

DEVELOPMENT AGREEMENT
(Greenway Trails) REVISED 3/22/2018

THIS DEVELOPMENT AGREEMENT (Greenway Trails) ("Agreement") is made and entered into this ____ day of _____, 2018, by and between the City of Grand Prairie, Texas ("City"), and WM SUB GT, LP, a Texas limited partnership ("Developer"). City and Developer may each be referred to herein as a "Party" and collectively as the "Parties".

W I T N E S S E T H:

WHEREAS, the Greenway Trails Project is a proposed development by Developer encompassing approximately 304.60 acres in Grand Prairie, Texas and described by metes and bounds on Exhibit "1" attached hereto (the "Project");

WHEREAS, City is planning the extension of a water transmission line of varying diameters (8-inch, 18-inch and 24-inch) and related facilities (the "Water Line Improvements") in the location depicted on Exhibit "2" attached hereto, which Water Line Improvements are on the City's capital improvement plan for construction in year 2018;

WHEREAS, City ordinance requires assessment of water impact fees with building permits; and

WHEREAS, Developer desires to outline terms upon which Developer may construct the Water Line Improvements, after which construction, if any, City has agreed to reimburse Developer and provide credits against certain impact fees for the Project, as more particularly described herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Developer covenant and agree as follows:

1. Approved Plans. City has approved and delivered to Developer the plans and specifications for the Water Line Improvements prepared by Freese and Nichols dated March 22, 2018 (the "Approved Plans"). City is solely responsible for the cost of the Approved Plans and any revisions to the Approved Plans, except such revisions as are requested by Developer.

2. Water Line Easements. City will be solely responsible for acquisition of all necessary easements for the construction of the Water Line Improvements. If the property owners are unwilling to dedicate such easements, City will use eminent domain to acquire such easements, at City's sole expense.

3. Water Line Improvements. Developer may elect to proceed with the construction of the Water Line Improvements by delivering written notice of such intention to the City (such written notice the "Construction Notice"). Following delivery of the Construction Notice, but prior to commencement of construction of the Water Line Improvements, Developer will provide to City a schedule of values detailing Developer's estimated cost for the Water Line

Improvements. Within ten (10) days of such delivery, City and Developer will have a pre-construction meeting and City will issue to Developer a notice to proceed with construction of the Water Line Improvements. Developer will construct the Water Line Improvements according to the Approved Plans prior to requesting a building permit for any residential lot at the Project. Developer will be responsible for any construction staking for the Water Line Improvements and the costs for same will be included in the Water Line Improvement Costs (as defined herein). Any changes to the Approved Plans will be subject to review and approval by the City's engineer prior to commencing work relating to such changes. Developer will have the right to construct any onsite earthwork, sanitary sewer, water, storm drain, paving, or franchise utilities improvements at the Project prior to City acceptance of the Water Line Improvements. City has the right to observe and inspect, at City's expense, the construction of all Water Line Improvements. Upon Developer's completion of the Water Line Improvements, the Water Line Improvements will be accepted by City.

4. Maintenance. Upon the City's acceptance of the Water Line Improvements, the Contractor of the Developer's choosing to perform the work will provide to City a maintenance bond covering the Water Line Improvements for a period of two (2) years from the date of acceptance of the Water Line Improvements by City. Thereafter, City will be responsible for all maintenance of the Water Line Improvements.

5. Reimbursements. Upon completion of the Water Line Improvements, Developer will provide to City verification of: (a) all costs incurred by Developer for the Water Line Improvements (collectively, the "Water Line Improvements Cost"), including, but not limited to, costs for engineering, surveying, legal, construction, construction management, construction materials testing, geo-technical testing and inspection; (b) costs that would have been incurred for a 12-inch diameter water line installed in the 18-inch diameter and 24-inch diameter portions of the Water Line Improvements ("12-inch Line Cost"); and (c) the portion of Water Line Improvements Cost installed in the 18-inch diameter and 24-inch diameter portions of the Water Line Improvements (the "Oversized Line Cost"). Upon receipt of the Water Line Improvements Cost and City's acceptance of the Water Line Improvements, City will provide for reimbursement and waiver of water impact fees as follows:

A. City will pay in cash to Developer upon City's acceptance of the Water Line Improvements an amount (the "Upsizing Cost") equal to the excess of the Oversized Line Cost over the 12-inch Line Cost, not to exceed \$1,500,000.

B. City will provide a waiver of water impact fees for the Project in a total amount (the "Impact Fee Credit") equal to the Water Line Improvements Cost, less the Upsizing Cost paid in cash by City to Developer. The Impact Fee Credit will be applied at the time a building permit is requested for a single family residential lot at the Project according to following schedule until no Impact Fee Credit remains. The water impact fee for such lot will be waived in an amount equal to the greater of (a) \$4,676.00, or (b) the current water impact fee per lot then applicable to single family residential lots.

C. The Parties expressly acknowledge that the Impact Fee Credit may be applied, in whole or in part, to and for the benefit of successors and assigns of Developer at the Project, including subsequent owners and builders requesting building permits for

single family residential lots at the Project. Notwithstanding the foregoing or anything elsewhere in this Agreement to the contrary: (i) except with respect to a conveyance of the Project to a Permitted Assignee (defined below), Developer's rights to receive any portion of the Impact Fee Credit and reimbursement pursuant to this Agreement must be specifically assigned, and no conveyance of any portion of the Project will be deemed to convey or assign Developer's right to receive any portion of the Impact Fee Credit or reimbursement pursuant to this Agreement unless such right is specifically and expressly assigned therein by reference to this Agreement; and (ii) Developer's conveyance of a portion of the Project to a Permitted Assignee will be deemed to automatically convey and assign Developer's right to receive the Impact Fee Credit and reimbursement pursuant to this Agreement as to single family residential lots on such portion of the Project.

D. The Parties further acknowledge that no reimbursement will occur unless and until the Water Line Improvements have been accepted by City.

6. Assignment. Developer has the right to assign this Agreement, in whole or in part, to Forestar (USA) Real Estate Group Inc., or any affiliate thereof, or D.R. Horton – Texas, Ltd., a Texas limited partnership, or any affiliate thereof (each, a "Permitted Assignee"), without the prior approval of City. Except for the foregoing, Developer has the right to assign this Agreement, in whole or in part, to any other entity or person at Developer's discretion with the prior approval of City. If Developer wholly assigns this Agreement, Developer will be released from its obligations under this Agreement from and after such assignment provided such assignee assumes Developer obligations under this Agreement, and City will execute such documents as are reasonably requested by Developer to evidence such release. Notwithstanding the definition of "Developer" in this Agreement, upon any assignment of this Agreement, references to "Developer" shall automatically be deemed to be references to the applicable assignee, without the need for any amendment of this Agreement.

7. Contingency. City and Developer acknowledge this Agreement is being entered into in anticipation of, and as a condition to, a sale of the Property to a Permitted Assignee. Developer has the right, in its sole discretion, to terminate this Agreement at any time prior to (i) the Property being sold to a Permitted Assignee, and (ii) such Permitted Assignee taking an assignment of this Agreement and assuming Developer obligations hereunder such that Developer is fully released from all obligations under this Agreement. Such termination may be made by delivery of written notice thereof from Developer to the City. If, however, the Property is sold to a Permitted Assignee prior to such termination and the Permitted Assignee takes an assignment of this Agreement as described above, then this Section will automatically be void and of no further effect and Developer will no longer have such right of termination. Upon any termination under this Section 7, City will execute such documents as are reasonably requested by Developer to fully release Developer and the Property from any obligations or encumbrances created by this Agreement.

8. Captions and Headings. The captions and headings of the sections of this Agreement are for convenience and reference only and will not affect, modify or amplify the provisions of this Agreement, nor will they be employed to interpret or aid in the construction of this Agreement.

9. Covenant Running with the Land; Release as to Fully Improved Lots. Unless terminated in accordance with Section 7 above, this Agreement will be a covenant running with the land, and will be binding upon and inure to the benefit of the Developer and each future owner of the Project or any portion thereof; provided, however, Developer's obligations under this Agreement will not be binding upon each single-family residential lot for which a record plat has been approved and recorded in the deed records and on which a residence has been constructed (a "Fully Improved Lot") and a Fully Improved Lot will be deemed automatically released from this Agreement. Any third party, including without limitation, any title company, grantee or lienholder, will be entitled to rely on such automatic release of a Fully Improved Lot from this Agreement. Anything contained herein to the contrary notwithstanding, upon completion by Developer and acceptance by City of the Water Line Improvements, this Agreement will terminate and City will execute a full release of this Agreement; provided, however, that no such release will release City from its obligations hereunder (which obligations will survive such release and termination until fully satisfied), nor will any such release constitute a waiver of any rights to Impact Fee Credit or reimbursement as provided herein (which rights will survive such release and termination until fully satisfied).

10. Applicable Laws and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Ellis County, Texas. Venue for any action arising under this Agreement will be in Ellis County, Texas.

11. Notices. Any notices required or permitted to be given hereunder will be given by certified or registered mail, return receipt requested, by personal delivery, or by overnight courier to the addresses set forth below or to such other single address as either Party will notify the other:

If to City: City of Grand Prairie
206 W. Church Street
Grand Prairie, Texas 75050
Attn: Director of Public Works
Telephone: 972.237.8066
Email: GJohnson@gptx.org

If to Developer: WM SUB GT, LP
4800 N Scottsdale Rd., Ste. 4000
Scottsdale, AZ 85251
Attn: Ryan J. Kretschmer
Telephone: (480) 586-9288
Email: rkretschmer@walton.com

With a copy to: Walton Development &
Management 5420 LBJ Freeway,
Ste. 790 Dallas, TX 75240
Attn: John Vick
Telephone: (214) 838-2103

12. Attorneys' Fees. Both Parties expressly covenant and agree that in the event of any litigation arising between the Parties to this Agreement, each Party shall be solely responsible for payment of its attorneys and that in no event shall either Party be responsible for the other Party's attorneys' fees regardless of the outcome of the litigation. Nothing herein will constitute a waiver of any claim or defense that could be asserted in any litigation related to this Agreement.

13. Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement will be construed as a whole and not strictly for or against any Party.

14. Severability. In the event any provision of this Agreement will be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement will, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

15. Filing in Ellis County Deed Records. This Agreement or a memorandum thereof will be filed in the deed records of Ellis County, Texas. Upon any sale or other transfer of any ownership rights in any unplatted portion of the Property, Developer will notify City in writing of such sale or transfer; provided, however, no notice will be required for the sale of a lot for which a record plat has been approved and recorded in said deed records.

16. Authority. Each of the Parties represents and warrants to the other that they have the full power and authority to enter into and fulfill their respective obligations under this Agreement.

17. Default. No Party will be in default of provisions under this Agreement until notice of the alleged failure of such Party to perform has been given as provided herein (which notice will set forth in reasonable detail the nature of the alleged failure) and until such Party has been given ten (10) days after the written notice in the case of the default of a payment obligation, and in all other cases a reasonable time, to cure the alleged failure (such reasonable time determined based upon the nature of the alleged failure, but in no event less than ten (10) days after written notice of the alleged failure has been given). Each Party agrees that no Party will be liable for any punitive, speculative, consequential or special damages under this Agreement.

18. Exhibits. The following exhibits are attached hereto and incorporated into this Agreement for all purposes:

- | | |
|-----------|--|
| Exhibit 1 | Metes and Bounds Description of the Project; |
| Exhibit 2 | Map depicting location of the Water Line |

IN WITNESS WHEREOF, the Parties have caused this document to be executed as of the date first above written.

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CITY OF GRAND PRAIRIE, TEXAS

City Manager

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Attorney

DEVELOPER:

WM SUB GT, LP, a Texas limited partnership

By: WM SUB GT GP, LLC, a Delaware limited liability company
Its: General Partner

By: WM Holdings CG, LLC, a Delaware limited liability company
Its: Sole Member and Manager

By: Walton WMCG Investor, LLC,
a Delaware limited liability company
Its: Manager

By: WDH Management, Inc., a Delaware corporation
Its: Manager

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this the ____ day of _____, 2018, by _____, the _____ of WDH Management, Inc., a Delaware corporation, Manager of Walton WMCG Investor, LLC, a Delaware limited liability company, Manager of WM Holdings CG, LLC, a Delaware limited liability company, Sole Member and Manager of WM SUB GT GP, LLC, a Delaware limited liability company, General Partner of WM SUB GT, LP, a Texas limited partnership, on behalf of said entities.

Notary Public, State of Texas

Exhibit "1"
Project

Exhibit "2"
Water Line Improvements