

HOMETOWN NORTH RICHLAND HILLS
PHASE 5 LIMITED DEVELOPMENT AGREEMENT

THIS PHASE 5 LIMITED DEVELOPMENT AGREEMENT (the "**Agreement**") is made by and between THE CITY OF NORTH RICHLAND HILLS, TEXAS (the "**City**"), HOMETOWN 5 DEVELOPMENT CORP., a Texas corporation (the "**Developer**"), and HOME TOWN EAST NRH OWNERS' ASSOCIATION, INC., a Texas nonprofit corporation (the "**HOA**").

RECITALS:

A. The Developer (and its related and affiliated entities) is developing certain parcels of real property located within the City, Tarrant County, Texas, as a mixed use residential and commercial development to be known as AHome Town North Richland Hills" (the "**Subdivision**").

B. The Developer is ready to commence development of Phase 5 of the Subdivision ("**Phase 5**") on the parcels of real property located within the City and as described on **Exhibit A** attached hereto and made a part hereof by reference. The HOA, or its successors or assigns, is the entity that shall own, manage, operate and maintain the common areas in Phase 5 of the Subdivision.

C. Part of the infrastructure contemplated for Phase 5 includes construction of a pedestrian bridge (including related abutments) (collectively, the "**Bridge**") across HomeTown Lake located on property owned by the City in the approximate location as depicted on **Exhibit B** attached hereto and made a part hereof by reference.

D. The parties wish to reaffirm the commitment to studying the need for a signalized intersection at Ice House Drive and Mid-Cities Boulevard, as previously agreed to on July 18, 2011 by the Amendment to Home Town North Richland Hills Comprehensive Development Agreement.

E. The parties hereto desire to document their various understandings and agreements concerning various aspects of construction and operation of such improvements related to the Subdivision on the terms hereinafter set forth.

NOW, THEREFORE, for and in consideration of the recitals set forth above, and for \$10.00 and other good and valuable consideration paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged by all parties, the parties hereby agree as follows:

1. **Signalized Intersection at Ice House Drive and Mid-Cities Boulevard.** In the event that a warrant study for the intersection of Mid-Cities Boulevard and Ice House Drive determines that a traffic signal is warranted, Developer agrees to pay 50% of the design and construction of such signal regardless of the total cost remaining after other funding collected for this signal is considered. This agreement affirms the Amendment to Home Town North Richland Hills Comprehensive Development Agreement of July 18, 2011.

2. **Design and Construction of the Bridge.** The Developer shall be responsible, at no cost or expense to the City, for preparation of all plans and designs for the Bridge to be constructed by the Developer. The Bridge shall be approximately 95 feet long and 10 feet wide, and the design of such Bridge shall be at the discretion of the Developer, but shall be generally harmonious with other architectural features of the Subdivision. The pedestrian surface of the Bridge shall be concrete or another material acceptable to the City. The design of the bridge shall include the trail approaches and connections. The City shall have the right to review and approve such designs and plans for such Bridge, such approval not to be unreasonably withheld or delayed. As development of Phase 5 of the Subdivision is commenced by or on behalf of the Developer, the Developer or its Affiliates shall coordinate the timing of the construction of the Bridge, with the understanding that the construction of the Bridge shall be substantially completed by the Developer on or before the date that the City has issued certificates of occupancy for no more than 50% of the single-family lots contained in Phase 5 of the Subdivision (the “**Required Completion Date**”). The Developer shall complete construction of the Bridge, at its sole cost and expense, in substantial accordance with the plans approved by the City for such structure, and in accordance with all building ordinances and regulations of the City. The Developer shall only be required to complete construction of the Bridge (including related abutments), and Developer shall have no obligation to construct or pay for any facilities that may interconnect with the Bridge, such as hiking, biking or pedestrian trails, or any furniture, landscaping or other equipment related to such facilities. The City shall grant to the Developer such easements, access agreements or other licenses as may be required for construction of the Bridge by the Developer (or its contractors) on property owned by the City. If the Bridge has not been completed by the Developer in accordance with such requirements by the Required Completion Date, the City may withhold issuance of further certificates of occupancy for homes constructed in Phase 5 of the Subdivision until such time as the Bridge has been completed in accordance with such requirements. Upon completion of the Bridge, the Developer shall dedicate such improvements to the City in such form as may be reasonably requested by the City, and City shall accept the Bridge for public use and shall accept all requirements for future maintenance thereof.

3. **Development Fees and Charges.** The City acknowledges that the construction of the Bridge by the Developer and the dedication of such Bridge to the City has substantial benefits to the City and the residents thereof. Accordingly, the City shall waive all permit costs and infrastructure inspection fees that would otherwise be applicable to the construction of the Bridge by the Developer.

4. **Construction by City of Connecting Trail System.** Within 90 days following completion of the Bridge by the Developer and acceptance thereof by the City, the City shall commence construction of the pedestrian trail connections and approaches on both sides of the Bridge, which will interconnect with the City’s existing network of hiking and recreation trails. The cost of such interconnecting trails, including all landscaping thereof or equipment related thereto, shall be borne by the City, and the Developer shall have no obligation to pay any construction, landscaping or equipment costs related to such pedestrian trails.

5. **Special Provisions Regarding Lake Water Use by Developer and HOA.** In consideration of the construction of the Bridge by the Developer, the City shall also permit the Developer and/or the HOA to pump and utilize untreated water from HomeTown Lake for the recirculation system to be constructed by the Developer for other ponds and canals located in Phase

5 of the Subdivision, at no charge by the City to the Developer or the HOA for such untreated water. The size of any pumps, valves and piping for the water system that shall be designed by Developer to service such recirculation system shall be in accordance with an approved pond design submitted by the Developer, subject in all events to compliance with published and adopted City standards. The water recirculation system constructed by the Developer for Phase 5 of the Subdivision shall meet existing industry standards and specifications for such systems and approved by the City. The HOA shall bear all maintenance and repair costs for such recirculation system. The City shall grant to the HOA, at no cost by the HOA, all easements, licenses, permits or approvals that may be required for the HOA to take such untreated water from HomeTown Lake for the purposes set forth herein.

6. **Capacity and Qualifications of Developer and HOA.** The City, the Developer and the HOA acknowledge and agree that this Agreement does not constitute the creation of a partnership, joint venture, or principal and agent relationship between them, but evidences merely a contractual relationship between the City, the HOA and the Developer. The Developer represents to the City that (a) the Developer possesses the requisite skill and expertise to develop the Bridge and other infrastructure improvements specified in accordance with this Agreement, and (b) the Developer has all requisite licenses required by law to carry out its duties hereunder. The Developer shall perform its duties hereunder in a good and workmanlike manner and in accordance with the prevailing standards of professional care applicable to its industry. The Developer shall fully comply with all applicable laws and regulations having to do with worker's compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employer-employee related subjects. The HOA represents to the City that the HOA shall carry out its duties hereunder in a good and workmanlike manner and in accordance with all applicable laws and ordinances.

7. **Record Documents.** Upon completion of the Bridge, if requested by the City, the Developer shall cause to be provided to the City at least two blue line copies and one electronic media copy (AutoCad, Release 14) of the record documents for such improvements.

8. **Indemnity.** The Developer agrees to defend, indemnify and hold the City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought that may arise out of or be occasioned by the Developer's intentional or negligent breach of any of the terms or provisions of this Agreement, or by any other negligent act or omission of the Developer, its officers, agents, associates, employees, contractors or consultants, in the performance of this Agreement; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of the City, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both the Developer and the City, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

9. **Applicability of City Ordinances.** Except as may be otherwise specifically provided herein or in any other agreements between the parties, the Developer and the HOA acknowledge that the Subdivision shall be subject to all ordinances of the City in effect from time to time.

10. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Tarrant County, Texas.

11. **Remedies.** In the event that any party hereto fails to comply with the terms and conditions of this Agreement, the other party hereto shall have the right to enforce the terms of this Agreement by specific performance, or by any other remedies available to such party at law or in equity, with the understanding, however, that nothing contained herein shall authorize the Developer to obtain a judgement lien on any property owned by the City.

12. **Entire Agreement.** This Agreement contains the entire agreement between the parties covering the subject matter set forth herein. No modifications or amendments of this Agreement shall be valid unless in writing and signed by the parties against whom such enforcement is sought.

13. **No Assignments by Developer and HOA.** The Developer may not assign its rights or delegate its duties under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, and no consent shall be required to an assignment to any affiliate of the Developer or for any collateral assignment by the Developer of its rights under this Agreement to any financial institution providing development financing for Phase 5 of the Subdivision. The HOA may not assign its rights or delegate its duties under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, no consent shall be required to an assignment by the HOA to any successor entity that shall assume all duties and obligations for maintenance of the common areas in Phase 5 of the Subdivision.

14. **Successors and Assigns.** If required, the City shall adopt an ordinance approving this Agreement and authorizing the execution of this Agreement by the Mayor or other appropriate representative of the City. Upon full execution of this Agreement by all parties hereto, this Agreement shall become a binding obligation of the parties and this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, and their respective successors and permitted assigns.

15. **Memorandum of Agreement.** The parties shall not record this Agreement, but shall, at the request of either party, execute, acknowledge and record a memorandum of this Agreement in the Real Property Records of Tarrant County, Texas, in order to place third parties on notice of the existence of this Agreement with respect to the construction requirements for the Bridge in Phase 5 of the Subdivision. If any such memorandum of this Agreement is recorded, upon completion of the Bridge by the Developer and acceptance thereof by the City, the parties shall execute and record a release of such memorandum in the Real Property Records of Tarrant County, Texas, in form reasonably acceptable to both parties.

16. **No Third Party Beneficiaries.** The provisions of this Agreement are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

17. **Notices.** All notices given hereunder shall be made in writing and given to the addressee at the address specified on the signature pages hereof. Notices may be given by certified mail, return receipt requested, by hand delivery, or by facsimile or email transfer and shall be effective upon receipt at the address of the addressee.

18. **Exhibits.** The following exhibits are attached to this Agreement and incorporated herein by reference for all purposes:

<u>Exhibit A</u>	Map or Legal Description of Phase 5
<u>Exhibit B</u>	Depiction of Location of Bridge

[Signature page follows.]

EXECUTED by the parties hereto as of the _____ day of _____, 2017.

Address for Notices:

CITY:

CITY OF NORTH RICHLAND HILLS,
TEXAS

By: _____
Title: _____

Address for Notices:

3500 Maple Avenue, Suite 1165
Dallas, Texas 75219

DEVELOPER:

HOMETOWN 5 DEVELOPMENT CORP.

By: _____
Title: _____

Address for Notices:

3500 Maple Avenue, Suite 1165
Dallas, Texas 75219

HOA:

HOME TOWN EAST NRH OWNERS'
ASSOCIATION, INC.

By: _____
Title: _____

Exhibit A

LEGAL DESCRIPTION OR MAP OF PHASE 5

Exhibit B

DEPICTION OF LOCATION OF BRIDGE