

ECONOMIC DEVELOPMENT AND LANDSCAPE MAINTENANCE AGREEMENT

This **ECONOMIC DEVELOPMENT AND LANDSCAPE MAINTENANCE AGREEMENT (“Agreement”)**, effective as of _____, 2024 (the “Effective Date”), is made by and between the **TOWN OF WESTLAKE**, a general law municipal corporation of the State of Texas (“Town”), acting by and through its duly authorized representative, and **GRANADA HOMEOWNERS’ ASSOCIATION**, (“Association”), a Texas _____, acting by and through its duly authorized representative.

Whereas, the Town desires to promote economic development for the benefit of its citizens, property owners, and visitors; and,

Whereas, the entryways and landscape corridors into the Town are an important component in promoting the Town’s economic development goals and objectives; and,

Whereas, the Town and Association entered into that certain Economic Development and Landscape Maintenance Agreement dated _____, 2021 (The “Original Agreement”); and,

Whereas, the areas described in the Agreement serve an important public purpose in the Town’s economic development goals and objectives; and,

Whereas, the Town and the Association hereby desire to terminate the Original Agreement and, in its place, enter into this Agreement; and,

Whereas, this Agreement, and the public funds to be expended, serve a public purpose, and, is authorized by Chapter 380 of the Texas Local Government Code.

SECTION 1 DESCRIPTION OF PROPERTY

1.01 The Town and Association hereby agrees to provide, furnish and perform the Town Services and Association Services, as hereinafter defined and set forth in Section 2 of this Agreement, on the Town-owned right-of-way located on Davis Boulevard as further identified in Exhibit A., attached hereto and incorporated herein for all purposes (the “Town Area”)

SECTION 2 DUTIES AND RESPONSIBILITIES

2.01 Association shall, at its sole cost and expense, by deed, transfer the ownership of the identified property in Exhibit A referred to in this agreement as “Town Property” to the Town of Westlake within 100 days of the signing of this agreement by both parties in accordance with this Agreement and all applicable laws.

2.02 Association represents that it has or will secure, at its own expense, all surveys, title work or appraisals necessary to transfer the ownership of the property defined in Exhibit A in accordance

with the requirements of this Agreement and the Town. In return the Town will perform the following items and shall be referred to as "Town Services"

- A. Maintain and operate irrigation systems within the Town Area, maintain all plantings, and grasses, and any associated additions to the Town Area as applicable Town ordinances, rules and regulations.
- B. Town will perform all services, and costs necessary to separate the irrigation systems between the Town Area and the Association Area if required;
- C. Town shall irrigate and maintain the Town Area;
- D. Town will maintain and repair all shade structures and water features in the Town Area;

2.03 In the event that any Town-owned property, including, but not limited to, utilities, park improvements, equipment, turf, and the like are damaged or destroyed by the Association during the performance of the Association Services, Association shall be solely responsible for all repairs or replacements and any costs related thereto. Any damage by Association shall be repaired or replaced by Association to the reasonable satisfaction of the Town within thirty (30) calendar days after the Town sends written notice of such damage or within such time as agreed to otherwise by the parties in writing. If the Association fails to remedy the damages in the time set forth above, then the Association agrees to reimburse the Town for any costs incurred by the Town in repairing or replacing such damage, with any such amount to be due and payable to the Town within thirty (30) calendar days after the Town sends a written invoice to the Association detailing such costs.

2.04 The Town shall, from the transfer of land ownership, pay 60% of all landscape maintenance costs associated with maintaining of the "Town Area" including the maintenance required for all water features. At the end of the 100-day period if the Association has not transferred the ownership of the Town Area to the Town of Westlake this agreement is null and void and the Town Area will be governed by the previous landscape agreement between the Association and the Town.

**SECTION 3
TERM OF AGREEMENT**

3.01 This Agreement shall commence on the Effective Date and, unless terminated earlier in accordance with this Agreement and will go forward in perpetuity.

**SECTION 4
ALTERATIONS AND ADDITIONS**

4.01 Association shall not make or cause to be made any alterations, additions, or improvements to Town Area without the prior written consent of the Town. Association shall present to the Town any plans and specifications for such alterations, additions, and improvements at the time such approval is sought.

**SECTION 5
INDEMNIFICATION**

5.01 ASSOCIATION COVENANTS AND AGREES TO, AND DOES HEREBY, INDEMNIFY AND HOLD HARMLESS AND DEFEND THE TOWN, ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL SUITS OR CLAIMS FOR DAMAGES OR INJURIES, INCLUDING DEATH, TO ANY AND ALL PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH ANY GROSSLY NEGLIGENT ACT OR GROSSLY NEGLIGENT OMISSION ON THE PART OF THE ASSOCIATION, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES OR SUBCONTRACTORS, AND THE ASSOCIATION DOES HEREBY ASSUME ALL LIABILITY AND RESPONSIBILITY FOR INJURIES, CLAIMS OR SUITS FOR THE DAMAGES TO PERSONS OR PROPERTY, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, OCCURRING DURING OR ARISING OUT OF THE PERFORMANCE OF THIS CONTRACT AS A RESULT OF ANY GROSSLY NEGLIGENT ACT OR GROSSLY NEGLIGENT OMISSION ON THE PART OF THE ASSOCIATION, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES OR SUBCONTRACTORS. SUCH INDEMNIFICATION SHALL INCLUDE WORKERS' COMPENSATION CLAIMS OF OR BY ANYONE WHATSOEVER IN ANY WAY RESULTING FROM OR ARISING OUT OF ASSOCIATION'S WORK, SERVICES AND OPERATIONS IN CONNECTION HEREWITH, INCLUDING OPERATIONS OF SUBCONTRACTORS.

5.02 ASSOCIATION SHALL LIKEWISE INDEMNIFY AND HOLD HARMLESS THE TOWN FOR ANY AND ALL INJURY OR DAMAGE TO TOWN PROPERTY ARISING OUT OF OR IN CONNECTION WITH ANY AND ALL GROSSLY NEGLIGENT ACTS OR GROSSLY NEGLIGENT OMISSIONS OF ASSOCIATION, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES OR INVITEES.

**SECTION 6
LIENS**

6.01 Association agrees to satisfy any lien that may be on the Town Area. In the event that a lien is filed for any work or improvements made prior to this agreement, as a result of any action of Association, Association will take all necessary steps to bond around or remove the lien within ten (10) days of its filing.

**SECTION 7
TERMINATION AND DEFAULT**

7.01 The Town may terminate this Agreement without cause during the 60 day period between execution of this document and the transfer of ownership of the Town Area with a 30 day notice in writing to the other party.

7.02 Association shall be in default under this Agreement if Association breaches any term or condition of this Agreement and/or the transfer of ownership of Town Area was not executed within 60 days of the execution of this agreement.

**SECTION 8
NOTICES**

8.01 Any notice required shall be sufficient if deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested, and addressed to the other party as follows:

TOWN:

Town of Westlake
1500 Solana Blvd.
Bldg. 7, Suite 7200
Westlake, Texas 76262

ASSOCIATION:

Attn: _____

_____, Texas _____

8.02 Mailing of all notices pursuant to this Section shall be deemed sufficient if mailed postage prepaid, certified mail, return receipt requested, and addressed as specified above, unless either party has been notified in writing of any changes to such address(es) or addressee(s). All time periods related to any notice requirements specified in this Agreement shall commence on the date notice is mailed, unless otherwise set forth in this Agreement.

**SECTION 9
VENUE AND JURISDICTION**

9.01 If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division. This Agreement shall be construed in accordance with the laws of the State of Texas.

**SECTION 14
ASSIGNMENT**

9.01 Association shall have the right to subcontract for the provision of any Services authorized hereunder. The existence of a subcontract shall not relieve Association of any responsibility or liability to the Town under this Agreement. Otherwise, Association may not assign, transfer or convey any of its duties and responsibilities under this Agreement to another party without the advance written approval of the Town and execution by such party of a written agreement with the Town under which such party agrees to be bound by the duties and obligations of Association under this Agreement.

**SECTION 10
FORCE MAJEURE**

10.01 If either Party is unable, either in whole or part, to fulfill its obligations under this Agreement due to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; wars; blockades; insurrections; riots; epidemics; public health crises; earthquakes; fires;

floods; restraints or prohibitions by any court, board, department, commission, or agency of the United States or of any state; declaration of a state of disaster or of emergency by the federal, state, county, or Town government in accordance with applicable law; issuance of an Imminent Threat Alert or Elevated Threat Alert by the United States Department of Homeland Security or any equivalent alert system that may be instituted by any agency of the United States; any arrests and restraints; civil disturbances; or explosions; or some other reason beyond the Party's reasonable control (collectively, "Force Majeure Event"), the obligations so affected by such Force Majeure Event will be suspended only during the continuance of such event. If a Force Majeure Event occurs, the Town may, in its sole discretion, close or postpone the opening of its community centers, parks, or other Town-owned and operated properties and facilities in the interest of public safety and operate them as the Town sees fit. Association hereby waives any and all claims it may have against the Town for damages resulting from any such Force Majeure Event.

SECTION 11 NO WAIVER

11.01 The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

SECTION 12 INTERPRETATION

12.01 In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

SECTION 13 CAPTIONS

13.01 Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

SECTION 14 ENTIRETY OF AGREEMENT

14.01 This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the Town and Association as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent it is in conflict with any provision of this Agreement.

SECTION 15 ELECTRONIC SIGNATURES AND COUNTERPARTS

15.01 This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

15.02 This Agreement may be executed by electronic signature, which will be considered as an original signature for all purposes and have the same force and effect as an original signature. For these purposes, “electronic signature” means electronically scanned and transmitted versions (e.g. via pdf file or facsimile transmission) of an original signature, or signatures electronically inserted via software such as Adobe Sign.

SECTION 16
ENTIRE UNDERSTANDING

16.01 This Agreement, including all exhibits attached hereto, constitutes the final, entire, and complete agreement between Association and the Town and supersedes any prior and contemporaneous negotiations, understandings, representations, and agreements between the parties. Any prior or contemporaneous oral or written agreement that purports to vary from the terms hereof shall be void. This Agreement cannot be modified or amended without the written consent of all the parties hereto and attached and made a part of this Agreement.

16.02 Neither this Agreement nor any provision hereof may be modified except by an instrument in writing, signed by the parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

EXECUTED to be effective on the Effective Date set forth above.

TOWN OF WESTLAKE

GRANADA _____ ASSOCIATION
a Texas _____ corporation

By: _____

By: _____

President

EXHIBIT “A”
TOWN AREA

The exterior of Granada is all on one lot with a legal description of GRANADA Block A Lot 85X including the surface drainage collection area east of the intersection of Solana and Dove on the north side of Dove adjacent to the Southern Fountain/Park.

The publicly accessible land that will be transferred to the Town is within Block A Lot 85 but does not include the entire Lot.

The publicly accessible land within GRANADA Block A Lot 85X that is to be transferred to town ownership is that land adjacent to Davis Blvd extending from Solana Blvd to Dove Road from the back of curb to base of the exterior wall of Granda and includes the following and is depicted below.

- Southern fountain/park with address of 2050 FM 1938 Davis Blvd
- Middle fountain/park with address of 2100 FM 1938 Davis Blvd
- Northern fountain/park with address of 2340 FM 1938 Davis Blvd

