

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement ("Agreement") is entered into by and between the City of Lewisville, Texas, a home rule city and municipal corporation of Denton County, Texas, duly acting by and through its City Manager ("City") and XMPK, LLC ("Owner") (collectively "Parties").

W I T N E S S E T H:

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code ("Statute"), the City adopted a program for making economic development grants on June 20, 2016 ("Policy Statement"); and

WHEREAS, the Policy Statement constitutes appropriate guidelines and criteria governing economic development agreements to be entered into by the City as contemplated by the Statute; and

WHEREAS, in order to maintain and/or enhance the economic and employment base of the Lewisville area to the long-term interest and benefit of the City, in accordance with said Statute, the City desires to enter into this Agreement; and

WHEREAS, Owner owns all of that approximately 0.172 acre tract of land located at 234 E. Walters Street, in Lewisville, Texas, which is more particularly described by "Attachment A" attached hereto and made a part hereof (the "Land"); and

WHEREAS, Owner intends to construct certain Real Property Improvements (hereinafter defined) on the Land as described in Attachment B, Development Plan, attached hereto and made a part hereof; and

WHEREAS, Owner desires to enter into this Agreement pursuant to the Statute; and

WHEREAS, the City desires to provide, pursuant to the Statute, an incentive to Owner to construct the Real Property Improvements, as hereinafter defined, on the Land; and

WHEREAS, Owner agrees to construct the Real Property Improvements in a manner consistent with the Development Plan, as described in Attachment “B”, and the floor plans and elevations, as described in Attachment “C” attached hereto and made a part hereof; and

WHEREAS, the City finds that entering into this Agreement for the construction of the Real Property Improvements on the Land would promote local economic development by providing new housing and providing jobs related to the construction activities in developing the Land, and stimulate business and commercial activity within the municipality by enabling residents to live in the immediate area of Old Town Lewisville, a focus of business and commercial activity and development in the City, and would directly establish a public purpose; and

WHEREAS, the City has determined that the said Agreement contains sufficient controls to ensure that the above-mentioned public purposes are carried out in all transactions involving the use of public funds and resources; and

WHEREAS, the City Council finds that the Real Property Improvements sought are feasible and practicable and would be of benefit to the Land and to the City after the expiration of this Agreement.

NOW THEREFORE, the City, in consideration of the mutual benefits and promises contained herein and for good and other valuable consideration, the adequacy and receipt of which is hereby acknowledged, the Parties hereto do mutually agree as follows:

ARTICLE I TERM

1.1 The term of this Agreement (“Term”) shall commence on the date this Agreement is executed by the City (“Effective Date”) and shall continue in effect until December 31, 2020, or upon substantial completion of the Real Property Improvements as shown on Attachments B and C, unless sooner terminated as provided herein.

ARTICLE II DEFINITIONS

2.1 Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“**Agreement**” has the meaning set forth in the introductory paragraph of this document.

“**City**” has the meaning set forth in the introductory paragraph of this Agreement.

“**Clawback Event**” shall mean a failure by Owner to meet a material term or condition of Article V of this Agreement after the expiration of any applicable Cure Period, which may create a requirement for repayment of the grant outlined herein.

“**Cure Period**” has the meaning given in Article V of this Agreement.

“**Effective Date**” has the meaning given in Article I of this Agreement.

“**Event of Bankruptcy**” shall mean the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of such party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“**Force Majeure**” shall mean any contingency or cause beyond the reasonable control of Owner, including without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions (unless caused by acts or omissions of Owner), fire, explosion or flood, and strikes.

“**Land**” has the meaning set forth in the recitals to this Agreement.

“**Owner**” has the meaning set forth in the introductory paragraph of this Agreement.

“Real Property Improvements” shall mean a residential development comprised of six (6) attached single-family units designed in craftsman/cottage style architecture constructed on the Land and other ancillary facilities such as required parking and landscaping, more fully described in the submittals filed with the City, as generally shown in the Development Plan attached hereto as Attachment B and in the floor plans and elevations attached hereto as Attachment C.

“Street Escrow Fee” shall mean one-half of the costs associated with the improvement of the abutting unimproved street as more specifically defined in Chapter 9.5-72(a) of the City’s Code of Ordinances.

“Term” has the meaning set forth in Article I of this Agreement.

ARTICLE III GENERAL PROVISIONS

3.1 As soon as practical after the Effective Date of this Agreement, Owner shall commence with improving the Land by constructing the Real Property Improvements in accordance with Attachments B and C.

3.2 Owner shall substantially complete the Real Property Improvements by December 31, 2020.

3.2.1 The date of substantial completion of the Real Property Improvements shall be defined as the date that Owner receives a final certificate of occupancy permit on the Real Property Improvements from the City for all six (6) residential units.

3.2.2 In the event of Force Majeure or if, in the reasonable opinion of the City Manager, Owner has made substantial progress toward completion of the Real Property Improvements or is diligently pursuing completion of the Real Property Improvements, the City Manager may grant additional time as may be required.

3.3 During the Term of this Agreement, Owner shall be subject to all applicable City taxation not specifically abated or exempted, including but not limited to, sales tax and ad valorem taxation on land, inventory and supplies.

ARTICLE IV ECONOMIC DEVELOPMENT INCENTIVES

4.1 Fee Waivers.

4.1.1 Subject to the terms and conditions of this Agreement, the City agrees to waive the following:

- (a) the Street Escrow Fee due by Owner to the City for future improvements to Walters and Harris Streets; and
- (b) all fees normally collected at the time of issuance of a building permit for construction of new single-family residential units which are a part of the Real Property Improvements, except for water and sanitary sewer impact fees; and
- (c) park dedication requirements due by Owner at the time of platting the property; however, Owner is required to pay the Park Development fee per unit at the time of platting.

4.1.2 Notwithstanding any fee waiver, Owner must still obtain all permits required by city ordinance.

4.2 Grant. Subject to the terms and conditions of this Agreement, the City agrees to provide Owner with a grant in an amount equal to the water and sanitary sewer impact fee payments made by Owner to the City for the new single-family residential units which are a part of the Real Property Improvements (“Grant”).

4.2.1 The City shall collect, and Owner shall pay, water and sanitary sewer impact fees for every meter within the development as part of the issuance of building permits for the new single-family residential units.

4.2.2 Owner shall request payment in a letter addressed to the Director of Economic Development, showing the number of residential units completed and the impact fees paid for each unit.

- (a) Owner shall provide any additional documents needed for verification, as requested by the City, before payment can be made.
- (b) Any amount owed to Owner as allowed under the Grant shall be paid within thirty (30) days after the City receives written notice and proper documentation from Owner requesting payment. Payment shall be on a "per unit" basis following the issuance of the certification of occupancy for each unit.

ARTICLE V TERMINATION

5.1 This Agreement may be terminated upon any one of the following:

- (a) by written agreement of the Parties;
- (b) expiration of the Term;
- (c) by either Owner or the City if the other party breaches any material terms or conditions of this Agreement and such breach is not cured within sixty (60) days after written notice thereof (the "Cure Period") or so long as the breaching party commences curative action within such 60-day period and diligently pursues such curative action to a satisfactory completion;
- (d) by City, if Owner suffers an Event of Bankruptcy;
- (e) by City, if any impositions owed to the City or the State of Texas by Owner shall remain delinquent after the Cure Period; and
- (f) by Owner upon sixty (60) days prior written notice to the City.

5.2 Payment of Waived Fees. In the event the Agreement is terminated by the City pursuant to Section 5.1(c), (d), (e), or (f), a Clawback Event shall have been deemed to occur, and Owner shall immediately pay the City, within sixty (60) days of notice from the City, an amount equal to the economic development incentives provided herein to Owner by the City.

ARTICLE VI MISCELLANEOUS

6.1 The terms and conditions of this Agreement are binding upon the successors and assigns of all Parties hereto. This Agreement cannot be assigned by Owner unless written permission is first granted by the City Manager, which consent shall not be unreasonably withheld, so long as Owner's assignee agrees to be bound by all terms and conditions of this Agreement.

6.2 It is understood and agreed between the Parties that Owner, in performing its obligations thereunder, is acting independently, and the City assumes no responsibility or liabilities in connection therewith to third parties.

6.3 Owner further agrees that the City, its agents and employees, shall have reasonable rights of access to the Land and Real Property Improvements as required by law to inspect the Real Property Improvements in order to ensure that the construction of the Real Property Improvements is in accordance with all applicable agreements with the City, including this Agreement, and all applicable state and local laws and regulations, as well as the continuing right, subject to Owner's reasonable security, health and safety requirements, to inspect the Real Property Improvements up to twice in any year during the Term of this Agreement to ensure that the Real Property Improvements are maintained, operated, and occupied in accordance with all applicable agreements with the City, provided that with respect to matters concerning this Agreement (i) the City must give Owner reasonable prior written notice no less than two (2) days prior to any such inspection, and (ii) a representative of Owner shall have the right to accompany the agent or employee of the City who is conducting such inspection.

6.4 The City represents and warrants that the Land does not include any property that is owned by a member of the City Council having responsibility for the approval of this Agreement.

6.5 Notices required to be given to any party to this Agreement shall be given personally or by certified mail, return receipt requested, postage prepaid, addressed to the party at its address as

set forth below, and, if given by certified mail, shall be deemed delivered three (3) days after the date deposited in the United States' mail:

For City by notice to:

City of Lewisville
Attn: Economic Development Director
151 W. Church Street
P.O. Box 299002
Lewisville, Texas 75057

For Owner by notice to:

Mr. Henry Rahmani
XMPK, LLC
251 S Mill Street, Suite 130
Lewisville, Texas 75057

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

6.6 This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which in the aggregate shall constitute one agreement.

6.7 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

6.8 Whenever the context requires, all words herein shall be deemed to include the male, female, and neuter gender, singular words shall include the plural, and vice versa.

6.9 This Agreement was authorized by action of the City Council, authorizing the City Manager to execute the Agreement on behalf of the City.

6.10 No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

6.11 This Agreement may be modified or rescinded only by a writing signed by both Parties or their duly authorized agents.

6.12 Venue for any litigation arising from this Agreement shall lie in Denton County, Texas.

6.13 **OWNER AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY OWNER'S BREACH OF THIS AGREEMENT OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OR INTENTIONAL TORT COMMITTED BY OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT. THE PROVISIONS OF THIS PARAGRAPH 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. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

6.14 Nothing contained in this Agreement shall constitute a waiver of the City's governmental immunity.

6.15 This Agreement shall be considered drafted equally by both the City and Owner.

DATED this the _____ day of _____, 2019.

CITY OF LEWISVILLE, TEXAS

Donna Barron, City Manager

ATTEST:

Julie Worster, City Secretary

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

OWNER:

XMPK LLC

Henry Rahmani, Managing Partner

ATTACHMENT A

Property Description

ATTACHMENT B

Development Plan

PRELIMINARY PLANS

THIS DOCUMENT IS FOR
INTERIM REVIEW AND IS
NOT INTENDED FOR
CONSTRUCTION, BIDDING,
OR PERMIT PURPOSES.
G&A CONSULTANTS, F-1798
ROBERT JOHN DOLLAH, JR.,
P.E. #86898
DATE 6/22/2018

OWNER/DEVELOPER
XMPK, LLC
51 S. MILL ST., SUITE 130
LEWISVILLE, TX 75067
Ph. 469-396-9618
Contact: Benny Jafari

Revisions:



**SITE PLANNING CIVIL ENGINEERING PLANNING
CONSULTANTS, LLC**

111 Hillside Drive · Lewisville, TX 75057 · P: 972.436.9712 · F: 972.436.9715
144 Old Town Blvd. North, Ste 2 · Argyle, TX 76226 · P: 940.240.1012 · F: 940.240.1021
TBPE Firm No. 1798 TBPLS Firm No. 10047700

DRAWN BY: RLR Date: 06/22/2018 SCALE: 1"=10' JOB. No. **18208**

HARRIS TOWNHOMES

ATTACHMENT C

Floor Plans and Elevations

