

Public Improvement Plan Agreement – Pearl 75

CITY OF BASTROP, TEXAS

Public Improvement Plan Agreement

Pearl 75

The State of Texas

County of Bastrop

WHEREAS, BLAKEY OWNER APARTMENTS, LLC, a Delaware limited liability company ("Developer"), is the developer of the following described property and desires to make certain improvements to the following lots and blocks in the Alta Blakey – Public Phase One Public Improvements Plans, (Permit Case Number 23-000014) (the "PIP"), a development in the City of Bastrop, Texas: being Lots One and Two of the Replat Establishing Pearl 75 – Phase One; and

WHEREAS, the said Developer has requested the City of Bastrop, a Home Rule Municipality of Bastrop County, Texas, hereinafter referred to as, "City", to provide approvals and cooperative arrangements in connection with said improvements:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That said Developer, acting herein by and through Bart Barrett, Vice President of WP Texas, LLC, a Delaware limited liability, the manager of WS Blakey Lane, LLC, a Delaware limited liability company, the manager of Blakey Owner Holdings, LLC, a Delaware limited liability company, the duly authorized manager of Developer, and the City, acting herein by and through Sylvia Carrillo, its City Manager, for and in consideration of the covenants and agreements herein performed and to be performed, do hereby covenant and agree as follows regarding assurance of construction of the public improvements reflected in and permitted pursuant to the PIP (collectively, the "Public Infrastructure Improvements"), including without limitation, sanitary sewer facilities, streets, public drainage and stormwater management facilities, street lights and street signs; summary of applicable infrastructure (development)

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amounts; assurance payments to the City; payment of inspection fees; and miscellaneous provisions relating to the acceptable completion of said construction according to the plans for the Public Infrastructure Improvements pursuant to the PIP approved by the City on _____, 2023.

1.00 Assurance of Infrastructure Construction

1.10 Employment of Contractors

In accordance with this agreement, the Developer agrees to employ a general contractor or contractors in accordance with the conditions set forth in Section 4.00 for work for which the Developer is providing as stated herein and indicated in the Summary of Infrastructure (Development) Assurance Amounts, Section 2.30 on page 4 of this agreement.

1.11 Public Infrastructure Construction and Acceptance Process

- a) The Developer and the City/County agree that a pre-construction meeting will not be held and notice to proceed issued until the payment of the Public Improvement Inspection fees are paid to the City/County and a copy of the approved plan set provided to the City Construction Manager. The Public Improvement Inspection fees will be three- and one-half percent (3.5%) of the total Public Infrastructure Improvements costs Attachment 1 (Engineers Estimate of Probable Costs), per the Master Fee Schedule adopted with Ordinance Number 2022-22.
- b) Upon completion of the Infrastructure, the developer must furnish the City with the following prior to acceptance and release of fiscal guarantee (if provided):
 1. As-Built/Record Drawings of Public Infrastructure Improvements in pdf format and in CAD/GIS format;

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2. The Developer agrees to require the contractor(s) to furnish the City and County with a two (2) year maintenance bond in the name of the City, subject to City approval, for twenty five percent (25%) of the contract price of the public streets, sidewalk, and drainage improvements. The maintenance bond(s) shall be submitted and approved prior to the final acceptance of the improvements;
 3. Letter of Concurrence from the Design Engineer;
 4. Close out documents required by the Engineering Department
(Attachment 2).
- c) Once these items are provided, the City will provide a Letter of Acceptance from the City Engineer.
- d) In order to record the Final Plat of Replat Establishing Pearl 75 – Phase One (City Permit Number 23-000012) (the “Final Plat”), the Developer must complete one of the following:
1. Have received a Letter of Acceptance from the City Engineer; or
 2. Provide fiscal guarantee for 125% of the outstanding Infrastructure (Development) Improvement Costs, with Engineer’s Opinion of Probable Costs. This guarantee will not be released until acceptance of the Infrastructure by the City Engineer as evidenced by the Letter of Concurrence referenced in subsection (b)(3) above.

1.12 Payment of Miscellaneous Construction Costs

It is further agreed and understood that additional costs may be required of the Developer to cover such additional work, materials and/or other costs as may be made necessary by conditions encountered during construction and within the scope

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of this project.

1.13 Compliance with Tree Preservation Ordinance

The Developer is responsible to fully comply with the City’s Tree Preservation Ordinance and Construction Standards during all phases of construction. The Developer submitted a tree protection plan and protected tree survey showing the protected trees on site and the measures of tree protection to be employed prior to any site work on the project with Public Improvement Plans approved on _____, 2023. The chart below reflects the proposed tree mitigation (the "Phase 1 Tree Mitigation") that will be the obligation of Developer in connection with its construction of non-public site work for development of the real property being the subject of the Final Plat. Contemporaneously with the Developer's execution of this Agreement and the City's approval of the Final Plat and the PIP, Developer shall deliver a fiscal surety bond to secure Developer's Phase 1 Tree Mitigation obligation (the "Tree Mitigation Bond") in the amount stated under "Full Mitigation Cost" below. Such Tree Mitigation Bond shall be released at such time as Developer's work under City site development case number 23-000064 (the "SDP") has been completed and accepted by the City. Notwithstanding the foregoing, following the date Developer pays the payment to the City's Tree Fund prior to and in connection with the City's issuance of the SDP, the Developer may elect to deliver a replacement bond equal only to the costs attributable to the on-site mitigation inches required under such SDP.

	Full Mitigation Cost	Proposed On-Site Mitigation Inches	Proposed Payment to Tree Fund
Trees (Inches)	146 Trees (4" Caliper Trees)	81 Trees (324 Inches)	65 Trees (260 Inches)
Dollar Equivalent	\$87,600	\$48,600	\$39,000
Proposed Mitigation	-	81 On-Site Trees	\$39,000

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2.00 Infrastructure (Development) Improvement Costs

All infrastructure (development) improvement costs of the Public Infrastructure Improvements are the full responsibility of the Developer unless otherwise noted, or unless otherwise funded with a public improvement district revenue, tax increment reinvestments zone revenue, or a Chapter 380 grant, pursuant to a separate agreement. The following improvement costs for the Public Infrastructure Improvements have been developed using the Developer’s plans and specifications and recommendations by the City in accordance with the construction guidelines set forth by the City:

2.10 Water Improvements

The distribution of costs between the City and the Developer for all domestic and fire water facilities are as follows:

	Full Project Cost	Developer Amount	City Participation
Water Facilities	\$649, 692	\$649, 692	\$0.00
Total Construction Cost	\$649, 692	\$649, 692	\$0.00

2.10 Sanitary Sewer Improvements

The distribution of costs between the City and the Developer for all sanitary sewer are as follows:

	Full Project Cost	Developer Amount	City Participation
Sanitary Sewer Facilities	\$339,174	\$339,174	\$0.00
Total Construction Cost	\$339,174	\$339,174	\$0.00

2.20 Drainage Improvements

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The distribution of costs between the City and the Developer for drainage improvements are as follows:

	Full Project Cost	Developer Amount	City Participation
Storm Drainage Facilities	\$503,179.18	\$503,179.18	\$0.00

2.30 Street Improvements

The distribution of costs between the City and the Developer for all street improvements being part of the Public Infrastructure Improvements are as follows:

	Full Project Cost	Developer Amount	City Participation
Streets & Sidewalks	\$118,611	\$118,611	\$0.00
Erosion Control Items	\$48,059	\$48,059	\$0.00
Total Construction Cost	\$166,670	\$166,670	\$0.00

2.40 Summary of Infrastructure (Development) Costs Amounts

	Final Assurance Amount
Water Facilities	\$649,692
Sewer Facilities	\$339,174
Storm Drainage Facilities	\$503,179.18
Streets, Sidewalks & Erosion Control Improvements	\$166,670
Total Infrastructure Development Cost Amounts	\$1,658,715.18

INSPECTION FEES TO BE PAID PRIOR TO PRE-CONSTRUCTION MEETING:

Percentage Final of Construction Improvement

	Construction Cost Amount	Inspection Fee

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Streets, Sidewalks & Erosion Control Improvements	3.5%	\$166,670	\$5,833.45
Water	3.5%	\$649,692	\$22,739.22
Wastewater	3.5%	\$339,174	\$11,871.09
Drainage	3.5%	\$503,179.18	\$17,611.27
Payment to the City			\$58,055.03

The final construction amount is **\$1,658,715.18**, and the Public Improvement Inspection fee amount is **\$58,055.03**, or \$2500, whichever is higher.

RECOMMENDED:

Tony Buonodono, P. E. City Engineer	Date
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3.00 Miscellaneous Improvements

3.10 Drainage Operation and Maintenance Plan

The Developer will provide the City with a Drainage Operation and Maintenance Plan (plan) in accordance with the Stormwater Drainage Manual. The plan shall provide detailed information regarding the obligation of responsible parties for any drainage system, stormwater system, or other improvement being part of the Public Infrastructure Improvements (the "Drainage Facilities") which will not be dedicated to the City as part of this agreement. Proof of payment to the surety and that all other obligations of the developer or contractor have been met in order for the bonds to be binding upon the surety. The obligations of maintenance shall be the responsibility of the owners of all of the property served by the Drainage Facilities, and the City agrees that Developer and/or such benefited owners may establish a property owners association in accordance with Texas laws (the "POA") in order to complete such maintenance obligations.

3.10 Sidewalks

The Developer shall be responsible for installing sidewalks along rights-of-way on open space lots and other lots that will not contain single family residential units as shown on the approved PIP. All sidewalks shall be in compliance with the City's and County's Master Transportation Plan and conform to the City of Bastrop Standard Construction Details.

3.20 Screening Wall, Landscaping, and Irrigation

The Developer shall be responsible for installing screening walls, retaining walls, landscaping, and irrigation in accordance with the approved PIP approved on _____, 2023.

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be assessed at the time of Final Plat recording and shall be paid by the builder, property owner, or developer at the time of Building Permit issuance for each individual lot within the Final Plat and shall be based on the Water and Wastewater Impact Fee for Service as set forth in the City of Bastrop Impact Fee Ordinance that is in effect as of the this agreement.

Impact Fees to be paid are as follows:

	Number Lots	Fee per Lot	Final Assessment Amount
Water Impact Fee	2	\$261,824	\$523,648
Wastewater Impact Fee	2	\$122,136	\$244,272
Total Impact Fees			\$767,920

4.00 Miscellaneous Provisions

4.10 Bonds

The Developer will provide the City with proof of payment to the surety and that all other obligations of the developer or contractor have been met in order for the bonds to be binding upon the surety.

4.20 Public Liability

The Developer shall further require the contractor(s) to secure Public Liability Insurance. The amount of Insurance required shall include Public Liability, Bodily Injury and Property Damage of not less than \$100,000 one person, \$300,000 one accident and \$100,000 property damage. The minimum requirements for automobile and truck public liability, bodily injury and property damage shall also include not less than \$100,000 one person, \$300,000 one accident, and \$100,000 property damage.

The Contractor shall provide Worker's Compensation Insurance in accordance with the most recent Texas Workers' Compensation Commission's rules.

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4.30 General Indemnity Provisions

The Developer shall waive all claims, fully release, indemnify, defend and hold harmless the City and all of its officials, officers, agents, consultants, employees and invitees in both their public and private capacities, from any and all liability, claims, suits, demands or causes of action, including all expenses of litigation and/or settlement which may arise by injury to property or person occasioned by error, omission, intentional or negligent act of Developer, its officers, agents, consultants, employees, invitees, or other person, arising out of or in connection with the Agreement, or on or about the property, and Developer will, at its own cost and expense, defend and protect the City and all of its officials, officers, agents, consultants, employees and invitees in both their public and private capacities, from any and all such claims and demands. Also, Developer agrees to and shall indemnify, defend and hold harmless the City and all of its officials, officers, agents, consultants, employees and invitees in both their public and private capacities, from and against any and all claims, losses, damages, causes of action, suit and liability of every kind (each a "Claim" and collectively, the "Claims"), including all expenses of litigation, court costs and reasonable attorney fees for injury to or death of any person or for any damage to any property, but not including special, punitive or consequential damages, arising out of or in connection with this Agreement or any and all activity or use pursuant to the Agreement, or on or about the property. This indemnity shall apply whether the Claims arise in whole or in part from the intentional acts or negligence of developer or any of its officers, officials, agents, consultants, employees or invitees, whether said negligence is contractual, comparative

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negligence, concurrent negligence, or any other form of negligence, but not for Claims resulting or arising from the City's sole negligence, gross negligence or willful misconduct. The City shall be responsible only for any Claims resulting or arising from the City's sole negligence, gross negligence. Provided, however, that nothing contained in this Agreement shall waive the City's defenses or immunities under Section 101.001 et seq. of the Texas Civil Practice and Remedies Code or other applicable statutory or common law. Notwithstanding anything to the contrary in this section, the Developer shall not be required to indemnify the City in the event the Claims arise in whole or in part as a result of the City's breach of this agreement or a separate agreement pertaining to the property governed by this agreement.

4.31 Indemnity Against Design Defects

Approval of the City Engineer or other City employee, official, consultant, employee, or officer of any plans, designs or specifications submitted by the Developer under this Agreement shall not constitute or be deemed to be a release of the responsibility and liability of the Developer, its engineer, contractors, 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 or liability by the City for any defect in the design and specifications prepared by the consulting engineer, his officers, agents, servants, or employees, it being the intent of the parties that approval by the City Engineer or other City employee, official, consultant, or officer signifies the City's approval of only the general design concept of the improvements to be constructed. In this connection, the Developer shall indemnify and hold harmless the City, its officials, officers, agents, servants and employees, from any

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loss, damage, liability or expense on account of damage to property and injuries, including death, but excluding any special, punitive or consequential damages, to any and all persons which may arise out of any defect, deficiency or negligence of the engineer's designs and specifications incorporated into any improvements constructed in accordance therewith, and the Developer shall defend at his own expense any suits or other proceedings brought against the City, its officials, officers, agents, servants or employees, or any of them, on account thereof, to pay all expenses and satisfy all judgments which may be incurred by or rendered against them, collectively or individually, personally or in their official capacity, in connection herewith. Notwithstanding anything to the contrary in this section, the Developer shall not be required to indemnify the City in the event the claims, suits, losses, damages, causes of action or liability arise in whole or in part as a result of the City's breach of this agreement or a separate agreement pertaining to the property governed by this agreement.

4.32 Approval of Plans

The Developer and City agree that the approval of plans and specifications by the City shall not be construed as representing or implying that improvements built in accordance therewith shall be free of defects. Any such approvals shall in no event be construed as representing or guaranteeing that any improvement built in accordance therewith will be designed or built in a good and workmanlike manner.

Neither the City or County, nor its elected officials, officers, employees, contractors and/or agents shall be responsible or liable in damages or otherwise to anyone submitting plans and specifications for approval by the City for any defects in any

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plans or specifications submitted, revised, or approved, in the loss or damages to any person arising out of approval or disapproval or failure to approve or disapprove any plans or specifications, for any loss or damage arising from the non-compliance of such plans or specifications with any governmental ordinance or regulation, nor any defects in construction undertaken pursuant to such plans and specifications.

4.33 Venue

Venue of any action brought hereunder shall be in the City of Bastrop, Bastrop County, Texas.

4.40 Dedication of Infrastructure Improvements

Upon final acceptance of, the public streets and sidewalks shall become the property of the City.

4.60 Assignment

This agreement, any part hereof, or any interest herein shall not be assigned by the Developer without written consent of the City Manager, said consent shall not be unreasonably withheld, and it is further agreed that such written consent will not be granted for the assignment, transfer, pledge and/or conveyance of any refunds due or to become due to the Developer except that such assignment, transfer, pledge and/or conveyance shall be for the full amount of the total of all such refunds due or to become due hereunder nor shall assignment release assignor or assignee from any and all Development assurances and responsibilities set forth herein.

Signature Page Follows

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IN TESTIMONY WHEREOF, the City of Bastrop has caused this instrument to be executed in duplicate in its name and on its behalf by its City Manager, attested by its City Secretary, with the corporate seal of the City affixed, and said Developer has executed this instrument in duplicate, at the City of Bastrop, Texas this the ___ day of _____, 2023.

BLAKEY OWNER APARTMENTS, LLC,
a Delaware limited liability company

CITY OF BASTROP, TEXAS

By: Blakey Owner Holdings, LLC,
a Delaware limited liability company,
its manager

By: _____
Name: Sylvia Carrillo, ICMA-CM, CPM
Title: City Manager

By: WS Blakey Lane, LLC,
a Delaware limited liability company,
its manager

By: WP Texas, LLC,
a Delaware limited liability company, its manager

By:
Name: Bart Barrett
Title: Vice President

ATTEST:

Ann Franklin
City Secretary

Date

APPROVED AS TO FORM:

Alan Bojorquez
City Attorney

Date

