed, the parties hereto agree as follows:

RECITALS

1. **Parties**. The parties to this City/Owner Agreement (hereinafter “Agreement”), are the **City of Killeen**, a municipal corporation, (hereinafter “City”), acting by and through its

City Manager, whose address is 101 North College Ave., Killeen, Texas, 76541, and **WBW Development Group, LLC - Series 018** (hereinafter “Owner”), whose address is **3000 Illinois Avenue, Suite 100, Killeen, Texas, 76543.**

2. **Project.** Owner is the owner of land included in the development project (hereinafter “Project”), more fully described by metes and bounds in **Exhibit A**, attached hereto and incorporated herein for all intents and purposes.

OBLIGATIONS OF OWNER

3. **Improvements.** Owner agrees to construct as described in **Exhibit B**, attached hereto and incorporated herein for all intents and purposes (collectively the “Public Improvements”), through the Project area **THE LANDING AT CLEAR CREEK PHASE IV** (Exhibit A) according to the standards and specifications in effect at time of construction. Owner agrees to construct and dedicate the Public Improvements as an independent obligation on its part, regardless of City’s performance under this Agreement.
4. **Performance Bond.** Owner shall provide a Performance Bond as specified in **Exhibit D**, “Development Process”.
5. **Maintenance Bond.** Upon completion of the Project and prior to the acceptance of the Project by City for maintenance, Owner shall submit to City a maintenance bond, in the amount equal to fifteen percent (15%) of the total cost to construct all streets and drainage in the Project and ten percent (10%) of the total cost to install all the water and sewer lines in the Project, executed by a corporate surety duly authorized to do business in this State, payable to the City and approved by the City as to form, to guarantee the maintenance of the Public Improvements for a period of one (1) year after completion and acceptance by City. In lieu of the maintenance bond, Owner may submit either an irrevocable letter of credit or cash bond payable to City in a face amount equal to that stated above for a surety bond, and approved by City as to form. “Maintenance” is defined for purposes of this paragraph as any repair, removal, replacement, or other work necessitated by defects in the original construction of the Public Improvements.
6. **Compliance with Law.** Owner agrees that nothing herein shall negate the applicability of future health and safety regulations which are not currently a part of the laws concerning subdivisions.
7. **Easements.** Owner agrees to dedicate any and all easements necessary to the Project which are located on Owner’s property. Owner agrees to grant a right-of-way for all sewer and water lines that City may desire to construct or cause to be constructed in the aforementioned streets, alleys, roads, courts, avenues, drives, public ways, and parks in said Project. Such easements shall be dedicated before beginning construction.
8. **Conveyance/Dedication.** Owner agrees to dedicate to City all the streets, alleys, roads, courts, avenues, drives, public ways, bridges, water and sewer lines, sidewalks, drainage courses, parks, and all other improvements in said Project, exclusive, however, of those

portions of the streets, alleys, roads, courts avenues, drives, public ways, bridges, water and sewer lines, sidewalks, drainage courses, and parks, lying outside of the City's limits as fixed by the legislature of Texas, which shall be dedicated to the public. Any and all dedications will not be effective until City takes formal action to accept the dedication(s) by letter of acceptance. Upon formally accepting the dedication, and after expiration of the 1-year maintenance bond required by City Ordinance and described in Exhibit D, City shall maintain same at its expense as provided for in the Killeen Code of Ordinances as part of the public ways of the City within the City's limits. The following are specifically excluded from conveyance or dedication and are expressly excluded from warranty: all encumbrances and other matters of record and all matters visible or apparent on the ground that a true and correct survey would reveal.

9. Warranty. Owner hereby gives express warranty that the Public Improvements will be constructed in accordance with the City's standards and specifications and shall be free from defects. Owner further indemnifies City for all claims, expenses, and liability arising in connection with any and all defects. This express warranty and indemnification shall be limited to a period of one (1) year after acceptance by City of the last completed Public Improvement. If there is a defect in construction or materials, City reserves the right to require an extension of the one-year warranty as a condition for final acceptance of the public improvements.
10. Inspections. Owner agrees that any and all work performed regarding the Public Improvement was or shall be inspected by the City's designated Engineer or inspector to ensure the quality of work and materials. The City shall have no duty to inspect the work of any contractor or subcontractor of the Owner except with regard to the Public Improvements and shall have no duty with regard to workplace safety at Project.
11. Insurance. No later than ten (10) days after the effective date of this Agreement and before the commencement of construction of the Public Improvements, Owner agrees to provide to City a certificate of insurance listing City of Killeen as an additional insured on its commercial general liability insurance policy.

CITY'S OBLIGATIONS

12. Acceptance/Certification. The acceptance of the Public Improvements, upon completion, is subject to approval of the City's designated Engineer.
13. Payment. Upon acceptance of **THE LANDING AT CLEAR CREEK PHASE IV**, a "Participation Cost" as set forth in **Exhibit C** shall be paid by the City. Notwithstanding anything contained in this Agreement, City shall not reimburse that portion(s) of costs which together exceed thirty percent (30%) of the costs of the Public Improvements. If upon a final accounting it is determined that the City paid more than 30%, Owner agrees to refund to the City that portion above 30% within 30 days of City's written request for reimbursement. It is mutually agreed and understood that City will pay no interest to Owner on the said total cost of the constructions and installations mentioned in Exhibit C. Notwithstanding any of these provisions, State law allows participation by the City at a

level not to exceed one-hundred percent (100%) of any costs associated with over sizing any project improvement.

14. Defects During Warranty Period. City shall notify Owner in writing upon discovery of defects in the Public Improvements. Owner shall remedy defects within thirty (30) days after receiving notice of such from City. City may in its sole discretion grant additional time for remedy of defects where required by nature of the defect, provided that Owner commence work within thirty (30) days after receiving notice as described above and continue diligently to complete the repair work.

GENERAL TERMS AND CONDITIONS

15. Specifications. It is understood among the Parties that the technical requirements and specifications for the Project shall be in accordance with those established by the City's designated Engineer. It is further understood that designs for the Project shall be provided by Owner and must be approved by City's designated Engineer. Such approval shall not be unreasonably withheld.
16. Objectives. In the negotiation and acceptance of any term or condition, the parties hereby agree that the objectives to be fulfilled are the development of the Project and the orderly development in all the areas in its vicinity capable of development by reason of its location, topography, and pressure planes, subject to reasonable engineering efforts, so that the public interest of the City of Killeen will be well served.
17. Independent Obligation. Owner's obligation to construct and complete the Public Improvements as to which the City is making cost participation is not conditioned upon commencement of work in the subdivision or upon the sale of lots.
18. Binding Agreement. The terms and conditions set out in this Agreement shall be binding upon the parties hereto, and upon the heirs, successors, executors, administrators, personal representatives, and assigns of Owner and City.
19. Governing Law. In any dispute between the parties, it is hereby agreed that the laws of the State of Texas shall control and the venue shall be in Bell County, Texas.
20. Effective Date. This Agreement is effective upon signature by the last party to sign it.
21. Failure to Cure Defects. If Owner fails to remedy defects within thirty (30) days or within additional time granted by City, City may take any and all action to perform the work to remedy defects, including contracting with another party for the repair work or using City maintenance crews to perform the repair work, as City deems appropriate. Owner shall reimburse City for costs of remedying defects or alternatively, City may draw upon the Owner's security described below and in Exhibit D.
22. Default. The following occurrences shall constitute defaults on the part of Owner:
 - (1) Owner's failure to begin or complete work on the Public Improvements within the prescribed time;

- (2) Owner's failure to construct Public Improvements in accordance with the requirements of Exhibit B;
 - (3) Owner's failure to cure defects within the time period prescribed;
 - (4) Owner's abandonment of the Project as evidenced by his failure to perform work for a period of one hundred eighty (180) days;
 - (5) Owner's insolvency, appointment of receiver, or filing of a voluntary or involuntary bankruptcy petition; or
 - (6) The commencement of a foreclosure proceeding against the Project property, or a conveyance in lieu of foreclosure.
23. Rights Upon Default. Upon default by Owner, City reserves all remedies available at law or in equity, including but not limited to: (1) an action to recover damages for breach of this Agreement; (2) an action to seek specific performance; (3) an action to seek injunctive relief; (4) an action to rescind this Agreement and final plat approval; and (5) drawing upon the Owner's security described below and in Exhibit D. City shall be entitled to recover all expenses and reasonable attorney's fees in the event of litigation. All remedies provided by this Agreement are cumulative of rights provided at law or in equity.
24. Forms of Security. In order to guarantee completion of the Public Improvements and the faithful performance of this Agreement, the Owner, no later than ten (10) days after the effective date of this Agreement and before the commencement of the construction of the Public Improvements, shall deliver to the City the following: a performance bond in the penal sum of one hundred (100) percent of the cost to complete the Public Improvements, insuring full completion of the public improvements described in Exhibit D to this Agreement.
25. Waiver. City waives none of its rights with respect to this Agreement unless that right is expressly waived in writing herein. Nothing herein shall constitute an implied waiver of City's sovereign immunity.
26. Severability. If any provision of this Agreement is held by the courts to be illegal or unenforceable, that provision shall be severed from the Agreement and shall not render invalid the remaining provisions of this Agreement.
27. Entire Agreement. The provisions herein constitute the full extent of the Agreement among the parties concerning the construction of Public Improvements in this Project, and no parole evidence shall be allowed to contradict the terms hereof. Any amendment to or modification of this Agreement shall be by the written, mutual consent of the parties hereto.
28. Assignment. No obligation contained herein shall be transferred or assigned without the written, mutual consent of the parties hereto.
29. Attorney's Fees. Should any party hereto bring suit in court to enforce the terms hereof, it is agreed that the losing party or parties shall pay to the successful party or parties costs and reasonable attorney's fees. If relief is granted to all parties, each will bear its own costs in their entirety.

Executed this _____ day of _____, 2016, in duplicate originals.

CITY OF KILLEEN

WBW DEVELOPMENT GROUP, LLC –
SERIES 018

BY: _____
Glenn Morrison
CITY MANAGER

BY: _____
Bruce Whitis
PRESIDENT

ATTEST:

BY: _____
Dianna Barker
CITY SECRETARY

STATE OF TEXAS §
COUNTY OF BELL §

This instrument was acknowledged before me on this _____ day of _____, 2016 by Bruce Whitis, President of WBW Development Group, LLC—Series 018, a separate series of WBW Development Group, LLC, a Texas series limited liability company.

Notary Public, State of Texas

- Exhibits:
A – Property Description – Field Notes
B – Public Improvements To Be Constructed By Owner
C – City Participation Cost
D – Development Process

EXHIBIT A

**PROPERTY DESCRIPTION –
FIELD NOTES**

THE LANDING AT CLEAR CREEK PHASE IV

All construction and remedial actions to take place in existing City of Killeen right-of-way and in accordance with the attached field notes (two pages) for The Landing at Clear Creek Phase IV subdivision, entitled “FIELD NOTES” Page “1 of 2” and Page “2 of 2”.

**FIELD NOTES
THE LANDING AT CLEAR CREEK
PHASE IV SUBDIVISION
BELL COUNTY, TEXAS**

Being a 7.15 acre tract of land situated in and being out of the J. E. Madera Survey, A-600, Bell County, Texas, and also part of a called 85.23 acre tract of land described in deed to the WBW Development, LTD recorded in Document No. 2012-00018996, Real Property Records in Bell County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a capped iron rod found marked "Cunningham-Allen" for the northeast corner of a called 21.162 acre tract as described by a deed to Killeen Independent School District recorded in Document No. 2013-00031144, Real Property Records in Bell County, Texas, and also being the southeast corner of the herein described tract;

THENCE N 64° 04' 37" W along the north line of said K.I.S.D. tract and south line of said 85.23 acre tract for a distance of 115.52 feet to a 3/8 inch iron rod found in the east margin of Katy Creek Lane, and an exterior corner for the beginning of a non-tangential curve to the right;

THENCE in a southwesterly direction along said curve to the right with the southeastern margin of said Katy Creek Lane, having a radius of 73.82 feet, an arc length of 107.68 feet, a chord bearing S 65° 54' 14" W, 98.39 feet, to an iron rod set for the end of curve;

THENCE N 72° 38' 59" W along the north line of said K.I.S.D. tract and south margin of said Katy Creek Lane for a distance of 88.21 feet to an iron rod set in the east line of a called Landing at Clear Creek Phase II Subdivision recorded in Document No. 2012-00044404, Real Property Records in Bell County, Texas;

THENCE N 17° 15' 30" E along the east line of said Phase II Subdivision and the west line of the herein described tract for a distance of 698.92 feet to An iron rod set in the north margin of Mohawk Drive;

THENCE N 72° 23' 13" W along the north margin of said Mohawk Drive for a distance of 229.48 feet to an iron rod set for the beginning of a curve to the right;

THENCE along said curve to the right, having a radius of 705.00 feet, an arc length of 260.48 feet, a chord bearing N 61° 48' 07" W, 259.00 feet, to an iron rod set in the east line of a called Landing at Clear Creek Phase I Subdivision recorded in Document No. 2012-00024778, Real Property Records in Bell County, Texas;

THENCE N 16° 40' 56" E along the east line of said Phase I Subdivision and the west line of the herein described tract for a distance of 122.49 feet to an iron rod set for the southwest corner of a called Bridgewood Addition Phase 2, recorded in Cabinet D, Slides 106 A-C, Plat Records of Bell County, Texas, and also being the northwest corner of the herein described tract;

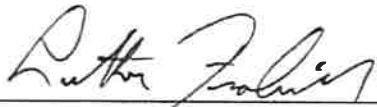
THENCE S 72° 22' 45" E along the south line of said Bridgewood Addition Phase 2 and the north line of the herein described tract for a distance of 762.90 feet to an iron rod set for the northeast corner of the herein described tract;

THENCE S 17° 22' 17" W for a distance of 819.68 feet to the **POINT OF BEGINNING**, and containing **7.15 acres** of land, more or less.

NOTE:

The bearings recited hereon are grid bearings based on The Texas State Plane Coordinate System, NAD83 (2011) datum, Texas Central Zone No. 4203, as derived from GPS observations.

All iron rods set for corner are ½ inch iron rods with cap marked "Yalgo RPLS 6200".



Luther E. Frobish
Registered Professional Land Surveyor
State of Texas No. 6200

4/30/15



EXHIBIT B

PUBLIC IMPROVEMENTS TO BE CONSTRUCTED BY OWNER

THE LANDING AT CLEAR CREEK PHASE IV

The Public Improvements to be oversized by the Owner as a part of this Agreement include the following infrastructure:

- Widening approximately 277 linear feet of Mohawk Drive by an additional 30 feet with curb inlets boxes and storm conduit required for a Minor Arterial Street.

These Public Improvements shall be in accordance with the approved construction drawings entitled The Landing at Clear Creek Phase IV, which are attached and made a part of this Agreement.

EXHIBIT C

CITY PARTICIPATION COST

THE LANDING AT CLEAR CREEK PHASE IV

Upon inspection of the Public Improvements listed in Exhibit B of this Agreement, and upon City’s determining that they are acceptable to the City, the City shall pay Owner one hundred percent (100%) of the installed cost of said Public Improvements identified in Exhibit B of this Agreement.

The specific items for City Cost Participation in this Agreement are described herein:

ITEM DESCRIPTION	COST
<u>Streets Infrastructure</u>	
Widen Mohawk Drive by 30 additional feet to a 66-foot back-of-curb to back-of-curb width Minor Arterial Street, to include storm drainage Improvements and pavement markings, including Engineering and Surveying	<u>\$56,343.92</u>
Cost to Oversize Public Street and Storm Drainage	\$56,343.92
TOTAL CITY COST IN PROJECT	\$56,343.92

EXHIBIT D

DEVELOPMENT PROCESS

THE LANDING AT CLEAR CREEK PHASE IV

1. Owner shall post with the City a Performance Bond executed by a corporate surety or corporate sureties duly authorized to do business in this State, payable to City and approved by City as to form, for construction included in the approved construction plans, in the sum of **To Be Determined**. A power of attorney shall be attached to the bond evidencing that the agent signing the bond has authority to sign the bonds on behalf of the surety. The bond shall be released upon completion and final acceptance by the City of the public improvements.
2. The approved plat with required notations shall be recorded following receipt of the Performance Bond.
3. The Public Improvements shall be completed to the satisfaction of the City prior to the City's making any cost participation in the construction thereof, and prior to the issuance to Owner of a Certificate of Occupancy for any building or structure built on the premises of the Project.
4. Upon completion of the Public Improvements, prior to their being accepted for maintenance by the City, Owner shall post, or cause to be posted, a Maintenance Bond executed by a corporate surety or sureties duly authorized to do business in Texas. Said Maintenance Bond shall be payable to City and approved by City as to form, to guarantee the maintenance of the Public Improvements for a period of one (1) year after completion and City's acceptance of them. If there is a defect in construction or materials, City reserves the right to require an extension of the one-year warranty as a condition of final acceptance of the Public Improvements.
5. In lieu of a maintenance or performance bond, Owner may submit either an Irrevocable Letter of Credit payable to City and approved by City as to form, or a Cash Bond payable to City and approved by City as to form.