

STATE OF TEXAS           §  
                                     §  
COUNTY OF COLLIN     §

**DEVELOPMENT AGREEMENT**

This Development Agreement (“Agreement”) is made by and between the City of Allen, Collin County, Texas (the “City”), and Watters Creek Owner, LLC, a Delaware limited liability company (the “Company”) (each a “Party” or collectively the “Parties”), acting by and through their respective authorized officers.

**WITNESSETH:**

**WHEREAS**, City intends to cause the design of certain roadway and traffic signal modification improvements for the intersection of Bethany Drive and Watters Road, and for the intersection of Bethany Drive and Watters Creek Boulevard (the “Project”); and

**WHEREAS**, Company has agreed to participate in a portion of the costs of the Project not to exceed Seventy-Three Thousand Three Hundred Thirty Dollars (\$73,330.00) to be paid to City as set forth herein;

**NOW THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Article I**  
**Definitions**

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

“City” shall mean the City of Allen, Collin County, Texas, acting by and through its City Manager.

“Company” shall mean Watters Creek Owner, LLC, a Delaware limited liability company.

“Effective Date” shall mean the last date of execution hereof.

“Expiration Date” shall mean the date the Parties have fully satisfied their respective obligations herein.

“Project” shall mean the design of roadway, sidewalk improvements and traffic signal modification improvements for the intersection of Bethany Drive and Watters Road, and for the intersection of Bethany Drive and Watters Creek Boulevard in accordance with plans approved by the City and as generally depicted in **Exhibit “A”**.

## **Article II Term**

The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

## **Article III Project**

3.1 Project Design. City shall contract for, and manage the design of the Project. City shall contract with the necessary design professionals within thirty (30) days after the Effective Date.

3.2 Project Cost Participation. Company shall pay to City fifty percent (50%) of the costs for the Project, such portion of the Project Costs, not to exceed the Seventy-Three Thousand Three Hundred Thirty Dollars (\$73,330.00) to be paid to City within thirty (30) days after receipt of a written invoice from the City.

## **Article IV Termination**

This Agreement shall be terminated upon any one or more of the following:

- (a) the Expiration Date;
- (b) upon the agreement of the Parties; or
- (c) upon written notice by either Party in the event the other Party breaches any of the terms and conditions of this Agreement and such breach is not cured within thirty (30) days written notice thereof.

## **Article V Miscellaneous**

5.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and assigns of all Parties hereto. This Agreement may not be assigned without the consent of the ACDC, which shall not be unreasonably withheld.

5.2 Limitation on Liability. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties. It is understood and agreed between the Parties that the Parties, in satisfying the conditions of this Agreement, have acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

5.3 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that is granted and assumed under this Agreement.

5.4 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received when sent by courier or otherwise hand delivered.

If intended for City, to:

Attention: City Manager  
City of Allen  
305 Century Parkway  
Allen, Texas 75013

With a copy to:

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 N. Akard  
Dallas, Texas 75201

If intended for Company:

Watters Creek Owner, LLC,  
c/o Trademark Property Company  
1701 River Run, Suite 500  
Fort Worth, TX 76107

With a copy to:

Watters Creek at Montgomery Farm  
970 Garden Park Drive  
Allen, Texas 75013  
Attn: General Manager

5.5 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

5.6 Governing Law. The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the jurisdiction of said Court.

5.7 Amendment. This Agreement may be amended by the mutual written agreement of the Parties. The City Manager, or designee is authorized to execute any amendments to this Agreement or any documents related hereto on behalf of the City.

5.8 Legal Construction. In the event anyone or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

5.9 Recitals. The recitals to this Agreement are incorporated herein.

5.10 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

5.11 Exhibits. Any exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

5.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

*[Signature Page to Follow]*

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF ALLEN, TEXAS

By: \_\_\_\_\_  
Peter H. Vargas, City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Peter G. Smith, City Attorney


EXECUTED on this 16 day of May, 2017.

WATTERS CREEK OWNER, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Aaron A. Giovara  
Authorized Signatory

# EXHIBIT "A"



 CITY OF ALLEN		PROJECT: BETHANY & WATERS	
		DESC: INTERSECTION IMPROVEMENT	
SCALE: 1"=50'	DATE: 2/16/2017	REV DATE:	SHEET: 1 OF 1