

STATE OF TEXAS

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COUNTY OF COLLIN

**PARK FACILITIES AGREEMENT  
(Cypress Meadows Phase II)**

This **PARK FACILITIES AGREEMENT** (“Agreement”) is made by and between the **City of Allen** (“City”), a Texas home rule municipality, and **JBGL Chateau, LLC**, (“Developer”), a Texas limited liability company, acting by and through their duly authorized representatives. (City and Developer referred to herein collectively as “the Parties” or separately as “Party”.)

**RECITALS:**

**WHEREAS**, Developer is the developer of the real property known as Cypress Meadows Phase II, an addition to the City of Allen, Collin County, Texas, according to the plat thereof recorded in Volume 2015, Slide 510, Plat Records, Collin County, Texas (the “Property”); and

**WHEREAS**, Developer is developing the Property and designing and constructing certain infrastructure including water, sewer and roadways, and the Park Improvements, Twin Creeks Park Phase II, on and for the benefit of the ultimate purchasers of lots within the Property (collectively referred to as the “Project”); and

**WHEREAS**, in order to further enhance the Park Improvements and create an incentive for Developer to design and install or construct the Park Improvements, City desires to participate in the cost of the Park Improvements; and

**WHEREAS**, the Parties desire to enter into this Agreement setting for the terms and conditions by which City will participate in the cost of the Park Improvements;

**NOW THEREFORE**, in consideration of the premises and the mutual covenants contained herein and other valuable consideration the sufficiency and receipt of which, are hereby acknowledged by the Parties agree as follows:

**Article I  
Term**

The term of this Agreement shall commence on the Effective Date and shall continue until all Parties have fully performed all terms and conditions of this Agreement, unless sooner terminated as provided herein.

**Article II  
Definitions**

“City Engineer” means the City of Allen City Engineer, or designee.

“City Property” means two tracts of land owned by City and described as (i) Lot 8, Block X, Cypress Meadows Phase I, an addition to the City of Allen, Collin County, Texas, according to

the plat thereof recorded in Cabinet 2013, Page 454, Plat Records, Collin County, Texas, and (ii) Tract 2 of Twin Creeks Phase 6B, an addition to the City of Allen, Collin County, Texas, according to the plat thereof recorded in Cabinet R, Page 276, Plat Records, Collin County, Texas

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the respective Public Improvements on the Property; (ii) all necessary permits for the construction of the respective Public Improvements on the Property pursuant to the respective plans therefore have been issued by all applicable governmental authorities; and (iii) grading of the Property has commenced.

“Completion of Construction” shall mean: (i) the respective Park Improvements have been substantially completed in accordance with the respective Construction Documents; and (ii) the respective Public Improvements have been accepted by the City.

“Construction Documents” shall mean the plans and specifications submitted for the design, installation and construction of the respective Park Improvements, as approved by the City Engineer and Parks Director, as applicable.

“Director” shall mean City’s Director of the Parks and Recreation Department, or designee.

“Effective Date” shall mean the date this Agreement (inclusive of original counterparts) bears the signature of authorized representatives of all of the Parties.

“Landscape Architect” shall mean the City of Allen Landscape Architect or designee.

“Park Improvements” shall mean the concrete trails and sidewalks, playground equipment, pavilion renovations and improvements, turf grass, landscape improvements and irrigation system expansion, and other park-related improvements to be constructed by the Developer on the Property pursuant to this Agreement and generally .

### **Article III**

#### **Park Improvements**

**3.1 Design of Park Improvements.** Developer shall, at its sole cost, engage the services of a Texas licensed landscape architect (the “Park Improvements Architect”) reasonably acceptable to City. The Park Improvement Architect, in consultation with the Landscape Architect and the Director, shall be responsible for preparing Schematic Design plans of the Park Improvements based on the Conceptual Park Plan attached as **Exhibit “A.”** Developer shall cause the Park Improvements Architect to prepare preliminary construction documents for the Park Improvements (the “Preliminary Construction Documents”) and submit the same to City for review and approval not later than thirty (30) days after the Effective Date. The City Engineer and the Director, as applicable, shall review the Preliminary Construction Documents and provide comments to Park Improvements Architect and Developer not later than thirty (30) days after delivery of such documents. Not later than thirty (30) days after City review and approval of the Preliminary Construction Documents, Developer shall cause the Park Improvements Architect to

prepare final construction documents for the Park Improvements (the “Final Construction Documents”) for review and approval by City.

**3.2 Project Construction.** Developer agrees to design, construct and install the Park Improvements at its own expense. Developer agrees to cause Commencement of Construction of the Park Improvements to occur not later than sixty (60) days after the date of City approval of the Final Construction Documents, and shall cause Completion of Construction of the Park Improvements to occur within two hundred seventy (270) calendar days thereafter.

**3.3 Construction Phase Responsibilities.**

(a) City shall be responsible for: (i) construction inspection services, excluding inspection for compliance with the Texas Accessibility Standards by the Texas Department of Licensing and Regulation (“TDLR”); (ii) utility billings upon substantial Completion of Construction of the Park Improvements; and (iii) review and approval of Construction Documents, plans, submittals and change orders

(b) Developer shall be responsible for: (i) construction contract management for the Park Improvements; (ii) survey for design and staking; (iii) the cost of all utilities for the Park Improvements during construction until Completion of Construction, unless otherwise provided herein; (iv) maintenance of all Park Improvement until Completion of Construction; and (v) TDLR inspection of the Park Improvements for compliance with the Texas Accessibility Standards.

**3.4 Reimbursement to Developer.** (a) City agrees to reimburse Developer an amount equal to the lesser of (i) 50% of the actual cost of the construction of the Park Improvements and (ii) \$175,823.84 (the “City Participation Amount”). Upon Completion of Construction of the Park Improvements, Developer shall deliver to the Director copies of all invoices and records showing the total cost of the construction of the Park Improvements, and such other information as may be reasonably requested by the Director to verify such costs. City shall pay the City Participation Amount not later than thirty (30) days after Completion of Construction of the Park Improvements and following the later of (i) the receipt of a final invoice from Developer for the Park Improvement, (ii) City verification of the costs, (iii) delivery to City of a release from the contractor(s) installing the Park Improvements and an affidavit that all amounts owed to subcontractors and suppliers have been paid, (iv) delivery to City of a maintenance bond to be in effect for a period of two years following Completion of Construction of the Park Improvements for the materials and workmanship for all Park Improvements and the assignment of all manufacturer’s standard warranties for all equipment, irrigation or other installed facilities.

**3.6 Grant of License.** Subject to the terms, conditions, and restrictions set forth in this Agreement, City finds that it will serve the public purpose to grant, and it does hereby grant, to Developer a revocable, non-exclusive license (“the License”) to enter onto and use the City Property for the purpose of (i) constructing the Park Improvements, and (ii) performing such other tasks that this Agreement obligates Developer, its successors and assigns to perform. This Agreement and the License granted hereby are subject to any existing public or private easement and/or facility located in, on, under, above, across or upon the City Property, to all vested rights

presently owned by any utility or communication company, public or private, for the use of the City Property for facilities presently located within the boundaries of the City Property and to any existing lease, license, or other interest in the City Property granted by City to any individual, corporation or other entity, public or private now or hereafter. The License shall terminate and no longer be effective upon termination of this Agreement. Developer shall notify City not later than three (3) business day prior to Commencement of Construction and shall provide City with an estimated time of completion.

**3.7 Ownership and Future Maintenance of Park Improvements.** The Parties understand, acknowledge, and agree that, upon Completion of Construction, Developer will have no ownership interest in the Park Improvements or any portion of the City Property upon which the Park Improvements have been constructed or installed. All future maintenance of the Park Improvements shall be the responsibility of City. Prior to Completion of Construction, Developer (or its contractor) shall provide City with a two year maintenance bond for the value of the Park Improvements, listing City as the Obligee/Owner.

**3.8 Indemnification.**

(a) Developer agrees to indemnify, defend, and hold harmless City, its officers, agents, partners, and employees (collectively, the “Indemnified Parties”) against and from any and all claims, loss, cost, damage, or expense, including reasonable attorney’s fees, arising out of or from or related to the acts or omissions of such Developer, its agents, employees, partners, shareholders, agents, contractors subcontractors, invitees, or guests, except to the extent caused by the willful misconduct or negligence of any of the Indemnified Parties, and only then to the extent of the proportion of any fault determined against the Indemnified Party. The provisions of this Section 3.8 shall survive the expiration or earlier termination of this Agreement.

(b) City shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from the acts or omissions of Developer pursuant to this agreement. Developer hereby waives all claims against City, its officers, agents and employees (collectively referred to in this section as “City”) for damage to any property or injury to, or death of, any person arising at any time and from any cause other than the sole negligence or willful misconduct of City. Developer does hereby indemnify and save harmless City from and against any and all liabilities, damages, claims, suits, costs (including court costs, reasonable attorneys’ fees and costs of investigation) and actions of any kind by reason of injury to or death of any person or damage to or loss of property arising from Developer’s breach of any of the terms and conditions of this Agreement, or by reason of any act or omission on the part of Developer, its officers, directors, servants, agents, employees, representatives, contractors, subcontractors, licensees, successors or permitted assigns in the performance of this Agreement (except when such liability, claims, suits, costs, injuries, deaths or damages arise from or are attributed to the sole negligence or willful act of City). In the event of joint or concurrent negligence of both City and Developer, the responsibility, if any, shall be apportioned comparatively in accordance with the laws of the state of Texas, without, however, waiving any governmental immunity available to City and without waiving any defenses of the Parties under Texas law. If any action or proceeding shall be brought by or against City in connection with any such liability or claim, Developer shall be required, on notice from City to defend such action or proceedings at Developer’s expense, by or through attorneys reasonably satisfactory to City. The provisions of this section are solely for the

**benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**

**3.9 Insurance.** During the Term of this Agreement, Developer shall obtain and maintain in full force and effect at its expense, and shall cause each of Developer's contractors to obtain and maintain at their expense, the following policies of insurance and coverage:

(a) **Commercial General Liability Policy** covering bodily injury, death and property damage, including the property of City, its officers, contractors agents and employees (collectively referred to as the "City") insuring against all claims, demands or actions relating to the work and services provided pursuant to this Agreement with minimum limits on a per project basis of not less than One Million Dollars (\$1,000,000) combined single limit and Two Million Dollars (\$2,000,000) aggregate, including products and completed operations coverage. This policy shall be primary to any policy or policies carried by or available to City.

(b) **Workers' Compensation/Employer's Liability Insurance Policy** in full accordance with the statutory requirements of the State of Texas and shall include bodily injury, occupational illness or disease coverage with minimum Employer's Liability limits of not less than \$500,000/\$500,000/\$500,000.

(c) **Waiver of Subrogation Rights.** The Commercial General Liability, Worker's Compensation, and Excess Liability insurance required pursuant to this Agreement shall provide for waivers of all rights of subrogation against City.

(d) **Additional Insured Status.** With the exception of Worker's Compensation Insurance, all insurance required by this Agreement shall include and name City as additional insureds using Additional Insured Endorsements that provide the most comprehensive coverage to the City under Texas law including products/completed operations.

(e) **Certificates of Insurance.** Certificates of Insurance and policy endorsements in a form satisfactory to City shall be delivered to City prior to the commencement of any work on the City Property. On every date of renewal of the required insurance policies, Developer shall cause (and cause its contractors to cause) a Certificate of Insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to City. In addition, Developer shall, not later than ten (10) business days after written request, provide City with Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of such policies). The failure to provide valid Certificates of Insurance and policy endorsements shall be deemed a breach of this Agreement. All policies and endorsements shall remain in effect until the termination of this Agreement.

(f) **Notice of Non-Renewal, etc.** Each and every insurance policy required to be carried by or on behalf of Developer or Developer's contractor pursuant to this Agreement shall provide (and any certificate evidencing the existence of each such insurance policy shall certify) that such insurance policy shall not be canceled, non-renewed or coverage thereunder materially reduced unless City has received notice of cancellation, non-renewal or material reduction in coverage, in each such case (except for notice of cancellation due to non-payment of premiums) such notice to be sent to City not less than thirty (30) calendar days (or the maximum period of calendar days permitted under applicable law, if less than thirty (30) calendar days) prior to the effective date of such cancellation, non-renewal or material reduction in coverage, as applicable. In the event any insurance policy required to be carried by or on behalf of Developer or Developer's contractor pursuant to this Agreement is to be canceled due to non-payment of premiums, the

requirements of the preceding sentence shall apply except that the notice shall be sent to City on the earliest possible date but in no event less than ten (10) calendar days prior to the effective date of such cancellation.

(g) **Carriers.** All policies of insurance required to be obtained by Developer and its contractors pursuant to this Agreement shall be maintained with insurance carriers that are satisfactory to City and lawfully authorized to issue insurance in the state of Texas for the types and amounts of insurance required herein. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by City. All insurance coverage required herein shall be evidenced by a certificate of insurance and policy endorsements submitted by the Developer's and its contractors' insurer or broker.

**3.9. No Liens; Bonds.** Developer understands and acknowledges that, as property owned by a home rule municipality, a valid lien cannot attach on the City Property to secure the payment of the cost of labor and materials related to the construction of the Park Improvements on the City Property. Developer shall require its contractor to obtain payment and performance bonds in the amount of the costs for construction of the Park Improvements in compliance with Chapter 2253, Texas Government Code, as amended, with both Developer and City as owners for purpose of the construction of the Utility Improvements.

**3.10 Restoration of City Property.** Prior to Completion of Construction, Developer shall return the surface of the City Property to as close as reasonably practical to its original condition prior to Commencement of Construction save and except for changes made in accordance with the approved plans for the Park Improvements. The area of the City Property where the Park Improvements are located shall be restored in accordance with the Approved Plans.

## **Article IV Termination**

This Agreement may be terminated by the mutual written agreement of the Parties. Either Party may terminate this Agreement if the other Party breaches any of the terms and conditions of this Agreement, and such breach is not cured by such Party within sixty (60) days after receipt of written notice thereof.

## **Article V Miscellaneous**

**5.1 Notice.** All notices required by this Agreement shall be in writing and addressed to the following, or such other Party or address as either Party designates in writing, by certified mail, postage prepaid or by hand delivery.

**If to City:**

City of Allen, Texas  
Attn: City Manager  
305 Century Parkway  
Allen, Texas 75013

**With Copies to:**

Director of Parks and Recreation  
City of Allen, Texas  
305 Century Parkway  
Allen, Texas 75013

Director of Engineering  
City of Allen, Texas  
305 Century Parkway  
Allen, Texas 75013

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
500 N. Akard, Suite 1800  
Dallas, Texas 75201

**If to Developer:**

JBGL Chateau, LLC  
Attn: Jed Dolson  
2805 N. Dallas Pkwy, Suite 400  
Plano, Texas 75093

**With Copies to:**

5.2 **Compliance with Laws.** Developer shall fully comply with all local, state and federal laws, including all codes, ordinances and regulations applicable to this Agreement and the work to be done thereunder, which exist or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment.

5.3 **Successors and Assigns.** All obligations and covenants of the Developer under this Agreement shall be binding on the Developer, its successors and permitted assigns. The Developer may not assign this Agreement without the prior written consent of the City.

5.4 **Severability.** In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall be enforceable and shall be enforced as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

5.12 **Governing Law.** The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

5.13 **Entire Agreement.** This Agreement embodies the complete agreement of the Parties, superseding all oral or written, previous and contemporary agreements between the Parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be

modified without written agreement of the Parties to be attached to and made a part of this Agreement.

5.14 **Incorporation of Recitals.** The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

5.15 **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

5.16 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**SIGNATURE PAGE TO FOLLOW**

**SIGNED AND AGREED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF ALLEN, TEXAS**

By: \_\_\_\_\_  
Peter H. Vargas, City Manager

**ATTEST:**

\_\_\_\_\_  
Shelley B. George, TRMC, City Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Peter G. Smith, City Attorney

**SIGNED AND AGREED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**DEVELOPER:**

**JBGL CHATEAU, LLC,  
A TEXAS LIMITED LIABILITY COMPANY**

By: \_\_\_\_\_  
Jed Dolson, President

[illegible]

**EXHIBIT “B”  
PARK BUDGET**

Park Improvements <u>Twin Creeks Park (Phase II)</u>	
Design Elements from plans issued 06/07/2016	
<b>A. Hardscape Improvements</b>	
	<u>Description</u>
1	Grading and excavation
2	Playground equipment
3	Playground drainage
4	Playground edging
5	Playground safety surface
6	Restoration of existing pole barn
7	Pole barn concrete slab and plaza
8	BBQ grills
9	Picnic tables
10	5' wide decomposed granite trail
11	5' wide concrete sidewalk
12	8' wide concrete trail
13	Trash Receptacles
<b>B. Landscape and Irrigation Improvements</b>	
	<u>Description</u>
1	Clearing and grubbing
2	Fine grading
3	Irrigation expansion and restoration
4	Solid sod grassing
5	Hydro-mulch grassing
6	Ornamental grassing
7	Steel edging
<b>Total Park Improvements:</b>	
<b>Total City of Allen Contribution:</b>	
<b>Developer to Fund Remaining Expenses:</b>	