

CIVIC SPACE IMPROVEMENT AGREEMENT

This **Civic Space Improvement Agreement** ("Agreement") is executed and made effective as of the Effective Date by and between **Alders at Twin Creeks, LLC**, a Delaware limited liability company ("Alders") and the City of Allen, a Texas home rule municipality ("City"). (Alders and City collectively herein referred to as "the Parties" and individually as "Party.").

RECITALS

WHEREAS, on or about December 20, 2016, Alders and City, along with other parties, entered into the certain *Civic Space Agreement*, ("the CSA") a true and correct copy of which is recorded as Instrument No. 20161221001729430 in the Official Public Records of Collin County, Texas; and

WHEREAS, the CSA sets forth certain obligations of the parties to the CSA with respect to the development and maintenance of the real property described in the CSA; and

WHEREAS, in Section 4 of the CSA, Alders agreed to cause the completion of the Property Owner #2 Improvements (as defined in the CSA) in compliance with the Lot 8 PD Ordinance (as defined in the CSA) and, after conveyance of title to the Detention Easement Area (as defined in the CSA) to City but prior to commencing any work in the Detention Easement Area, to negotiate and sign a license and temporary construction easement with City granting to Alders and its contractors the right to enter the Detention Easement Area for purposes of constructing and/or installing the Property Owner # 2 Improvements and setting forth the terms and conditions applicable to such entry onto and use of the Detention Easement Area; and

WHEREAS, City has determined that it desires to perform work on the Detention Easement Area in addition to having the Property Owner # 2 Improvements constructed and installed; and

WHEREAS, the Parties have determined that it would be more efficient to have City construct and install the Property Owner #2 Improvements in conjunction with the other work to be performed by City on the Detention Easement Area;

NOW, THEREFORE, for and in consideration of the covenants made one to the other as set forth in this Agreement, the Parties agree as follows:

1. City agrees to assume Alders' obligation pursuant to Section 4 of the CSA to construct the Property Owner #2 Improvements subject to the following:
 - a. Alders shall pay to City the amount of \$141,172.00 not later than the earlier of (i) thirty (30) days after the Effective Date or (ii) the date prior to issuance of a Certificate of Occupancy for any building on the Alders Property (as defined below);

- b. The Parties agree to release and hold each other harmless with respect to the failure to have the Property Owner # 2 Improvements constructed prior to November 15, 2017;
 - c. City shall be in sole control of the construction and installation of the Property Owner # 2 Improvements; provided, however, subject to delays as the result of a Force Majeure Event, City agrees to complete construction of the Property Owner #2 Improvements not later than one (1) year after the date the payment required by Section 1.a., above, is made to City. In the event of an occurrence of a Force Majeure Event, the deadline for completion of the construction of the Property Owner #2 Improvements shall be extended one day for each day during which a Force Majeure Event is continuing or, in the case of a Force Majeure Event relating to unknown conditions of the Detention Easement Area, one day for each day that is required by City or City's contractor to perform the work necessary to resolve the unknown condition and proceed with work in accordance with the Approved Plans.
 - d. For purposes of this Section 1, a "Force Majeure Event" means any contingency or cause beyond the reasonable control of a Party including, without limitation: acts of God (including inclement weather) or the public enemy; war; riot; civil commotion; insurrection; the order of a court resulting from any litigation brought by a third party to prevent or delay City's construction or installation of the Property Owner #2 Improvements; government or de facto governmental action (unless caused by acts or omissions of Developer); pending referendum; fires; explosions or floods; strikes; slowdowns or work stoppages, or conditions relating to the Detention Easement Area that were unknown to, and could not have reasonably been discovered by, City prior to commencement of construction of the Property Owner #2 Improvements.
- 2. Alders agrees that City shall have no obligation to issue a certificate of occupancy for the improvements being constructed on the property described as Lot 8, Block F, Bray Central One, an addition to the City of Allen, Collin County, Texas, according to the plat thereof recorded in Volume 2016, Page 274, Map Records, Collin County, Texas (the "Alders Property"), until the funds described in Section 1.a., above, have been paid to City.
 - 3. This Agreement shall be effective on the date it is signed by authorized representatives of each of the Parties ("Effective Date").
 - 4. **Severability.** If any term, provision, condition, covenant or agreement contained in this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms, provisions, conditions, covenants or agreements contained in this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term, provision, condition, covenant or agreement, there shall be added to this Agreement a legal, valid and enforceable term, provision, condition, covenant or agreement as similar as possible to the term, provision, condition, covenant or agreement declared illegal, invalid or unenforceable.

5. **No Waiver.** No waiver of any of the terms, provisions, conditions, covenants or agreements contained in this Agreement shall be effective unless in writing executed by the party for whose benefit the applicable term, provision, condition, covenant or agreement is intended. No waiver of any term, provision, condition, covenant or agreement contained in this Agreement under a particular circumstance shall be deemed a waiver of such term, provision, condition, covenant or agreement under a different circumstance.
6. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original, and all of which shall constitute one and the same agreement.
7. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all parties hereto irrevocably agree that venue for any dispute involving this Agreement shall be in any court of competent jurisdiction in Collin County, Texas.
8. **Entire Agreement.** This Agreement embodies the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect to the subject matter hereof; provided, however, the Parties acknowledge and agree that this Agreement does not amend or supersede the CSA.

(Signatures on following pages)

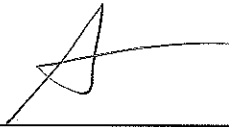
SIGNED AND AGREED this 31 day of January, 2018.

ALDERS AT TWIN CREEKS, LLC,
a Delaware limited liability company

By: Alders at Twin Creeks Development, LLC, a
Delaware limited liability company, its manager

By: Drever Alders at Twin Creeks, LLC, a
Delaware limited liability company, its manager

By: Drever Alders at Twin Creeks MM,
LLC, a Delaware limited liability company,
its manager

By: 
Noah E. Drever, Managing Member

SIGNED AND AGREED this ____ day of _____, 2018.

CITY OF ALLEN, a Texas home rule municipality

By: _____
Peter H. Vargas, City Manager

ATTEST:

Shelley B. George, City Secretary