

RESOLUTION NO. R-2021-90

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING A PUBLIC IMPROVEMENT PLAN AGREEMENT WITH 71 RETAIL PARTNERS LP., FOR BASTROP GROVE SECTION 3, LOT 7 AS ATTACHED IN EXHIBIT A; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, The City Council has adopted the Bastrop Building Block (B³) Code and related codes that provide a process for the standards and construction of public improvements that support the development created during the subdivision process; and

WHEREAS, the Development Manual includes the requirement for a developer to provide a Public Improvement Plan Agreement to ensure the installation of the public improvements; and

WHEREAS, the "Developer" known as 71 Retail Partners LP. has an approved Preliminary Plat and Public Improvement Plan for the construction of a drainage improvement on a commercial lot; and

WHEREAS, The City Council also understands the importance ensuring the proper construction of the required public improvements and the value they bring in regard to the public safety of neighborhoods.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1: That the City Manager will execute the Public Improvement Plan Agreement for Bastrop Grove Section 3 Lot 7, attached as Exhibit A.

Section 2: All orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 3: That this Resolution shall take effect immediately upon its passage.

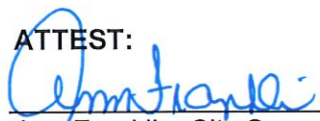
DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 21st day of September, 2021.

APPROVED:



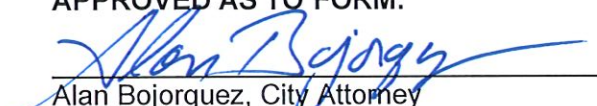
Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

CITY OF BASTROP, TEXAS
Public Improvement Plan Agreement
BASTROP GROVE SECTION 3, LOT 7

The State of Texas

County of Bastrop

WHEREAS, 71 RETAIL PARTNERS, LP., hereinafter referred to as, "Developer", is the developer of the following described property and desires to make certain improvements to the following lots and blocks in BASTROP GROVE SECTION 3, LOT 7, a development in the City of Bastrop, Texas: being 1 LOT; 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 DOUGLAS MACMAHON, its duly authorized officer, and the City, acting herein by and through PAUL A. HOFMANN, it's 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 private drainage improvements; summary of applicable infrastructure (development) 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 BASTROP GROVE SECTION 3, LOT 7 approved by the City on August 16, 2021.

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 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 and a copy of the approved plan set provided to the City Construction Manager. The Public Improvement Inspection fees will be three and a half percent (3.5%) of the total drainage infrastructure costs.
- 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 Final Drainage Plans in pdf format and in CAD/GIS format;
 2. Letter of Concurrence from the Design Engineer.
- 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, the developer must complete one of the following:

Public Improvement Plan Agreement – *BASTROP GROVE SECTION 3, LOT 7*

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 Estimate of Probable Costs. This guarantee will not be released until acceptance of the Infrastructure by the City Engineer.

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 of this project.

1.13 Compliance with Tree Preservation Ordinance

N/A

Public Improvement Plan Agreement – *BASTROP GROVE SECTION 3, LOT 7*

2.00 Infrastructure (Development) Improvement Costs

All infrastructure (development) improvement costs 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 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 Drainage Improvements

Fiscal guarantees will be provided to the City, or through an agreement consistent with the estimates for the improvements as attached in Exhibit A.

	Full Project Cost	Assurance Amount	City Participation
Drainage Facilities	\$ 21,756.25	\$ 27,195.32	\$0.00
Total Construction Cost	\$ 21,756.25	\$ 27,195.32	\$0.00

2.20 Summary of Infrastructure (Development) Assurance Amounts

	Final Assurance Amount
Drainage Facilities	\$ 27,195.32
Total Development Assurance Amounts	\$ 27,195.32

Public Improvement Plan Agreement – *BASTROP GROVE SECTION 3, LOT 7*

3.00 Miscellaneous Improvements

3.10 Drainage Operation and Maintenance Plan

N/A

3.10 Sidewalks

N/A

3.20 Screening Wall, Landscaping, and Irrigation

N/A

3.30 Street Lights

N/A

3.40 Street Name and Regulatory Signs

N/A

RECOMMENDED:



Curtis Hancock
Public Works Director

9/27/21

Date

3.50 Land Dedication

N/A

3.60 Impact Fees (MUD Facility)

N/A

4.00 Miscellaneous Provisions

Public Improvement Plan Agreement – *BASTROP GROVE SECTION 3, LOT 7*

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.

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

Public Improvement Plan Agreement – BASTROP GROVE SECTION 3, LOT 7

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, including all expenses of litigation, court costs and attorney fees for injury to or death of any person or for any damage to any property 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, suits, losses, damages, causes of action or liability 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 negligence, concurrent negligence, gross negligence or any other form of negligence. The City shall be responsible only for the City's sole 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, 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.

4.31 Indemnity Against Design Defects

Public Improvement Plan Agreement – *BASTROP GROVE SECTION 3, LOT 7*

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 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 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

Public Improvement Plan Agreement – *BASTROP GROVE SECTION 3, LOT 7*

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 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

N/A

4.50 Assignment

Public Improvement Plan Agreement – BASTROP GROVE SECTION 3, LOT 7

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.


4.60 Conflicts

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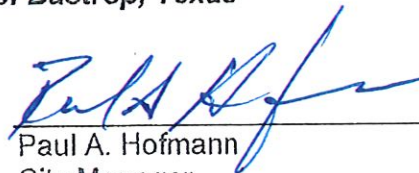
IN TESTIMONY WHEREOF, the City of Bastrop has caused this instrument to be executed in duplicate in its name and on its behalf by its City Manager, attested by its City Secretary, with the corporate seal of the City affixed, and said Developer has executed this instrument in duplicate, at the City of Bastrop, Texas this the 21st day of September, 2021.

BASTROP GROVE SECTION 3, LOT 7

City of Bastrop, Texas




Douglas MacMahon
71 Retail Partners, LP



Paul A. Hofmann
City Manager

ATTEST:




Ann Franklin
City Secretary

10/20/21

Date

Public Improvement Plan Agreement – BASTROP GROVE SECTION 3, LOT 7

APPROVED AS TO FORM ^{AB} AND LEGALITY:


Alan Bojorquez
City Attorney


Date

Distribution of Originals:

Developer
City Secretary
Planning and Development Department

**ENGINEER'S COST ESTIMATE
BASTROP GROVE SECTION 3 LOT 7**

DESCRIPTION	QUANTITY	UNIT	COST	AMOUNT
I. DRAINAGE				
Drainage Ditch Grading complete and in place per linear ft	150	LF	\$75.00	\$11,250.00
Concrete Pilot Channel complete and in place per linear ft	150	LF	\$20.00	\$3,000.00
Reinforced Concrete Revetment complete and in place per sq. yard	53	SY	\$75.00	\$4,000.00
SUBTOTAL DRAINAGE ITEMS:				\$18,250.00
II. EROSION CONTROL ITEMS				
Revegetation of R.O.W., Easements and All Disturbed Areas - Seed & Topsoil,	590	SY	\$2.50	\$1,475.00
Construction Entrance	1	EA	\$1,000.00	\$1,000.00
Install and Maintain Silt Fence, complete and in place per linear foot	375	LF	\$2.75	\$1,031.25
SUBTOTAL EROSION CONTROL ITEMS:				\$3,506.25

TOTAL CONSTRUCTION COST ESTIMATE

\$21,756.25



Firm F3791

08/09/2021

Prepared By:

Carlson, Brigance, & Doering, INC.
Firm Id # 3791

Mr. Brendan P. McEntee, P.E.
12129 Ranch Road 620 North, Suite 600
Austin, Texas 78750