



in the development requirements for the Property, including incorporating agreed upon standards for 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 single-family residential dwelling units and other structures as permitted by Ordinance No. 982, approved by the Town Council on the 13<sup>TH</sup> day of **OCTOBER, 2023**.

**PARAGRAPH 1.02. "FINAL PLAT"** shall mean the map of a subdivision or addition to be recorded after approval by the Town Planner and any accompanying material and additional requirements as described in the Town of Westlake, Texas Code of Ordinances. The Final Plat shall conform to all the applicable requirements set forth in the Town of Westlake, Texas Code of Ordinances and State Law.

**PARAGRAPH 1.03. "PROPERTY"** shall mean the 32.8 acres of real property, more or less, located wholly within Tarrant County and on which the Development shall be located.

**PARAGRAPH 1.04. "SUBSTANTIAL COMPLETION"** or the phrase **"SUBSTANTIAL COMPLETION OF THE DEVELOPMENT IMPROVEMENTS"** shall

mean the installation of utilities and infrastructure serving the Development that may not be completed and accepted by the Town Manager (as further defined below), but have a certain level of reasonable function and use. For the purposes of this Agreement, “Substantial Completion” and the phrase “Substantial Completion of the Development Improvements” shall be solely applicable to the inspection and the full or the partial acceptance of common utilities and infrastructure that are necessary to adequately serve this Development including, but not limited to, streets, utilities, et cetera.

**PARAGRAPH 1.05. “TOWN ENGINEER”** shall mean a person employed or otherwise appointed by the Town as a professional engineer licensed by the State of Texas who is responsible for reviewing and approving engineering plans and other related technical documents for the Town.

**PARAGRAPH 1.06. “TOWN MANAGER”** shall mean the Town Manager of the Town, or their designee.

## ARTICLE II.

### **CONSTRUCTION OF IMPROVEMENTS**

**PARAGRAPH 2.01.** Prior to commencing construction of the Improvements as set forth under the terms and conditions of this Agreement, the Parties acknowledge and agree to all of the following:

A. Soil Testing and Related Geotechnical Work. The Developer is hereby authorized to commence soil testing and related geotechnical work necessary for preparing and submitting an accurate and complete Final Plat; provided, however, that in conducting soil testing and related

geotechnical work, all trees and vegetation that are protected by applicable codes, ordinances, and regulations of the Town shall be preserved and protected. The removal of any protected trees shall result in fines and penalties as established by the Town of Westlake, Texas Code of Ordinances.

B. Preliminary Site Evaluation. For the purposes of this Agreement and the provisions as found in Ordinance No. 982, approved by the Town Council on the **13<sup>TH</sup>** day of **OCTOBER, 2023**, the preliminary site evaluation was approved by the Town on the **20<sup>TH</sup>** day of **MAY, 2024**.

C. Final Plat. The Parties hereby agree that a Final Plat that is prepared and submitted in accordance with all applicable rules, regulations, and requirements of the Town as set forth in the Town of Westlake Code of Ordinances shall fulfill and satisfy the requirement to “vacate and replat that vacates Lot1R1-1, Block 2 from the Westlake / Southlake Park Addition Number One” as found in Ordinance No. 982, approved by the Town Council on the **13<sup>TH</sup>** day of **OCTOBER, 2023**, for all intents and purposes therein. The Parties shall not construe that approval of the Final Plat shall constitute approval, completion, or satisfaction of any other requirements as set forth in Ordinance No. 982, approved by the Town Council on the **13<sup>TH</sup>** day of **OCTOBER, 2023**.

D. Release of Building Permits. Except as otherwise provided for in the terms and conditions of this Agreement, no building permits shall be released by the Town Manager for construction on any lot of record.

E. HOA Documents. The HOA (as defined below in this Agreement) Documents shall be prepared and presented to the Town Council for review and approval in accordance with all the provisions as set forth in Ordinance No. 982, approved by the Town Council on the **13<sup>TH</sup>** day of **OCTOBER, 2023**. In no circumstance shall the Town Manager release any building permit unless and until the HOA Documents have been approved by the Town Council.

F. Expedited Development Review. Notwithstanding any fees adopted by the Town for expedited development review and approval, the Developer may make a formal request for an expedited development review subject to fee payment and the following considerations:

1. Architectural standards contained within the HOA Documents that solely focus on building walls, building openings, building attachments, roofs, and visual screening; and

2. Architectural standards shall be legally binding on the Developer and their successors and assigns, including future property owners within the Development.

3. It is explicitly understood and agreed that expedited development review is not a requirement for fulfilling any of the terms and conditions of this Agreement nor a mandate; rather, it is an option provided by the Town to assist the Developer with expediting the review and approval of building and construction plans submitted in accordance with the provisions as found in Ordinance No. 982, approved by the Town Council on the 13<sup>TH</sup> day of **OCTOBER, 2023**, and the other terms and conditions of this Agreement.

G. Development as a Single Phase. **THE DEVELOPER SHALL CONSTRUCT (OR SHALL CAUSE TO BE CONSTRUCTED) THIS DEVELOPMENT AS A SINGLE PHASE.**

**PARAGRAPH 2.02.** The Developer shall provide, at its own expense, all the engineering services required for the Development and Improvements. Engineering services shall be performed by a licensed 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 subject to the review and stamped acceptance of the Town Engineer. The Town Engineer's review and acceptance does not relieve the Developer or Developer's engineer of the responsibility for design and construction.

**PARAGRAPH 2.03.** Construction of all the Improvements shall be in strict conformance, in all material respects, 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. In the event of any discrepancy (or discrepancies) between the approved and recorded Final Plat and any other policies, standards, and specifications adopted by the Town relating to the design of the plans for the construction of all the Improvements, shall give priority to the Final Plat.

**PARAGRAPH 2.04.** 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 2.05.** 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 and shall be timely, and appropriately completed in conformance with the approved plans and the Town's engineering standards at the sole expense of the Developer.

**PARAGRAPH 2.06.** 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 calendar days' written notice, should the Developer fail in this responsibility, the Town may contract for this service, and bill the Developer for costs. In the event the costs remain unpaid for 30 calendar days after notice, the Town Manager may issue a construction stop work order until all costs are paid by the Developer.

**PARAGRAPH 2.07.** The obligations and responsibilities of the Developer as established by the terms and conditions of this Agreement for construction of the Improvements shall be performed and completed by the Developer no later than two (2) years from the issuance of the notice to proceed for construction of Improvements. Pursuant to the provisions in Section 82-61 of the Town of Westlake, Texas Code of Ordinances, and except as otherwise provided in this Agreement; prior to the issuance of the notice to proceed, the Developer shall present to the Town Manager: (i) a cash escrow; or (ii) a letter of credit drawn upon a state or national bank in an amount sufficient to cover the costs of the Improvements. For the purposes of this Agreement and satisfaction of the Town of Westlake, Texas Code of Ordinances, the letter of credit shall: (i) be irrevocable; (ii) provide for a term sufficient to cover the completion, maintenance and warranty periods, but not less than two years; and (iii) require only that the Town present the issuer with a sight draft and a certificate signed by the Town Manager certifying to the Town's right to draw funds under the letter of credit. Proper application for acceptance of the Improvements by the Town shall be made by such date, subject to any extension for Force Majeure (as defined in Paragraph 10.08 of this Agreement) and any delays in the required inspections as provided for under Paragraph 2.07 of this Agreement as provided below.

**PARAGRAPH 2.08.** The Developer shall furnish to the Town Manager a two (2) year maintenance bond in an amount equal to 100 percent of the cost of construction of all public facilities and public infrastructure improvements (e.g., streets, sidewalks, water, sewer, ductbank, drainage, et cetera) prior to Final Acceptance of the Improvements. The two (2) year maintenance bond shall take effect on the same date of Final Acceptance of all the aforesaid public facilities and public infrastructure improvements on the Property and shall secure all costs of maintenance of such public facilities and public infrastructure improvements during that period of time. The Developer shall supply (or shall cause to be supplied) the maintenance bond to the Town Manager, and the Town shall be named as the beneficiary.

**PARAGRAPH 2.09.** 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. The Developer shall provide written notice of Substantial Completion of the Improvements to the Town Manager and the Town Engineer, and the Town Engineer shall make reasonable efforts to schedule an inspection of the Improvements within 14 calendar days of receipt of such notice of Substantial Completion. Any unreasonable delays by the Town Engineer in scheduling the inspection shall afford the Developer a day for day extension as provided for under Paragraph 2.06.

**PARAGRAPH 2.10.** 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, and, will further provide all lien releases and releases of claims, regarding or pertaining to, the Improvements. The Developer shall be solely responsible for the information 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 2.11.** Prior to the Town accepting the Improvements, either in whole or in part, the Developer shall provide the Town with reproducible “as constructed” drawings in CAD format, certified as accurate by the Town Engineer. The Developer shall also provide written notice of substantial completion of the Improvements to the Town Engineer and the Town Engineer shall timely review (i.e., within 14 calendar days) the “as constructed” drawings and either: (i) certify the “as constructed” drawings or (ii) provide the Developer with detailed comments within 14 days of receipt of such notice of substantial completion. The Developer shall timely (i.e., within 14 calendar days) address any and all comments, and the Town Engineer shall repeat the process until such “as constructed” drawings are approved and certified. However, any unreasonable delays on the part of the Town Engineer in certifying the “as constructed” drawings of Improvements shall afford the Developer a day for day extension under Paragraph 2.06 of this Agreement.

**PARAGRAPH 2.12.** 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 Town of Westlake, Texas Code of Ordinances and the most recent fee schedule adopted by the Town.

**PARAGRAPH 2.13.** 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 dedicated or conveyed to the Homeowners’ Association (“**HOA**”), the documents of such dedication or conveyance shall be furnished to the Town for recording. A policy

of title insurance insuring title in the Town for a commercially reasonable policy amount may be required by the Town, and the Developer shall pay the premium for such title insurance policy at its sole expense and responsibility.

**PARAGRAPH 2.14.** Prior to the final acceptance of Development Improvements by 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. 982; 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. Any unreasonable delays in Developer obtaining approvals from the Town Council under this Paragraph 2.12, shall provide Developer a day for day extension under Paragraph 2.06.

**PARAGRAPH 2.15.** In accordance with the Town of Westlake, Texas Code of Ordinances, 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.

**PARAGRAPH 2.16.** There shall be no construction, grading, or other clearing activities permitted to commence until a notice to proceed is issued by the Town Manager. Any unreasonable delays in issuing the notice to proceed by the Town Manager shall afford the Developer a day for day extension under Paragraph 2.06 of this Agreement.

**PARAGRAPH 2.17.** Prior to the issuance of the notice to proceed, the Developer shall submit an erosion control plan, drainage plan, and any other related documents to the Town Engineer for review and approval. At a minimum, the plan shall meet all Town ordinance requirements and additional conditions required by the Town Engineer.

**PARAGRAPH 2.18.** 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 2.19.** Regarding vehicle entry gates, the Developer hereby agrees to install and maintain technology and / or remote monitoring services that can determine vehicle stacking onto Sam School Road and quickly and automatically move traffic through the gates to minimize vehicle stacking onto Sam School Road. Final installation shall be reviewed and approved by the Town Manager for compliance prior to the final acceptance of public improvements.

**PARAGRAPH 2.20.** In accordance with the provisions set forth in Paragraph 2.01 and as found in Ordinance No. 982, approved by the Town Council on the **13<sup>TH</sup>** day of **OCTOBER, 2023**, the Developer is authorized to reasonably grade (or cause to be graded) portions of the property for roadways and utilities. However, such grading shall not be permitted to occur unless and until the soil testing and related geotechnical work has been completed and all necessary reviews and approvals have occurred and been received. Grading for the roadways and utilities shall not include grading for any lots for residential use or for open space. Additionally, at no such time shall any grading work for roadways and utilities or for future lots for residential use adversely impact floodplains, riparian corridors, or other waterbodies and elements of the natural environment protected by any Federal Law or State Law or the Town of Westlake, Texas Code of

Ordinances. The Town Manager may issue a stop work order for any grading activities that are in violation of the approved plans or any applicable Federal Law or State Law, any ordinances adopted by the Town, and any violations of the terms and conditions of this Agreement. Such violation may also be subject to applicable fines and fees as established by Federal Law, State Law, and / or the Town of Westlake, Texas Code of Ordinances.

**PARAGRAPH 2.21.** The Developer shall provide a location for a Town Entry Marker within the existing public right-of-way, as shown on EXHIBIT “C” attached hereto. Such location shall also be identified and depicted on the Final Plat, and a construction and maintenance easement shall be dedicated to the Town and included on the Final Plat or provided by a separate instrument. The site for the Town Entry Marker shall be on the northbound side of Sam School Road, within the existing right of way, and adjacent to Property as shown on EXHIBIT “C” attached hereto. The site shall be prepped for electrical installation. The design of the Town Entry Marker, and its construction, shall be at the sole expense and option of the Town.

**PARAGRAPH 2.22.** The Parties agree to negotiate in good faith a separate agreement for parkland dedication fees. For purposes of this Agreement, such separate agreement contemplating parkland dedication fees shall be reviewed, considered, and possibly acted on by the Town Council prior to the release of the first building permit. Such agreement shall only consider and address the parkland dedication fees.

**PARAGRAPH 2.23.** A pedestrian bridge is proposed to be constructed across Marshall Creek at the sole cost and expense of the Developer, and as found in Ordinance No. 982, approved by the Town Council on the 13<sup>TH</sup> day of **OCTOBER, 2023**. Construction of such pedestrian bridge shall directly connect existing and future portions of the public trail with existing and future portions of the private trail internal to the Development. The design of the pedestrian bridge (i.e.,

the railings) shall be naturalistic and rusticated in aesthetic; and it shall be the same width of the private trail internal to the Development. Such design shall require the mutual review and approval of the Town Manager and the Developer and the plans shall be provided to the Town Manager prior to any such disturbance related to the construction of the pedestrian bridge. Additionally, the pedestrian bridge shall not be disruptive to any portion of the natural environment and / or ecological system within and adjacent to the Development. An easement or other such instrument shall be provided by the Developer to allow for appropriate public use and access of the pedestrian bridge to the satisfaction of the Town Attorney.

**PARAGRAPH 2.24.** All streets within this Development shall be private; and all streets shall be paved in concrete unless an alternative material is reviewed and approved by the Town Manager. All paving materials shall comply with all applicable engineering and safety standards, subject to review and approval by the Town Engineer. All streets shall have sidewalks provided. Such sidewalks shall be no less than five (5) feet in width and shall comply with all the applicable requirements for accessibility. All streets within the Development shall be maintained by the Developer and / or the HOA.

**PARAGRAPH 2.25.** The HOA (and its successor) shall maintain all public and private open space within the Development. The Town shall have no financial obligation or performance to maintain any public and private open space within the Development.

**PARAGRAPH 2.26.** The Developer shall pay to the Town, per each residential lot within the Development, the amount of \$15,000.00 (“FIFTEEN THOUSAND AND 00/100 DOLLARS”) for the Town of Westlake Academy. This payment shall be made to the Town prior to the recording of the Final Plat and the issuance of any building permits.

ARTICLE III.

**UTILITIES**

**PARAGRAPH 3.01.** The Developer shall furnish approvals and authorizations 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 of Westlake, Texas Code of Ordinances, as amended, and any other applicable local, State and Federal regulations. The Developer shall be solely responsible for all construction costs, materials, and engineering.

**PARAGRAPH 3.03.** Waterline extension to the City of Southlake for emergency use and flow will be stubbed outside the limits of the pavement for future connections by the Town. The Developer shall not be responsible for any additional lines or connections once this waterline is stubbed out in accordance with the approved plans.

**PARAGRAPH 3.04.** The Developer shall connect all water utilities to the Town. Further, it is understood by the Parties that the Property is currently located within the City of Southlake Water Certificate of Convenience and Necessity (the "CCN"). The Town shall be responsible for obtaining all necessary permits and filings with the Public Utilities Commission of Texas (the "PUC") for the Property to be served by water utilities from the Town. Any unreasonable permitting delays with the PUC on the part of the Town shall extend Developer's time to complete the Improvements, day for day, under Paragraph 2.06.

**PARAGRAPH 3.05.** 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 of Westlake, Texas 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 for the installation of the sanitary sewer facilities within the Development.

**PARAGRAPH 3.06.** 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 of Westlake, Texas 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 3.07.** 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 in accordance with the applicable provisions contained within the Town of Westlake, Texas 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**”). 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.** The Architectural Standards shall be reviewed and approved by the Town Council in accordance with the provisions adopted in Ordinance No. 982 on the **13<sup>TH</sup>** day of **OCTOBER, 2023**. Further, the Architectural Standards shall specifically include the provisions that are contained in Paragraphs C (i.e., garages), D (i.e., roof materials), and E (i.e., exterior walls) in Section 2 of Ordinance No. 982, Town in Ordinance No. 982 on the **13<sup>TH</sup>** day of **OCTOBER, 2023**.

**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, including those found

in Paragraph 2.01 (F) related to Ordinance No. 982 and the HOA documents, 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.

### **OBLIGATIONS OF THE TOWN**

**PARAGRAPH 5.01.** The Town shall make (or shall cause to be made) improvements to Sam School Road within the existing public right-of-way; and it is expressly acknowledged by the Parties that no additional public right-of-way shall be required to be dedicated to the Town in order to facilitate such improvements to Sam School Road. The improvements to Sam School Road shall be in accordance with the following provisions (so that no portion of the Property shall be required to be dedicated as additional right of way). The Town agrees to improve the currently unimproved portion(s) of Sam School Road (i.e., asphalt pavement) from the Town municipal limits to Solana Boulevard in accordance with all applicable design and engineering standards including, but shall not be limited to:

A. Reconstructing and paving the portion(s) of Sam School Road as shown on EXHIBIT “C”, attached hereto and incorporated herein in concrete, subject to review and approval by the Town Manager; and

B. Reconstructing and paving the portion(s) of Sam School Road as shown on EXHIBIT “C” to a minimum width of 37 feet, including all curbing and drainage infrastructure, and ensuring that, such improvements are capable of supporting either a two-lane or a four-lane

undivided road to be determined at the sole discretion and option of the Town Manager, within a minimum existing dedicated right-of-way of 70 feet; and

C. Such reconstruction and paving of the portion(s) of Sam School Road shall also include a sidewalk a minimum of five (5) feet in width along the portion of Sam School Road that borders the Property; and

D. Such reasonable reconstruction of the portion of the entry drive shown as “SOLANA HILLS DRIVE” which falls within the right-of-way, subject to approval by the Town Manager and requirements of State Law. The Town Manager, at their sole option and discretion, may elect to defer such approval to the Town Council.

E. The Parties agree that the timing for commencing the improvements to Sam School Road in accordance with the specifications of this Agreement and all other regulations and standards as found in the Town of Westlake, Texas Code of Ordinances, as amended, shall be at the sole discretion and option of the Town Manager; and

F. The Parties acknowledge and agree that the Town shall be responsible for facilitating and managing construction of improvements to Sam School Road in accordance with the specifications of this Agreement and all other regulations and standards as found in the Town of Westlake, Texas Code of Ordinances, as amended, and that the Developer shall be responsible for reimbursing the Town for constructing the improvements as follows:

i. The Town shall, in accordance with all applicable laws, bid the cost to make (or cause to be made) the improvements to Sam School Road as contemplated within the terms and conditions of this Agreement.

ii. The Town shall provide a minimum of 30 days’ written notice to the Developer of the Town’s intent to bid the improvements to Sam School Road. Within immediate

receipt of notice the Developer shall have at least 15 days to escrow the funds to improve Sam School Road as described in this Agreement. The escrow amount (as further defined below) shall be provided to the Town Manager before any application may be made for the first building permit.

**NO APPLICATION FOR A BUILDING PERMIT MAY BE MADE TO THE TOWN MANAGER UNLESS AND UNTIL THE ESCROW AMOUNT HAS BEEN PROVIDED TO THE TOWN MANAGER.**

iii. The Developer shall be responsible for escrowing 50 percent of the bid costs to improve Sam School Road from the centerline of the right-of-way to the front of the Property as described in EXHIBIT “B” and “EXHIBIT”C” (the “**ESCROW AMOUNT**”).

iv. The Town Manager shall timely prepare and provide the Developer with a separate invoice for all engineering schematics, plans, and documents related to constructing improvements to Sam School Road.

v. The Town will work diligently and in good faith to provide all the necessary permits and approvals from the Town and all other governmental officials, bodies, and agencies having jurisdiction over this Development; to supervise all phases of construction of the improvements to Sam School Road; and to cause construction to be performed in strict accordance with the approved plans.

vi. The Parties recognize, acknowledge, and agree that certain changes may be necessary to accomplish the construction of the improvements to Sam School Road.

#### ARTICLE VI.

#### **COMPLETION OF AGREEMENT**

This Agreement shall not be considered complete unless and until:

**PARAGRAPH 6.01.** All Improvements and other public improvements and infrastructure for this Development are finished, completed, and accepted by the Town.

**PARAGRAPH 6.02.** The lighting plan is reviewed, approved, and installed in accordance with said plan and accepted by the Town.

**PARAGRAPH 6.03.** All terms and conditions of this Agreement shall be satisfied.

**PARAGRAPH 6.04.** 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 6.05.** 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 6.06.** Original Maintenance Bonds shall have been provided and any other bonds required for the completion of the Improvements.

**PARAGRAPH 6.07.** Lien and claim release(s) have been provided.

**PARAGRAPH 6.08.** All obligations and responsibilities of the Developer under the terms and conditions of this Agreement, Ordinance No. 982, and any other codes, ordinances, regulations or standards adopted by the Town have been met.

## ARTICLE VII.

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

**PARAGRAPH 7.01.** 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 review and approval by the Town Manager. 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 VIII.

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

### **VARIOUS DEADLINES AND COMMITMENTS**

**PARAGRAPH 8.01. 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 8.02. 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 8.03. 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 IX.

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

**PARAGRAPH 9.01.** 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 X.

#### **INDEMNIFICATION AND INDEMNITY AGAINST NEGLIGENT DESIGN**

**PARAGRAPH 10.01. 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 10.02. 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 10.03. 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 XII.

**MISCELLANEOUS PROVISIONS**

**PARAGRAPH 11.01.** 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: Fenway Development, Inc.  
Attn: Frank Liu  
2410 Polk Street, Suite 200  
Houston, Texas 77003

With a copy to: Moody Law Group, PLLC  
Attn: John S. Moody, Jr.  
3003 W. Alabama  
Houston, Texas 77098

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 11.02.**      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 11.03.**      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 11.04.**      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 11.05.**        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 11.06.**        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 11.07.**        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 11.08.**        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 (“**FORCE MAJEURE**”), 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 11.09.**        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 11.10.**        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 11.11.**        CAPTIONS. Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**PARAGRAPH 11.12.**        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 11.13.**        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.

**FENWAY DEVELOPMENT, INC.:**

**By:** \_\_\_\_\_

**Frank Liu, President**

**TOWN OF WESTLAKE, TEXAS:**

**By:** \_\_\_\_\_

**Wade Carroll, Town Manager**

**ATTEST:**

**By:** \_\_\_\_\_

**Dianna Buchanan, Town Secretary**

**APPROVED AS TO FORM:**

**By:** \_\_\_\_\_

**Stan Lowry, Town Attorney**