

**DEVELOPMENT AGREEMENT FOR SUBDIVISION IMPROVEMENTS**  
**FOR**  
**WESTLAKE VENTANAS**

This Development Agreement (this “**AGREEMENT**”) is made and entered into on this **21<sup>ST</sup>** day of **JANUARY, 2025** (the “**EFFECTIVE DATE**”) by and between the Town of Westlake, Texas, a Type A General Municipality located in the State of Texas (the “**TOWN**”), and **OTTER PARTNERS, LP**, a Texas Limited Partnership duly incorporated in the State of **Texas** (the “**DEVELOPER**”) to establish the terms and conditions for designing and installing infrastructure and other related improvements for **WESTLAKE VENTANAS**, a residential development approved by Ordinance No. 994 by the Town Council on the **1<sup>ST</sup>** day of **APRIL, 2024** and subject to certain conditions as set forth in Ordinance No. 1001 approved by the Town Council on the **19<sup>TH</sup>** day of **AUGUST, 2024** (the “**DEVELOPMENT**” as further defined below). The Town and the Developer may also be referred to collectively as the “**PARTIES**”, or individually as a “**PARTY**”.

**WHEREAS**, the Developer either owns or will own certain real property more particularly described on **EXHIBIT “B”** attached hereto and incorporated herein by reference for all purposes (the “**PROPERTY**” as further defined below); and

**WHEREAS**, the Property is located within PD 1-2, Planned Development District 1-2, that is commonly known as “**WESTLAKE ENTRADA**”, as approved by Ordinance No. 703 by the Town Council on the **22<sup>ND</sup>** day of **APRIL 2013**; and

**WHEREAS**, pursuant to the provisions approved by Ordinance No. 703 by the Town Council on the **22<sup>ND</sup>** day of **APRIL 2013**, a development plan subject to review and approval by the Town Council is required, and such development plan was approved by Ordinance No. 720 by the Town Council on the **28<sup>TH</sup>** day of **OCTOBER 2013** (“**DEVELOPMENT PLAN**”); and

**WHEREAS**, the Development Plan was subsequently amended by Ordinance No. 830, as adopted by the Town on the **19<sup>TH</sup>** day of **JUNE 2017**; and

**WHEREAS**, the Development Plan was subsequently amended by Ordinance No. 918, as adopted by the Town on the **26<sup>TH</sup>** day of **OCTOBER 2020**; and

**WHEREAS**, the Development Plan was subsequently amended by Ordinance No. 934, as adopted by the Town on the **23<sup>RD</sup>** day of **AUGUST 2021**; and

**WHEREAS**, the Development Plan was subsequently amended by Ordinance No. 959, as adopted by the Town on the **5<sup>TH</sup>** day of **DECEMBER 2022**; and

**WHEREAS**, the Development Plan was subsequently amended by Ordinance No. 994, as adopted by the Town on the **1<sup>ST</sup>** day of **APRIL 2024**; and

**WHEREAS**, the Development Plan was subsequently amended by Ordinance No. 997, as adopted by the Town on the **3<sup>RD</sup>** day of **JUNE 2024**; and

**WHEREAS**, the Development Plan was subsequently amended by Ordinance No. 1001, as adopted by the Town on the **19<sup>TH</sup>** day of **AUGUST 2024**, including a revised Development Plan attached thereto as EXHIBIT “A” and included therein for all references and purposes; and

**WHEREAS**, the Development Plan amended by Ordinance No. 1001, as adopted by the Town on the **19<sup>TH</sup>** day of **AUGUST 2024**, included specific provisions relating to the Property including that the Architectural Standards (further defined below) shall be “according to the development guidelines and standards for The Knolls Development” and that the amendment to

the Development Plan for the development of this portion of Westlake Entrada shall further reflect approval provided 959, as adopted by the Town on the 5<sup>TH</sup> day of **DECEMBER 2022**; and

**WHEREAS**, the Development Plan amended by Ordinance No. 1001, included conditions that apply to “all further applications for development that are submitted pursuant to the Entrada Development Plan be submitted to address and provide for the following in future site plan / applications: (a) [t]he need to provide off-street parking for delivery trucks to ensure fire lanes are open; and (b) [t]he provision of view corridors (visibility easements) to ensure the safety of residents backing out of driveways”; and

**WHEREAS**, the Developer intends to develop (or cause to be developed) the Property as the Development in strict accordance with the rules, regulations, and provisions as set forth in Ordinance No. **994**, approved by the Town on the 1<sup>ST</sup> day of **APRIL, 2024** and those certain terms and conditions for development as set forth in Ordinance No. 1001, approved by the Town Council on the 19<sup>TH</sup> day of **AUGUST, 2024**; and

**WHEREAS**, the Parties desire to clarify certain rules and regulations of the Ordinance No. 994, approved by the Town on the 1<sup>ST</sup> day of **APRIL, 2024**, for there to be certain assurance in the development requirements for the Property, including incorporating agreed upon standards for the installation of infrastructure and other public improvements as well as building materials and aesthetic methods for the design and construction of buildings and other structures within the Development, while recognizing the Developer’s reasonable expectations in the development of the Property, as more fully described herein.

**NOW, THEREFORE**, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties covenant and agree as follows:

ARTICLE I.

**DEFINITIONS**

**PARAGRAPH 1.01. “DEVELOPMENT”** shall mean the construction of **51** single-family residential dwelling units and other accessory structures as approved in Ordinance No. 994, approved by the Town Council on the **1<sup>ST</sup>** day of **APRIL, 2024**, and subject to those certain terms and conditions for development as set forth in Ordinance No. 1001, approved by the Town Council on the **19<sup>TH</sup>** day of **AUGUST, 2024**.

**PARAGRAPH 1.02. “PROPERTY”** shall mean the **15.2 +/-** acres of real property, more or less, located wholly within Tarrant County and on which the Development shall be located.

**PARAGRAPH 1.03. “TOWN ENGINEER”** shall mean the person appointed by the Town and that is responsible for reviewing and approving engineering plans and related technical documents for the Town.

**PARAGRAPH 1.04. “TOWN MANAGER”** shall mean the Town Manager of the Town, or their designee.

ARTICLE II.

**IMPROVEMENTS**

**PARAGRAPH 2.01.** The Developer shall provide, at its own expense, all the engineering services required for the Development and Improvements (as defined in this Article II of this Agreement). Engineering services shall be performed by a professional engineer that is registered in the State of Texas. Such engineering services shall conform in all respects to the Town's engineering and design standards. Engineering services shall include, but shall not be limited to: surveys; designs; plans and profiles; estimates; construction supervision; and furnishing necessary documents in connection therewith as requested by the Town Manager and / or the Town Engineer. All engineering plans submitted shall be prepared by the Developer's Engineer, and such engineer plans shall be subject to the review, the approval, and the stamped acceptance of the Town Engineer. The Town Engineer's review and acceptance does not relieve the Developer or the Developer's engineer of the responsibility for design and construction. Further, the Developer's Engineer shall be a licensed engineer in the State of Texas.

**PARAGRAPH 2.02.** Construction of all the Improvements shall be in strict conformance with the plans to be prepared by the Developer (or on behalf of the Developer) and reviewed and accepted by the Town Engineer, in accordance with all policies, standards, and specifications that are adopted by the Town relating thereto. The Town Engineer's review and acceptance of the plans shall not be construed to limit or affect the Developer's responsibility for design and construction of the Improvements in whole or in part.

**PARAGRAPH 2.03.** The Developer shall employ, at its own expense, a qualified testing company, previously approved by the Town, to perform all testing of materials or construction that may be required by the Town and shall furnish copies of test results to the Town Engineer.

**PARAGRAPH 2.04.** At all times during the construction of the Improvements, the Town Manager shall have the right, but not the obligation or responsibility, to inspect the materials and

their workmanship; and the Developer shall ensure (or shall cause to be ensured) that all materials and work conform to the approved plans and specifications. Any material or work not conforming to the approved plans and the Town's engineering standards shall promptly be removed or replaced to the satisfaction of the Town Manager and / or the Town Engineer and at the sole expense of the Developer.

**PARAGRAPH 2.05.** The Developer shall be responsible for mowing all grass and weeds and otherwise reasonably maintaining all land within the Development which has not been sold to third parties. After 15 days' written notice from the Town Manager, and should the Developer fail in this responsibility to mow all grass and weeds, then at the sole discretion and option of the Town Manager, the Town Manager shall be authorized to: (i) issue (or cause to be issued) a citation to the Developer in the amount of \$2,000.00 ("TWO THOUSAND AND 00/100 UNITED STATES DOLLARS"), with each day that the grass and weeds are not mowed constituting a separate and distinct infraction; or (ii) the Town Manager may contract (or cause to be contracted) a landscaping company to mow all grass and weeds and, for this service, shall bill the Developer for costs. In the event the costs remain unpaid, the Town Manager shall issue a construction stop work order or withhold the issuance of any building permits until all costs are paid by the Developer.

**PARAGRAPH 2.06.** The obligations and responsibilities of the Developer as established by the terms and conditions of this Agreement for the construction of Improvements shall be performed and completed by the Developer no later than two (2) years from the issuance of the notice to proceed by the Town Manager for construction of Improvements, and proper application for acceptance of the Improvements shall be made by such date.

**PARAGRAPH 2.07.** The Improvements shall not be considered complete until the Town Engineer has certified to the Town, in writing, that the Improvements have been completed in strict conformance with the plans as accepted by the Town.

**PARAGRAPH 2.08.** Prior to the Town's acceptance of the Improvements, the Developer shall prepare and furnish a sworn affidavit, signed by an authorized representative of the Developer that the Improvements completed have been paid for, in full, by the Developer. The Developer shall be solely responsible for the information so provided on the affidavit. Said written certification shall be reviewed by the Town, but the Town, including its employees, shall assume no responsibility or liability to any party regarding the veracity of the information so provided.

**PARAGRAPH 2.09.** Prior to the Town accepting the Improvements, either in whole or in part, the Developer shall provide the Town with reproducible "as constructed" drawings, certified as accurate by the Town Engineer. All such drawings shall be provided in a digital format that is acceptable to the Town Engineer for review and approval.

**PARAGRAPH 2.10.** The Developer shall be solely responsible for all permit fees related to construction or installation of the Improvements. The permit fees shall include all fees contained in the Code of Ordinances of the Town and the most recent fee schedule adopted by the Town.

**PARAGRAPH 2.11.** Prior to commencing the construction of any Improvements agreed upon herein, the Developer shall acquire at its own expense clear and sufficient title to streets and easements, free and clear of any liens or encumbrances on all lands and facilities other than the Developer's development loan, if any, traversed by the proposed Improvements. All such streets and easements shall be private; and be permanently dedicated or conveyed to the Homeowners' Association ("**HOA**").

**PARAGRAPH 2.12.** Prior to the final acceptance of those portion of the Improvements that will be public by the Town, the Developer shall provide a maintenance bond for a period of two (2) years as set forth in the Code of Ordinances of the Town. The Developer shall submit the following for review, consideration, and possible action by the Town Council: Development covenants, conditions and restrictions to be enforced by the HOA, which should include HOA dues, duties and powers, transitional details providing for an orderly transition from the declarant to the HOA, and Town review of HOA dues to provide for adequacy of funding of maintenance of private infrastructure to Town standards by the HOA; homebuilder requirements and obligations; architectural design guidelines as described in Ordinance No. 994 , approved by the Town Council on the 1<sup>ST</sup> day of **APRIL, 2024**; and cluster mailbox designs and locations if applicable. Said items shall be approved by the Town Council prior the release of any building permits for the Development.

**PARAGRAPH 2.13.** In accordance with the Code of Ordinances of the Town, all existing overhead electric utility lines within and immediately adjacent to the Development shall be buried underground at the Developer’s sole expense to the extent permitted by the adjacent landowners. All overhead electric utility lines shall be buried prior to final acceptance of public improvements.

**PARAGRAPH 2.14.** There shall be no construction, grading, or other clearing activities permitted to commence until a notice to proceed is issued by the Town Manager.

**PARAGRAPH 2.15.** Prior to the issuance of the notice to proceed, the Developer shall submit (or shall cause to be submitted) an erosion control plan to the Town Manager and the Town Engineer for review and approval. The erosion control plan shall meet all requirements of the Code of Ordinances of the Town and additional conditions required by the Town Manager and / or the Town Engineer. Further, it is expressly acknowledged that there shall be no inspections scheduled,



and none shall be conducted unless and until the requisite Storm Water Pollution Prevention Plan (“SWPPP”) has been submitted and approved and the applicable inspections in relation to the SWPPP have been passed by the appropriate governmental agency or authority.

**PARAGRAPH 2.16.** In addition to the Town Manager, employees and agents of the Town shall have unrestricted access to the Development for official business, in perpetuity, including but not limited to construction inspections and general inspections of the condition of the Development and utilities maintenance.

**PARAGRAPH 2.17.** A left turning lane, constructed at the sole expense of the Developer, shall be provided along the eastbound portion of Solana Boulevard adjacent to this Development. Prior to the construction of such left turning lane, all the engineering schematics and designs shall be submitted to the Town Manager and the Town Engineer for review and approval. Engineering schematics and designs related to the left turning lane shall meet all requirements of the Town of Westlake and shall be accepted as part of the Improvements as set forth in this Agreement prior to the Developer (or any builders or any other third-party agents and representatives of the Developer) making any application for a building permit within this Development.

**PARAGRAPH 2.18.** Prior to the issuance of a building permit, the Developer is expressly prohibited from grading (or causing to be graded) any individual lots for residential use. However, the Developer is authorized to reasonably grade for roads and infrastructure and for staging areas. All the graded areas shall comply with the applicable provisions in Chapter 36 of the Code of Ordinances of the Town and all such plans shall be submitted to the Town Manager and the Town Engineer for review and approval prior to the disturbance of any land. The Town Manager may issue a stop work order for any grading activities that are in violation of any federal or state law, any ordinances adopted by the Town, and any terms and conditions of this Agreement. Nothing

contained in this Agreement shall be construed to prevent the Town Manager from issuing an early grading permit for residential lots, provided, however, that all erosion plans, drainage plans, tree surveys, tree protection plans, and other related plans, documents, and drawings for residential lots as required by the Town Engineer in accordance with the applicable provisions of the Code of Ordinances of the Town have been reviewed and approved.

**PARAGRAPH 2.19.** Prior to the issuance of any building permit, the Developer shall pay to the Town (or cause to be paid to the Town) the parkland dedication fees. The parkland dedication fees shall be calculated by the Town Manager and furnished to the Developer prior to making any application for a building permit.

**PARAGRAPH 2.20.** Prior to the issuance of any building permit for this Development, the Developer is expressly prohibited from grading (or causing to be graded) any individual lots for residential use. However, the Developer is authorized to reasonably grade for staging areas to be depicted on grading plans to be submitted to the Town Manager for review and approval as set forth in Chapter 36 of the Code of Ordinances of the Town and any other applicable code, ordinance, or standard adopted by the Town. The Town Manager may issue a construction stop work order for any grading activities that are in violation of any federal or state law, any ordinances adopted by the Town, and any violations of the terms and conditions of this Agreement. The Town Manager shall be further authorized to issue (or cause to be issued) citations for any violation of any ordinances adopted by the Town regulating erosion and grading activities.

**PARAGRAPH 2.21.** The HOA (and its successor) shall be responsible for maintaining all public and private open space within the Development. The HOA (and its successor) shall also be responsible for maintaining all property adjacent to the Development fronting Solana Boulevard, including the right-of-way, the easements between the lot line and the street curb, and all retaining

walls, signs, and landscaping. All such public and private space as described in Paragraph 2.21 of this Agreement shall be submitted to the Town Manager for review and approval prior to submittal of a final plat by the Developer.

**PARAGRAPH 2.22.** Notwithstanding any of the paragraphs above in Article II of this Agreement, or any other paragraph, sentence, or clause of this Agreement:

A. Consistent with the conditions specified in Ordinance No. 1001, as approved by the Town Council on the **19<sup>TH</sup>** day of **AUGUST, 2024**, no detailed site plan shall be approved unless and until the Developer provides (or shall cause to be provided) such site plan to sufficiently depict to the satisfaction of the Town Manager and the Town Engineer that all “view corridors to ensure the safety of residents backing out of driveways” are provided on each lot.

i. All garage doors facing a street shall be setback a minimum of 10 feet from the front lot line (for purposes of this Agreement, the term “**FRONT LOT LINE**” shall mean the lot line that borders a street and, for a corner lot bordering a street on two sides, where the measure of the minimum lot width is calculated).

ii. No portion of any building façade containing garage doors facing a Front Lot Line for the purposes of this Agreement shall project forward of the garage, except in configurations where the garage doors are “side-entry” and project forward from the main volume of the principal residential building on the lot.

B. All trees planted and located along both sides of the access easement for the private drive leading to the Town Hall shall be permanently protected and preserved by the HOA and its successor; such permanent protection and preservation shall be recorded by easement on the final plat and include a note expressing the same to the satisfaction of the Town Manager.

C. All visual screening walls to be located along Solana Boulevard shall be designed and constructed in accordance with the Entrada Design Guidelines as provided for in Ordinance No. 760, approved by the Town Council on the **14<sup>TH</sup>** day of **DECEMBER 2015** and subsequently amended by Ordinance No. 933, approved by the Town Council on the **23<sup>RD</sup>** day of **AUGUST 2021**.

D. All fencing along streets and the private driveway leading to the Town Hall shall be wrought iron and black.

E. Chain-link and barbed-wire fencing is not allowed within any lot or portion of this Development.

F. The Parties acknowledge and agree that Developer has paid (or caused to be paid) an amount of \$10,000.00 (“TEN THOUSAND AND 00/100 UNITED STATES DOLLARS”) for each detached single-family residence to be constructed within the Development. The Parties also acknowledge and agree that such payment for each detached single-family residence to be constructed within the Development shall be exclusively and solely used for the impact to and the benefit of Westlake Academy. No further payment shall be required for the impact to and the benefit of Westlake Academy.

G. All private streets serving this development shall be paved in concrete; all concrete paving materials shall meet applicable standards for engineering, public works, and public safety to the satisfaction of the Town Manager and Town Engineer.

### ARTICLE III.

#### **UTILITIES**

**PARAGRAPH 3.01.** The Developer shall furnish proof that proper arrangements have been made for the installation of water, sanitary sewer, gas, electric, and duct bank utilities.

**PARAGRAPH 3.02.** The Developer shall install water facilities to serve all platted lots within the Development in accordance with plans and specifications prepared by the Developer's engineer and released by the Town for construction and in accordance with Chapter 82, Article IX, Water Facilities, of the Town Code of Ordinances, as amended, and any other local, state and federal regulations. The Developer shall be solely responsible for all construction costs, materials, and engineering.

**PARAGRAPH 3.03.** The Developer shall connect all water utilities to the Town utility system.

**PARAGRAPH 3.04.** The Developer shall install sanitary sewer collection facilities to service all platted lots within the Development. Sanitary sewer facilities shall be installed in accordance with the plans and specifications to be prepared by the Developer's engineer and released by the Town. Further, the Developer agrees to complete this installation in accordance with Chapter 82, Article X, Wastewater Facilities, of the Town Code of Ordinances, as amended, and any other local, state and federal regulations. The Developer shall be responsible for all construction costs, materials, engineering, and permits.

**PARAGRAPH 3.05.** The Developer shall install drainage facilities to service all platted lots within the Development in accordance with the plans and specifications to be prepared by the Developer's engineer and released by the Town for construction. The Developer shall adhere to all applicable provisions contained in Chapter 82, Article X, Drainage Facilities, of the Town Code of Ordinances, as amended. The Developer shall fully comply with all Environmental Protection Agency ("EPA"), Federal Emergency Management Authority ("FEMA") and Texas Commission

on Environmental Quality (“TCEQ”) requirements relating to the planning, permitting and management of storm water which may be in force at the time that development proposals are being presented for approval to the Town. The Developer shall comply with all provisions of the Texas Water Code, as amended.

**PARAGRAPH 3.06.** In accordance with the Town’s Code of Ordinances, the Developer shall bury all utilities serving the development. Furthermore, all existing overhead utilities within, and adjacent to, the development shall be buried per the provisions contained within the Town’s Code of Ordinances prior to the final acceptance of public improvements.

#### ARTICLE IV.

### **BUILDING MATERIALS AND AESTHETICS**

**PARAGRAPH 4.01.** All buildings and structures designed and constructed as part of this Development shall be in accordance with the architectural standards set forth in the HOA Design Guidelines (“**ARCHITECTURAL STANDARDS**”). The Architectural Standards shall be the complete set of specific building material and aesthetics found in Ordinance No. 994 as approved by the Town Council on the **1<sup>ST</sup>** day of **APRIL, 2024**, for The Knolls Development, a copy of which is attached thereto and is included therein as EXHIBIT “C” for all purposes and references. All future development or modifications to buildings and structures within the Development shall be in conformance with and shall adhere to the Architectural Standards. The Parties acknowledge and agree that the Development is an area of architectural significance as contemplated by the provisions found in Chapter 3000 of the Texas Government Code, as amended. Also, the covenant to develop and modify buildings and structures within the Development in accordance with the

Architectural Standards is with the irrevocable and voluntary consent of the Developer in accordance with the provisions as found in Section 3000.002 (d) of the Texas Government Code, as amended. The Developer acknowledges and agrees that the consideration described herein shall constitute adequate consideration for such voluntary consent.

**PARAGRAPH 4.02.** Any request by the Developer, or their successors and assigns, or any property owner to modify or deviate from the Architectural Standards shall require a public hearing (e.g., a recommendation provided by the Planning and Zoning Commission and a decision made by the Town Council to approve, to approve with modifications, or to deny) pursuant to the Code of Ordinances for the Town. **FURTHER, IT IS ACKNOWLEDGED BY THE PARTIES THAT, WHERE THE PROVISIONS IN THE ARCHITECTURAL STANDARDS ARE SILENT, THE PROVISIONS IN THE PD 1-2, PLANNED DEVELOPMENT DISTRICT 1-2, AS AMENDED, SHALL GOVERN. WHERE THE PROVISIONS IN THE AFORESAID PD 1-2, PLANNED DEVELOPMENT DISTRICT 1-2, AS AMENDED, FOR WESTLAKE ENTRADA ARE SILENT, THEN THE APPLICABLE PROVISIONS OF THE CODE OF ORDINANCES FOR THE TOWN SHALL PREVAIL. UNLESS SPECIFICALLY STATED OTHERWISE IN ORDINANCE NO. 994 AS APPROVED BY THE TOWN COUNCIL ON THE 1<sup>ST</sup> DAY OF APRIL 2024, OR THE AFORESAID PD 1-2, PLANNED DEVELOPMENT DISTRICT 1-2 FOR WESTLAKE ENTRADA, IN THE EVENT OF ANY CONFLICT BETWEEN THOSE TWO (2) DOCUMENTS AND THE PROVISIONS OF THE CODE OF ORDINANCES FOR THE TOWN, THE PROVISIONS IN THE CODE OF ORDINANCES FOR THE TOWN SHALL GOVERN.**

**PARAGRAPH 4.03.** With respect to any buildings and structures designed or constructed on the Property and as part of the Development pursuant to this Agreement, the Developer hereby

waives any right, requirement or enforcement of the provisions of Section 3000.001-3000.005 of the Texas Government Code, as amended.

## ARTICLE V.

### **COMPLETION OF AGREEMENT**

This Agreement shall not be considered complete unless and until:

**PARAGRAPH 5.01.** All public improvements and infrastructure are finished, completed, and accepted by the Town.

**PARAGRAPH 5.02.** The lighting plan is reviewed, approved, and installed in accordance with said plan and accepted by the Town.

**PARAGRAPH 5.03.** All terms and conditions of this Agreement shall be satisfied.

**PARAGRAPH 5.04.** All Improvements shall be finished, completed, and accepted by the Town.

**PARAGRAPH 5.05.** The lighting plan as required and defined by applicable regulations in the Code of Ordinances of the Town is reviewed, approved, installed, and accepted by the Town.

**PARAGRAPH 5.06.** Record drawings for all streets, utilities, and other infrastructure in the Development, including street lighting, shall be (i) certified by the Developer's engineer and (ii) accepted by and filed with the Town Engineer and provided in the following format:

- a. Three (3) sets of record drawings;
- b. Digital record drawings with GIS spatial data and coordinates compatible with the latest version of ArcGIS Pro;



c. Digital record drawings compatible with the current version of AutoCAD;  
and;

d. Digital record drawings in PDF format.

**PARAGRAPH 5.07.** All fees required by the Town and all other entities with review and permitting jurisdiction for the Improvements or the Development shall have been paid.

**PARAGRAPH 5.08.** Original Maintenance Bonds shall have been provided and any other bonds required for the completion of the Improvements.

**PARAGRAPH 5.09.** Lien release(s), affidavits of all bills paid, and claims have been provided.

**PARAGRAPH 5.10.** All obligations and responsibilities of the Developer under the terms and conditions of this Agreement, Ordinance No. 994 as approved by the Town Council on the **1<sup>ST</sup>** day of **APRIL, 2024**, those certain terms and conditions for development as set forth in Ordinance No. 1001, approved by the Town Council on the **19<sup>TH</sup>** day of **AUGUST, 2024**, and any other codes, ordinances, regulations or standards adopted by the Town have been met.

## ARTICLE VI.

### **USE OF PUBLIC RIGHT-OF-WAY**

**PARAGRAPH 6.01.** The Parties agree that the Developer may provide unique amenities within public right-of-way, including but not limited to landscape, irrigation, lighting, patterned concrete, and other similar features for enhancement of the Development, subject to the review and approval of the Town Manager. The Town Manager may defer review and approval of the provision of unique amenities within the public right-of-way to the Town Council for their decision

(e.g., approve, approve with modifications, or deny). The Developer agrees to maintain these amenities until such responsibility is turned over to the HOA. The Developer, and their successors and assigns, acknowledge and understand that the Town is not responsible for the maintenance or replacement of these amenities under any circumstances, and further agrees to indemnify and hold harmless the Town and its employees and authorized agents from any and all damage, loss, or liability of any kind whatsoever by reason of injury to property or third person occasioned by the Developer's use of the public right-of-way with regard to these improvements and the Developer shall also, at their own cost and expense, defend and protect the Town and its employees and authorized agents against all such claims and demands.

## ARTICLE VII.

### **DEFAULT, TERMINATION AND FAILURE BY THE DEVELOPER TO MEET VARIOUS DEADLINES AND COMMITMENTS**

**PARAGRAPH 7.01. FAILURE TO PAY TOWN TAXES OR FEES.** An event of default shall occur under this Agreement if during the term hereof and after the expiration of any applicable notice and cure period any legally-imposed Town taxes or fees owed on, or generated by, the Developer or one of its Affiliates with regard to the Development become delinquent and Developer or the Affiliate does not either: (i) pay such taxes and any associated penalties within 30 days of receipt of notification of such delinquency; or (ii) has not commenced the legal procedures for protest and / or contest of any such taxes within 30 days of receipt of notification of such delinquency. If the default has not been cured by such time, the Town shall have the right

to terminate this Agreement by providing ten (10) days' written notice to the Developer and shall have all other rights and remedies that may be available to it under the law or in equity.

**PARAGRAPH 7.02. VIOLATIONS OF TOWN CODE, STATE OR FEDERAL LAW.**

An event of default shall occur under the terms and conditions of this Agreement if, during the term hereof and after the expiration of any applicable notice and cure period, that any written citation is issued to the Developer or their Affiliates due to the occurrence of a violation of a material provision of the Town Code of Ordinances with respect to the Development (including, without limitation, any violation of the Building Code, Fire Code, and any other violations related to the environmental condition of the Development or to matters concerning the public health, safety, or welfare) and such citation is not: (i) paid before it is delinquent; or (ii) the recipient of such citation does not properly follow the legal procedures for protest and/or contest of any such citation within the deadlines set forth in said citation. An event of default shall further occur under this Agreement if the Developer is in violation of any material state or federal law, rule or regulation on account of the Development, improvements in the Development or any operations thereon (including, without limitation, any violations related to: (i) the environmental condition of the Development; (ii) the environmental condition on other land or waters which is attributable to operations of the Development; or (iii) to other matters concerning the public health, safety or welfare related to the Development). Upon the occurrence of such default, the Town shall notify the Developer in writing and Developer shall have (i) thirty (30) calendar days to cure such default or (ii) if Developer has diligently pursued cure of the default but such default is not reasonably curable within thirty (30) calendar days, then such amount of time as determined by both Parties mutually and in good faith necessary to cure such default. If the default has not been fully cured by such time, the Town shall have the right to terminate this Agreement with ten (10) days notice

by providing written notice to the Developer and shall have all other rights and remedies that may be available to under the law or in equity.

**PARAGRAPH 7.03. GENERAL BREACH.** Unless stated elsewhere in this Agreement, the Developer shall be in default under this Agreement if the Developer breaches any material term or condition of this Agreement. In the event that such breach remains uncured after thirty (30) calendar days following receipt of written notice from the Town referencing this Agreement (or, if the Developer has diligently and continuously attempted to cure following receipt of such written notice but reasonably requires more than thirty (30) calendar days to cure, then such additional amount of time as is reasonably necessary to effect cure, as determined by both parties mutually and in good faith), the Town shall have the right to terminate this Agreement with ten (10) days' notice by providing written notice to Developer.

## ARTICLE VIII.

### **NO INDEPENDENT CONTRACTOR OR AGENCY RELATIONSHIP**

**PARAGRAPH 8.01.** It is expressly understood and agreed by the Parties hereto that the Developer shall not operate as a servant, contractor agent, representative or employee of the Town. The Developer shall have the exclusive right to control all details and day-to-day operations related to its operations and obligations that it is required to perform under the terms and conditions of this Agreement, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, licensees and invitees. The Developer acknowledges that the doctrine of respondeat superior will not apply as between the Town and the Developer, or the Town's officers, agents, employees, contractors, subcontractors, licensees, and invitees. Further,

the Developer agrees that nothing contained in this Agreement shall be construed as the creation of a partnership or joint enterprise between the Town and the Developer of any kind.

ARTICLE IX.

**INDEMNIFICATION AND INDEMNITY AGAINST NEGLIGENT DESIGN**

**PARAGRAPH 9.01. THE DEVELOPER, AT NO COST OR LIABILITY TO THE TOWN, AGREES TO DEFEND, INDEMNIFY AND HOLD THE TOWN, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AGENTS, ATTORNEYS, SERVANTS AND EMPLOYEES (TOGETHER WITH THE TOWN, EACH A “TOWN INDEMNIFIED PERSON”) HARMLESS AGAINST ANY AND ALL THIRD PARTY CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES RELATED THERETO, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO THE DEVELOPER’S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT RELATE TO, ARISE OUT OF OR ARE OCCASIONED BY (i) THE DEVELOPER’S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT; OR (ii) ANY ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF THE DEVELOPER, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS (OTHER THAN THE TOWN, OR ITS EMPLOYEES, OFFICERS, AGENTS, ASSOCIATES, CONTRACTORS OR SUBCONTRACTORS), OR SUBCONTRACTORS DUE OR RELATED TO, FROM, OR ARISING FROM THE OPERATION AND CONDUCT OF ITS OPERATIONS AND OBLIGATIONS OR**

**OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION SHALL REQUIRE DEVELOPER TO INDEMNIFY OR DEFEND FOR ANY CLAIMS ARISING OUT OF THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE TOWN ENGINEER OR ANY TOWN INDEMNIFIED PERSON.**

**PARAGRAPH 9.02. APPROVAL OF THE TOWN ENGINEER OR OTHER TOWN 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 TOWN FOR ANY DEFECT IN THE DESIGN AND SPECIFICATIONS PREPARED BY THE CONSULTING ENGINEER, ITS OFFICERS, AGENTS, SERVANTS, OR EMPLOYEES, IT BEING THE INTENT OF THE PARTIES THAT APPROVAL BY THE TOWN ENGINEER OR OTHER TOWN EMPLOYEE, OFFICIAL, CONSULTANT, OR OFFICER SIGNIFIES THE TOWN APPROVAL OF ONLY THE GENERAL DESIGN CONCEPT OF THE IMPROVEMENTS TO BE CONSTRUCTED. IN THIS CONNECTION, THE DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS EACH TOWN INDEMNIFIED PERSON, 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 NEGLIGENT DESIGN OF THE ENGINEER INCLUDED IN DESIGNS AND SPECIFICATIONS INCORPORATED INTO ANY IMPROVEMENTS CONSTRUCTED IN ACCORDANCE THEREWITH, AND THE DEVELOPER SHALL DEFEND AT ITS OWN EXPENSE ANY SUITS OR OTHER PROCEEDINGS BROUGHT AGAINST ANY TOWN INDEMNIFIED PERSON, 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; PROVIDED THAT DEVELOPER SHALL HAVE THE RIGHT TO SELECT COUNSEL OF ITS OWN CHOOSING AND SHALL HAVE ALL REQUISITE AUTHORITY TO ENTER INTO ANY SETTLEMENT AGREEMENT AT ANY TIME IN CONNECTION WITH ANY SUCH CLAIMS OR LIABILITIES FOR WHICH DEVELOPER OWES INDEMNITY UNDER THIS SECTION.

PARAGRAPH 9.03. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS ARTICLE SHALL REQUIRE THE DEVELOPER TO INDEMNIFY OR DEFEND ANY CLAIMS ARISING OUT OF THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE TOWN ENGINEER OR ANY TOWN INDEMNIFIED PERSON.

#### ARTICLE X.

#### MISCELLANEOUS PROVISIONS

PARAGRAPH 10.01. NOTICES. All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party

designates in writing, by certified mail, postage prepaid, reputable overnight delivery service, or by hand delivery:

If to Developer: Otter Partners, LP  
Attn: Frank Bonilla  
18 Comillas  
Westlake Texas 76262

With a copy to: Entrada Villa Partners, LLC  
4110 Riverwalk Drive  
Flower Mound, TX 75028

If to Town: Town of Westlake  
Attn: Town Manager  
1500 Solana Boulevard  
Building 7, Suite 7200  
Westlake, Texas 76262

With a copy to: Town of Westlake  
Attn: Deputy Town Manager  
1500 Solana Blvd.  
Building 7, Suite 7200  
Westlake, Texas 76262

With a copy to: Boyle & Lowry, L.L.P.



Attn: L. Stanton Lowry  
4201 Wingren Drive, Suite 108  
Irving, Texas 75062

**PARAGRAPH 10.02.**      ASSIGNMENT AND SUCCESSORS. The Developer may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the prior consent of the Town Council. Any lawful assignee or successor in interest of the Developer of all rights and obligations under this Agreement shall be deemed the “Developer” for all purposes under this Agreement.

**PARAGRAPH 10.03.**      COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS. This Agreement shall be subject to all applicable Federal, State and local laws, ordinances, rules and regulations, including, but not limited to, all provisions of the Town’s codes and ordinances, as amended.

**PARAGRAPH 10.04.**      GOVERNMENTAL POWERS. It is acknowledged that, by execution of this Agreement, the Town does not waive or surrender any of its governmental powers or immunities that are outside of the terms, obligations, and conditions of this Agreement.

**PARAGRAPH 10.05.**      NO WAIVER. 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.

**PARAGRAPH 10.06.**      VENUE AND JURISDICTION. 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.

**PARAGRAPH 10.07.**        NO THIRD-PARTY RIGHTS. The provisions and conditions of this Agreement are solely for the benefit of the Town and the Developer, and any lawful assign or successor of the Developer, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

**PARAGRAPH 10.08.**        FORCE MAJEURE. It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather that prohibits compliance with any portion of this Agreement, or other circumstances which are reasonably beyond the control or knowledge of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such requirement shall be extended for a period of time equal to the period such party was delayed.

**PARAGRAPH 10.09.**        INTERPRETATION. 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.

**PARAGRAPH 10.10.**        SEVERABILITY CLAUSE. It is hereby declared to be the intention of the Parties that any sections, paragraphs, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph or section of this Agreement shall be declared unconstitutional or illegal by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Agreement since the same would have been

executed by the Parties without the incorporation in this Agreement of any such unconstitutional phrase, clause, sentence, paragraph or section. It is the intent of the parties to provide the economic incentives contained in this Agreement by all lawful means.

**PARAGRAPH 10.11.**        CAPTIONS. Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**PARAGRAPH 10.12.**        ENTIRETY OF AGREEMENT. This Agreement, including any attachments attached hereto, including the Requirements for Contractor’s Insurance and any documents incorporated herein by reference, and the Economic Development Program Agreement, contain the entire understanding and Agreement between the Town and the Developer, and any lawful assign and successor of the Developer, as to the matters contained herein. Any prior or contemporaneous oral or written Agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both parties and approved by the Town Council of the Town in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

**PARAGRAPH 10.13.**        COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

**SIGNATURES ON FOLLOWING PAGE**

**DEVELOPER:**

**By:**

\_\_\_\_\_

Frank Bonilla, Manager Otter Partners, LP

**TOWN OF WESTLAKE, TEXAS**

**By:**

\_\_\_\_\_

Wade Carroll, Town Manager

**ATTEST:**

\_\_\_\_\_

Dianna Buchanan, Town Secretary

\_\_\_\_\_

Stan Lowry, Town Attorney