

**Development Agreement
Mid Cities Boulevard Median Improvement**

THE STATE OF TEXAS {
COUNTY OF TARRANT {

WHEREAS, **The Villages of Bear Creek Property Owners Association**, hereinafter called "POA", is the adjacent property owner to a section of median, hereinafter called the "Median", located within the City of Euless public right-of-way of Mid-Cities Boulevard between Bear Creek Parkway and the southbound frontage road of State Highway 360, and desires to make certain improvements within and about the Median; and

WHEREAS, **The City of Euless**, a municipal corporation of Tarrant County, Texas hereinafter called "The City", requires that the POA enter into a cooperative agreement in connection with said improvements for use of the public rights of way; and

WHEREAS, the City has an interest in increasing the aesthetic nature of public right-of-ways and medians within the City through the appropriate utilization of landscaping and other streetscape elements that include the erection of decorative masonry columns (subdivision identifier pylons); and

WHEREAS, the POA has an economic interest in creating significant iconic wayfinding and landscaping elements within the public right-of-way of Mid-Cities Boulevard directing potential residents, investors and guests to their developments and subdivisions; and

WHEREAS, the POA desires to enter into a Right of Way Use and Development Agreement, hereinafter called "Agreement", with the City in order to construct, install, and maintain certain landscape plantings and construction elements within the Median as shown within the attached Median Development Plan included as Exhibit "A"; and

WHEREAS, the City has received and reviewed said Median Development Plan and verified that the construction plans for the decorative masonry columns were stamped and sealed by a registered State of Texas Engineer, and as such, has released the POA to construct the improvements within the Median.

NOW THEREFORE, KNOW BY ALL MEN THESE PRESENTS:

That said POA, acting herein by and through **Del Bennett**, and the City, acting herein by and through **Gary McKamie**, its City Manager, for and in consideration of the covenants and agreements herein performed and to be performed, do hereby agree as

follows regarding assurance of modification and maintenance of the Mid-Cities Boulevard Median Development Plan:

1. Obligations of the POA. The POA agrees, with respect to the Median, that all provisions and requirements, including but not limited to the following:
 - a. The POA will provide, at its sole expense all materials, equipment and labor necessary to provide and install the planting materials and provide grounds maintenance in the area described above within Exhibit A.
 - b. The POA agrees to install an irrigation system, at its own expense, subject to the release for construction by the Building Official and will be solely responsible for the installation and maintenance of all plant materials and irrigation system additions, as shown within Exhibit A, and all equipment and labor necessary to maintain all turf grass, trees, shrubs, bedding plant materials and irrigation systems. All irrigation system additions must be installed by a licensed Irrigator.
 - c. Any future or phased improvements, such as development of new medians or right-of-way or the installation of plant materials within the designated area, described above, on City property, must be submitted in writing for approval, and must be approved in writing, by the Director of the Planning and Community Development Department or designee before any work begins.
 - d. The POA agrees not to take any action that would result in the creation of any lien on City property. In the event that a lien is filed, as a result of any action of the POA, the POA will take all necessary steps to remove the lien within 10 days of its filing.
 - e. In the event that any City owned property, such as utilities, equipment, etc. are damaged or destroyed during the maintenance of the Median, due to negligence or acts or omissions of the POA, the POA shall be solely responsible for repairs or replacement.
 - f. The City reserves the right to modify or remove any landscape improvements placed on City property by the POA, as determined necessary by the Director of the Planning and Community Development Department or designee, should any of the following occur:
 - i. The POA ceases to maintain the area according to this Agreement.
 - ii. The area becomes a hazard to the general public.
 - iii. The Planning and Community Development Department Director determines in his or her sole discretion that another beneficial use for the general public exists. This may include street relocation, street realignment or another use of the property that is deemed beneficial to the general public.

- iv. The City determines in its sole discretion to make use of the area for the installation of any public utilities or other City improvements.
2. Obligations of the City. The City agrees to release the POA to complete the improvements contained in the Median Development Plan subject to the POA meeting the obligations set forth herein, the City's ordinances, and other applicable rules, laws or other authority regulating right-of-way use.
3. Indemnification. The POA shall and does hereby agree to indemnify and hold harmless the City from any and all damages, loss or liability of any kind whatsoever by reason of injury to property, or third person occasioned by its use of the easement/right of way/median or act of omission, neglect or wrong doing of the POA, his officers, agents, employees, invitees or other persons, with regard to the improvements and maintenance of such improvements as included in the Median Development Plan; and, the POA shall, at his own cost and expense, defend and protect the City against any and all such claims and demands. The City shall be responsible only for the City's sole negligence. Provided, however, that nothing contained in this Agreement shall waive the City's defenses or immunities under Section 101.001 et seq. of the Texas Civil Practice and Remedies Code or other applicable statutory or common law.
4. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, said invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if the invalid, illegal or unenforceable provision was never a part of this agreement.
5. Modification. The Agreement may only be modified by a written instrument signed by both parties.
6. Applicable Law. This Agreement shall be construed under the laws of the State of Texas and the obligations of the parties shall be performable in Tarrant County, Texas.
7. Parties at interest. This Agreement shall be for the exclusive benefit of the parties hereto and shall not confer any benefit on any third party (unless said third party is an assignee of the POA as provided for in the Agreement).
8. Effective Date/Term. This Agreement shall become effective upon its execution by both parties and shall remain in effect and bind all future owners of this lot and shall be considered a covenant running with the land.

9. Notice. Any notice required under this agreement shall be in writing and shall be sent to the address reflected on the signature page of this Agreement or at such other address as the party hereto may specify by notice in compliance to the requirement with this paragraph. The POA shall be responsible for maintaining the current address and telephone number with the City.

10. Exhibits. The following exhibits are incorporated into and made a part hereof for all purposes: Exhibit "A" – Median Development Plan.

IN WITNESS WHEREOF, the parties to these presents have executed this contract in three (3) counterparts, each of which shall be deemed an original on this _____ day of _____ 2009.

POA

CITY OF EULESS

Del Bennett
Villages of Bear Creek
Property Owners Association

Gary L. McKamie
City Manager

Susan Crim
City Secretary