

ORDINANCE NO. 20130131-017

AN ORDINANCE APPROVING THE NEGOTIATION AND EXECUTION OF A MANAGED GROWTH AGREEMENT FOR DEVELOPMENT OF A 196 ACRE TRACT LOCATED AT AVERY RANCH BOULEVARD AND DOUBLE EAGLE PASS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The Council finds that the 196 acre tract located at Avery Ranch Boulevard and Double Eagle Pass described in C8J-2008-0056(XT).MGA is a large, long-term project under Section 25-1-540 (*Managed Growth Agreements*).

PART 2. The Council authorizes the City Manager to negotiate and execute a Managed Growth Agreement ("MGA") between the City of Austin and Pearson Place at Avery Ranch, Ltd. in substantially the same form as the agreement and incorporated into this ordinance as Exhibit 1. The MGA is limited to the 196 acre tract located at Avery Ranch Boulevard and Double Eagle Pass as approved in C8J-2008-0056(XT).MGA, subject to any minor revisions approved in accordance with the MGA. To the extent the MGA conflicts with the City Code, the MGA shall be controlling.

PART 3. This ordinance takes effect on February 11, 2013.

PASSED AND APPROVED

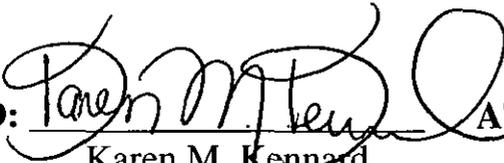
January 31, 2013

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Lee Leffingwell
Mayor

APPROVED: _____


Karen M. Kennard
City Attorney

ATTEST: _____

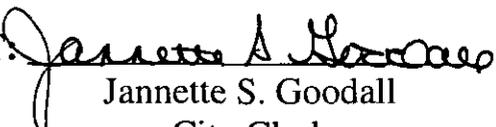

Jannette S. Goodall
City Clerk

EXHIBIT 1

DRAFT **MANAGED GROWTH AGREEMENT** **BETWEEN THE CITY OF AUSTIN AND PEARSON PLACE AT** **AVERY RANCH, LTD.**

This Managed Growth Agreement ("Agreement") Between the City of Austin, Texas ("City") and Pearson Place at Avery Ranch Ltd.. ("Pearson Place") is made and entered into by the City, a home rule municipal corporation acting by and through its duly authorized City Manager and Pearson Place. Pearson Place and the City may be referred to jointly as Parties or singly as "Party" in this Agreement.

RECITALS

1. On March 11, 2008, Pearson Place filed an application for a subdivision preliminary plan for the construction of single-family and multi-family units on property described in Exhibit A, which is attached hereto and incorporated herein ("the Property").
2. On October 7, 2008, the City approved Preliminary Plan No. C8J-2008-0056, which included 392 single-family residential lots, 2 multi-family lots and 17 lots for landscape, open space, drainage, pedestrian access and amenity center lots, including internal drives, water quality and detention ponds, and infrastructure on 196 acres ("the Project"). A portion of the Project (Section 1) has been final – platted and includes 108 lots, detention and water quality pond, and infrastructure improvements, which have been completed.
3. Pearson Place desires to extend the life of the approved preliminary plan for 5 years due to the size of the project and the numerous permits involved. By code, the preliminary plan will expire March 11, 2013. Pearson Place desires to extend the life of the preliminary plan until March 11, 2018.

NOW, THEREFORE, for and in consideration of the mutual covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and Pearson Place agree as follows:

A R T I C L E I **PURPOSE & LEGAL AUTHORITY**

Section 1.01 Purpose.

The purpose of this Agreement is to provide certainty that the Project will not be required to undergo design changes as a result of changes to City regulations over a long period of time required for Pearson Place to obtain the necessary approvals and complete the Project in phases.

Section 1.02 Legal Authority.

Section 25-1-540 of the City Code authorizes the execution of managed growth agreements for planning and developing large projects, long term projects, or any project having special benefits that are in the public interest. The Project is a large project situated on 196 acres with 41 single-family units and 2 multi-family sites and is a long term project.

Section 1.03 Expiration Date

Section 25-1-540 provides that a managed growth agreement may specify the time period during which a project may comply with the regulations in effect when the first application for the project is filed and establish an expiration date for each application necessary to complete the project. Section 25-4-62 of the Land Development Code states that preliminary plans within the desired development zone expire 5 years from the date of original application.

ARTICLE II
TERMS

Section 2.01 Original Regulations; Expiration Date

Subject to Section 2.03 below, Pearson Place may construct the Project to comply with City regulations in effect on March 11, 2008, which is the day the application was originally submitted under the Land Development Code ("Original Regulations"). The expiration date of Preliminary Plan No. C8J-2008-0056 for purposes of Chapter 25-4-62 of the City Code and the expiration date of the Project for purposes of Article 12 of Chapter 25-1 of the City Code shall be March 11, 2018.

Section 2.02 Revisions to the Preliminary Plan

Minor revisions to the Project shall be permitted in accordance with the City Code and City regulations. However, Pearson Place may not construct any improvements on the Property that the City Manager determines to vary substantially from the Project as defined by Preliminary Plan No. C8J-2008-0056 without forfeiting the rights granted under this Agreement to develop the Project under Original Regulations. This Agreement does not abridge the rights of Pearson Place or its successors (including homebuilders who acquire one or more home sites for resale to third parties) to sell and convey home sites within the Project.

Section 2.03 Exceptions from Right to Develop Under Original Regulations

In this section Pearson Place agrees to comply with City regulations adopted after March 11, 2013 as they pertain to:

- a. erosion and sedimentation controls;
- b. uniform building, fire, electrical, plumbing, or mechanical codes adopted by recognized national code organizations or local amendments to those codes enacted to address imminent threats of destruction of property or injury to persons;
- c. regulations to prevent the imminent destruction of property or injury to persons that do not affect landscaping, tree preservation, open space, or park dedication, lot size or dimensions, lot coverage, building size, residential or commercial density, or timing of the project, or that change development permitted by a restrictive covenant required by the City.

A R T I C L E I I I
M I S C E L L A N E O U S P R O V I S I O N S

Section 3.01 Notice.

It is contemplated that the Parties will contact each other concerning the subject matter of this Agreement. However, any formal notice or communication required to be given by one Party to another by this Agreement ("Notice ") shall be given at the addresses below for the Parties.

Notice may be given by: (1) delivering the Notice to the Party to be notified; (2) by depositing the Notice in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; or (3) by sending the Notice by telefax with confirming copy sent by mail to the Party to be notified.

Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective after the earlier of the date of actual receipt or three days after the date of the deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified or purposes of Notice, the addresses of the Parties shall, until changed as provided in this section, be as follows:

City of Austin: City Manager
 P.O. Box 1088
 Austin, Texas 78767

with required copy to: City Attorney
 P.O. Box 1088
 Austin, Texas 78767

Owner

Pearson Place at Avery Ranch Ltd. (Gary L. Newman)
7811 RR 2338
Georgetown, TX 78628

The Parties may change their addresses for Notice purposes by providing five days written notice of the changed address to the other Party.

If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating Notice is extended to the first business day following the Saturday, Sunday, or legal holiday.

Section 3.02 Severability.

The provisions of this Agreement are not severable. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to any person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the Parties agree and understand that the omission of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement would frustrate the purpose of this Agreement, and, therefore, in that event, this Agreement shall terminate.

Section 3.03 Waiver.

Any failure by a Party to the Agreement to insist on strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver of the provision or of any other provision of the Agreement. A Party has the right at any time to

insist on strict performance of any of the provisions of this Agreement.

Section 3.04 Applicable Law and Venue.

The construction and validity of this Agreement shall be governed by the laws of the State of Texas (without regard to conflict of laws principles). Venue shall be in Travis County, Texas.

Section 3.05 Incorporation of Exhibits.

All Exhibits attached to or referred to in this Agreement are incorporated into this Agreement by reference for the purposes set forth in this Agreement.

Section 3.06 Assignability, Successors, and Assigns.

This Agreement is not assignable by Pearson Place or the City without the prior written consent of the City Council or Pearson Place.

The Agreement shall be binding on and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

Section 3.07 Amendment.

This Agreement may only be amended in writing on the approval of the City Council and Pearson Place.

ARTICLE IV
DEFAULT AND REMEDIES FOR DEFAULT

Section 4.01 Default.

On the occurrence, or alleged occurrence, of an event of default, the non-defaulting Party shall send the defaulting Party notice of its default or alleged default. Except as otherwise specifically provided in this Agreement, the defaulting Party must cure its default within 30 days following the notice of the receipt of the default, or, must begin to cure the default within 14 days following receipt of the notice of default and diligently pursue the cure to completion within 50 days of receipt of the notice of default. If the defaulting Party fails to abide by these deadlines, the non-defaulting Party shall have all rights and remedies available in law and equity and all rights and remedies provided in this Agreement. All of these rights and remedies shall be cumulative.

This Agreement shall be effective on the date it has been signed by both Parties.

Pearson Place

By: _____

Name: _____

Title: _____

Date: _____

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me _____, Notary Public, on this day personally appeared _____ of _____, a _____, known to me through valid identification to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on _____, 2013.

Notary Public

APPROVED AS TO FORM:

CITY OF AUSTIN:

By: _____
Brent Lloyd
Assistant City Attorney

By: _____
Sue Edwards
Assistant City Manager

Date: _____

EXHIBIT A

"The Property"

195.563 acres of land out of the Rachel Saul Survey, abstract no. 551, (see attached preliminary plan), save and except Pearson Place Section 1 Subdivision as recorded in Cabinet GG, Slide 139 Williamson County Deed Records