

The Regular Meeting of the Town of Westlake Town Council will begin immediately following the conclusion of the Town Council Work Session but not prior to the posted start time.



TOWN OF WESTLAKE, TEXAS

Vision Statement

An oasis of natural beauty that maintains our open spaces in balance with distinctive development, trails, and quality of life amenities amidst an ever expanding urban landscape.

TOWN COUNCIL MEETING

AGENDA

November 14, 2016

**1301 Solana Blvd.
Building 4, Suite 4202
2ND FLOOR, COUNCIL CHAMBER
WESTLAKE, TX 76262**

Workshop Session: 5:00 p.m.

Regular Session: 6:30 p.m.

Mission Statement

Westlake is a unique community blending preservation of our natural environment and viewscales, while serving our residents and businesses with superior municipal and academic services that are accessible, efficient, cost-effective, and transparent.

Westlake, Texas – "One-of-a-kind community; natural oasis – providing an exceptional level of service."

Work Session

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. REVIEW OF CONSENT AGENDA ITEMS FOR THE TOWN COUNCIL REGULAR MEETING AGENDA.

4. EXECUTIVE SESSION

The Council will conduct a closed session pursuant to Texas Government Code, annotated, Chapter 551, Subchapter D for the following:

- a. Sec. 551.071 Consultation with Attorney (1) when the governmental body seeks the advice of its attorney about: Land Sale
- b. Section 551.087 Deliberation Regarding Economic Development Negotiations (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1) for the following:
 - Maguire Partners-Solana Land, L.P., related to Centurion's development known as Entrada and Granada
 - Project Lynx
 - CS Kinross Lake Parkway, a Delaware limited liability company, its affiliate Charles Schwab & Co., Inc.
- c. Section 551.072 to deliberate the purchase, exchange, lease or value of real property regarding Town Hall offices, Fire Station site and Town owned property
- d. Section 551.074(a)(1): Deliberation Regarding Personnel Matters – to deliberate the appointment, employment, evaluation, reassignment, duties, of a public officer or employee: Town Manager

5. RECONVENE MEETING

6. DISCUSSION ITEMS

- a. Presentation and Discussion of the Upcoming Legislative Session and Possible Westlake Priorities.
- b. Discussion regarding a proposed Special Events Ordinance.
- c. Discussion regarding the Town's Health, Dental, and Vision insurance for 2017.
- d. ***Standing Item***: Presentation and discussion of development projects per Staff October 2016 report and October 2016 Entrada report from the Developer.

7. COUNCIL RECAP / STAFF DIRECTION

8. ADJOURNMENT

Regular Session

- 1. CALL TO ORDER**
- 2. ITEMS OF COMMUNITY INTEREST:** Mayor and Council Reports on Items of Community Interest pursuant to Texas Government Code Section 551.0415 the Town Council may report on the following items: (1) expression of thanks, congratulations or condolences; (2) information about holiday schedules; (3) recognition of individuals; (4) reminders about upcoming Town Council events; (5) information about community events; and (6) announcements involving imminent threat to public health and safety.
- 3. CITIZEN COMMENTS:** This is an opportunity for citizens to address the Council on any matter whether or not it is posted on the agenda. The Council cannot by law take action nor have any discussion or deliberations on any presentation made to the Council at this time concerning an item not listed on the agenda. The Council will receive the information, ask staff to review the matter, or an item may be noticed on a future agenda for deliberation or action.
- 4. CONSENT AGENDA:** All items listed below are considered routine by the Town Council and will be enacted with one motion. There will be no separate discussion of items unless a Council Member or citizen so requests, in which event the item will be removed from the general order of business and considered in its normal sequence.
 - a. Consider approval of the minutes from the October 24, 2016, meeting.
 - b. Consider approval of **Resolution 16-36**, Approving the 2017 Meeting Calendar for the Town Council and Board of Trustees.
 - c. Consider approval of **Ordinance 802**, Appointing the Judge and Alternate Judge for two (2) year terms.
 - d. Consider approval of **Resolution 16-37**, approving the declaration of Covenants, Conditions, and Restrictions and Design Guidelines for Quail Hollow, a residential development located in a R-1 zoning district, on approximately 188 acres of land located at the southeast corner of FM 1938/Davis Boulevard and Dove Road.
- 5. PUBLIC HEARING AND CONSIDERATION REGARDING ORDINANCE 803, AMENDING AND EXPANDING TAX ABATEMENT REINVESTMENT ZONE NO. 4, IN THE TOWN OF WESTLAKE, TARRANT AND DENTON COUNTIES, TEXAS FOR THE PROJECT COMMONLY KNOWN AS CHARLES SCHWAB & CO. WESTLAKE CORPORATE OFFICE CAMPUS.**
- 6. CONSIDER APPROVAL OF RESOLUTION 16-38, AMENDING RESOLUTION 16-31, AMENDING AND EXPANDING NEIGHBORHOOD EMPOWERMENT ZONE #4 IN THE TOWN OF WESTLAKE RELATED TO THE CHARLES SCHWAB & CO. CORPORATE OFFICE CAMPUS SITE DESIGNATED FOR TAX REINVESTMENT ZONE #4.**

7. CONSIDER APPROVAL OF RESOLUTION 16-39, AMENDING AND RESTATING THE ECONOMIC DEVELOPMENT AGREEMENT AND ADOPTING A TAX ABATEMENT AGREEMENT, PURSUANT TO CHAPTER 312 OF THE TEXAS TAX CODE, WITH CS KINROSS LAKE PARKWAY, A DELAWARE LIMITED LIABILITY COMPANY, AND ITS AFFILIATE CHARLES SCHWAB & CO., INC.

8. DISCUSSION AND CONSIDERATION OF RESOLUTION 16-40, APPROVING THE UNITED HEALTHCARE AS THE TOWN'S HEALTH AND VISION INSURANCE CARRIER AND METLIFE AS THE TOWN'S DENTAL INSURANCE CARRIER FOR 2017.

9. EXECUTIVE SESSION

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- b. Section 551.087 Deliberation Regarding Economic Development Negotiations (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1) for the following:
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- c. Section 551.072 to deliberate the purchase, exchange, lease or value of real property regarding Town Hall offices, Fire Station site and Town owned property
- d. Section 551.074(a)(1): Deliberation Regarding Personnel Matters – to deliberate the appointment, employment, evaluation, reassignment, duties, of a public officer or employee: Town Manager

10. RECONVENE MEETING

11. TAKE ANY ACTION, IF NEEDED, FROM EXECUTIVE SESSION ITEMS.

12. FUTURE AGENDA ITEMS: Any Council member may request at a workshop and / or Council meeting, under "Future Agenda Item Requests", an agenda item for a future Council meeting. The Council Member making the request will contact the Town Manager with the requested item and the Town Manager will list it on the agenda. At the meeting, the requesting Council Member will explain the item, the need for Council discussion of the item, the item's relationship to the Council's strategic priorities, and the amount of estimated staff time necessary to prepare for Council discussion. If the requesting Council Member receives a second, the Town Manager will place the item on the Council agenda calendar allowing for adequate time for staff preparation on the agenda item.

13. ADJOURNMENT

ANY ITEM ON THIS POSTED AGENDA COULD BE DISCUSSED IN EXECUTIVE SESSION AS LONG AS IT IS WITHIN ONE OF THE PERMITTED CATEGORIES UNDER SECTIONS 551.071 THROUGH 551.076 AND SECTION 551.087 OF THE TEXAS GOVERNMENT CODE.

CERTIFICATION

I certify that the above notice was posted at the Town Hall of the Town of Westlake, 1301 Solana Blvd., Building 4, Suite 4202, Westlake, TX 76262, November 10, 2016, by 5:00 p.m. under the Open Meetings Act, Chapter 551 of the Texas Government Code.

Kelly Edwards, TRMC, Town Secretary

If you plan to attend this public meeting and have a disability that requires special needs, please advise the Town Secretary 48 hours in advance at 817-490-5710 and reasonable accommodations will be made to assist you.

Town Council

Item # 2 – Pledge of
Allegiance

Texas Pledge:

*"Honor the Texas flag;
I pledge allegiance to
thee, Texas, one state
under God, one and
indivisible."*

Town Council

Item # 3 – Review of
Consent Items

REVIEW OF CONSENT AGENDA ITEMS FOR THE TOWN COUNCIL REGULAR MEETING AGENDA.

- a. Consider approval of the minutes from the October 24, 2016, meeting.
- b. Consider approval of **Resolution 16-36**, Approving the 2017 Meeting Calendar for the Town Council and Board of Trustees.
- c. Consider approval of **Ordinance 802**, Appointing the Judge and Alternate Judge for two (2) year terms.
- d. Consider approval of **Resolution 16-37**, approving the declaration of Covenants, Conditions, and Restrictions and Design Guidelines for Quail Hollow, a residential development located in a R-1 zoning district, on approximately 188 acres of land located at the southeast corner of FM 1938/Davis Boulevard and Dove Road.

Town Council

Item # 4 – Executive Session

EXECUTIVE SESSION

- a. Sec. 551.071 Consultation with Attorney (1) when the governmental body seeks the advice of its attorney about: Land Sale
- b. Section 551.087 Deliberation Regarding Economic Development Negotiations (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1) for the following:
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Town Council

Item # 5 – Reconvene
Council Meeting

Town Council

Item #6 – Discussion Items

DISCUSSION ITEMS

- a. Presentation and Discussion of the Upcoming Legislative Session and Possible Westlake Priorities.
- b. Discussion regarding a proposed Special Events Ordinance.
- c. Discussion regarding the Town's Health, Dental, and Vision insurance for 2017.
- d. ***Standing Item:*** Presentation and discussion of development projects per Staff October 2016 report and October 2016 Entrada report from the Developer.



TYPE OF ACTION

Workshop - Discussion Item

**Westlake Town Council Meeting
Monday, November 14, 2016**

TOPIC: Presentation and Discussion of the Upcoming Legislative Session and Possible Westlake Priorities.

STAFF CONTACT: Tom Brymer, Town Manager

Strategic Alignment

<u>Vision, Value, Mission</u>	<u>Perspective</u>	<u>Strategic Theme & Results</u>	<u>Outcome Objective</u>
Mission: Westlake is a unique community blending preservation of our natural environment and viewsapes, while serving our residents and businesses with superior municipal and academic services that are accessible, efficient, cost-effective, & transparent.	Citizen, Student & Stakeholder	Exemplary Service & Governance - We set the standard by delivering unparalleled municipal and educational services at the lowest cost.	Preserve Desirability & Quality of Life
<u>Strategic Initiative</u>			
Outside the Scope of Identified Strategic Initiatives			

Time Line - Start Date: November 14, 2016 **Completion Date:** November 1, 2017

Funding Amount: N/A **Status -** **Not Funded** **Source -** N/A

EXECUTIVE SUMMARY (INCLUDING APPLICABLE ORGANIZATIONAL HISTORY)

The next session of the Texas Legislature convenes this coming January. Thousands of bills will be introduced during this session, many of which will not move through the Legislature. However, there are move bills that do move through the Legislature’s process, and often these bills would have a negative impact on Texas municipalities generally, and sometimes, on Westlake directly. As these potential deleterious (to cities’ interests) bills are introduced, it is often in the Town’s best interest to express our concern regarding such legislation. These concerns are usually expressed in written form (letters from the Mayor to our legislative delegation or the committee considering the bill). Occasionally it means being willing to testify at a committee hearing on a proposed bill.

Having general policy guidance from the Town Council regarding our legislative priorities for the upcoming session is helpful to staff in determining the Town's position on "bad bills", i.e. introduced legislation that would negatively impact Westlake directly or cities in general and thus, impact Westlake. It is the purpose of this agenda item to discuss the Town's position on developing a legislative agenda for the upcoming session and communicating it to our legislative delegation in December prior to the start of the session.

RECOMMENDATION

The Texas Municipal League's (TML) Board is finishing its consideration for adoption formal legislative priorities for the upcoming session and it is not quite ready for public distribution. The 2015-16 TML Legislative Agenda is attached for Town Council review and discussion as the 2016-17 Legislative Agenda will likely be similar. While TML's 2015-16 Legislative Priorities does contain specifics, you will notice that in general the highest priority is to oppose "bad bills". These are usually bills that reduce local control. It is recommended that this be a key tenet in Westlake's legislative agenda as well. TML has indicated that, while this is usually something that occurs in every session, they anticipate the strongest effort yet by the Legislature to pursue bills that reduce, erode, and usurp local control, i.e. reducing home rule and the ability of cities to handle many issues that they now have authorization to deal with at the local level.

Other key tenets in a possible Westlake legislative agenda could be urging the Legislature to provide additional funding for public education, as well as not passing bills that created unfunded mandates (often by creating new regulations that cities are required to implement) for cities or force cities to provide new or additional funding for State services.

If the Council is interested in formally adopting a legislative priority agenda for the upcoming session, staff recommends that a resolution with draft priorities be brought forward at the Council's December meeting for consideration. Those legislative priorities could include those mentioned above which include opposing bills that:

- **reduce local control**
- **impose unfunded mandates**
- **require cities to collect new or additional revenue to fund State services**

Further, Westlake's agenda for the upcoming session could include supporting bills that:

- **Increase public school (FSP) funding) levels**
- **Provide cities with a mechanism to deal with dissolution of special districts in their boundaries**

Also, by the December meeting it is anticipated that TML will have approved its legislative priorities and the Council could see if it wishes to support all or part of those priorities as well.

ATTACHMENTS: Texas Municipal League 2015-16 Legislative Priorities.

The TML Legislative Program for 2015 – 2016

Introduction

City officials across the state are well aware of the fact that many significant decisions affecting Texas cities are made by the Texas Legislature, not by municipal officials.

During the 2013 legislative session, more than 6,000 bills or significant resolutions were introduced; almost 1,500 of them would have affected Texas cities in some substantial way. In the end, over 1,700 bills or resolutions passed and were signed into law; approximately 220 of them impacted cities in a direct or indirect way.

There is no reason to believe that the workload of the 2015 session will be any lighter; it may be greater. And for better or worse, city officials will have to live with all the laws that may be approved by the legislature. Thus, the League must make every effort to assure that detrimental bills are defeated and beneficial bills are passed.

The TML approach to the 2015 session is guided by principles that spring from a deeply rooted TML legislative philosophy:

- The League will vigorously oppose any legislation that would erode the authority of Texas cities to govern their own local affairs.
- Cities represent the level of government closest to the people. They bear primary responsibility for provision of capital infrastructure and for ensuring our citizens' health and safety. Thus, cities must be assured of a predictable and sufficient level of revenue and must resist efforts to diminish their revenue.
- The League will oppose the imposition of any state mandates that do not provide for a commensurate level of compensation.

In setting the TML program for 2015-2016, the Board recognized that there is a practical limit to what the League can accomplish during the legislative session. Because the League (like all associations) has finite resources and because vast amounts of those resources are necessarily expended in defeating bad legislation, the Board recognized that the League must very carefully select the bills for which it will attempt to find sponsors and seek passage.

The Board considered approximately 200 initiatives that had been recommended by TML policy committees or by the membership-at-large. Each initiative was subjected to several tests:

- Does the initiative have wide applicability to a broad range of cities of various sizes (both large and small) and in various parts of the state?

- Does the initiative address a central municipal value, or is it only indirectly related to municipal government?
- Is this initiative, when compared to others, important enough to be part of TML’s list of priorities?
- Will the initiative be vigorously opposed by strong interest groups and, if so, will member cities commit to contributing the time and effort necessary to overcome that opposition?
- Is this initiative one that city officials, more than any other group, should and do care about?

The Board placed each legislative issue into one of five categories of effort. Those five categories are:

- **Seek Introduction and Passage** – the League will attempt to find a sponsor, will provide testimony, and will otherwise actively pursue passage. Bills in this category are known as “TML bills.”
- **Support** – the League will attempt to obtain passage of the initiative if it is introduced by some other entity.
- **Oppose** – the League will actively and vigorously attempt to defeat the initiative because it is detrimental to member cities.
- **No Position** – the League will take no action.

Our Highest Priority: Oppose Bad Bills

The Board determined that TML’s highest priority goal for 2015-2016 will be the defeat of legislation deemed detrimental to cities. As a practical matter, adoption of this position means that the beneficial bills will be sacrificed, as necessary, in order to kill detrimental bills.

TML Priority Package

The Board determined that the TML Priority Package will include the following items in priority order:

1. Defeat any legislation that would erode municipal authority in any way, impose an unfunded mandate, or otherwise be detrimental to cities, especially legislation that would:

- a. impose a revenue cap of any type, including a reduced rollback rate, mandatory tax rate ratification elections, lowered rollback petition requirements, limitations on overall city expenditures, exclusion of the new property adjustment in effective rate and rollback rate calculations, or legislation that lowers the rollback rate and gives a city council the option to re-raise the rollback rate.
 - b. negatively expand appraisal caps.
 - c. erode the concept that appraisals must reflect the true market value of property.
 - d. remove or negate the strictly voluntary nature of highway turnbacks, including relevant state budget strategies.
 - e. erode the authority of a city to be adequately compensated for the use of its rights-of-way.
 - f. impose additional state fees or costs on municipal court convictions or require municipal courts to collect fine revenue for the state.
 - g. impose state “tap fees” or any other type of state charge on municipal water systems.
 - h. impose mandatory water conservation measures on cities.
 - i. erode municipal authority to participate in utility rate cases.
 - j. limit or prohibit the authority of city officials to use municipal funds to communicate with legislators.
 - k. limit or prohibit the authority of the Texas Municipal League to use any revenue, however derived, to communicate with legislators.
 - l. establish a standard or process for determining economic loss and related compensation resulting from a regulatory action.
2. Passage of any legislation that would:
- a. allow a city the option of selecting either an official newspaper, or an official website, for the publication of legally-required official notices, including procurement and other notices.
 - b. modify the deadline for publication of the *Notice of Proposed Property Tax Rate* from September 1 of each year to “before the later of September 1 or the 30th day after the date the certified appraisal roll is received by the taxing unit.”

Support

The Board voted to support legislation that would:

1. allow for greater flexibility by cities to fund local transportation projects; amend or otherwise modify state law to help cities fund transportation projects; or provide municipalities with additional funding options and resources to address transportation needs that the state and federal governments are unable or unwilling to address.
2. discontinue the diversion of transportation revenues to non-transportation purposes and appropriate all revenues from highway user fees and taxes to fund transportation.
3. provide additional funding to the Texas Department of Transportation for transportation projects that would benefit cities, so long as existing funding formulas are followed.
4. amend Chapter 327 of the Texas Tax Code to authorize the collection of municipal sales and use taxes for street maintenance for an indefinite term instead of the four years provided by current law.
5. with regard to federal transportation funding: (1) provide local governments with long term funding; (2) send funding directly to the projects where people live and work; (3) give local leaders a stronger role in the decision making process; (4) include alternative financing; and (5) streamline the planning and approval process.
6. provide local, state, and federal transportation funding for rail as one component of transportation infrastructure.
7. provide financial and regulatory tools empowering Texas cities with military bases to help strengthen the missions and services of the installations and prevent the potential for being listed by BRAC.
8. amend or revise the Biggert-Waters Flood Insurance Reform Act to reduce the severe short term economic/financial impact on people and communities.
9. eliminate any mandate on the Texas Commission on Fire Protection to generate revenues above what is required to self-fund the agency.
10. allow new car sales to no longer be exempt from local sales tax.
11. allow a more equitable way of distributing court fines that would result a higher percentage of fines being kept local, where the laws are enforced, the court is held, and the fines collected.
12. allow law enforcement agencies to use unmanned aircraft systems to fulfill their public safety responsibilities and protect the citizens of the State of Texas.

13. allow law enforcement to conduct sobriety checkpoints.
14. provide consistency and uniformity in the compliance deadlines and fees for compliance dismissals of class C misdemeanors.
15. eliminate the ten-cent court cost by repealing Section 102.061(8) of the Government Code and Article 102.022(b) of the Code of Criminal Procedure.
16. amend Article 27.14(b) of the Code of Criminal Procedure to eliminate the need to send a certified letter if a plea is received through the mail with no payment, and use regular or electronic mail instead.
17. require the state to provide easy electronic access to the state's insurance database for municipal courts.
18. amend Article 45.048 of the Code of Criminal Procedure to allow courts to satisfy fines and costs upon request for time spent in juvenile detention.
19. repeal Article 45.0511(c)(3) of the Code of Criminal Procedure requiring an affidavit be filed when requesting to take a driving safety course to have a ticket dismissed and to amend Article 45.0511(b)(3)(B) of the Code of Criminal Procedure to allow defendants to request the driving safety course by regular mail or electronic means instead of by certified mail.
20. amend Article 45.012 Code of Criminal Procedure to allow for online "authentication" instead of signatures for certain documents.
21. amend Article 45.051(f) of the Code of Criminal Procedure to allow holders of commercial driver's licenses accused of offenses committed in personal vehicles or in a non-commercial vehicle to be eligible for deferred dispositions.
22. amend the Water Safety Act (Chapter 31 of the Texas Parks and Wildlife Code) to allow municipal courts to retain a portion of a fine under that chapter.
23. amend Section 81.072 of the Government Code to exempt a violation of a disciplinary rule regarding a prosecutor to disclose information or evidence for a fine-only offense that is not contested in a municipal court by a defendant.
24. provide for uniformity in the compliance of juvenile confidentiality as required by law for children charged with class C misdemeanors except traffic offenses.
25. prevent further exploitative payday and auto title lending practices.

26. resolve inconsistencies within Texas Government Code Section 551.127 so that governmental bodies that choose to use videoconference calls for meetings are provided clarity of the law governing videoconference calls.
27. transfer the Code Enforcement Officer licensing program from the Texas Department of State Health Services to the better-equipped Texas Department of Licensing and Regulation.
28. implement Recommendation 3.2 in the Sunset Advisory Commission Staff Report to transfer the sanitarian licensing program from the Texas Department of State Health Services to the Texas Department of Licensing and Regulation.
29. modify the Gas Reliability Infrastructure Program to allow for municipal contest and review in a similar manner to rate cases in order to assure a just and reasonable basis for the GRIP charges and to ensure GRIP is used for its intended purpose.
30. simplify the effective tax rate calculation for notice purposes only, provided the legislation would have no effect on the underlying effective tax rate and rollback tax rate calculations themselves, nor upon the hold harmless exemptions to those rates.
31. help offset the losses incurred by cities disparately impacted as a result of H.B. 3613 (relating to the property tax exemption for disabled veterans) adopted in 2009 and S.B. 516 (relating to the property tax exemption for the surviving spouse of a disabled veteran) adopted in 2011.
32. make beneficial amendments to the equity appraisal statute.
33. require mandatory disclosure of real estate sales prices.
34. allow a council-option city homestead exemption of up to 30 percent, or the equivalent dollar amount.
35. create a new council-option city sales tax for property tax relief that may exceed the two-percent local cap.
36. automatically convert existing sales taxes for property tax relief to any newly-created sales tax for property tax relief that would not count against the two-percent local cap.
37. expand the sales tax base, but only if the city tax base fully benefits from the expansion.
38. convert the sales tax reallocation process from a ministerial process into a more formalized administrative process that would, at a minimum, require prior notice to all affected parties.

39. toll the four-year “look-back provision” relating to collection of unpaid city sales tax, but only in the case of nonpayment by a business and not misallocation among cities.
40. authorize cities – in relation to annexation, planned annexation, voluntary annexation, or negotiated annexation – to replace some or all ESD sales taxes in an area with city sales taxes, provided an ESD’s existing sales tax debt is proportionately and reasonably provided for in some manner.
41. permit a municipal development district’s sales tax, notwithstanding a competing ESD sales tax, to apply in the extraterritorial jurisdiction, as current law allows, provided an ESD’s existing sales tax debt is proportionately and reasonably provided for in some manner.
42. allow cities to remove themselves from an ESD if the city is capable of providing services to the area.
43. require city council approval for an ESD to expand into a city’s corporate limits or extraterritorial jurisdiction.
44. expand the use of public, educational, and government (PEG) fees to include operational and related costs associated with PEG channels.
45. repeal the current impact fee exemption for school districts.
46. eliminate the population brackets or otherwise amend the hotel occupancy tax statute in a manner that provides all Texas cities, to the maximum extent feasible and reasonable, the authority to spend hotel occupancy tax revenue on existing sports facilities and fields in a manner that promotes tourism and benefits the interest of the local hotel and motel industry.
47. grant additional authority to a general law city to establish a property’s contiguity with city boundaries through annexation of adjacent road rights-of-way from the city’s boundaries to land petitioned for annexation at its closest point to that boundary, so long as the property lies within the city’s extraterritorial jurisdiction.
48. subject to municipal zoning authority land in which the state’s general land office retains an ownership interest wholly or partly and that is used by a person for commercial purposes.
49. provide additional tools for cities or the state to address the problem of scrap tire dumping.
50. improve local sales tax collections by limiting fraud as it relates to international purchasers.
51. make beneficial procedure-related amendments to the dangerous dog statute.

52. clarify the authority of general law cities to enact sex offender residency restrictions
53. make it an offense for a person to post on a publicly-accessible website the residence address or telephone number of an individual the actor knows is a public servant or member of a public servant's family or household.
54. expressly authorize non-attorney consultants to participate in a meeting by conference call.
55. reduce the administrative convenience fee charged by the attorney general for each electronic submission for an open records letter ruling.
56. enact beneficial amendments to the Texas Open Meetings Act that relate to the use of social media and the discussion of public business.
57. reverse the effect of H.B. 1164 (2013) by requiring county election precincts to match single member districts in cities over 10,000 population.
58. provide additional state funding to fully fund the State Water Plan.
59. expand the authority of cities to operate all variants of desalination, including legislation that would allocate state funding to desalination.
60. impose permit reliability to secure customary 20-30 year water project financing.
61. clarify that the governmental-proprietary function distinction from tort law does not apply to contracts disputes.
62. restore full funding to the Texas Recreation and Parks Accounts (TRPA) No. 467 & Large County and Municipality Recreation and Parks Account No. 5007. (Both accounts are also known as the "Local Park Grant Program.")
63. pass through federal dollars used for parks, recreation, open space, trails, and tourism from any of the following: (1) the United States Department of the Interior Land and Water Conservation Fund and the fund's reauthorization; (2) the Sport Fish Restoration Boat Access Program; and (3) the United States Department of Transportation Recreation Trails Program.
64. directly benefit parks, recreation, open space, and trails on utility corridors and waive all liability for those purposes to the utilities.
65. ensure parks and recreation agencies are included as eligible partners and beneficiaries in any strategy or guideline aimed at benefiting healthy lifestyles, increasing physical activity, conservation, or preservation.

66. either appropriate funds or directly benefit parks, recreation, open space, trails, and tourism.
67. remove the cap on sporting goods sales tax revenues for state and local parks.
68. create a constitutional dedication of sporting goods sales tax revenues for use in state and local parks that would directly benefit parks, recreation, open space, trails and tourism.
69. enact beneficial amendments to S.B. 905 (related to commemorative bottle sales at distilleries) from 2013.
70. allow a city to decide the appropriate amount of relocation assistance to a person who is displaced by code enforcement.
71. extend the deadline for cities to change the date of their general elections to another uniform election date.
72. provide for voluntary “complete streets” participation.
73. permit city health benefit pools to be recognized as qualified health plans under federal law, and to permit city health benefit pools to offer administrative support for city health benefits offered through exchanges.

Oppose

The Board voted to oppose legislation that would:

1. erode municipal authority in any way, impose an unfunded mandate, or otherwise be detrimental to cities.
2. impose a revenue cap of any type, including a reduced rollback rate, mandatory tax rate ratification elections, lowered rollback petition requirements, limitations on overall city expenditures, exclusion of the new property adjustment in effective rate and rollback rate calculations, or legislation that lowers the rollback rate and gives a city council the option to re-raise the rollback rate.
3. negatively expand appraisal caps.
4. erode the concept that appraisals must reflect the true market value of property.
5. remove or negate the strictly voluntary nature of highway turnbacks, including relevant state budget strategies.

6. erode the authority of a city to be adequately compensated for the use of its rights-of-way.
7. impose additional state fees or costs on municipal court convictions or require municipal courts to collect fine revenue for the state.
8. impose state “tap fees” or any other type of state charge on municipal water systems.
9. impose mandatory water conservation measures on cities.
10. erode municipal authority to participate in utility rate cases.
11. limit or prohibit the authority of city officials to use municipal funds to communicate with legislators.
12. limit or prohibit the authority of the Texas Municipal League to use any revenue, however derived, to communicate with legislators.
13. establish a standard or process for determining economic loss and related compensation resulting from a regulatory action.
14. enact new property tax exemptions that substantially erode the tax base.
15. impose a property tax freeze that can be implemented by any mechanism other than council action.
16. extend the “Prop 2” pollution control property tax exemption to processes, facilities, or end products.
17. impose new mandatory homestead exemptions or exemption increases.
18. enact any sales tax exemption that would substantially erode the sales tax base.
19. lengthen or broaden the scope of the current sales tax holiday.
20. enact a requirement that the adoption of a new sales tax for property tax relief shall result in a lower property tax rollback rate for the adopting city.
21. expand the sales tax base without fully benefitting the city tax base.
22. alter the city share or the calculation or sourcing of city sales taxes.
23. limit the authority of Type A or Type B sales tax corporations statewide, but take no position on legislation that is regional in scope and that is supported by some cities in that region.

24. expand election requirements for issuance of any city debt, impose a petition/election procedure where none currently exists, or that would otherwise erode the ability of a city to issue debt in any way.
25. limit or eliminate the current flexibility of the Major Events Trust Fund as a tool for cities to attract or host major events and conventions.
26. enact state or federal legislation or rules that would negatively affect the provisions of Chapter 66 of the Utilities Code, which relates to state-issued cable franchises.
27. erode municipal authority over the management and control of rights-of-way.
28. erode municipal authority to require utility companies to pay the costs of relocating their facilities in a timely manner as required by current law.
29. repeal or limit red light camera authority generally. (Further, the committee recommends that TML defer to the Texas Red Light Coalition on more detailed matters relating to revisions to red light camera policy.)
30. erode existing municipal authority relating to sex offender residency restrictions, or create a state standard that preempts current or future municipal sex offender residency restrictions.
31. provide for any expansion of mandated emergency management training that would impose an additional cost to cities or that is not funded by commensurate state resources.
32. subject city police to criminal charges for enforcing federal firearms laws, and/or subject any city that allows such enforcement to a lawsuit by the state's attorney general.
33. implement Recommendation 3.1 in the Texas Sunset Advisory Commission Staff Report to deregulate the Code Enforcement Officer licensing program in Texas.
34. further erode local control as it pertains to retirement issues.
35. expand or enact detrimental amendments to the civil service law.
36. make meet and confer mandatory or expand the current meet and confer law.
37. make collective bargaining mandatory or impose expanded collective bargaining rights.
38. substantively change or expand the scope of the current disease presumption law.
39. eliminate any of the current uniform election dates.

40. impose on cities any additional mandates relating to irrigation/sprinklers.
41. limit a city's authority to enter into a solid waste franchise.
42. exempt any public or private entity from paying municipal drainage fees.
43. impose federal or state mandates that diminish local control over municipal collocation regulations.
44. create appropriations earmarks for specific park projects or locales.
45. be detrimental to parks, recreation, open space, trails, and tourism.
46. erode municipal governmental immunity.
47. require the reporting of lobbying activities beyond the requirements in current law.
48. preempt or prohibit the regulation of payday and auto title lenders by a city.
49. preempt existing or future bans on the use of plastic bags in a city.
50. specify what and how cities may regulate with regard to cell phones.
51. repeal existing municipal ordinances relating to cell phone bans or create a state standard that preempts more restrictive current or future municipal cell phone bans.
52. impose a statewide smoking ban that would preempt existing or future municipal smoking bans.
53. erode municipal authority over billboards or that would place any unfunded mandate on cities relating to billboards.
54. impose mandatory "complete streets" requirements on cities.
55. further erode a city's ability to condemn property for a public use.
56. erode municipal annexation authority.
57. erode municipal zoning authority.
58. restrict a city's ability to adopt or amend zoning regulations, or vest or otherwise create a property right in a zoning classification.
59. further erode a city's ability to regulate religious or charitable organizations.

60. enact adverse amendments to the permit vesting statute (Chapter 245 of the Local Government Code).
61. allow special districts to form in a city or its extraterritorial jurisdiction without the city's permission, or that would impose additional requirements on cities relating to special districts.
62. reduce municipal authority to require exactions related to and required by new development, or that would erode the authority of cities to adopt and enforce minimum development standards.
63. erode a city's ability to make amendments to model building codes.
64. further restrict a city's ability to impose building fees.
65. erode municipal authority in the ETJ.
66. further restrict a city's ability to impose municipal impact fees or that would exempt any entity from paying municipal impact fees.
67. erode municipal authority in relation to tree preservation requirements.

Take No Position

The Board voted that TML take no position on legislation that would:

1. amend Chapter 682 of the Transportation Code to allow all parking cases to be administratively adjudicated as civil cases, rather than just municipal ordinance parking cases for eligible cities.
2. add a line item to the state appropriations bill in an amount equal to that of counties, which is understood to be \$200,000, to fund the Texas Municipal Court Education Center.
3. remove the affirmative defense for the offense of failure to show proof of financial responsibility and establish a \$20 dismissal fee if proof is provided to the court in 20 working days.
4. make the impoundment of vehicles optional upon a defendant's conviction of a second "no vehicle liability" charge and that impoundment may be ordered by justice courts of the sheriff and by municipal courts of the chief law enforcement officer of the city.
5. authorize a council-option reduction in the current ten-percent cap on annual appraisal growth.

6. expand or contract eligibility for the CHDO property tax exemption (other than legislation relating to municipal approval of CHDO exemptions).
7. broaden the authority of Type A or Type B sales tax corporations.
8. create additional, flexible cost-of-living adjustment (COLA) options that are not retroactive to a retiree's date of retirement, such options to possibly include one-time increases tied to increases in the consumer price index (CPI) or flat percentage increases.
9. allow the collection of a DNA sample from all suspects who are arrested for a class B misdemeanor or higher.

Other

The Board voted that TML take the following additional actions:

1. support the preservation of municipal authority to reduce the effects of oil and gas development on city residents, but take no position on municipal authority to outright ban oil and gas development.
2. that, should legislation be filed that relates to immigration and that would affect cities, League staff should seek the guidance of the TML Executive Committee regarding the League's position on such legislation.
3. that the League offer support in securing an unmanned aircraft designation by the FAA to promote economic growth for the State of Texas and the well-being of its citizens.
4. that the League support the continued efforts of the National League of Cities in opposing any efforts by Congress or the administration to reduce or eliminate the tax exemption of municipal bond interest.
5. that the League urge the Texas Legislature to direct the Department of Information Resources to complete the evaluation and review of sub-allocation of the texas.gov domain using the construct: *cityname.texas.gov*.
6. that the League continue working with the Texas Commission on Environmental Quality and affected cities to form a working group related to municipal stormwater issues.
7. that the League take the issue of the raising the exemption amounts in the Texas Engineering Practices Act to the government advisory committee of the Texas Board of Professional Engineers for further study.



TYPE OF ACTION

Workshop - Discussion Item

**Westlake Town Council Meeting
Monday, November 14, 2016**

TOPIC: Discussion regarding a proposed Special Events Ordinance.

STAFF CONTACT: Jarrod Greenwood, Public Works Director/Assistant to the Town Manager

Strategic Alignment

<u>Vision, Value, Mission</u>	<u>Perspective</u>	<u>Strategic Theme & Results</u>	<u>Outcome Objective</u>
Planned / Responsible Development	Citizen, Student & Stakeholder	Exemplary Service & Governance - We set the standard by delivering unparalleled municipal and educational services at the lowest cost.	Preserve Desirability & Quality of Life
<u>Strategic Initiative</u>			
Conduct Neighborhood Meetings and Discussions			

Time Line - Start Date: November 14, 2016

Completion Date: December 12, 2016

Funding Amount:

Status - N/A

Source - N/A

EXECUTIVE SUMMARY (INCLUDING APPLICABLE ORGANIZATIONAL HISTORY)

Municipalities will have a special event ordinance in order to provide staff the ability to evaluate events in an effort to mitigate impacts on the general health and welfare of the citizens and property owners. Additionally, the use of public rights-of-ways and Town owned properties need to be managed to ensure availability of resources to facilitate the special event and minimize impacts to the general public.

The Town does not currently have a Special Events Ordinance, which can become an issue in the future as we continue to see growth of development. Over the past several years, Town staff has experienced growth that has resulted in an increase in events organized by residents, property

owners, and corporate citizens that require. While historically staff has managed to work with previous event organizers of special events without any issues, this will not be the case as Westlake continues to develop and the amphitheatre becomes operational.

The proposed Special Events Ordinance identifies two types of Special Events: 1) Level One; and 2) Level Two.

Level One is for events less than 300 people, while Level Two is used for event with more than 300 people. As you will recall, the Council approved the amphitheater SUP by Ordinance 776 at the March 28, 2016 regular Town Council. The proposed amphitheatre is planned to have 300 fixed seats and a total capacity (includes lawn seating) of 3,000. The criterion of 300 people was utilized for the permit due to the provision of the Entrada Amphitheatre SUP.

Section 2 of the SUP stipulates that for any event with more than 300 people, the following conditions must be met:

- a. parking (which may involve shared parking agreements with neighboring property owners);
- b. traffic control (which may include a traffic impact analysis, to be updated as needed or for each event);
- c. security (including a plan setting out how many emergency service personnel will be needed);
- d. noise (requiring compliance with Town ordinances in regard to sound levels and hours of operation);
- e. meeting the requirements of the mass gathering ordinance (including insurance and indemnity); and
- f. any other concerns in regard t the public health, safety, or welfare. (which could include type of show, for example, shows with pyrotechnics will require greater protections, or meteorological conditions, or multiple events occurring simultaneously).

While the Special Event Ordinance language was heavily influenced by the Entrada SUP requirements, the proposed Ordinance will be used for other events, i.e. Vaquero fireworks, Westlake Classic Car Show, Run the Ranch....

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF WESTLAKE, TEXAS, AMENDING CHAPTER 10 BY ADDING ARTICLES 3 AND 4, SECTIONS 10-51 THROUGH 10-78 ENACTING PERMIT PROCEDURES, FEES AND REGULATIONS REGARDING SPECIAL EVENTS OR WITHIN THE TOWN; PROVIDING A PENALTY; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING A CUMULATIVE CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Town of Westlake, Texas, (the “Town”) is a General Law Municipality located in Tarrant and Denton Counties, Texas, created in accordance with the provisions of the Texas Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the Town Council of Westlake, Texas, finds that special events and Level Two Special Event events without proper regulations, may affect the health, safety, and general welfare of the public and may cause imminent destruction of property or injury to persons; and

WHEREAS, the Town Council of Westlake, Texas, deems it necessary to enact an ordinance to govern special events and Level Two Special Event events within the corporate limits of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS:

Section 1: THAT, the above findings are hereby found to be true and correct and are incorporated herein in their entirety.

Section 2: THAT, the Town hereby adopts the following procedures and regulations governing Level Two Special Event events, by amending Chapter 10 by adding Articles 3 and 4, Section 10-51 through 10-78 to read as follows:

ARTICLE 3. – LEVEL TWO SPECIAL EVENTS - GENERALLY

Sec. 10-51. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Event sponsor means any person, group of persons, firm, corporation, partnership, or association that organizes, promotes or solicits funds for the organization or promotion of a Level One or Level Two Special Event.

Issuing officer means the town manager or designated representative.

Level One Special Event means any temporary event involving less than 300 persons that uses either public property, including streets, right-of-way, parks, trail or other public property, or involves closing, blocking or restricting a public street, right-of-way, a park, a trail or the public property

Level Two Special Event means any outdoor meeting or gathering held inside the town limits or within the extraterritorial jurisdiction of the town in which 300 or more persons are present at any one time. This definition shall not apply to Westlake Academy school gatherings such as sporting or educational events where the students are the primary participants;

Sec. 10-52. - Conduct of event; minimum standards.

(a) Event Sponsor shall provide information and proof that shows that the following minimum standards will be met for any Level Two Special Event permitted under this article:

(1) *Water supply.* The event sponsor shall provide access to a supply of potable water on the site where the event is taking place.

(2) *Toilet facilities.* The event sponsor shall provide toilet facilities and shall arrange for collection and cleaning at intervals of sufficient frequency to prevent the creation of a health hazard or public nuisance.

(3) *Solid waste facilities.*

a. The event sponsor shall arrange for solid waste facilities with the waste collection company holding a franchise with the town.

b. All solid waste shall be collected at such frequent intervals as may be necessary to maintain sanitary conditions at the site as determined by the town manager or designee.

(4) *Noise control.* Amplifying equipment shall be designed to control the noise level at the perimeter of the site on which the gathering shall take place and be so operated that all town ordinance requirements are met.

(5) *Food sanitation.* All food and beverages sold or furnished shall be in accordance with the standards of the Tarrant County Health Department.

(6) *Medical and nursing care.* When required by the town fire chief, the event sponsor shall provide one or more emergency aid stations, which shall be staffed and include suitable temporary shelter, supplies and equipment, at no cost to the town.

(7) *Signage.* Signage used in accordance with the event shall comply with the sign regulations of the town under the provisions for Level One Special Event and promotional signage. Any signs not located on the actual premises where the event is being held shall only be approved upon the issuance of a sign permit from the town manager or designee. Signs advertising the event or directing potential customers to the event site are expressly prohibited from placement in the town rights-of-way.

(8) *Tents.* A separate tent permit shall be obtained from the fire marshal in order to erect a tent. Any Level One Special Event or Level Two Level One Special Event which includes the use of a tent, canopy, or temporary structure shall meet the requirements in the building code and fire code. Fire lanes for emergency equipment must be provided and the site prepared in a manner so as not to be a fire hazard as determined by the fire marshal.

(9) *Alcohol.* It is the responsibility of the applicant to obtain town approval for the possession and consumption of alcoholic beverages during any Level One Special Event or Level Two Special Event. For Level One Special Events or Level Two Special Event requiring a permit from the Texas Alcoholic Beverage Commission (TABC), a copy of the state permit shall be required prior to the issuance of a Level One Special Event or Level Two Special Event permit. In accordance with the alcohol provisions in this Code, the town manager or designee shall have the authority to issue a temporary alcohol sales permit in conjunction with a Level One Special Event or Level Two Special Event permit provided all town and state regulations are met. Prior to town manager or designee consideration of the alcohol permit, the police chief or police staff designee shall, notwithstanding any requirements of TABC, determine the amount, if necessary, of police officers required while alcohol is being served. The cost of any required police officers as part of this permit shall be paid in full by the event sponsor prior to issuance of the temporary alcohol sales permit.

(10) *Fireworks/pyrotechnic displays.* Any use of fireworks or pyrotechnic displays must show proof of application for a state permit and prior to issuance of a Level One or Level Two Special Event permit. A permit from the fire marshal shall be obtained prior to the use of fireworks or pyrotechnics.

(11) *Town sponsorship.* Should the event be officially sponsored or co-sponsored by the town, then certain standards of this chapter may be waived as determined by the issuing officer.

(12) *Lighting.* Lighting shall meet the requirements of the “dark skies” parameters established by the town, provided; however, that public safety will be of paramount concern and, if necessary for public safety, temporary lighting may be required which would not meet the “dark sky” requirements.

(13) *Final site cleanup.* At the conclusion of the Level One Special Event or Level Two Special Event, the site shall be inspected by the Tarrant of Denton Counties for health and sanitation considerations. The event sponsor shall be responsible for the final site cleanup. The Event Sponsor or landowner, upon notification by the town of the existence of any unsanitary conditions shall immediately cause such conditions to be corrected.

(b) A plan demonstrating the manner and method or meeting all of the above requirements, as applicable, shall accompany the permit application.

Section 10-53. Reimbursable costs.

(a) Reimbursable Costs. A Level One Special Event or Level Two Special Event is required to pay for all costs and expenses incurred by the town for activities associated with staging of the event, including, without limitation, the following:

(1) Utilities services provided to the Level One Special Event, including all of the costs of installation, maintenance, and connection.

- (2) Food services inspection.
- (3) Repair, maintenance and removal of facilities in the event of a failure of promoter.
- (4) Repair of streets, alleys, sidewalks, parks, and other public property.
- (5) Police protection.
- (6) Fire protection.
- (7) Emergency medical service.
- (8) Garbage disposal and cleanup.
- (9) Traffic control.
- (10) Other direct costs associated with the Level One or Level Two Special Event.

(b) One Town department shall not be required to pay a different Town department for the above in the case of a Town sponsored event. Since costs are reimbursable to Town, Town does not have to reimburse for Town events.

Sections. 10-54—10-70. - Reserved.

ARTICLE 4. – LEVEL ONE SPECIAL EVENT AND LEVEL TWO SPECIAL EVENTS - PERMIT

Sec. 10-71. - Required.

(a) No person may act as an event sponsor of a Level One Special Event or Level Two Special Event unless a permit has been issued by the Town council under the provisions of this article.

(b) A permit may be issued for a series of events. All requirements must be met for every event.

Sec. 10-72. - Application—Filing; contents.

(a) An event sponsor desiring to hold a Level One Special Event or Level Two Special Event shall file a permit application with the issuing officer at least 60 days prior to the first day of the Level One or Level Two Special Event.

(b) The application for a permit under this article must include:

- (1) The name and address of the event sponsor.
- (2) A description of the Level One Special Event or Level Two Special Event site.

(3) The name and address of the owner of the place where the Level One Special Event or Level Two Special Event is to be held and a letter signed by the property owner giving permission to the use the property for the Special Event.

(4) The dates and times of the Level One or Level Two Special Event.

(5) The maximum number of persons that the event sponsor will allow to attend the Level One or Level Two Special Event and a statement showing how the event sponsor plans to control the number of persons in attendance at the Level One or Level Two Special Event.

(6) A description of the nature of the event.

(7) A filing fee in the amount established by the Town Resolution setting such fees as well the amount of money required for all reimbursable costs must be submitted with the application for a permit.

(8) The event sponsor shall attach a letter to the application which addresses the following:

a. Initial set-up times.

b. Controlling the number of persons in attendance at the Level One or Level Two Special Event.

c. Parking traffic control.

d. Street closures.

e. Compliance with health requirements regarding food and beverage services, including the provision for potable water.

f. Plans for emergency services, equipment and personnel.

g. Plans for event security.

Prior to a Level One Special Event or Level Two Special Event permit applications being approved, applications will be submitted to the Chief of Police or staff designee for consideration, as to whether the applicant's plans for emergency services, equipment and personnel are adequate for the requested event to allow for a peaceful assembly. If additional emergency services are deemed necessary for the safety and security of event participants, the applicant will be notified prior to application approval. These considerations will be based on the size of the event, the amount of vehicular and pedestrian traffic, as well as the type of event. The cost of any required fire or police personnel as part of this permit shall be paid in full by the event sponsor.

h. Restroom facilities.

i. Solid waste collection arrangements.

j. The sale of alcoholic beverages and the process for identifying minors attending the event and preventing the consumption of alcohol by minors.

k. Clean-up after the event.

(9) Any other information requested by the issuing officer that they may deem necessary in order to consider the permit request.

Sec. 10-73. - Insurance, indemnification, surety bond.

(a) If an event is to be held on town-owned property, the event sponsor shall furnish the issuing officer with a certificate of insurance complying with minimum standards sufficient to protect town-owned property.

(b) The event sponsor for a Level One or Level Two Special Event permit shall sign an agreement to indemnify and hold harmless the town, its officers, employees, agents, and representatives against all claims of liability and causes of action resulting from injury or damage to persons or property arising out of the Level One or Level Two Special Event.

(c) The event sponsor may be required to post a surety bond in the assurance that the town property is cleaned and returned to the condition prior to the event. The issuing officer shall determine if the need for a bond exists and shall make the appropriate recommendation to the town council upon town council consideration of the permit.

Sec. 10-74. - Same—Hearing.

Upon receipt of all information required under this Articles 4, the issuing officer will review the information and if it meets all requirements, the issuing officer may issue the permit within thirty (30) days. If the application does not meet the requirements, the issuing officer may deny the permit. The applicant may correct the deficiencies within one week without incurring another permit charge or, at the applicant's choice; the applicant may appeal the decision of the issuing officer. If the applicant appeals the decision, the matter will be heard by the town manager. If the appeal is denied by the town manager, the applicant may appeal the matter to be heard by the town council. If there is an appeal to the town council, the time for a hearing before the town council on the application for a permit under this article shall occur at the next available council meeting, provided that the next council meeting is at least ten (10) working days after the appeal is filed, in order to provide for preparation of the item and to meet the requirements of the Texas Open Meetings Act.

Sec. 10-75. - Town council approval required for appeal.

After the hearing on the appeal for an application for a permit under this article is completed, the town council shall grant or deny the permit.

Sec. 10-76. - Cash deposit.

As a condition precedent to the issuance of a permit under this article, the issuing officer may require the event sponsor to make an additional cash deposit with the town to provide an adequate fund for the compensation of reimbursable costs and such security personnel as may be required to ensure the physical safety of persons and property of persons in attendance, as well as the persons and property of the community directly affected by the Level One or Level Two Special Event.

Sec. 10-77. - Contents.

A permit, if issued, shall authorize the event sponsor to hold a Level One Special Event or Level Two Special Event at a specified place and at specified times.

Sec. 10-78. - Revocation.

At any time, the issuing officer may, after reasonable notice to the, event sponsor, revoke the permit on a finding that the failure to carry out the preparations will result in a serious threat to the health or safety of the community or the persons attending the event.

Section s10-79. to 10-100. - Reserved.

Section 3: All rights and remedies of the Town of Westlake, Texas, are expressly saved as to any and all violations of the provisions of any other ordinance affecting Level One Special Events or Level Two Special Events which existed at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, the same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 4: It is hereby declared the intention of the Town Council that if any section, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or otherwise illegal by the valid judgment or decree of any court of competent jurisdiction, such event shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this, since the same would have been enacted by the Town Council without such unconstitutional or illegal phrase, clause, sentence, paragraph, or section.

Section 5: This Ordinance shall be cumulative of all provisions of ordinances of the Town except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

Section 6: Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum not to exceed the maximum amount allowed by law.

Section 7: This Ordinance shall become effective from the date of its passage, and the Town Secretary is hereby directed to cause the caption of this Ordinance to be published in accordance with applicable law.

AND IT IS SO ORDAINED.

Passed and approved by the Town Council of the Town of Westlake, Texas, by a vote of ___ to ___ on this the ___ day of _____, 2016.

TOWN OF WESTLAKE, TEXAS

By: _____
Laura Wheat, Mayor

ATTEST:

APPROVED AS TO FORM AND LEGALITY

Kelly Edwards, Town Secretary

L. Stanton Lowry, Town Attorney



TYPE OF ACTION

Workshop - Discussion Item

**Westlake Town Council Meeting
Monday, November 14, 2016**

TOPIC: Discussion regarding the Town’s Health, Dental, and Vision insurance for 2017.

STAFF CONTACT: Todd Wood, Director of HR & Administrative Services
Amanda DeGan, Assistant Town Manager

Strategic Alignment

<u>Vision, Value, Mission</u>	<u>Perspective</u>	<u>Strategic Theme & Results</u>	<u>Outcome Objective</u>
Fiscal Responsibility	Fiscal Stewardship	Exemplary Service & Governance - We set the standard by delivering unparalleled municipal and educational services at the lowest cost.	Attract, Recruit, Retain & Develop the Highest Quality Workforce
<u>Strategic Initiative</u>			
Outside the Scope of Identified Strategic Initiatives			

Time Line - Start Date: January 1, 2017 **Completion Date:** December 31, 2017

Funding Amount: 500,726 **Status -** **Funded** **Source - General Fund**

EXECUTIVE SUMMARY (INCLUDING APPLICABLE ORGANIZATIONAL HISTORY)

Staff recently issued a Request for Proposal (RFP) for our annual health insurance plan, effective January 2017 through December 2017. The attached staff report provides information of the recommended selections, and alternatives that were considered by the Leadership Team.

RECOMMENDATION

Report presented for Council review and discussion.

ATTACHMENTS

Staff Report

Staff Report – Health Insurance

Historical Background

In October 2016, staff submitted a Request for Proposal (RFP) for municipal employee health insurance for the 2017 calendar year. RFP submissions were received on October 31, 2016. As our Plan year is on January 1st, quotes from health insurance carriers cannot be received or analyzed prior to 60 days before the start date of the plan. These parameters create time constraints and flexibility/options challenges due to the required Council approval at our November meeting each year.

All submissions were reviewed with the consideration of the Town’s financial capacity and meeting strategic objective to attract, recruit, and develop the highest quality workforce. Providing the most competitive and cost-effective coverage to our employees is a key component in achieving this desired outcome. The Town received bids from five insurance carriers, and they were evaluated using criteria from our employee benefit survey and our insurance history to determine the appropriate selection. Factors that were considered included the following:

- Premium cost (employer and employee)
- Coverage for major items, preventative care, and medications
- Provider Network Quality
- Schedule of Plan benefits / Ease of Use
- Stability/experience of the company providing the insurance
- Out-of-pocket expense exposure

The Leadership Team recently met to discuss five (5) comparable health plan options from Blue Cross/Blue Shield (current carrier), Aetna, Humana, United Health Care, and Texas Municipal League. The team felt it was important to maintain a proper balance between providing the best coverage that meets our needs while remaining within our budgetary allocations during the selection process.

Staff Recommendations

The two finalists in the selections process included the renewal of our current plan from Blue Cross/Blue Shield (BCBS), and an alternate plan from United Health Care (UHC). The renewal from Blue Cross reflected a 14.8% rate increase over 2016, and the bid from United Health Care reflected a rate increase of 15.9% over 2016. It should be noted that United Health Care’s rates are subject to final underwriting; although any changes, up or down are expected to be minimal. The approximate costs of the plans are as follows:

	<u>Total annual costs</u>	<u>Approx. Budgetary Impact</u>
BCBS PPO Plan	\$594,144	\$459,528
UHC PPO Plan	\$599,712	\$468,216
UHC PPO Plan w/vision	\$605,207	\$472,393

** Please note, the FY 16-17 budget was approved for a total expenditure of \$490,195 for health insurance. This is a 21% increase the prior year, and also includes the cost for new positions approved in the budget..*

While the total annual costs are slightly lower with BCBS (\$11,063 lower per year than UHC with vision coverage), staff is recommending United Health Care for the Town's health insurance provider due to the following factors:

- 1. Quality of Blue Cross benefits has declined**
 - Based on employee feedback and discussions with providers and pharmacy options
 - Many have expressed concern in finding doctors who will accept the plan
- 2. Some employers are leaving Blue Cross/Blue Shield.**
 - Our insurance broker has indicated that there is a recent trend where employers are opting to leave BCBS
- 3. UHC has a larger provider network**
 - Provider network is 50.2% larger than the BCBS
- 4. Blue Cross will no longer partner with CVS**
 - Recent pharmacy listing showed BCBS had 25 participating pharmacies within a five-mile radius (including CVS, which will be dropped)
 - UHC search showed 93 participating pharmacies in the same coverage area
- 5. UHC offers 100% co-insurance for in-network services**
 - BCBS offers 80% co-insurance
 - UHC substantially reduces out-of-pocket exposure after meeting deductibles
 - In-network office visit co-pays with UHC are free for children under 19
- 6. BCBS is further reducing the list of covered drugs in 2017**
 - BCBS excludes 926 prescription medications
 - UHC excludes 72 prescription medications
 - UHC allows for 90-day refill option
- 7. UHC offers a vision insurance option**
 - Town's cost for this coverage would be \$4,176 annually

Health Savings Account Plans (HSA)

HSA plans were listed in the RFP as an option of specific interest to the Town. Bids for these plans were also received and evaluated, but were not selected due to several factors. The most attractive HSA plan included a 2.3% overall rate increase, and included a \$3,000 deductible. This deductible is three times the amount of our current option, which means that employees and their families would incur \$3,000-\$6,000 in out-of-pocket expenses prior to any coverage benefits (aside from wellness screenings and some vaccinations.)

The rates quoted for the HSA plan would save the Town approximately \$60k annually in premiums. However, even if the HSA accounts were subsidized by the Town by \$2,000

per employee to offset the increased deductible, this option would cost \$8,000 more than the UHC premium discussed above. Additionally, this amount would need to be shared between employees and their dependents, as 62% of employees carry dependents on their plans. For the 79 total participants on the plan, this results in an average benefit of \$750 to offset the \$2,000 additional exposure per participant. Other plans were also examined. As premiums decreased, deductibles increased. In some cases, these plans did not include any out-of-network coverage. The savings and or potential advantages of an HSA plan, whether subsidized or unsubsidized, did not provide a sufficient offset to the potentially higher exposure.

Dental

MetLife presented a proposal for 2017, with a 3% rate increase for the year. Staff recommends retaining the current dental plan with MetLife, as this is a very modest increase with a very highly-rated carrier. Employee satisfaction with the plan has been very good. The approximate annual cost of the MetLife dental plan is \$28,333 for the Town, which is approximately 5% less than estimates included in the FY 16/17 budget. The total annual estimated cost of the plan including employee contributions for dependent coverage is \$37,098.

Summary

It is the recommendation of the staff team that the Council authorize the transition to UHC from BCBS in order to offer a competitive health care option that is within the budget parameters passed by the governing board. As BCBS appears to be on the decline (as far as benefit provision and network options are concerned), it is important that we offer a health care option that meets the needs of our employees while also being fiscally responsible. In previous discussions with the Council, we were directed to explore a variety of options for the provision of healthcare and based on our research, we believe this is the best option for our organization.

The Town has recently participated in discussions with five other cities for the possible formulation of a municipal cooperative to purchase health insurance through an interlocal agreement. The objective of these cooperatives are to combine employees into a single group; creating greater purchasing leverage and spreading risk across a larger pool of participants. This is currently in the preliminary discussion phase, and staff will continue to provide updates on the progress of these discussions.

TOWN OF
W
ESTLAKE

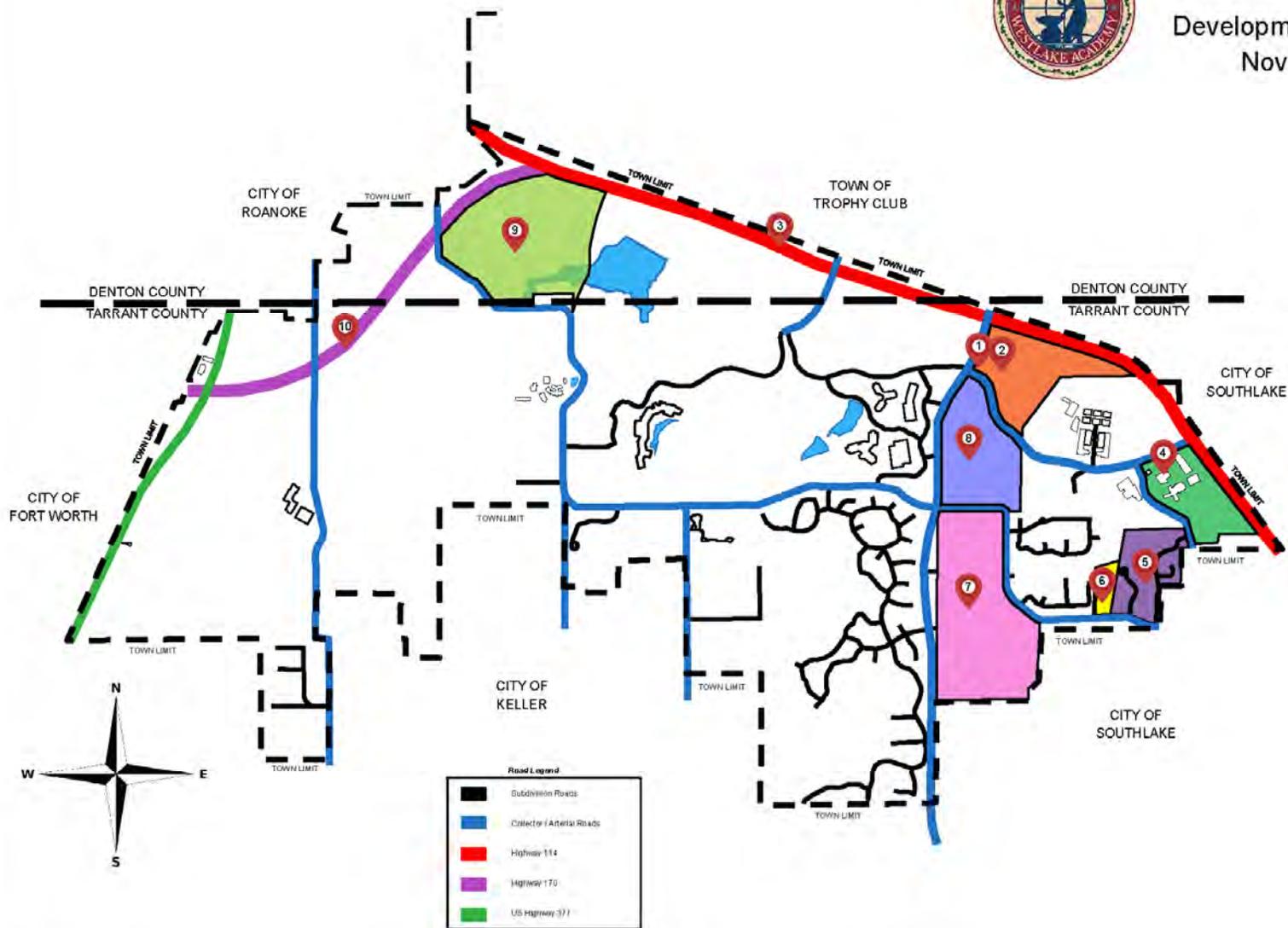
Development Snapshot

October 2016



Town of Westlake

Development Activities Map November 2016



Map Guide

- 1 CVS Pharmacy Entrada
35 Arta Drive
- 2 Primrose School Entrada
26 Arta Drive
- 3 Highway 114 Lane Expansion
- 4 Hollywood Hamburger Solana
1301 Solana Boulevard
- 5 Terra Bella
Residential Development
- 6 Carlyle Court
Residential Development
- 7 Quail Hollow
Residential Development
- 8 Granada
Residential Development
- 9 Project Blizzard
Mixed-Use Development
- 10 Highway 170 Lane Expansion

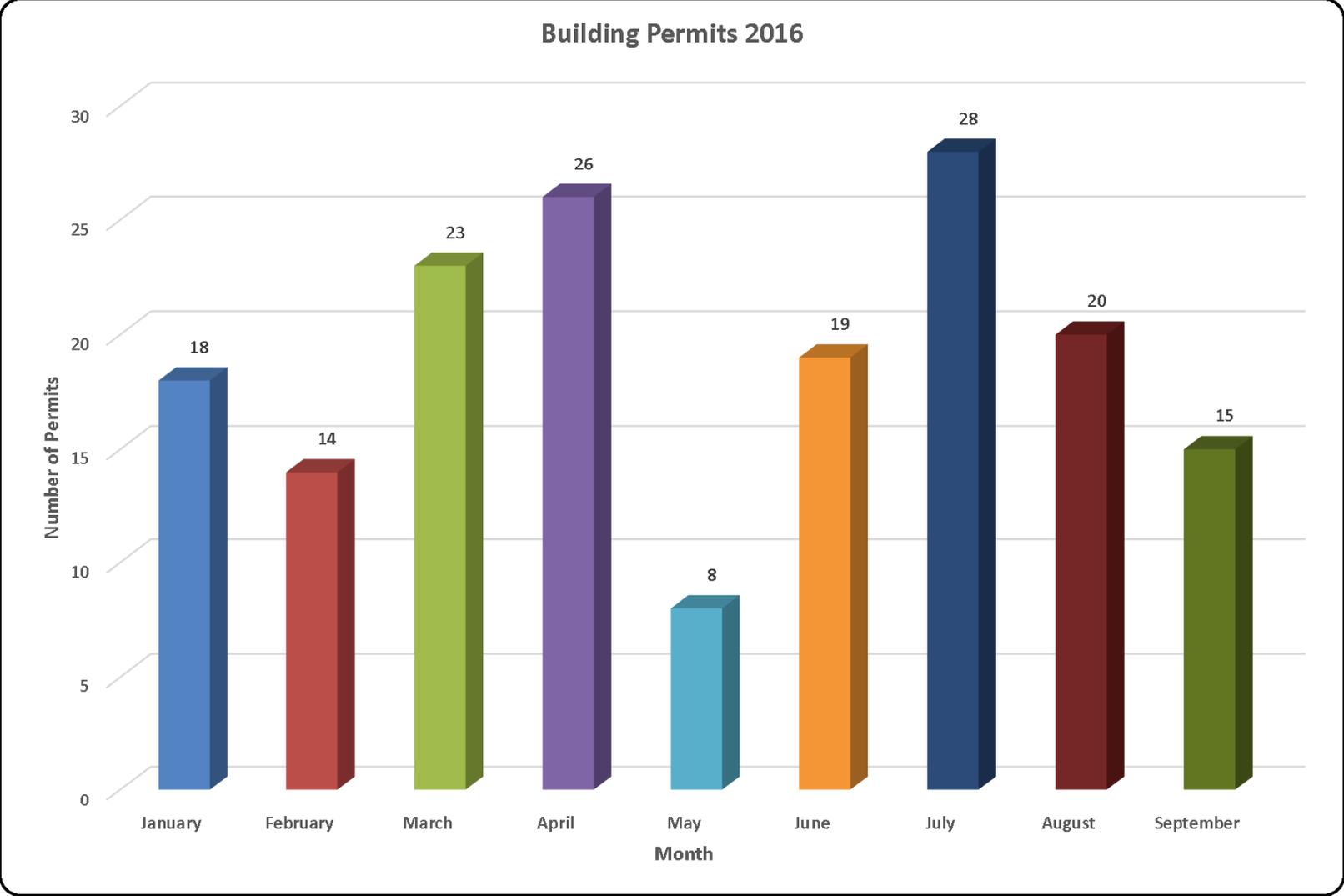
This map is for information purpose only.

Development Activities Map Legend

1. CVS Pharmacy: Status—Store open; Temporary C of O issued pending final Town compliance
2. Primrose School: Status—Under construction. Projected completion: Winter/Spring 2017
3. SH 114 Expansion: Status—Construction underway. Projected completion: Fall 2018
4. Hollywood Hamburger: Status—Construction underway. Projected completion: Winter/Spring 2017
5. Terra Bella Subdivision (28 Lots): Status—13 lots are currently developed
6. Carlyle Court Subdivision (8 Lots): Status—3 lots are currently developed or under construction
7. Quail Hollow Subdivision (92 Lots): Status—Phase I under construction. Phase II under review
8. Granada Subdivision (84 Lots): Status—Phase I is 78% built-out; Phase II is under construction
9. Project Blizzard (Schwab): Status—Preliminary utility work underway. Concept plan and site plan to be reviewed and approved. Projected building construction start: Summer 2017
10. SH 170 Expansion: Status—Construction underway. Projected completion: Fall 2018



2016 Building Permit Activity



FROM: Mike Beaty, Centurion American

DATE: Nov. 8, 2016

Good Afternoon:

Attached please find the Power Point.

Below is a written summary with a look-ahead through Q1 2017. Please let me know if you need anything further.

Thank you,

Mike

Completed Tasks:

- Arta Paving is complete
- Hardscape is complete including the gas meter enclosure
- Solana Boulevard expansion at the Davis Intersection is complete
- Davis Left Turn lane is complete
- CVS is open
- Sanitary sewer goes to plugged manhole and is being trucked to Town Lift Station, pending final connection for offsite sanitary sewer (Southlake / TRA)
- First 12 Trevi's PD Site plan has been fully approved. Civil Engineering Plans are moving forward, along with Building Permit plan sets for the homes
- New Mineral Lease has been executed and Mehrdad is moving forward with the acquisition of the Wells Fargo Mineral Rights
- Franchise and Duct Bank installation for Block J (Phase I-A) complete
- New Duct Bank Lid installed for manhole in Solana Boulevard

Open Tasks from previous update:

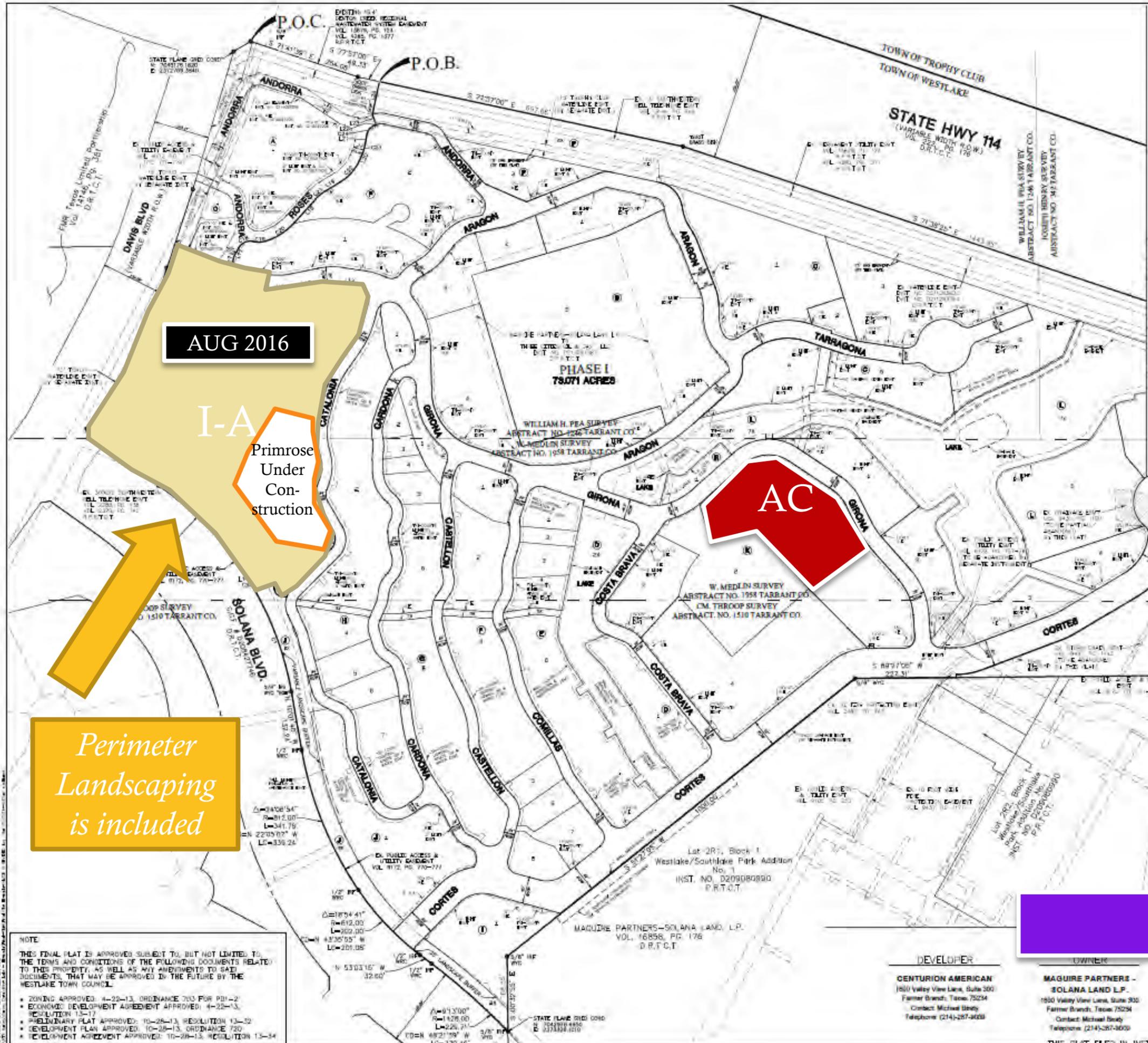
- Solana Boulevard / Granada Intersection has a modified armor joint detail to be installed.
- AC Marriott package being update to include a potential LQ next door, with a shared parking garage between the two

Year-End 2016 Milestones:

- Phase I-B Paving
- Start the first 6 Villas
- Perimeter Landscape Continues
- Start the Davis-114 Retail Corner as soon as Building Permits are available.
- Pour Chapel Foundation

August 2016 Milestones:

- Completion of Arta Paving
- Completion of Hardscape at Davis and Solana Boulevard
- Completion of Offsite Sanitary Sewer Line
- Completion of Internal Water, Sanitary Sewer and Storm Drainage
- Complete AC Marriot Application to be on the October Meeting schedule for Marriot approval
- Primrose Under Construction



AUG 2016

I-A
Primrose Under Construction

AC

Perimeter Landscaping is included

August 2016

NOTE
THIS FINAL PLAT IS APPROVED SUBJECT TO, BUT NOT LIMITED TO, THE TERMS AND CONDITIONS OF THE FOLLOWING DOCUMENTS RELATED TO THIS PROPERTY, AS WELL AS ANY AMENDMENTS TO SAID DOCUMENTS, THAT MAY BE APPROVED IN THE FUTURE BY THE WESTLAKE TOWN COUNCIL.

- ZONING APPROVED: 4-22-13, ORDINANCE 700 FOR PD1-2
- ECONOMIC DEVELOPMENT AGREEMENT APPROVED: 4-22-13, RESOLUTION 13-17
- PRELIMINARY PLAT APPROVED: 10-28-13, RESOLUTION 13-22
- DEVELOPMENT PLAN APPROVED: 10-28-13, ORDINANCE 720
- DEVELOPMENT AGREEMENT APPROVED: 10-28-13, RESOLUTION 13-24

DEVELOPER
CENTURION AMERICAN
1501 Valley View Lane, Suite 300
Farmers Branch, Texas 75234
Contact: Michael Brady
Telephone: (214)-287-8028

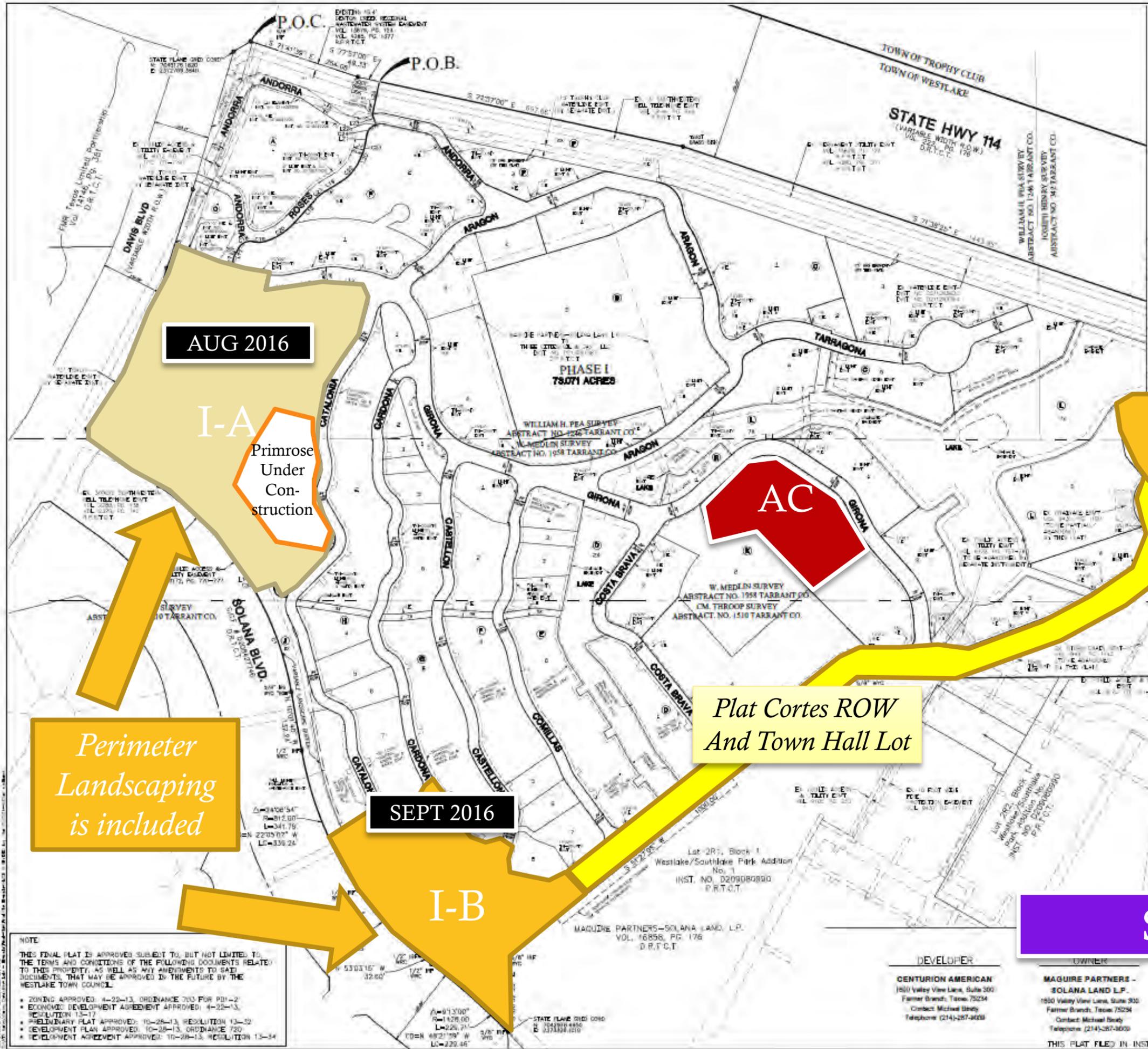
OWNER
MAGUIRE PARTNERS - SOLANA LAND L.P.
1501 Valley View Lane, Suite 300
Farmers Branch, Texas 75234
Contact: Michael Brady
Telephone: (214)-287-8028

BGE

THIS PLAT FILED IN INSTRUMENT NO. _____

September 2016 Milestones:

- Begin Cortes Paving
- Plat for Block J to start the First 6 Villas
- Dedicate Cortes Right-of-Way to Town for access to Town Hall Site
- Perimeter Landscape work continues
- Execute agreement with Tom Allen for Mineral Rights and Surface Rights acquisition to facilitate surface parking for the internal office buildings.
- Pull Building Permits for:
 - First 6 Villas
 - Davis-114 Retail Corner
- Planning & Zoning , then Council to receive presentation for the first 12 Trevi homes.
- Architecture work continues for Internal Office Buildings, Amphiteater, Parking Garage and First Restaurant Row Building
- Pour Chapel Foundation on the Island



September 2016

NOTE
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- DEVELOPMENT AGREEMENT APPROVED: 10-28-13, RESOLUTION 13-34

DEVELOPER	OWNER
CENTURIUM AMERICAN 1501 Valley View Lane, Suite 300 Farmor Branch, Texas 75234 Contact: Michael Brady Telephone: (214)-287-8008	MAGUIRE PARTNERS - SOLANA LAND L.P. 1501 Valley View Lane, Suite 300 Farmor Branch, Texas 75234 Contact: Michael Brady Telephone: (214)-287-8008



THIS PLAT FILED IN INSTRUMENT NO. _____

Perimeter Landscaping is included

OCT 2016

I-C

AUG 2016

I-A

Primrose Under Construction

Perimeter Landscaping is included

SEPT 2016

I-B

Plat Cortes ROW And Town Hall Lot

October 2016 Milestones:

Paving Continues for Cortes and internal streets

Begin Construction on Davis-114 Retail Corner with Starbucks

Perimeter Landscaping Continues

Receive approval for AC Marriot Franchise in Entrada and move forward with Architecture

Architecture work continues for Internal Office Buildings, Amphiteater, Parking Garage and First Restaurant Row Building

Complete Lake Retaining wall work

October 2016

NOTE
THIS FINAL PLAT IS APPROVED SUBJECT TO, BUT NOT LIMITED TO, THE TERMS AND CONDITIONS OF THE FOLLOWING DOCUMENTS RELATED TO THIS PROPERTY, AS WELL AS ANY AMENDMENTS TO SAID DOCUMENTS, THAT MAY BE APPROVED IN THE FUTURE BY THE WESTLAKE TOWN COUNCIL.

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BGE

THIS PLAT FILED IN INSTRUMENT NO. _____

Town Council

Item # 7 – Council Recap /
Staff Direction

COUNCIL RECAP / STAFF DIRECTION

Town Council

Item # 8 – Adjournment
Work Session

Town Council

ITEMS OF COMMUNITY INTEREST: Mayor and Council Reports on Items of Community Interest pursuant to Texas Government Code Section 551.0415 the Town Council may report on the following items: (1) expression of thanks, congratulations or condolences; (2) information about holiday schedules; (3) recognition of individuals; (4) reminders about upcoming Town Council events; (5) information about community events; and (6) announcements involving imminent threat to public health and safety.

Item # 2 – Items of Community Interest

- ✓ [Town Council](#) Workshop/Meeting
Monday, November 14, 2016
Westlake Town Hall, Solana – Council Chamber/Courtroom
- ✓ Westlake **Municipal offices closing at noon** for off-site staff meeting
Friday, November 18, 2016
- ✓ Westlake **Municipal offices closed** for the Thanksgiving holidays
Thursday, November 24 and Friday, November 25, 2016
- ✓ [Planning & Zoning](#) Meeting, if needed
Monday, November 28, 2016
Westlake Town Hall, Solana – Council Chamber/Courtroom

Looking ahead to December...

- ✓ [Coffee & Conversation](#) with the Mayor
Monday, December 5, 2016; 8-9:30 am
Marriott Solana hotel – The Great Room
- ✓ WA [Board of Trustees](#) Workshop/Meeting
Monday, December 5, 2016
Westlake Town Hall, Solana – Council Chamber/Courtroom
- ✓ [Planning & Zoning](#) Meeting, if needed
Tuesday, December 6, 2016
Westlake Town Hall, Solana – Council Chamber/Courtroom
- ✓ [Lone Star Legislative Report](#); Hosted by Northwest Metroport Chamber w/ four State legislators present
Friday, December 9, 2016; 11:30 am – 1:00 pm
DFW Marriott Hotel & Golf Club at Champions Circle
**Please let [Ginger](#) know if you plan to attend for tickets & RSVP*
- ✓ [Town Council](#) Workshop/Meeting
Monday, December 12, 2016
Westlake Town Hall, Solana – Council Chamber/Courtroom
- ✓ Westlake **Municipal offices closed** for the Christmas holidays
Friday, December 23 and Monday, December 26, 2016

***For meeting agendas and details on calendar events, please visit the Town's [website](#).**

Town Council

Item # 3 – Citizen Comments

CITIZEN COMMENTS: This is an opportunity for citizens to address the Council on any matter whether or not it is posted on the agenda. The Council cannot by law take action nor have any discussion or deliberations on any presentation made to the Council at this time concerning an item not listed on the agenda. The Council will receive the information, ask staff to review the matter, or an item may be noticed on a future agenda for deliberation or action.

Town Council

Item # 4 – Consent Agenda

CONSENT AGENDA: All items listed below are considered routine by the Town Council and will be enacted with one motion. There will be no separate discussion of items unless a Council Member or citizen so requests, in which event the item will be removed from the general order of business and considered in its normal sequence.

- a. Consider approval of the minutes from the October 24, 2016, meeting.
- b. Consider approval of **Resolution 16-36**, Approving the 2017 Meeting Calendar for the Town Council and Board of Trustees.
- c. Consider approval of **Ordinance 802**, Appointing the Judge and Alternate Judge for two (2) year terms.
- d. Consider approval of **Resolution 16-37**, approving the declaration of Covenants, Conditions, and Restrictions and Design Guidelines for Quail Hollow, a residential development located in a R-1 zoning district, on approximately 188 acres of land located at the southeast corner of FM 1938/Davis Boulevard and Dove Road.



**MINUTES OF THE
TOWN OF WESTLAKE, TEXAS
TOWN COUNCIL MEETING**

October 24, 2016

PRESENT: Mayor Laura Wheat, Council Members: Alesa Belvedere, Carol Langdon, Rick Rennhack and Wayne Stoltenberg

ABSENT: Michael Barrett

OTHERS PRESENT: Town Manager Thomas Brymer, Town Secretary Kelly Edwards, Town Attorney Stan Lowry, Assistant Town Manager Amanda DeGan, Director of Public Works Jarrod Greenwood, Finance Director Debbie Piper, Fire Chief Richard Whitten, Director of Communications Ginger Awtry, Director of Information Technology Jason Power, Director of Planning & Development Ron Ruthven, Chief Building Official Eddie Edwards, Director of Parks & Recreation Troy Meyer.

Work Session

1. CALL TO ORDER

Mayor Wheat called the work session to order at 5:08 p.m.

2. PLEDGE OF ALLEGIANCE

Mayor Wheat led the Pledge of Allegiance to the United States and Texas flags.

3. REVIEW OF CONSENT AGENDA ITEMS FOR THE TOWN COUNCIL REGULAR MEETING AGENDA.

No additional discussion.

4. DISCUSSION ITEMS

- a. Presentation and Discussion of 2017 DirectionFinders Citizen Survey Instrument for Municipal Services.

Assistant Town Manager DeGan provided an overview of the proposed survey document.

Discussion ensued regarding asking residents about additional services that the Town is not providing and how to pay for those services, a new software program for additional survey questions in-between the bi-annual survey, other citizen engagement tools including a road construction update in the cover letter of the survey, adding questions regarding following of the Town on Facebook or Twitter, moving the tree lighting event to another location, and the number of copies mailed per household.

- b. Review and discussion of the proposed 2017 Meeting Schedule of the Town Council and Board of Trustees.

Town Secretary Edwards provided an overview of the proposed calendar.

- c. Presentation and discussion of certificates of obligation for the Westlake Fire-EMS Station and the refunding of existing 2007 bonds.

Director Piper, Mr. Tom Lawrence, and Director Meyer provided an overview of the process to date, cost of the project and next steps.

Discussion ensued regarding the cost per square foot, multiple methods used to calculate the total cost per square foot, cost comparison of other fire stations, cost of the Emergency Operations Center (EOC) room, educating the public regarding the costs (slab/ECO/etc.), cost of the building exterior and site work, signage for future home of Fire and EMS, and tax exempt obligations per year.

- d. ***Standing Item:*** Update and discussion regarding the Granada Development, including items posted on the regular session agenda and the Covenants Conditions Restrictions (CCR's) and Design Standards.

Director Greenwood provided an update regarding ductbank construction, proposed enhancements to the entry, installation of a separate construction entrance, landscaping enhancements, and continuing to managing erosion control.

- e. **Standing Item:** Update and discussion regarding the Entrada Development, including items posted on the regular session agenda and public art.

Director Greenwood stated that CVS plans to open on October 31, 2016 and they are satisfying all Life Safety Issues.

Discussion ensued regarding CVS lighting color and the brightness, non-safety lighting, uniform lighting throughout the development, hard hat tours for residents, new construction within the development, additional commercial spaces within the CVS pad site, residential site plans, and construction on Solana Boulevard.

5. EXECUTIVE SESSION

The Council convened into executive session at 6:20 p.m.

The Council will conduct a closed session pursuant to Texas Government Code, annotated, Chapter 551, Subchapter D for the following:

- a. Sec. 551.071 Consultation with Attorney (1) when the governmental body seeks the advice of its attorney about: (A) pending or contemplated litigation; or (B) a settlement offer; (2) Consultation with Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter: Ordinance 767
- b. Sec. 551.071 Consultation with Attorney (1) when the governmental body seeks the advice of its attorney about: Contract dispute regarding sanitary sewer connections.
- c. Section 551.087 Deliberation Regarding Economic Development Negotiations (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1) for the following:
 - Maguire Partners-Solana Land, L.P., related to Centurion's development known as Entrada and Granada
 - Project Lynx
 - Quail Hollow
 - CS Kinross Lake Parkway, a Delaware limited liability company, its affiliate Charles Schwab & Co., Inc.
- d. Section 551.072 to deliberate the purchase, exchange, lease or value of real property regarding Town Hall offices, Fire Station site and Town owned property
- e. Section 551.074(a)(1): Deliberation Regarding Personnel Matters – to deliberate the appointment, employment, evaluation, reassignment, duties, of a public officer or employee: Town Manager

6. RECONVENE MEETING

Mayor Wheat reconvened the meeting at 8:28 p.m.

7. COUNCIL RECAP / STAFF DIRECTION

Review survey questions as discussed.

Add language to the work session to discuss current construction projects.

8. ADJOURNMENT

Mayor Wheat adjourned the work session at 8:28 p.m.

Regular Session

1. CALL TO ORDER

Mayor Wheat called the regular session to order at 8:28 p.m.

2. ITEMS OF COMMUNITY INTEREST

Director Awtry provided an update regarding upcoming events and Director Greenwood provided an overview of the Car Show.

3. CITIZEN COMMENTS

No one addressed the Council.

4. CONSENT AGENDA

- a. Consider approval of the minutes from the September 19, 2016, meeting.
- b. Consider approval of **Resolution 16-33**, Appointing a new member to the Historical Preservation Society.

MOTION: Council Member Stoltenberg made a motion to approve the consent agenda. Council Member Rennhack seconded the motion. The motion carried by a vote of 4-0.

5. **DISCUSSION AND CONSIDERATION OF RESOLUTION 16-34, DIRECTING PUBLICATION OF NOTICE OF INTENTION TO ISSUE CERTIFICATES OF OBLIGATION.**

Director Piper and Mr. Tom Lawrence asked for additional questions.

Discussion ensued regarding the notice requirements and a resident's comments were read aloud. Mr. Lawrence provided an additional explanation regarding the process of issuing Certificates of Obligation.

MOTION: Council Member Rennhack made a motion to approve **Resolution 16-34**. Council Member Belvedere seconded the motion. The motion carried by a vote of 4-0.

6. **DISCUSSION AND CONSIDERATION OF ORDINANCE 800, REGARDING MATTERS INCIDENT AND RELATED TO THE ISSUANCE AND SALE OF "TOWN OF WESTLAKE, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2017", INCLUDING THE ADOPTION OF AN ORDINANCE AUTHORIZING THE ISSUANCE OF SUCH BONDS AND ESTABLISHING PROCEDURES AND DELEGATING AUTHORITY FOR THE SALE AND DELIVERY OF SUCH BONDS.**

Mr. Tom Lawrence provided an overview of item, refunding process, savings and rates.

MOTION: Council Member Rennhack made a motion to approve **Ordinance 800**. Council Member Langdon seconded the motion. The motion carried by a vote of 4-0.

7. **DISCUSSION AND CONSIDERATION OF AN ORDINANCE 801, PURSUANT TO SECTION 82-3(c)(3) OF THE UNIFIED DEVELOPMENT CODE CREATING AN EXCEPTION TO THE REQUIREMENT FOR REPLATTING FOR THE CONVEYANCE OF 5.03 ACRES OF LAND TO THE TOWN OF WESTLAKE FROM FMR TEXAS I, LLC FROM LOT 1, FIDELITY INVESTMENTS ADDITION, PHASE 1, AN ADDITION TO THE TOWN OF WESTLAKE, AS RECORDED IN CABINET A, SLIDE 11041, PLAT RECORDS, TARRANT COUNTY, TEXAS, ("LOT 1") AND VERIFICATION THAT THE REMAINDER OF SAID LOT 1 SHALL IN ALL RESPECTS HEREAFTER CONTINUE TO BE TREATED AS A PLATTED LOT.**

Attorney Lowry provided an overview of the item requested by FMR Texas.

MOTION: Council Member Stoltenberg made a motion to approve **Ordinance 801**. Council Member Langdon seconded the motion. The motion carried by a vote of 4-0.

8. EXECUTIVE SESSION

The Council convened into executive session at 8:48 p.m.

The Council will conduct a closed session pursuant to Texas Government Code, annotated, Chapter 551, Subchapter D for the following:

- a. Sec. 551.071 Consultation with Attorney (1) when the governmental body seeks the advice of its attorney about: (A) pending or contemplated litigation; or (B) a settlement offer; (2) Consultation with Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter: Ordinance 767
- b. Sec. 551.071 Consultation with Attorney (1) when the governmental body seeks the advice of its attorney about: Contract dispute regarding sanitary sewer connections.
- c. Section 551.087 Deliberation Regarding Economic Development Negotiations (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1) for the following:
 - Maguire Partners-Solana Land, L.P., related to Centurion's development known as Entrada and Granada
 - Project Lynx
 - Quail Hollow
 - CS Kinross Lake Parkway, a Delaware limited liability company, its affiliate Charles Schwab & Co., Inc.
- d. Section 551.072 to deliberate the purchase, exchange, lease or value of real property regarding Town Hall offices, Fire Station site and Town owned property
- e. Section 551.074(a)(1): Deliberation Regarding Personnel Matters – to deliberate the appointment, employment, evaluation, reassignment, duties, of a public officer or employee: Town Manager

9. RECONVENE MEETING

Mayor Wheat reconvened the meeting at 9:47 p.m.

10. TAKE ANY ACTION, IF NEEDED, FROM EXECUTIVE SESSION ITEMS.

MOTION: Council Member Rennhack made a motion to approve **Resolution 16-35**, Approving a Developer and Economic Development Agreement with Quail Hollow Development II, LLC. Council Member Belvedere seconded the motion. The motion carried by a vote of 4-0.

11. FUTURE AGENDA ITEMS

No future agenda items.

12. ADJOURNMENT

There being no further business before the Council, Mayor Wheat asked for a motion to adjourn the meeting.

MOTION: Council Member Belvedere made a motion to adjourn the meeting. Council Member Langdon seconded the motion. The motion carried by a vote of 4-0.

Mayor Wheat adjourned the meeting at 9:47 p.m.

APPROVED BY THE TOWN COUNCIL ON NOVEMBER 14, 2016.

ATTEST:

Laura Wheat, Mayor

Kelly Edwards, Town Secretary



TYPE OF ACTION

Workshop - Discussion Item

**Westlake Town Council Meeting
Monday, November 14, 2016**

TOPIC: Consider approval of a Resolution adopting the 2017 Meeting Schedule of the Town Council and Board of Trustees.

STAFF CONTACT: Kelly Edwards, Town Secretary

Strategic Alignment

<u>Vision, Value, Mission</u>	<u>Perspective</u>	<u>Strategic Theme & Results</u>	<u>Outcome Objective</u>
Informed & Engaged Citizens / Sense of Community	Citizen, Student & Stakeholder	Exemplary Service & Governance - We set the standard by delivering unparalleled municipal and educational services at the lowest cost.	Increase Transparency, Accessibility & Communications
<u>Strategic Initiative</u>			
Outside the Scope of Identified Strategic Initiatives			

Time Line - Start Date: September 1, 2016 **Completion Date:** November 14, 2016

Funding Amount: 00.00 **Status -** **Not Funded** **Source -** N/A

EXECUTIVE SUMMARY (INCLUDING APPLICABLE ORGANIZATIONAL HISTORY)

From time to time, the Council/BOT regular meeting schedule requires modification due to holidays and other events that may create a conflict for Council/Board Members and staff to attend Council/Board meetings.

Several factors have been taken into consideration as staff prepared the 2017 meeting calendar, including national holidays, school holidays, early voting, Planning & Zoning meetings and annual training conferences. Due to the increase in development we have found it is necessary to schedule a Planning & Zoning meeting each month prior to the Town Council meeting.

RECOMMENDATION

Approve the 2017 Meeting Calendar.

ATTACHMENTS

Resolution
2017 Meeting Calendar

TOWN OF WESTLAKE

RESOLUTION NO. 16-36

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS, ESTABLISHING REGULAR MEETING DATES AND PROCEDURES; SETTING THE 2017 MEETING DATES OF THE TOWN COUNCIL AND BOARD OF TRUSTEES; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Texas Local Government Code allows the governing body of a general law municipality to establish regular meetings of the governing body by the passage of a resolution; and

WHEREAS, the Town Council finds that it is in the best interest of the Council and the Town's residents that the Council shall establish regular meetings at a convenient date, time, and place; and

WHEREAS, the 2017 available regular meeting dates are hereby established in accordance with attached *Exhibit "A"*; and

WHEREAS, the Town Council finds that the passage of this Resolution is in the best interest of the citizens of Westlake.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS:

SECTION 1: That, all matters stated in the Recitals hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

SECTION 2: The Town Council of the Town of Westlake, Texas, and Westlake Academy Board of Trustees shall conduct regularly scheduled meetings on dates and times as established by the Town Council. All Mondays shall be established as a day available for regular meetings as needed. Special meetings shall be called in accordance with Section 22.038(b) of the Texas Local Government Code. Meetings shall be held at the Town Hall offices located at 1301 Solana Boulevard, Bldg. 4, Ste. 4202, Westlake, Texas 76262, or a meeting room close by, or another location designated by the Town in the meeting notice. The exact time of each meeting will be determined prior to the notice of said meeting.

SECTION 3: The Town Council hereby sets the 2017 regular meeting schedules as shown in the attached *Exhibit "A"*.

SECTION 4: If any portion of this Resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the Council hereby determines that it would have adopted this Resolution without the invalid provision.

SECTION 5: That this resolution shall become effective from and after its date of passage.

PASSED AND APPROVED ON THIS 14th DAY OF NOVEMBER 2016.

ATTEST:

Laura Wheat, Mayor

Kelly Edwards, Town Secretary

Thomas E. Brymer, Town Manager

APPROVED AS TO FORM:

L. Stanton Lowry, Town Attorney

Town of Westlake Meeting Schedule

January 2017

S	M	T	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

February 2017

S	M	T	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

March 2017

S	M	T	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

April 2017

S	M	T	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

May 2017

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June 2017

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July 2017

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August 2017

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September 2017

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October 2017

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November 2017

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December 2017

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31						

- School Board
- Town Council
- New Council/BOT Orientation
- Planning & Zoning Meetings

- School & Town Holiday
- School Holiday
- Election Day /
Special Meeting to
Canvass Returns

- Budget / Meeting Retreats
- Town Holiday
- First/Last Day School



TYPE OF ACTION

Regular Meeting - Consent

**Westlake Town Council Meeting
Monday, November 14, 2016**

TOPIC: Consider approval of Ordinance for Appointing Presiding Judge and Alternate Judge

STAFF CONTACT: Amanda DeGan, Assistant Town Manager
Sharon Wilson, Court Administrator

Strategic Alignment

<u>Vision, Value, Mission</u>	<u>Perspective</u>	<u>Strategic Theme & Results</u>	<u>Outcome Objective</u>
Transparent / Integrity-driven Government	Municipal & Academic Operations	Exemplary Service & Governance - We set the standard by delivering unparalleled municipal and educational services at the lowest cost.	Increase Transparency, Accessibility & Communications
<u>Strategic Initiative</u>			
Outside the Scope of Identified Strategic Initiatives			

Time Line - Start Date: n/a

Completion Date: n/a

Funding Amount:

Status - Funded

Source - General Fund

EXECUTIVE SUMMARY (INCLUDING APPLICABLE ORGANIZATIONAL HISTORY)

In keeping with the requirements of Ordinance No. 401 establishing the Municipal Court for the Town of Westlake in 2001, the presiding and alternate judicial positions require reappointment on a biennial basis

The Court has been very fortunate to have two outstanding individuals fill these positions, each with a long history of public service to local governments. Brad Bradley is the current presiding judge and has served as either presiding or alternate judge for many of our surrounding communities. Eric Ransleben is the alternate judge and has served as a prosecutor and alternate

judge for many local jurisdiction as well. The proposed ordinance recommends the reappointment of both of these individuals.

RECOMMENDATION

Staff recommends approval of the re-appointment Ordinance.

ATTACHMENTS

Ordinance XXX

TOWN OF WESTLAKE

ORDINANCE NO. 802

AN ORDINANCE OF THE TOWN OF WESTLAKE APPOINTING THE PRESIDING JUDGE AND THE ALTERNATE PRESIDING JUDGE FOR THE MUNICIPAL COURT OF RECORD NO. 1 FOR A TWO (2) YEAR TERM IN THE TOWN OF WESTLAKE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Town of Westlake Board of Alderman established the Municipal Court of Record No. 1 and must provide for the appointment of a Presiding Judge and an Alternate Judge; and

WHEREAS, Ordinance 401 also sets forth certain duties and qualification for each of the Appointees; and

WHEREAS, the Town Council of the Town of Westlake, Texas, is of the opinion that it is in the best interests of the town and its citizens that the amendments should be approved and adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS:

SECTION 1: That the Town Council hereby appoints the following individuals to the Municipal Court of Record No. 1 in the capacity set forth below:

Presiding Judge Brad Bradley

Alternate Judge Eric G. Ransleben

These appointments are made subject to and are governed by the provisions of Ordinance No. 401, and in accordance with State law

SECTION 2: That this Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance.

SECTION 3: If any section, article, paragraph, sentence, clause, phrase or word in the Ordinance, or application thereof to any person or circumstance, is held in valid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the Town Council hereby declares it

would have passed such remaining portion of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION4: All other Ordinances in effect and not in conflict with this Ordinance shall remain in full force and effect.

SECTION5: The Town Secretary of the Town of Westlake is hereby directed to engross and enroll this Ordinance by copying the exact Caption and Effective Date clause in the minutes of the Town Council of the Town of Westlake and by filing this Ordinance in the Ordinance records of the Town.

SECTION 6: This ordinance shall take effect immediately from and after its passage as the law in such case provides.

PASSED AND APPROVED ON THIS 14th DAY OF NOVEMBER, 2016.

ATTEST:

Laura Wheat, Mayor

Kelly Edwards, Town Secretary

Thomas E. Brymer, Town Manager

APPROVED AS TO FORM:

L. Stanton Lowry, Town Attorney



Westlake Planning and Zoning Commission



TYPE OF ACTION

Regular Meeting - Consent

Monday, November 14, 2016

TOPIC: Consider a Resolution approving the declaration of Covenants, Conditions, and Restrictions and Design Guidelines for Quail Hollow, a residential development located in a R-1 zoning district, on approximately 188 acres of land located at the southeast corner of FM 1938/Davis Boulevard and Dove Road.

STAFF CONTACT: Jarrod Greenwood, Public Works Director/Assistant to the Town Manager

Strategic Alignment

<u>Vision, Value, Mission</u>	<u>Perspective</u>	<u>Strategic Theme & Results</u>	<u>Outcome Objective</u>
Mission: Westlake is a unique community blending preservation of our natural environment and viewscales, while serving our residents and businesses with superior municipal and academic services that are accessible, efficient, cost-effective, & transparent.	Citizen, Student & Stakeholder	High Quality Planning, Design & Development - We are a desirable well planned, high-quality community that is distinguished by exemplary design standards.	Preserve Desirability & Quality of Life
<u>Strategic Initiative</u>			
Outside the Scope of Identified Strategic Initiatives			

Time Line - Start Date: November 14, 2016 **Completion Date:** November 14, 2016

Funding Amount: N/A **Status -** **Not Funded** **Source -** N/A

EXECUTIVE SUMMARY (INCLUDING APPLICABLE ORGANIZATIONAL HISTORY)

The developer provided a presentation at the February 15, 2016 P&Z and February 22, 2016 Town Council meetings illustrating the development phasing plan, perimeter fence/wall, “Accepted Architectural Styles” and “General Building Requirements”.

The Quail Hollow preliminary plat and SUP were approved at the March 28, 2016 regular Town Council meeting. The SUP included a stipulation that the Town Council would approve the Covenants, Conditions, and Restrictions and Design Guidelines.

RECOMMENDATION

Staff recommends approval of the Covenants, Conditions, and Restrictions and Design Guidelines as presented.

ATTACHMENTS

Resolution

Covenants, Conditions and Restrictions

Design Guidelines will be delivered under separate cover

TOWN OF WESTLAKE

RESOLUTION 16- 37

A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS, APPROVING THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICIONS DEED RESTRICTIONS AND DESIGN GUIDELINES FOR QUAIL HOLLOW, A RESIDENTIAL DEVELOPMENT LOCATED IN R-1 ZONING DISTRICT, ON AN APPROXIMATELY 188 ACRE TRACT LOCATED AT THE SOUTHEAST CORNER OF FM 1938/DAVIS BOULEVARD AND DOVE ROAD.

WHEREAS, the Town of Westlake is experiencing planned growth through the attraction of economic development projects such as Fidelity Investments and Deloitte University, residential developments such as Vaquero, Glenwyck Farms, Terra Bella, and Granada which are consistent with the Town’s Comprehensive Plan; and

WHEREAS, the Town of Westlake (Town) and Quail Hollow II LLC, (the Developer) desire to foster a cooperative partnership to continue this planned growth through standards that ensure high quality development within the Town in the development known as Quail Hollow; and

WHEREAS, the preliminary plat for Quail Hollow was approved by on March 28, 2016; and

WHEREAS, The Quail Hollow Specific Use Permit was approved by Ordinance 780 on March 28, 2016 with a condition that the Town shall approve the deed restrictions and guidelines for the entire Quail Hollow residential development prior to the approval of the Quail Hollow Phase 1 Final Plat; and

WHEREAS, the Town Council finds that the passage of this Resolution is in the best interest of the citizens of Westlake.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS:

SECTION 1: THAT, all matters stated in the Recitals hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

SECTION 2: THAT, the Town Council of the Town of Westlake, Texas, hereby approves the Quail Hollow Declaration of Covenants, Conditions and Restrictions attached hereto as **Exhibit “A”**. and the Quail Hollow Design Guidelines attached hereto as **Exhibit “B”**.

SECTION 3: If any portion of this Resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the Council hereby determines that it would have adopted this Resolution without the invalid provision.

SECTION 4: That this resolution shall become effective from and after its date of passage.

PASSED AND APPROVED ON THIS 14TH DAY OF NOVEMBER, 2016.

Laura Wheat, Mayor

ATTEST:

Kelly Edwards, Town Secretary

Thomas E. Brymer, Town Manager

APPROVED AS TO FORM:

Stan Lowry, Town Attorney

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
QUAIL HOLLOW**

**Riddle & Williams, P.C.
3710 Rawlins Street, Suite 1400
Dallas, Texas 75219**

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EXHIBITS:

- EXHIBIT "A"** - Property Initially Subject to Declaration
- EXHIBIT "B"** – Bylaws of Quail Hollow Westlake Homeowners Association, Inc.
- EXHIBIT "C"** - Certificate of Formation of Quail Hollow Westlake Homeowners Association, Inc.
- EXHIBIT "D"** - General Architectural Provisions

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
QUAIL HOLLOW**

STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF TARRANT §

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR QUAIL HOLLOW (this "Declaration") is made this ____ day of June, 2016, by **QUAIL HOLLOW DEVELOPMENT I, LLC**, a Texas limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"). Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the Property. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Property as is now or hereafter subjected to this Declaration.

NOW, THEREFORE, the Declarant hereby declares that the real property described in Exhibit "A" to this Declaration and any additional property which is hereafter annexed in accordance with Article XIV hereof shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

The terms in this Declaration and the exhibits to this Declaration shall generally be given their ordinary, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

Section 1.1 "ARB" shall mean the Architectural Review Board established for the purposes described in Article X.

Section 1.2 "Assessment" shall refer to any charge levied against a Lot or Owner by the Association, pursuant to the Governing Documents or by law, including but not limited to Base Assessments, Special Assessments, Specific Assessments, Acquisition Assessments, and Resale Assessments, and any charges related to the collection thereof, including, interest, late charges, collection costs, attorney's fees and costs, all as defined in Article IX of this Declaration.

Section 1.3 "Association" shall refer to Quail Hollow Westlake Homeowners Association, Inc., a Texas non-profit corporation, its successors or assigns.

Section 1.4 "Base Assessment" shall refer to assessments levied on all Lots subject to assessment under Article IX to fund Common Expenses for the general benefit of all Lots.

Section 1.5 "Board of Directors" or "Board" shall be the body responsible for administration of the Association, selected as provided in the Governing Documents and generally serving the same role as the board of directors under Texas corporate law.

Section 1.6 "Builder" shall mean any Person which purchases, or contracts to purchase, one or more Lots within the Property from the Declarant or from a Builder for the purpose of constructing a Residence thereon for resale to consumers or under contract to an Owner other than Declarant, or who purchases, or contracts to purchase, one or more parcels of land within the Property for further development or resale in the ordinary course of such Person's business. As used herein, Builder does not refer to Declarant or to a home builder or home marketing company that is an affiliate of Declarant.

Section 1.7 "Bylaws" shall refer to the Bylaws of Quail Hollow Westlake Homeowners Association, Inc. attached hereto as Exhibit "B" and incorporated by reference, as they may be amended from time to time.

Section 1.8 "Certificate of Formation" or "Certificate" shall refer to the Certificate of Formation of Quail Hollow Westlake Homeowners Association, Inc., attached hereto as Exhibit "C" and incorporated by reference, as filed with the Secretary of State of the State of Texas.

Section 1.9 "Certificate of Occupancy" shall refer to a certificate or other similar document issued by the Town, or other applicable governmental authority certifying or authorizing a Residence for occupancy by a single family.

Section 1.10 "Class 'B' Control Period" shall refer to the period of time during which the Class "B" Member is entitled to appoint, remove and replace a majority of the members of the Board. The Class "B" Control Period shall expire upon the first to occur of the following:

- (a) December 31, 2022; or
- (b) when, in its discretion, the Class "B" Member so determines.

Section 1.11 "Common Area" shall mean all real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in and

for the common use and enjoyment of the Owners or dedicated to the Association either by separate instrument or as shown on the Plat of the Property or any portion thereof filed or approved by Declarant. The Common Area consists of the following components, and any modifications, improvements or additions thereto, on or adjacent to the Property, even if located on a Lot or public right-of-way: (i) the Property, save and except the Lots; (ii) the land described on the Plat as Common Area and all improvements on such Common Area; (iii) any area shown on the Plat as an area to be maintained by the Association; (iv) the right-of-way easements constituting the formal entrances to the Property, including any monument signage, controlled access gates, gatehouses, landscaping, irrigation, electrical and water installations, planter boxes and fencing; (v) the recreational amenities including, without limitation, the fishing dock, lakes, ponds, streams, wetlands, and water wells, including all mechanical, electrical and structural components of such features and amenities; and (v) personal property owned by the Association, such as books and records, office equipment, and supplies. One or more portions of the Common Area may from time to time be reasonably limited to private functions, and conversely, one or more portions of otherwise private property may be utilized for Association functions and activities. The Association shall at all times have and retain the right to effect minor redesigns or minor reconfigurations of the Common Area (particularly along the lake/pond edges) and to execute any open space declarations applicable to the Common Area which may be permitted in order to reduce property taxes, and to take whatever steps may be appropriate to lawfully avoid or minimize the imposition of federal and state *ad valorem* and/or income taxes.

Section 1.12 "Common Expenses" shall mean the actual and estimated expenses incurred, or anticipated being incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find to be necessary and appropriate pursuant to the Governing Documents. Common Expenses may include, without limitation, the following expenses: (i) maintenance, repair, and replacement, as necessary, of the Common Area; (ii) utilities billed to the Association; (iii) services billed to the Association and available to all Lots; (iv) taxes on property owned by the Association, franchise taxes, and the Association's income taxes; (v) management, legal, accounting, auditing, and professional fees for services to the Association, including fees paid to architects, engineers or similar professionals for service on the ARB; (vi) costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association; (vii) premiums and deductibles on insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association, including fidelity bonds and directors' and officers' liability insurance; (viii) contribution to the reserve funds; and (ix) any other expense which the Association is required by law or the Governing Documents to incur, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Property, enforcement of the Governing Documents, protection of the property values of the Development, or beneficial to the Development in general. Common Expenses shall not include expenses incurred during the Development Period for initial development or other original construction costs incurred by the Declarant unless approved by Members representing a majority of the total Class "A" votes of the Association.

Section 1.13 "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Property, or the minimum standards established pursuant to the Governing Documents, whichever is a higher standard. Such standard shall be established initially by the Declarant and may include both objective and

subjective elements. The Community-Wide Standard may evolve and change as development progresses and as the needs and desires within the Property change.

Section 1.14 "Declarant" shall refer to Quail Hollow Development I, LLC, a Texas limited liability company, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire such interest for the purpose of development or sale of all or any portion of the remaining undeveloped or unsold portions of the Property and is designated as the "Declarant" hereunder in a recorded instrument executed by the immediately-preceding "Declarant". Upon designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease.

Section 1.15 "Declaration" shall refer to this instrument, as it may be amended and supplemented from time to time.

Section 1.16 "Development" shall mean and refer to the Quail Hollow development, including all of the Property, Common Area and Lots.

Section 1.17 "Development Period" shall mean the period of time beginning on the date that this Declaration is recorded, and terminating on December 31, 2025 (unless the Declarant, in its sole discretion, terminates the Development Period prior to such time and declares so in a recorded instrument), during which time the Declarant may exercise its Development Period Rights.

Section 1.18 "Development Period Rights" shall mean generally those rights reserved to Declarant under this Declaration during the Development Period to (i) facilitate the development, construction, and marketing of the Development; or (ii) direct the size, shape and composition of the Development. Such rights include, without limitation, the right to: (i) annex and withdraw real property to and from the Property pursuant to Article XIV; (ii) adopt and amend General Architectural Provisions for the construction and modification of improvements within the Property pursuant to Article X; (iii) appoint members to the ARB; (iv) change the scheme of the Property pursuant to Article XV; (v) approve or exclude certain Builders from building homes within the Property pursuant to Article XV; (vi) amend the Governing Documents without the consent or approval of other Owners or Mortgagees pursuant to Article XVII; and (vii) exercise the rights set forth in Article XV hereof and any other rights reserved to the Declarant during the Development Period pursuant to the Governing Documents.

Section 1.19 "Development Plan" shall refer to the master concept plan for the development of the Property prepared by the Declarant, as it may be amended from time to time, which includes all of the property described in Exhibit "A" and all or a portion of the property which may be annexed as provided in Article XIV. Inclusion of property on the Development Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall exclusion of any property from the Development Plan bar its later annexation, as provided in Article XIV.

Section 1.20 "Eligible Mortgage Holder" shall mean those holders of First Mortgages secured by Lots in the Property who have requested notice of certain items as set forth in this

Declaration.

Section 1.21 "First Mortgage" shall mean any Mortgage which is not subject to any lien or encumbrance except the taxes or other liens which are given priority by statute or agreement.

Section 1.22 "First Mortgagee" shall mean the beneficiary or holder of a First Mortgage.

Section 1.23 "General Architectural Provisions" shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications applicable to most of the aspects of construction, placement, location, alteration, maintenance and design of any improvements to or within the Property, and all amendments, bulletins, modifications, supplements and interpretations thereof. The initial General Architectural Provisions are attached hereto as Exhibit "D" and incorporated herein by reference.

Section 1.24 "Governing Documents" shall refer to, singularly or collectively, as the case may be, this Declaration, the Bylaws, the Certificate of Formation, the Rules and Regulations (if any), the General Architectural Provisions (as adopted pursuant to Article X), and any other instrument recorded as a part of the Association's dedicatory instruments, as each may be supplemented and amended from time to time.

Section 1.25 "Lot" shall mean a portion of the Property, whether improved or unimproved, which may be independently owned and is intended for development, use and occupancy as a residence for a single family. The term shall refer to the land, if any, which is part of the Lot, as well as any improvements thereon and any portion of a right-of-way that customarily is used exclusively by and in connection with the Lot. In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain a single Lot until such time as a plat is recorded subdividing all or a portion thereof. Thereafter, the portion encompassed by such plat shall continue to be treated in accordance with this Section. Some portions of the Common Area may be platted as a "lot" on the Plat; however, these lots shall be excluded from the definition of a Lot as used herein.

Section 1.26 "Member" shall refer to a Person subject to membership in the Association.

Section 1.27 "Mortgage" shall refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed. A "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

Section 1.28 "Owner" shall refer to one or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. Contract sellers and Mortgagees who acquire title to a Lot through a deed in lieu of foreclosure or through foreclosure are considered Owners hereunder. The term "Owner" shall include Declarant.

Section 1.29 "Person" shall mean a natural person, a corporation, a partnership, a trustee, a limited liability company or any other legal entity.

Section 1.30 "Plat" shall refer to, all plats, singularly and collectively, recorded in the Real Property Records of Tarrant County, Texas, and pertaining to Quail Hollow, an addition to the Town of Westlake, Texas, as such plat(s) may be amended from time to time, which includes all of the property described in Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of the Association and made subject to this Declaration.

Section 1.31 "Property" shall mean and refer to the real property described in Exhibit "A" attached hereto and all improvements, easements, rights, and appurtenances to the real property, and such additions thereto as may hereafter be brought within the jurisdiction of the Association and made subject to this Declaration.

Section 1.32 "Resident" shall mean an occupant of a Residence, regardless of whether the Person is the record title holder of the Lot.

Section 1.33 "Residence" shall mean a residential dwelling structure constructed on a Lot and which is intended to be used and occupied as a residence for a single family.

Section 1.34 "Rules and Regulations" or "Rules" shall mean any written rules or regulations adopted, implemented or published by the Association or its Board at any time and from time to time, as they may be amended from time to time, with respect to the use and enjoyment of the Common Area and the conduct of its Members and their guests, invitees, agents and contractors within the Property.

Section 1.35 "Special Assessment" shall mean and refer to Assessments levied against all Owners to cover unanticipated expenses or expenses in excess of those budgeted, as described in Section 9.3.

Section 1.36 "Specific Assessment" shall mean Assessments levied in accordance with Section 9.4.

Section 1.37 "Supplemental Declaration" shall mean an instrument recorded pursuant Article XIV to subject additional property to this Declaration and/or to impose, expressly or by reference, additional restrictions and obligations on the land described therein.

Section 1.38 "Town" shall refer to the Town of Westlake, Texas.

ARTICLE II **PROPERTY RIGHTS**

Section 2.1 Common Area. Each Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area, including, but not limited to, a perpetual easement over the Property's streets and recreational facilities, as may be reasonably required, for the use and enjoyment of the Property and his or her Residence, subject to:

(a) this Declaration and any other applicable covenants or easements, as they may be amended from time to time, and subject to any restrictions or limitations contained in any deed conveying such property to the Association;

(b) the right of the Board to adopt rules regulating the ingress, egress, access, use and enjoyment of the Property, including the right to designate portions of the Common Area for private use on a temporary basis to the exclusion of other Persons;

(c) the right of the Board to suspend the right of an Owner to use recreational facilities (i) for any period during which any Assessment or other charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation of the Governing Documents after notice and a hearing pursuant to the Bylaws;

(d) the right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees, guests and invitees;

(e) the right of the Board to dedicate or transfer all or any part of the Common Area pursuant to Section 4.8; and

(f) the right of the Board to mortgage, pledge or hypothecate any or all of the Association's real or personal property as security for money borrowed or debts incurred, subject to any limitations contained in the Bylaws.

Section 2.2 Delegation of Use. Any Owner may extend his or her right of use and enjoyment of the Common Area to the members of his or her family, lessees and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessees of such Lot.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Membership. Every Owner is a Member of the Association; provided, there is only one membership per Lot. In the event a Lot is owned by more than one Person, all co-Owners shall be entitled to the privileges of membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2 and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's immediate family. The membership rights of an Owner which is not a natural person may be exercised by the officers, directors, partners, or trustees, or by the individuals designated from time to time by the Owner in writing provided to the Secretary of the Association.

Section 3.2 Voting. The Association shall have two classes of membership, Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall be entitled to one equal vote for each Lot in which they hold the interest required for membership under Section 3.1, except that there shall be only one vote per Lot.

Where there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine between themselves and advise the Secretary of the Association in writing prior to the vote being cast. In the absence of such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it and the vote is not cast unanimously among the Persons casting the vote.

(b) Class "B". The Class "B" Member shall be the Declarant. The Class "B" Member shall be entitled to three (3) votes for each Lot it owns and it shall be entitled to appoint a majority of the members of the Board during the Class "B" Control Period, in the manner specified in the Bylaws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents.

The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of:

- (i) two (2) years after expiration of the Class "B" Control Period; or
- (ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to one Class "A" vote for each Lot, if any, which it owns.

Section 3.3 Merger. Merger of the Association with another property owner's association must be evidenced by an amendment to this Declaration. The amendment must be approved by Owners of at least a majority of the Lots, and by the Declarant during the Development Period. Upon a merger, the property, rights and obligations of another association may, by operation of law, be added to the property, rights and obligations of the Association as a surviving association pursuant to the merger. The surviving association may administer the provisions of the Governing Documents within the Property, together with the covenants and restrictions established upon any other property under its jurisdiction. No merger, however, will effect a revocation, change or addition to the covenants established by this Declaration within the Property.

ARTICLE IV
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 4.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration and subject to the terms of any easement or other agreement with the Town or adjacent property owner, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings, equipment and common landscaped areas), and shall keep it in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

Section 4.2 Personal Property and Real Property for Common Use. The Association may acquire, hold and dispose of tangible and intangible personal property and real property, subject to such restrictions as are set forth in the Governing Documents. The Board shall accept any conveyance of personal property or fee title, leasehold, or other interests in any improved or unimproved real estate located within the Property, including the Common Area, conveyed to it by the Declarant. Upon conveyance or dedication by the Declarant to the Association, such property shall be thereafter maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed of conveyance. Upon written request of the Declarant, the Association shall re-convey to Declarant for no or nominal monetary consideration any unimproved portions of the Property originally conveyed by Declarant to the Association, to the extent conveyed in error or needed by Declarant to make minor adjustments in property lines.

Section 4.3 Rules and Regulations. The Declarant and the Board may adopt, amend, repeal and enforce reasonable Rules and Regulations, and penalties for infractions thereof, governing the occupancy, lease, use, disposition, maintenance, appearance, and enjoyment of the Common Areas and Lots, and governing the ingress, egress and access to the Property. Without limiting the generality of the foregoing, the Declarant and the Board may adopt, amend repeal and enforce reasonable Rules and Regulations governing the type of vehicles that may use the private streets, the speed at which vehicles may be operated on the private streets, and the parking of vehicles on the private streets. Any such Rules and Regulations may include the right to prohibit or to restrict. Such Rules and Regulations shall be consistent with the rights and duties established by this Declaration. Such Rules and Regulations shall be binding upon all Owners, occupants, invitees and licensees, if any, until and unless overruled, canceled or modified in a regular or special meeting of the Association by the vote of a majority of the Class "A" Members and the consent of the Class "B" Member, so long as such membership shall exist.

Section 4.4 Compliance and Enforcement. Every Owner and his or her family, guests, lessees, and invitees shall comply with the Governing Documents. The Association shall be authorized to impose sanctions for violations of the Governing Documents. Sanctions may include, without limitation, the following:

- (a) imposing reasonable monetary fines, which shall constitute a lien upon the Owner's Lot;
- (b) suspending the violator's right to use any recreational facilities within the Common

Area; provided, however, nothing herein shall authorize the Board to prohibit reasonable ingress or egress to or from a Lot by an Owner or Resident;

(c) suspending, restricting or prohibiting a non-Resident violator's ingress, egress and access to the Property; provided, however, nothing herein shall authorize the Board to prohibit reasonable ingress or egress to or from a Lot by an Owner or Resident;

(d) suspending any services provided by the Association to a violator or the violator's Lot if the Lot Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association;

(e) exercising self-help (specifically including, but not limited to, towing of vehicles that are parked or stored in violation of the Governing Documents, removing nonconforming structures and/or improvements pursuant to Section 10.9 and performing maintenance on an Owner's Lot pursuant to Section 5.4);

(f) recording a Notice of Violation pursuant to Section 10.12;

(g) levying a Specific Assessment pursuant to Section 9.4; and

(h) taking any other action to abate a violation of the Governing Documents.

In addition to any other enforcement rights, the Association or any Owner may bring suit in law or in equity, or both, to enjoin any violation or to recover monetary damages, or both. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. The Association shall be entitled to recover all costs, including, without limitation, attorney's fees and court costs reasonably incurred in enforcing the Governing Documents. Failure by the Association to enforce any the foregoing or any other right or remedy of the Association shall in no event be deemed a waiver of the right to do so thereafter.

The Association, through the Board, by contract or other agreement, shall have the right, but not the obligation, to enforce applicable county and city ordinances, and may, but shall not be obligated to, permit Tarrant County and the Town to enforce ordinances on the Property for the benefit of the Association and its Members.

Section 4.5 Implied Rights. The Association may exercise any other right or privilege given to it expressly by the Governing Documents. The Association may also exercise every other right or privilege reasonably implied from or reasonably necessary to effectuate any such right or privilege.

Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

Section 4.6 Governmental Interests. For so long as the Declarant owns any Property, the Association shall permit the Declarant to designate and re-designate sites within the Property for water and sewer facilities and other public facilities. The sites may include Common Area

owned by the Association, and in such case no membership approval shall be required and the Association shall dedicate and convey the designated site as requested by the Declarant.

Section 4.7 Indemnification. The Association shall indemnify every officer, director and committee member to the full extent permitted by Section 8.001 *et seq.* of the Texas Business Organizations Code, as amended (but, in the case of any such amendment, only to the extent that such amendment permits broader indemnification than permitted prior to such amendment). Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association.

Section 4.8 Dedication of Common Area. Subject to such approval requirements as may be set forth in this Declaration, the Association shall have the power to dedicate portions of the Common Area to Tarrant County, Texas, or to any other local, state or federal governmental entity, provided, the Town shall have no obligation to accept any private street for public access and maintenance and may impose such conditions upon acceptance as it deems appropriate.

Section 4.9 Security. The Association may, but shall not be obligated to, maintain or support certain facilities and activities within the Property designed to enhance the security of the Property, including, without limitation, the installation of controlled access gates and the provision of patrol or access monitoring personnel. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT, SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY, NOR SHALL SUCH PARTIES BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT, MAKE ANY REPRESENTATION OR WARRANTY THAT ANY SYSTEMS OR MEASURES, INCLUDING ANY MECHANISM, DEVICE OR PERSON EMPLOYED TO LIMIT OR RESTRICT ACCESS TO THE PROPERTY CANNOT BE COMPROMISED OR CIRCUMVENTED; OR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ANY CASE PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND ALL TENANTS, GUESTS AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD, COMMITTEE MEMBERS, DECLARANT OR ANY SUCCESSOR DECLARANT, ARE NOT INSURERS AND THAT EACH PERSON WITHIN THE PROPERTY ASSUME ALL RISKS FOR PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING LOTS AND THE CONTENTS THEREOF, RESULTING FROM ACTS OF THIRD PARTIES.

Section 4.10 Use of Recreational Facilities. Each Owner acknowledges that certain recreational facilities including, but not limited to, lakes and a fishing dock, are or may be

provided within the Common Area for the use and enjoyment of the Owners and Residents, and their respective families, tenants, and invitees. Inclusion of a recreational facility in this Section 4.10 shall not, under any circumstances, obligate any Declarant or the Association to provide such facility, nor shall the omission of any type of recreational facility from this Section 4.10 prevent any Declarant or the Association from providing such facility at a later time. **EACH OWNER HEREBY ACKNOWLEDGES THAT THERE ARE RISKS ASSOCIATED WITH THE USE OF ANY SUCH RECREATIONAL FACILITIES AND THAT ALL USERS OF SUCH FACILITIES ARE SOLELY RESPONSIBLE FOR SUCH RISK. EACH OWNER, BY ACCEPTING A DEED TO A LOT, ACKNOWLEDGES THAT HE OR SHE HAS NOT RELIED UPON THE REPRESENTATIONS OF THE DECLARANT OR THE ASSOCIATION WITH RESPECT TO THE SAFETY OF ANY RECREATIONAL FACILITIES OR OTHER COMMON AREA WITHIN THE PROPERTY.**

The Association may, but shall not be obligated to, contract with, employ or otherwise provide, from time to time, a lifeguard or other monitoring personnel or equipment to be present or operational at any recreational facility within the Property. Each Owner acknowledges that the presence of such personnel shall not create a duty on the part of any Declarant or the Association to provide for, insure or guarantee the safety of any user of the facility. Each Owner acknowledges that the presence of such monitoring personnel shall not in any way alter the risks assumed by each Owner, his or her family members, tenants, other Residents of Owner's Lot and guests of any such Persons, which risks shall continue to be assumed by the user of the recreational facility.

Section 4.11 Construction Activities All Owners are hereby placed on notice that Declarant(s), any affiliate of Declarant(s) and/or its agents, contractors, subcontractors, licensees and other designees, successors or assignees, may be, from time to time, conducting excavation, construction and other activities within or in proximity to the Property. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, easement or other interest, and by using any portion of the Property, each Owner automatically acknowledges, stipulates and agrees (a) that none of the aforesaid activities shall be deemed nuisances or noxious or offensive activities, under any applicable covenants or at law generally, (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is trespass or otherwise) any property within or in proximity to any portion of the Property where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours), (c) Declarant(s), any affiliate of Declarant(s) and all of their agents, contractors, subcontractors, licensees and other designees, successors and assignees, shall not be liable but, rather, shall be held harmless, for any and all losses and damages (compensatory, consequential, punitive or otherwise), injuries or deaths arising from or relating to the aforesaid activities, and (d) any purchase or use of any portion of the Property has been and will be made with full knowledge of the foregoing.

Section 4.12 Use of Technology. The Association may, as a Common Expense, provide for or offer services which make use of computers and other technological opportunities. For example, to the extent Texas law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send required notices by electronic means; hold

Board or Association meetings and permit attendance and voting by electronic means or via the web, establish a website ("Association Website") to provide Owners, residents, tenants, occupants, and invitees ("Association Website Users") with a forum for Association Website Users to participate in community life, disseminate information about activities and programs and foster a sense of community. The Association shall be the sole authorized provider of the Association Website. If the Association Website is established, the Board shall have the sole authority to establish who may access the Association Website and to remove content deemed objectionable or offensive in the Board's sole discretion. During the Development Period, all content must be approved in advance by the Declarant.

No Association Website User shall use the Association's Website or any other electronic means of communication which is in any way associated with the Development to slander, vent complaints, or create/foster an atmosphere of discontent with regard to another Member, his or her family, the Association, the Board, committee members, the Declarant or any affiliate of Declarant.

Section 4.13 Mineral Interests. As of the date of recording of this Declaration, all mineral interests and water rights, including but not limited to development rights, may have been reserved by one or more prior owners of the Property or conveyed pursuant to one or more deeds or other instruments. By accepting title or other interest to a Lot, each Owner acknowledges the possible existence of such superior rights in favor of their owners. In the event that Declarant holds any such mineral interests or water rights as of the date of recording of this Declaration, the Declarant hereby reserves for itself all right, title and interest in and to the oil, gas, and other minerals and water in, on, and under and that may be produced from the Property, TO HAVE AND TO HOLD FOREVER.

Section 4.14 Private Streets.

(a) The private streets as shown on the Plat shall be maintained by the Association as part of the Common Area as set forth in Section 6.1, and the Town shall have no responsibility for maintenance of such streets. The Town may, but shall not be obligated to, inspect such streets and require the Association to make any repairs necessary to bring such streets up to the standards of public streets within the Town. If the Association should fail to make any repairs within a reasonable time after receipt of written notice from the Town as to the need for such repairs, or if the Association and the Town otherwise agree, the Town shall have the right: (i) to cause such repairs to be made and to assess each Lot within the Property for an equal share of the cost of such repairs; or (ii) to revoke the special use permit for private streets, make any necessary repairs, remove any gate, gatehouse or other structures not permitted on public streets within the Town, and unilaterally re-file the subdivision plat(s) for the Property dedicating the streets within the Property to the public; or (iii) both of the above, in the event the balance of the reserve fund is not sufficient to cover all street repairs. If the private streets are converted to public streets, under (ii) above, the Town shall be entitled to that portion of the Association's reserve funds allocated to maintenance of the street so dedicated, as provided in Section 9.2.

(b) Each Owner, by acceptance of any interest in a Lot, acknowledges and agrees that the Town shall have no obligation to provide certain services, such as but not limited to routine

police patrols, enforcement of traffic and parking ordinances, or preparation of accident reports, in areas served by private streets.

- (c) This Section shall not be amended without the prior written consent of the Town.

ARTICLE V **MAINTENANCE**

Section 5.1 Association Responsibility. Except as may be otherwise provided by this Declaration and subject to the terms of any easement or other agreement with the Town or adjacent property owner, the Association shall maintain and keep in good repair the Common Area, including maintenance of the private streets to at least the standards of similarly situated public streets within the Town. Such maintenance shall include, but need not be limited to:

- (a) All portions of and all landscaping, structures and improvements situated upon the Common Area, including, without limitation, (i) all street trees and shrubs, (ii) all entry features and monuments including the expenses for water and electricity, if any, provided to all such entry features; and (iii) any irrigation or drainage systems located on the Common Area.

- (b) all private streets, street shoulders, curbs, lamp posts and street lights within the Property;

- (c) all recreational facilities, including, without limitation, the fishing dock;

- (d) all ponds, lakes, streams and/or wetlands located within the Property which serve as part of the drainage and storm water retention system for the Property, including any retaining walls, bulkheads, levees or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits and similar equipment installed therein or used in connection therewith;

- (e) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.;

- (f) any real or personal property owned by the Association but which is not a Common Area, such as a Lot owned by the Association;

- (g) landscaping and other flora within public rights-of-way abutting the Common Area (subject to the terms of any easement or other agreement relating thereto); and

- (h) such portions of any additional property located adjacent to the Property, the maintenance of which is deemed to be in the best interest of the Association to maintain or which must be maintained according to this Declaration, any Supplemental Declaration, any covenant to share costs, or any contract or agreement for maintenance thereof entered into by the

Association.

The Association shall maintain the facilities and equipment within the Common Area in continuous operation, except for any periods of maintenance or repairs or unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation. Except as provided hereinabove, the Common Area shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Class "B" Member, if any.

The costs associated with maintenance, repair and replacement of the Common Area shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Common Area pursuant to this Declaration, a covenant to share costs, other recorded covenants, or agreements with the owner(s) thereof.

Section 5.2 Owner Responsibility. Each Owner shall maintain his or her Lot and Residence and all landscaping, structures, driveways, parking areas, fences, walls and other improvements within the boundaries of the Lot, except for the improvements located within the right-of-way easements constituting the formal entrances to the Property as shown on the Plat.

Each Owner shall maintain the driveway serving his or her Lot whether or not lying entirely within the Lot boundaries, and shall maintain all landscaping on that portion of the Common Area or public right-of-way between the Lot boundary and the nearest curb or pavement edge of the adjoining street(s). Owners of Lots which are adjacent to any portion of the Common Area on which decorative walls or fences have been constructed shall also maintain that portion of the Common Area which lies between such wall or fence and the Lot boundary. Owners of Lots which abut the bank or water's edge, or abut a portion of the Common Area abutting the bank or water's edge, or abut a portion of the Common Area abutting the bank or water's edge, of any lake, pond, stream or wetlands area within the Property shall maintain all landscaping between the Lot boundary and such bank or water's edge; provided, there shall be no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to Article X hereof. The Association, and its agents, during normal business hours, shall have the right (after five (5) days' written notice to the Owner of any Lot involved, setting forth the specific violation or breach of this covenant and the action required to be taken, and if at the end of such time reasonable steps to accomplish such action have not been taken by the Owner), to enter on the subject premises (without any liability whatsoever for damages for wrongful entry, trespass or otherwise to any Person) and to take the action(s) specified in the notice to remedy or abate said violation(s) or breach(es). The cost of such remedy or abatement shall be paid to the Association upon demand and if not paid within thirty (30) days thereof, shall become a lien upon the Lot affected. The Association, or its agent, shall further have the right (upon like notice and conditions), to trim or prune, at the expense of the Owner, any hedge, tree or any other planting that, in the written opinion of the Association, by reason of its location on the Lot, or the height, or the manner in which it is permitted to grow, is detrimental to the adjoining Lots, is dangerous or is unattractive in appearance. The lien provided under this section will constitute a lien retained against such property with the same force and effect as the lien for unpaid assessments as set forth in this Declaration.

Retaining walls constructed along a common boundary between two Lots or a Lot and the Common Area (a "shared retaining wall") shall be constructed entirely on the high side of the two properties, and the wall and any fence built thereon shall be maintained by the Owner located on the high side of the two properties. The Owner on the low side of two properties with a shared retaining wall hereby grants to the Owner on the high side of the shared retaining wall an easement for (i) the existence and continuance of any encroachment of the shared retaining wall as a result of original construction, repairs in place, shifting, settlement, or movement by natural causes, and (ii) the maintenance, repair, replacement, or reconstruction of the shared retaining wall, as appropriate and necessary to effect the purposes and provisions of this Section. Notwithstanding anything contained in this Section 5.2 to the contrary, an Owner may not alter, modify or relocate a shared retaining wall in any manner that affects the use, condition, or appearance of the shared retaining wall to the adjoining property, without the prior written consent of the Owner of the adjoining property.

Section 5.3 Standard of Performance. Unless otherwise specifically provided in the Governing Documents, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain his or her Lot to a level consistent with the Community-Wide Standard. Specifically, each Owner must (i) repair and replace worn, rotten, deteriorated, and unattractive materials; (ii) regularly repaint all painted surfaces; (iii) regularly re-stain all stained surfaces; (iv) regularly water all landscape, prune and cut all trees and shrubbery, mow and edge all lawns and yards, including fenced and unfenced portions of the Lots and public right of ways abutting the Lots, so that the Lot is neatly manicured, healthy and in a well-groomed condition (weeds and grass not to exceed six inches (6") in height); (v) promptly remove diseased, dying or dead plant material, and promptly replace such material with plants of a similar or superior quality and appearance and that maintain the minimum landscape requirements of Exhibit "D"; (vi) keep the yard irrigation system in good repair and repair and replace sprinkler heads, irrigation lines and other irrigation equipment as needed for optimum landscape maintenance; (vii) promptly remove all litter, trash, refuse, waste and debris; (viii) keep exterior lighting and mechanical facilities in working order; (ix) keep driveways in good repair and condition; (x) promptly repair any exterior damage; (xi) comply with all governmental health and police requirements; and (xii) not alter the drainage from the Lot or cause damage to adjoining Lots or Common Areas from improper drainage or over watering (such Owner being responsible for any damage resulting therefrom).

Repair and replacement shall include improvement, if necessary to comply with applicable building codes or other regulations or if otherwise deemed appropriate, in the Board's reasonable discretion. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on such Owner's Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article X. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive, and landscaped condition consistent with the Community-Wide Standard. Neither the Association nor an Owner shall be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own, except to the extent that it has been negligent in the performance of its maintenance responsibilities. The Owner shall pay any costs which are not covered by insurance.

Section 5.4. Owner's Default in Maintenance. In addition to any other enforcement rights available to the Association, if any Owner fails properly to perform his or her maintenance responsibilities, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment in accordance with Section 9.4. However, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when immediate entry is required due to an emergency situation.

Section 5.5 Party Structures.

(a) General Rules of Law to Apply. Each fence, wall, mailbox or driveway built as a part of the original construction on the Lots which shall serve and/or separate any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party structures and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure. The Owner on each side of a party structure hereby grants to the Owner on the other side of the party structure an easement for (i) the existence and continuance of any encroachment of the party structure as a result of original construction, repairs in place, shifting, settlement, or movement by natural causes, and (ii) the maintenance, repair, replacement, or reconstruction of the party structure, as appropriate and necessary to effect the purposes and provisions of this Section. Notwithstanding anything contained in this Section 5.5(b) to the contrary, an Owner may not alter, modify or relocate a party structure in any manner that affects the use, condition, or appearance of the party structure to the adjoining Lot, without the prior written consent of the Owner of the adjoining Lot.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who benefits from the use of the party structure may restore it. If other Owners thereafter use the party structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration. In the event of any dispute arising concerning a party structure, each party shall appoint one arbitrator. Should any party fail and/or refuse to appoint an arbitrator within ten (10) days after written request by the other party, the requesting party shall appoint an arbitrator for the refusing party. The arbitrators appointed shall appoint one additional arbitrator. The decision by a majority of all three arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other. The Association and/or the Declarant shall have no responsibility in resolving any disputes between

Members concerning a party structure.

Section 5.6 Rights of the Town. The Town, including its agents and employees, has the right of immediate access to the Common Area at all times if necessary for the welfare or protection of the public, to enforce Town ordinances, or to improve the appearance of to preserve public property, public easements or public rights-of-way. Should the Association fail to carry out its duties as specified in this Declaration to a standard acceptable to the Town, the Town or its lawful agents shall have the right and ability, after at least ninety (90) days' notice to the Association, to remove any landscape system, features or elements that cease to be maintained by the Association; to perform the responsibilities of the Association if the Association fails to do so in compliance with any of the provisions of this Declaration or of any applicable Westlake Town codes, ordinances or regulations; to assess the Association for all costs incurred by the Town in performing said responsibilities if the Association fails to do so; and to avail itself of any other enforcement actions available to the Town pursuant to state law or Westlake Town codes, ordinances or regulations. Should the Town exercise its rights as specified above, the Association shall indemnify and hold harmless the Town from any and all costs, expenses, suits, demands, liabilities or damages, including attorney's fees and costs of suit, incurred or resulting from the Town's removal of any landscaping systems, features or elements that cease to be maintained by the Association or from the Town's performance of the aforementioned operations, maintenance or supervision responsibilities of the Association due to the Association's failure to perform said duties.

ARTICLE VI

INSURANCE AND CASUALTY LOSSES

Section 6.1 Association Insurance. The Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(a) blanket "all-risk" property insurance for all insurable improvements on the Common Area in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then at a minimum an insurance policy providing fire and extended coverage, including coverage for vandalism and malicious mischief shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of the insured property under current building codes and ordinances;

(b) commercial general liability insurance on the Common Area, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on its behalf. If generally available at reasonable cost, such policy shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury and property damage;

(c) commercial crime insurance, including fidelity insurance, covering all persons responsible for handling Association funds in an amount determined in the Board's best business judgment, but not less than an amount equal to one-sixth (1/6) of the annual Base Assessment on all Lots plus reserves on hand. Fidelity insurance policies contain a waiver of all defenses based upon the exclusion of persons serving without compensation;

(d) workers' compensation insurance and employer's liability insurance, if and to the extent required by law;

(e) directors' and officers' liability coverage, covering all directors, officers and committee members; and

(f) such additional insurance as the Board, in its business judgment, determines advisable.

Premiums for all insurance on the Common Area and any Lot owned by the Association shall be a Common Expense.

Section 6.2 Policy Requirements. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lot(s) as a Specific Assessment.

Section 6.3 Individual Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" property insurance on his or her Lot(s) and structures constructed thereon providing full replacement cost coverage (less a reasonable deductible), unless the Association carries such insurance (which it is not obligated to do so hereunder). Further, each Owner shall obtain and maintain general liability insurance on his or her Lot. If an Owner fails to maintain required insurance, the Board may obtain insurance on behalf of the Owner. If the Association assumes responsibility for obtaining any insurance coverage on behalf of an Owner, the premiums for such insurance shall be levied as a Specific Assessment against the benefitted Lot and the Owner. Each Owner and Resident is solely responsible for insuring his or her personal property in his or her Residence and on the Lot, including furnishings, vehicles, appliances, equipment and stored items.

Section 6.4 Damage and Destruction.

(a) In the event of damage to or destruction of Common Area or other property insured by the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damage or destroyed property to substantially the same condition in which it existed prior to the fire or other peril, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed

unless Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within sixty (60) days after the loss not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available. However, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

(c) If it is determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive landscaped condition consistent with the Community-Wide Standard.

Section 6.5 Disbursement of Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and its Members and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Lot and may be enforced by such Mortgagee.

Section 6.6 Repair and Reconstruction. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without the vote of the Members, levy a Specific Assessment to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.3.

ARTICLE VII **NO PARTITION**

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action seeking judicial partition without the written consent of all Owners and Mortgagees. This Article shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

ARTICLE VIII **CONDEMNATION**

Section 8.1 Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least sixty-seven percent (67%) of the total Class "A" votes in the Association and of the Class "B" Member, if any, by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as set

forth in this Article.

Section 8.2 Disbursement. If the taking involves a portion of the Common Area on which improvements have been constructed, then the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking, the Class "B" Member, if any, and Class "A" Members representing at least sixty-seven percent (67%) of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions in Article VI hereof regarding the disbursement of funds for the repair of casualty damage or destruction shall apply.

If the taking or conveyance does not involve any improvements on the Common Area or a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE IX **ASSOCIATION FINANCES**

Section 9.1 Assessment.

(a) Personal Obligation. Except as hereinafter provided, each Owner, by accepting a deed for any portion of the Property, is deemed to covenant and agree to pay all Assessments authorized by the Governing Documents. All Assessments, together with interest (at a rate not to exceed eighteen percent (18%) per annum, or such higher rate as the Board may establish by resolution, subject to the limitations of Texas law), late charges as determined by Board resolution, costs and reasonable attorney's fees, shall be the personal obligation of each Owner upon whom the Assessment or charge is assessed and a lien upon each such Owner's Lot until paid in full. Except as provided in Section 9.5, upon the transfer of title to a Lot, the grantee shall be jointly and severally liable for any Assessments or charges due at the time of conveyance.

(b) Resale Certificate. The Association shall, within ten (10) days of the receipt of a written request from an Owner, Owner's agent, or title insurance company or its agent acting on behalf of the Owner, furnish to such Person, in addition to any other information that may be required by law, a certificate in writing signed by an officer of the Association, or a duly authorized agent, setting forth the amount of any unpaid Assessments against the Owner's Lot. Such certificate shall be conclusive evidence of such Owner's Assessment obligation as of the date of the certificate. The Association or its duly authorized agent may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(c) Time of Payment; Due Date. Assessments shall be paid in such manner and on such dates as may be fixed by the Board. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. Special Assessments and Specific Assessments are due on the date stated in the notice of assessment or, if no date is stated, within ten (10) days after notice of the Assessment is given. Assessments are considered

delinquent if not received by the Association on or before the due date. If any Owner is delinquent in paying any Assessments levied on his or her Lot, the Board may require any unpaid installments of all outstanding Assessments to be paid in full immediately.

(d) No Exemption. Except for property exempt from Assessment pursuant to Section 9.8 hereof, no Owner may waive or otherwise exempt himself from liability for any Assessments by non-use of Common Area, abandonment of the Lot or any other reason. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association or for inconvenience or discomfort arising from the making of repairs or improvements, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority or for any other action taken or failed to be taken by the Association.

(e) Budget Deficits. Declarant shall pay the difference between the amount of Assessments (exclusive of reserve contributions) levied on all other Lots subject to assessment and the amount of actual expenditures (exclusive of reserve contributions) incurred by the Association during each fiscal year (the "budget deficit"). This obligation to fund budget deficits shall cease upon the first to occur of the following: (i) the termination of the Class "B" Membership, (ii) the cessation of budget deficits or (iii) when, in its discretion, the Declarant so determines and declares in a recorded instrument. Until such time as Declarant's obligation to fund the budget deficits terminates, the Declarant shall be exempt from the payment of Assessments. The Association shall have a lien against all Lots owned by the Declarant to secure the Declarant's obligations under this Section, which lien shall have the same attributes and shall be enforceable in the same manner as the Association's lien against other Lots under this Article. The Declarant's obligations hereunder may be satisfied in the form of a loan or by "in kind" contributions of services or materials, or by a combination of these as determined by Declarant in Declarant's absolute discretion. After termination of Declarant's obligation to fund the budget deficits, Declarant shall pay Assessments on its unsold Lots in the same manner as any other Owner.

(f) Declarant Subsidy. Declarant may reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by such Declarant under Section 9.1(e) above), which may be either a contribution, or a loan, in the Declarant's absolute discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not otherwise obligate Declarant to continue payment of such subsidy in future years, unless provided in a written agreement between the Declarant and the Association.

Section 9.2 Base Assessment.

(a) Budget. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses of the Association during the coming year, including any contributions to one or more reserve funds. During the period of time that Declarant is obligated to pay the budget deficits, the budget shall be established as if the

Property were fully developed, fully phased, fully constructed and fully occupied with a level of service and maintenance typical for similar developments in the surrounding area, using cost estimates that are current for the period in which the budget is prepared. Contributions and/or loans to the Association attributable to the Declarant shall be disclosed as a line item in the budget. The reserve portion of the budget shall take into account the number and nature of replaceable assets, the expected life of each asset and the expected repair or replacement cost. The Board may set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, with respect both to amount and timing of Base Assessments over the period of the budget. During the period of time that Declarant is obligated to pay the budget deficits, Declarant has no duty to contribute to the Association's reserve fund(s).

(b) Computation. The total budgeted Common Expenses shall be set at a level which is reasonably expected to produce the total income of the Association equal to the total budgeted Common Expenses, including reserves. In determining the assessment applicable to a particular Lot (the "Base Assessment"), the Board shall first divide the total budgeted Common Expenses by the total number of Lots then subject to Assessment (the "Unadjusted Base Assessment"). The Unadjusted Base Assessment shall then be adjusted for each Lot as follows: (i) Lots which are one and one-half (1-1/2) acres or less in size ("Estate Lots") shall be assessed at a rate equal to eighty percent (80%) of the Unadjusted Base Assessment, and (ii) Lots greater than one and one-half (1-1/2) acres in size ("Manor Lots") will be assessed at a rate equal to the Unadjusted Base Assessment plus twenty percent (20%) of the Unadjusted Base Assessment times the ratio of the total number of Estate Lots to Manor Lots as represented by the following formula:

$$\text{Base Assessment} = \text{Unadjusted Base Assessment} + (20\% \times \text{Unadjusted Base Assessment} \times [\text{Estate Lots}/\text{Manor Lots}])$$

In determining the total income of the Association, the Board may consider sources of funds available to the Association other than the Base Assessment. If during the course of the year the Board determines that the Base Assessment is insufficient to cover the estimated Common Expenses for the remainder of the year, the Board may, subject to the provisions of Section 9.2(c) below, increase the Base Assessment for the remainder of the year in an amount that covers the estimated deficiency. Any such increase in the Base Assessment shall be determined in the same manner as set forth in this Section 9.2(b).

(c) Notice; Disapproval. The Board shall send notice of the amount of the Base Assessment to be levied pursuant to the Board approved budget, or the amount of any proposed increase in the Base Assessment during the year, to each Owner at least thirty (30) days prior to the effective date of such budget or increase. During the Class "B" Control Period, the Base Assessment shall automatically become effective upon Board approval. Thereafter, the Base Assessment shall automatically become effective upon Board approval unless disapproved by the Class "B" Member, if any, or by Members representing at least fifty-one percent (51%) of the total Class "A" votes in the Association.

There shall be no obligation to call a meeting of the Members for the purpose of considering a Base Assessment except on petition of the Members as provided for special meetings in the Bylaws, which petition must be presented to the Board within ten (10) days after

delivery of the budget and notice of the Base Assessment.

In the event a proposed Base Assessment is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, the budget and Base Assessment most recently in effect shall continue in effect until a new budget and Base Assessment is determined.

Section 9.3 Special Assessments. In addition to other Assessments authorized hereunder, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of the amount budgeted. Any such Special Assessment shall be levied against all Lots subject to Assessment hereunder and shall be allocated between Estate Lots and Manor Lots in the same manner used for the determination of the Base Assessments as provided in Section 9.2(b). Except as otherwise provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent, or any combination thereof, of Members representing at least fifty-one percent (51%) of the total votes of the Association, and the affirmative vote or written consent of the Declarant. Notwithstanding the foregoing, during the Class "B" Control Period, the Declarant may unilaterally levy a Special Assessment. Special Assessments may be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

Section 9.4 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot which is subject to Assessment as follows:

(a) To cover costs incurred in bringing a Lot into compliance with the provisions of the Governing Documents;

(b) to cover the costs of providing benefits, items or services not provided to all Lots, such as additional landscape maintenance, pest control service, security and transportation services; such Assessments may be levied in advance of the provisions of the requested benefit, item or service as a deposit against charges to be incurred;

(c) for fines levied pursuant to the Governing Documents;

(d) for damages caused to the Common Area by the Owner, his or her family, guests, tenants, invitees, contractors or employees;

(e) for architectural review fees; and

(f) for any other cost or expense authorized by the Governing Documents to be levied against an Owner and his or her Lot which is not part of the Base Assessment or Special Assessment.

Section 9.5 Lien for Assessments. The Association shall have a lien against each Lot to secure payment of Assessments, as well as interest (subject to the limitations of Texas law), late charges, and costs of collection (including attorney's fees and costs). Such lien shall be prior and

superior to all other liens, except (a) the liens of all taxes, bonds, assessments and other levies which by law would be superior thereto; (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value recorded before the date on which the delinquent Assessment became due; and (c) the lien or charge of any construction loan for the construction of the original Residence. Such lien, when delinquent, may be enforced by suit, judgment and judicial or non-judicial foreclosure (after first obtaining a court order in an application for expedited foreclosure as prescribed by law).

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Lot, the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability or priority of the lien. The lien may be foreclosed through judicial or, to the extent allowed by law, non-judicial foreclosure proceedings in accordance with Section 209.0092 and Section 51.002 *et seq.* of the Texas Property Code (the "Foreclosure Statute"), as it may be amended from time to time, in like manner of any deed of trust on real property. In connection with the lien created herein, each Owner of a Lot hereby grants to the Association, whether or not it is so expressed in the deed, the contract for sale or other conveyance to such Owner, a power of sale to be exercised in accordance with the Foreclosure Statute. At any foreclosure proceeding, any Person may bid for the Lot at foreclosure sale and acquire, hold, lease, mortgage and convey the Lot. If and while the Association owns the Lot following foreclosure: (i) no right to vote shall be exercised on its behalf; and (ii) no Base Assessment shall be levied on it. The Association may sue to recover a money judgment for unpaid Assessments and other charges without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the Assessment lien or relieve such Lot from the lien for any post-sale Assessments. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a superior lien shall extinguish the lien as to any installments of such Assessments which became due prior to such sale or transfer. Where the Mortgagee holding a superior lien of record or other purchaser of a Lot obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be personally liable for Assessments on such Lot due prior to such acquisition of title. Such unpaid Assessments shall be deemed to be Common Expenses, collectible from Owners of all Lots, including such acquirer, its successors and assigns.

Section 9.6 Date of Commencement of Assessments. The obligation to pay Assessments shall commence as to every Lot then subject to the Declaration on the first day of the month following the month in which the Board first determines a budget and levies assessments pursuant to this Article IX. The initial Base Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time Assessments commence on the Lot. Prior to the commencement of Assessments, Declarant shall be responsible for all operating expenses of the Association.

Section 9.7 Capitalization of the Association. Upon the initial acquisition of record title to a Lot by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to the greater of (i) one-fourth (1/4th) of the annual Base Assessment per Lot for that year, or (ii) Two Hundred and No/100 Dollars (\$200.00) (the "Acquisition Assessment"). Thereafter, upon each transfer of record title to a Lot from the first Owner other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to the greater of (i) one-fourth (1/4th) of the Base Assessment per Lot for that year, or (ii) Two Hundred and No/100 Dollars (\$200.00) (the "Resale Assessment"). The Acquisition Assessment and Resale Assessment shall be in addition to, not in lieu of, the Base Assessment levied on the Lot and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into the Association's designated account(s) and disbursed therefrom to the Association for use in covering operating expenses, capital expenditures and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

Section 9.8 Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Assessments:

- (a) all Common Area;
- (b) all property dedicated to and accepted by any governmental authority or public utility;
- (c) all property owned by persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code of 1986 so long as such person owns property subject to this Declaration for purposes listed in Section 501(c) and who has been given a written exemption from Assessment by the Association; and
- (d) all property owned by the Declarant (such exemption shall terminate as to any Lots owned by the Declarant after the expiration of Declarant's obligation to pay the budget deficits).

ARTICLE X **ARCHITECTURAL STANDARDS**

Section 10.1 General. Except as otherwise provided in this Article, no structure shall be placed, erected or installed upon any Lot and no improvements (including staking, clearing, excavation, drainage, grading and other site work, construction of all new buildings and outbuildings, construction of landscape improvements, construction of fences and walls, exterior alteration, renovation, expansion, refinishing or modification of existing improvements, change in exterior paint colors, and planting or removal of landscaping materials) (collectively, the "Work") shall take place except in compliance with this Article X and the General Architectural Provisions. Notwithstanding the above, an Owner may repaint the exterior of a structure in accordance with originally approved color scheme and rebuild in accordance with originally approved plans and specifications without first seeking approval pursuant to Section 10.3. In addition, no prior approval shall be required to remodel, repaint or redecorate the interior of

structures on a Lot. However, modifications to the interior of screened porches, patios and similar portions of a Lot visible from outside the Lot shall be subject to prior approval in accordance with this Article. The General Architectural Provisions may provide for further exceptions to the prior approval requirement of Section 10.3.

All dwellings constructed on any portion of the Property shall be designed by and built in accordance with the plans and specifications of a licensed architect or building design professional.

This Article X shall not apply to the construction activities of the Declarant nor to improvements to the Common Area by or on behalf of the Association.

This Article X may not be amended during the Development Period without the Declarant's prior written consent.

Section 10.2 Architectural Review. The Architectural Review Board (the "ARB") shall be responsible for administration of the General Architectural Provisions and the review of all applications for original construction and any modifications, additions, or alterations to existing improvements under this Article. The members of the ARB need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board of Directors.

(a) Appointment of ARB Members. The ARB shall consist of at least three (3) and no more than five (5) persons. During the Development Period, the Declarant retains the right to appoint and remove in its sole discretion all members of the ARB who may be representatives of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant and recorded in the Tarrant County Deed Records. Upon the expiration of such right, the Board shall appoint the members of the ARB, who shall serve and may be removed at the sole discretion of the Board, or, alternatively, the Board may elect to act as the ARB, in which case all references in the Governing Documents to the ARB shall be construed to mean the Board.

Section 10.3 Guidelines and Procedures.

(a) General Architectural Provisions and Procedures. The initial design and development guidelines and application and review procedures (the "General Architectural Provisions") which shall be applicable to all construction activities within the Property are attached hereto as Exhibit "D" and incorporated by reference. Declarant shall have the sole and full authority to amend them during the Development Period unless Declarant assigns such right to the Board at an earlier time. Thereafter, the Board shall have the authority to amend the General Architectural Provisions. Any amendments to the General Architectural Provisions shall be prospective only and shall not apply or require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the General Architectural Provisions; Declarant or the Board, as appropriate, is expressly authorized to amend the General Architectural Provisions to remove

requirements previously imposed or otherwise to make the General Architectural Provisions less restrictive. The General Architectural Provisions may contain general provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the Property to another depending upon location and unique characteristics.

(b) Procedures. Except as otherwise provided in this Article, no Work shall commence on any Lot until an application for approval has been submitted to and approved by the ARB IN WRITING. Such application shall be in the form required by the ARB and shall include plans and specifications ("Plans") showing the site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor, and other features of proposed construction, as applicable, and the name and contact information of the Builder and its major subcontractors. The ARB may require the submission of such additional information as it deems necessary to consider any application. The Plans shall be in such form and shall contain such information as may reasonably be required pursuant to the General Architectural Provisions. The ARB may permit a Builder to submit a standard set of plans and elevations for consideration and approval with respect to multiple Lots at one time.

(c) Basis of Review. In reviewing each submission, the ARB may consider (but shall not be limited to consideration of) visual and environmental impact, ecological compatibility, natural platforms and finished grade elevations, the quality of workmanship and design, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plant life, architectural merit and compliance with the general intent of the General Architectural Provisions, the general scheme of development for the Property, and any other aspect of construction, landscaping and property use that may affect the general value and appearance of the Property. The ARB may solicit comments on an application from Owners or Residents who may be affected by the proposed Work. If a building permit is required for the Work, the ARB may condition approval on the issuance of the appropriate permit. The issuance of a permit by a governmental body does not satisfy the approval requirements under this Declaration. Decisions of the ARB may be based on purely aesthetic considerations.

(d) Time Period for Review. A schedule and procedures outlining the specified Plans to be submitted at specific times shall be established by the ARB and may be set forth in the General Architectural Provisions. The ARB shall, within twenty-one (21) business days after receipt of the complete and final submission of Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of submission of (i) the approval of Plans or (ii) the disapproval of Plans, specifying the segments or features of the Plans which are objectionable and suggestions, if any, for the curing of such objections. If the ARB fails to respond within twenty-one (21) business days after the actual date on which a complete and final (as determined by the ARB in its sole discretion) submission is received, the applicant may give the ARB written notice of such failure to respond, stating that, unless the ARB responds within fourteen (14) business days of receipt of such notice, approval of the matters submitted shall be presumed.

(e) Appeal. On or before ten (10) days after applicant's receipt of the ARB's disapproval of Plans, the applicant may appeal the ARB's decision to the Board by delivering to

the Association a written request for appeal. Upon the applicant's timely request for an appeal, the Board shall consider the appeal in executive session of the Board within thirty (30) days of the Association's receipt of the appeal. The applicant and/or its representative shall be given at least ten (10) days' notice of the session and shall be given a reasonable opportunity to be heard during the session. The Board may permit the ARB, Owners, builders, architects, engineers or similar professionals, to attend the session and/or provide information to assist the Board in discharging its duties hereunder. The applicant shall reimburse the Association for reasonable compensation paid by the Association to any such professional to attend or provide assistance to the Board in making a decision on an appeal hereunder. The Board shall make a decision on the appeal and notify the applicant of the Board's decision within ten (10) days of the conclusion of the session. If the Board fails to timely hold the session or to timely notify the applicant of the Board's decision, the matters which are the subject of the appeal shall be deemed approved.

(f) Notice. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed and postage prepaid, is deposited with the United States Postal Service, registered or certified mail, return receipt requested. Personal or electronic delivery of such written notice shall also be sufficient and shall be deemed to have been given at the time of delivery or electronic transmission with verification of receipt.

(g) Commencement and Completion of Work. All work for which final Plans have been approved by the ARB shall commence within nine (9) months of final approval and shall be completed within eighteen (18) months of commencement of construction or such shorter period as the ARB may specify in the notice of approval, unless completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the ARB. If construction is not timely commenced or completed, the ARB may, in addition to any other remedies provided in the Governing Documents, require the re-submission of Plans prior to the continuation or commencement of construction.

(h) Owner's Right to Build. The fact that construction of a Residence may not commence or be completed for a period of months or years does not diminish or extinguish an Owner's right to construct a Residence or other improvements on a Lot. Neighboring Owners to a vacant Lot acquire no right to the continued existence of a vacant Lot during the period of inactivity.

Section 10.4 No Waiver of Future Approvals. The ARB's approval of any Plans for any Work done or proposed, or in connection with any other matter requiring the approval and consent of the ARB, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar Plans or other matters subsequently or additionally submitted for approval.

Section 10.5 Variances. The ARB may authorize variances from compliance with the General Architectural Provisions and any required procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations so require. Such variances must be consistent with the overall objectives of the General Architectural Provisions as determined by the ARB in its sole discretion. Such variances shall not, however, (i) be effective unless in writing; (ii) be contrary to the restrictions set forth in this

Declaration; (iii) adversely affect adjoining property (as determined by the ARB in its sole discretion); or (iv) estop the ARB from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not constitute hardships.

Section 10.6 Limitation of Liability. Review and approval of any application pursuant to this Article X is made on the basis of aesthetic considerations only, and the ARB shall not bear any responsibility for ensuring (i) structural integrity or soundness of approved construction or modifications, (ii) compliance with building codes and other governmental requirements, or (iii) conformity of quality, value, size or design among Lots. The ARB's approval of any Plans shall not be construed as representing, implying or covenanting that (i) any improvements will be built in accordance with the approved Plans; (ii) any improvements built in accordance with approved Plans are or will be built in a good and workmanlike manner or are or will be free from defects or problems; and (iii) approved Plans are complete, accurate or adequate, or satisfy applicable requirements of the Town. **Neither the Declarant, the Association, the Board, the ARB, nor member of any of the foregoing, shall be held liable for any defects or inadequacies in the Plans, the failure of approved Plans to comply with the applicable requirements of the Town, any defects in or inadequacies with any improvements constructed pursuant thereto, including, without limitation, any drainage or foundation problems, or for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot.**

Section 10.7 Fees; Assistance. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals, although nothing shall be construed herein as requiring the review of applications by such professionals. Design review fees may be charged for each standard set of plans submitted by a Builder for multiple Lots.

Section 10.8 Construction Deposit. In order to insure an Owner's compliance with this Declaration, the General Architectural Provisions and the rules and regulations promulgated thereunder, each Owner of a Lot (other than Declarant) shall pay to the Association a construction deposit, in an amount established by the Board from time to time, upon the Owner's submission of final plans and specifications for the construction or modification of an improvement under this Article. This deposit is in addition to any such deposit required under a separate agreement between a Builder and Declarant. In the event the ARB disapproves of the final plans and specifications, the Association shall promptly return the construction deposit (less any outstanding plan review fees) to said Owner upon receipt of the Owner's written request to do so. If said plans and specifications are approved, the entire construction deposit shall be held by the Association until construction of the improvement is completed in accordance with the approved plans as determined by the Board in its sole discretion. The Association shall release the construction deposit to the Owner, less any funds expended or reserved by the Association pursuant to this Section, within thirty (30) days of receipt of written notice from the Owner of completion of the improvement.

The Association may, without waiving any other remedy provided by this Declaration or

by law, draw upon the construction deposit or withhold the release of the deposit as necessary to cover, among other things (i) any plan review fees; (ii) the cost or anticipated cost to repair damage to the Common Area caused by the Owner, his contractors, subcontractors, agents or employees; (iii) the cost or anticipated cost to perform the care, maintenance or repairs required to be performed by an Owner pursuant to this Declaration and any rules promulgated thereunder; (iv) the cost or anticipated cost to restore an Owner's Lot to a condition existing prior to the commencement of nonconforming work (including, without limitation, the demolition and removal of any unapproved or nonconforming improvement); and (v) monetary fines levied against the Owner for violations of the Governing Documents. If any part of the construction deposit is applied by the Association, the Owner shall, immediately upon demand, deposit with the Association a sum equal to the amount so applied in order to restore the construction deposit to its original amount.

Section 10.9 Enforcement. Any Work performed in violation of this Article X or the General Architectural Provisions shall be deemed nonconforming. Upon written request from the Board, the Declarant or the ARB, Owners shall, at their own cost and expense, cure such nonconforming Work or remove such structure or improvement and restore the Lot to substantially the same condition as existed before the nonconforming Work. Should an Owner fail to remove or restore as required hereunder, the Declarant, the Association or their designees, shall have the right to enter the Lot and remove or cure the violation. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the nonconforming Lot and collected as a Specific Assessment pursuant to Section 9.4.

In the event that any Person fails to commence and diligently pursue to completion all approved Work, Declarant or the Association shall be authorized, after providing notice and an opportunity to cure to the Owner, to enter upon the Lot and remove or complete any incomplete Work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment pursuant to Section 9.4.

In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article X and the decisions of the ARB.

Section 10.10 Approved Builder Group and Approved Builder.

(a) Only Builders who have qualified for inclusion into the Approved Builder Group may construct or build a Residence within the Property. In order to qualify for admission into the Approved Builder Group, the Builder must submit an application to the ARB and receive written approval from the ARB for inclusion or admission into the Approved Builder Group (a Builder who is a member of the Approved Builder Group is referred to in this Declaration as an "Approved Builder"). Such application shall be in the form required by the ARB and shall include, without limitation, evidence that: (i) the Builder holds a current certificate of registration with the Texas Residential Construction Commission under Chapter 416 of the Texas Property Code; (ii) the Builder maintains a Master Builder Certification from the National Association of Homebuilders or its professional equivalent; (iii) the Builder is adequately insured; and (iv) the Builder has constructed and sold a minimum of five (5) homes valued at more than

\$1,000,000.00. The Builder shall also be required to provide to the ARB the name, address and telephone numbers of its owners (if privately owned), or its principal officers (if publicly traded), at least three (3) client referrals and one (1) bank reference. The ARB may require the submission of such additional information as it deems necessary to consider an application as an Approved Builder. Status as an Approved Builder is non-transferable. In the event that the person or persons who own or have voting control of 50% or more of the Approved Builder at the time of admission to the Approved Builder Group cease to own or control the Approved Builder, the Approved Builder shall lose its status as an Approved Builder and must reapply to be eligible to construct Residences in the Property. In the event that the an Approved Builder has failed to obtain a building permit to construct a Residence within the Property within any consecutive twelve (12) month period, that Approved Builder's status as an Approved Builder shall be suspended until such time as the Builder applies for reinstatement by submitting such information as the ARB may require. If, for any reason, there is no Approved Builder Group in place or in existence, then no Builder may construct a Residence within the Property unless and until it has received written authorization from the ARB that it is considered an Approved Builder. If any Owner desires that a Builder other than a Builder in the Approved Builder Group construct a Residence: (i) the Owner and Builder must submit an application to the ARB for permission to construct a Residence; (ii) the Builder must then receive written approval or permission from the ARB to construct a Residence; and (iii) the Builder must meet any and all requirements set by the ARB.

In reviewing an application for Approved Builder status, the ARB may consider (but shall not be limited to consideration of), the Builder's financial stability, construction experience, years in business, professional licensing, professional awards and achievements, proven record of superior workmanship and quality of design, customer satisfaction, and commitment to warranty programs. The ARB's selection criteria may be based upon purely subjective considerations.

(b) Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration may be excluded by the Board from further construction activity within the Property. Any Approved Builder who fails to comply with the terms and provisions of this Declaration may lose its status as an Approved Builder and be excluded from the Approved Builder Group. In such event, the Association, its officers and directors shall not be held liable to any Person for exercising the rights granted by this Section.

(c) The ARB may remove an Approved Builder from the Approved Builder Group if the ARB determines, after notice and an opportunity for a hearing are provided to the Approved Builder, that the Approved Builder fails to meet the then existing requirements for admission into the Approved Builder Group, or the Approved Builder is in violation of the Governing Documents, including the failure to submit plans to the ARB for approval or the failure to construct improvements in accordance with approved plans. If removed from the Approved Builder Group, the Builder may complete construction of any Residence for which construction had commenced, but shall not commence any new construction without the ARB's written approval.

Section 10.11 Builder Performance. Neither the Association, the ARB, the Declarant, nor any affiliate of the Declarant, as hereinafter defined, are a co-venturer, partner, agent, employer, stockholder or affiliate of any kind of or with any Builder, nor is any Builder an agent of the Declarant or an affiliate of the Declarant. Therefore, the Association, the ARB, the Declarant and affiliates of Declarant shall not be responsible for, or guarantors of, performance by any Builder of all or any of its obligations to any Owner pursuant to any contracts for the sale or construction of a Residence or otherwise. Neither the Association, the ARB, or the Declarant nor any affiliates of the Declarant has made, or have made, any warranty or representation with respect to performance by any Builder under any contract or otherwise.

Such Owner acknowledges and agrees that neither the Association, the ARB, the Declarant nor any affiliate of the Declarant share any liability or obligation to Owner, related to or arising out of any contract with a Builder or otherwise, by reason of any failure by a Builder fully and adequately to perform its obligations to Owner. Owner further acknowledges and agrees that Owner has not, in entering into any contract with a Builder, relied upon any representations, oral or written, of the Association, the ARB, the Declarant or any affiliate of the Declarant or any salesperson.

Section 10.12 Notice of Violation. To evidence any violation of the Governing Documents as to a particular Lot, the Board may file in the Deed Records of Tarrant County, Texas, a notice of violation setting forth (i) the violation, (ii) the name of the Owner and Lot, and (iii) a sufficient legal description of the Lot. Such notice shall be signed and acknowledged by an officer or duly authorized agent or attorney of the Association. The cost of preparing and recording such notice may be assessed against the non-conforming Lot and collected as a Specific Assessment pursuant to Section 9.4.

ARTICLE XI **USE RESTRICTIONS**

Section 11.1 General. The Property shall be used only for single-family residential and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by Declarant to assist in the sale of any portion of the Property, offices for any property manager, or business offices for Declarant or the Association) consistent with the Governing Documents.

Section 11.2 Occupants Bound. All provisions of the Governing Documents which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests, and invitees of any Lot. Every Owner shall cause all occupants, guests, and invitees of his or her Lot to comply with the Governing Documents. Every Owner shall be responsible for all violations and losses to the Common Area or another Owner's Lot caused by such occupants, guests, and invitees, notwithstanding the fact that such Persons are fully liable and may be sanctioned for any such violation or loss. In addition to any other remedy available to the Association under the Governing Document or by law, the Association may deny, suspend or restrict access to the Property by guests or invitees, including contractors and subcontractors, who violate the Governing Documents.

Section 11.3 Signs. Except for signs of the Declarant and the Association, no sign of any kind shall be displayed to the public view on the Common Area without the prior written approval of the ARB. No signs of any kind shall be displayed to the public view on a Lot except for the following: (i) one (1) sign of not more than five (5) square feet advertising a Lot for sale (for lease signs are strictly prohibited); (ii) signs used by the Declarant or by a Builder to advertise the Property during the Development Period, including entry, directional and advertising signs; (iii) political signs not exceeding four (4) feet by six (6) feet in size advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal (but no more than one such sign for each candidate or ballot item) provided that such signs are ground-mounted, and are not erected more than ninety (90) days in advance of the election to which they pertain and are removed within ten (10) days after the election, and do not violate any of the provisions of Section 202.009(c) of the Texas Property Code; (iv) personal signs indicating school affiliations, social events, birth announcements and similar type signs provided they are removed after a reasonable period of time following installation; and (v) two signs not exceeding one square foot in size each indicating that a Residence is monitored by a security company.

No sign may be displayed in a window of a Residence. The Association shall have the right to remove any sign, billboard or other advertising structure that does not comply with the Governing Documents or which, in the Board's sole discretion, are unsuitable for the community, and in so doing shall not be subject to any liability for trespass or any other liability in connection with such removal. If permission is granted to any Person to erect a sign upon the Common Area, the ARB reserves the right to restrict the size, color, lettering and placement of such sign. The Board and the Declarant shall have the right to erect signs as they, in their discretion, deem appropriate.

Section 11.4 Parking and Prohibited Vehicles.

(a) Parking on Streets. Parking on the streets overnight is prohibited. Without the ARB's prior written approval, the original garage area of a Lot may not be enclosed or used for any purpose that prohibits the parking of two (2) standard size operable vehicles therein. Garage doors are to be kept closed at all times except when a vehicle is entering or exiting. Except as provided in Section 11.4(b) below, vehicles must be parked in the garage or on the driveway.

(b) Prohibited Vehicles. Commercial vehicles, vehicles exceeding ½ ton, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, golf carts, stored vehicles, inoperable vehicles, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, shall be parked only in enclosed garages. Boats and other water craft, watercraft trailers and recreational vehicles may be parked on a Lot provided that they are completely screened from view from any other Lot, street or Common Area. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days. For purposes of this Section, a vehicle shall be considered "inoperable" if it is obviously not capable of being operated as a vehicle or if it does not have current registration or operating licenses. Notwithstanding the above, service and delivery vehicles may be parked in the Property for such period of time as is reasonably necessary to provide service or

to make a delivery to a Lot or the Common Area. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed at the vehicle owner's expense.

Section 11.5 Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any portion of the Property, except that dogs, cats or other usual and common domesticated household pets may be permitted on a Lot in such numbers as permitted by the ordinances of the Town. Notwithstanding the above, those pets which are permitted to roam free or, in the sole discretion of the Board, endanger the health, make objectionable noise or constitute a nuisance or inconvenience to the occupants of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined whenever outside the Residence or the enclosed portion of the Lot. The pet owner is responsible for the removal of his or her pet's waste from the Property in accordance with the Town's ordinances. Structures designed to keep or contain pets, including dog houses, animal pens, dog runs and the like, must be placed in a location on the Lot that is not visible from outside the Lot.

Section 11.6 Quiet Enjoyment. Nothing shall be done or maintained on any part of a Lot which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort or serenity of the occupants of other Lots. There shall not be maintained any plants or animals or device or things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Property.

Section 11.7 Unsightly or Unkempt Conditions. All portions of a Lot outside of enclosed structures shall be kept in a clean and tidy condition at all times. Nothing shall be done, maintained, stored or kept outside of enclosed structures on a Lot which, in the determination of the Board, causes an unclean, unhealthy or untidy condition to exist or is obnoxious to the senses. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any part of the Property. Notwithstanding the above, the disassembly and assembly of motor vehicles to perform repair work shall be permitted provided such activities are not conducted on a regular or frequent basis and are conducted entirely within an enclosed garage.

No person shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances in any drainage ditch, street or gutter, or anywhere on the Common Area. Such materials shall not be disposed of on any portion of the Property without the prior permission of the owner thereof.

Section 11.8 Antennas. No exterior antennas, aerials, satellite dishes or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be placed, allowed or maintained upon any portion of the Property. Notwithstanding the foregoing (i) antennas or satellite dishes designed to receive video programming services via multi-point distribution services which are one (1) meter or less in diameter or diagonal measurement; (ii) antennas or satellite dishes designed to receive direct broadcast satellite service which are one

meter or less in diameter; or (iii) antennas or satellite dishes designed to receive television broadcast signals [(i), (ii) and (iii) are collectively referred to as "Permitted Devices"] shall be permitted to be placed on a Lot provided that any such Permitted Device is placed in the least conspicuous location on the Lot at which an acceptable quality signal can be received and such Permitted Device is not visible from neighboring property or is screened from the view of adjacent Lots in a manner consistent with the Community-Wide Standard and the General Architectural Provisions.

Section 11.9 Garbage Cans, Tanks, etc. All garbage cans, above-ground storage tanks, mechanical equipment and other similar items on Lots shall be located or screened so as to be concealed from view of neighboring Lots, streets and property located adjacent to the Lot. All rubbish, trash and garbage shall be stored in appropriate containers approved pursuant to Article X. All rubbish, trash and garbage shall regularly be removed from the Property and shall not be allowed to accumulate. Garbage and trash cans may be placed at the curbside or other designated pickup location not more than twenty-four (24) hours prior to the pickup time and must be removed within twelve (12) hours after pickup.

Section 11.10 Subdivision and Time Sharing. No Lot shall be subdivided into two or more Lots, nor shall two or more Lots be combined into a single Lot, nor shall a Lot have its boundary lines changed after the subdivision plat has been approved and recorded except with the prior written approval of the Board. Declarant, however, hereby expressly reserves the right to subdivide, change the boundary line of and re-plat any Lot(s) owned by Declarant. Notwithstanding the combination of two or more Lots into a single Lot, the voting rights and the assessment obligation of the Owner of the combined Lot(s) shall be based upon the number of Lots originally comprising the Lot as shown on the original approved and recorded subdivision plat of the portion of the Property including such Lots.

No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

Section 11.11 Firearms. The discharge of firearms and use of bows and arrows within the Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained in the Governing Documents, the Association shall not be obligated to take action to enforce this Section. Violations should be reported to the local police authorities.

Section 11.12 Pools. No above-ground swimming pools shall be erected, constructed or installed on any Lot. Jacuzzis, whirlpools, hot tubs or spas approved pursuant to Article X shall not be considered an above-ground pool for the purposes of this Section.

Section 11.13 Irrigation. No sprinkler or irrigation systems of any type installed by a Builder on a Lot shall be modified by a non-Builder Owner unless prior written approval has been received from the Board or its designee. Each Owner must install and maintain a central sprinkler system on his or her Lot.

Section 11.14 Tents, Sheds, Mobile Homes and Structures. Except as otherwise permitted by this Declaration, no tent, shack, mobile home, storage shed, greenhouse or similar structure, whether temporary or permanent, shall be placed upon a Lot in a location that is visible from outside the Lot. Party tents or similar temporary structures may be erected for a limited period of time for special events with prior written approval of the Board. Except as may be permitted by the Declarant or the ARB during initial construction within the Property, no thing or structure on a Lot may be occupied as a Residence at any time by any Person other than a structure which has been issued a Certificate of Occupancy by the Town. This provision applies, without limitation, to the garage, mobile homes, campers, trailers, recreational vehicles, and storage sheds.

Section 11.15 Grading, Drainage and Septic Systems. No Person shall alter the grading or drainage of any Lot without prior approval pursuant to Article X of this Declaration. No Person other than Declarant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers or storm drains. The Declarant hereby reserves for itself and the Association a perpetual easement across the Property for the purpose of altering drainage and water flow. However, the exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any adjacent property without the Owner's consent. Septic tanks and drain fields, other than those installed by or with the consent of the Declarant or required by the Town, are prohibited within the Property.

Section 11.16 Removal of Plants and Trees. No trees or shrubs, except for those which are diseased or dead or create a safety hazard, shall be removed except by the Declarant or in strict compliance with the General Architectural Provisions. In the event of an intentional or unintentional violation of this section, the violator may be required by the ARB to replace the removed tree with one or more comparable trees of such size and number and in such locations as the ARB may determine necessary, in its sole discretion, to mitigate the damage.

Section 11.17 Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Property, except for temporary lines as required during construction and high voltage lines.

Section 11.18 Air-Conditioning Units; Solar Energy Devices. No window air-conditioning units may be installed in any Lot. Solar energy devices must be approved in accordance with the General Architectural Provisions and Article X of this Declaration.

Section 11.19 Lighting. Except for traditional holiday decorative lights, which may be displayed for one (1) month prior to and one (1) week after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved in accordance with the General Architectural Provisions and Article X of this Declaration.

Section 11.20 Exterior Sculpture and Similar Items. No artificial vegetation, permanent or temporary flagpoles, exterior sculpture, windmills, fountains, birdhouses, birdbaths, other decorative embellishments, or similar items, shall be permitted unless in compliance with Article X of this Declaration and the General Architectural Provisions unless (i) the item is expressly permitted by this Declaration, or (ii) the item is placed within a fenced yard, the item is no taller

than the fence, and the fence blocks the view of the item at eye level.

Section 11.21 Flags. The United States flag, the Texas state flag and/or an official or replica flag of any branch of the United States armed forces may be displayed provided that they are displayed in accordance with the Rules and Regulations and the General Architectural Provisions. No other type of flag, pennant, banner, kite, or similar items of display is permitted on a Lot if the display is visible from a street or Common Area.

Section 11.22 Religious Displays. One or more religious items may be displayed or affixed to the entry of a Residence provided that such item is displayed or affixed in accordance with the Rules and Regulations and the General Architectural Provisions. Notwithstanding the foregoing, in displaying a religious item, an Owner or Resident may not use a material or color for an entry door or door frame of the Owner's or Resident's dwelling or make an alteration to the entry door or door frame without the prior written approval of the ARB.

Section 11.23 Playground and Recreational Equipment. No jungle gyms, swing sets, basketball hoops or backboards, playground equipment, tennis courts or such other recreational equipment shall be erected or installed on any Lot unless in compliance with Article X of this Declaration and the General Architectural Provisions. Any temporary basketball hoops or backboards permitted by the Board must be stored out of sight of neighboring property when not in use. Any playground or other play areas or equipment erected within the Property shall be used at the risk of the user. The Association shall not be held liable to any Person for any claim, damage or injury occurring thereon or related to use thereof.

Section 11.24 Fences.

(a) Height and Location. The height of fences must not exceed 6 feet.

(b) Transitions. Fences that adjoin or connect must appear to be the same height or must be designed and constructed with transitions between the differing heights to reduce the appearance and effect of the height change.

(c) Finish Side "Out". All fences that are visible from a street, a Common Area, or a neighboring development must have a "finished side" appearance on the outward face of the fence.

(d) Condition. Each Owner must maintain the fences and gates on his or her Lot in a condition and appearance that is standard for the neighborhood.

(e) Permitted Materials. Fences must be made of the style, quality, color and type that are standard for the Property, or made of another ARB-approved material. Barbed wire and chain link fencing are prohibited. Railroad ties may not be used for a retaining wall.

(f) Fence Color. All fence colors must be approved by the ARB.

(g) Uniformity. Notwithstanding anything to the contrary in any instrument

pertaining to the Property or elsewhere in this Declaration, the ARB may require that all fences along a particular stretch within the Property, such as along or visible from a road or Common Area, be uniform in height, color, material, and appearance, including use of a particular color. Further, the ARB may require certain treatments for transitions between fences and at changes in grade or elevation.

(h) Fences Along Common Area. Declarant reserves the right for itself and for the ARB to establish and publish detailed specifications for fences on or along the sides of Lots that abut Common Area within the Property. If no such specifications are published, the fences will be wood split rail.

(i) Fences on Lots Abutting Lakes. Declarant reserves the right for itself and for the ARB to establish and publish detailed specifications for fences on or along the sides of Lots that abut a lake, pond or stream within the Property. If no such specifications are published, fences are not permitted along the portion of the Lot abutting the lake, pond, or stream. Fences along the side boundary line of a Lot that abuts a lake, pond, or stream must be cast iron.

(j) Fences By Declarant or Builder. The ARB may authorize variations of this Section's requirements for fences constructed by the Declarant or by Builders in connection with new home construction during the Development Period. Any fence installed by Declarant is deemed to have been approved by the ARB.

Section 11.25 Business Use. No business, trade or similar activity may be conducted in or from any Lot, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot, (ii) the business activity conforms to all zoning requirements for the Property and is ancillary to the primary use of the home as a residence, (iii) the business activity does not noticeably increase the level of vehicular or pedestrian traffic or the number of vehicles parked in the Property, (iv) the business activity does not involve door-to-door solicitation of residents of the Property, and (v) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

The terms "business" and "trade" as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full or part time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

Notwithstanding the above, the leasing of a Lot in compliance with Section 11.26 of this Declaration shall not be considered a business or trade within the meaning of this Section. The Association may also adopt Rules regarding the use of a Lot for garage sales, yard sales, estate sales, rummage sales and/or similar temporary sales activities, including Rules limiting the

frequency, location, and signage relating to such activities. Sales activities that are conducted in accordance with such Rules shall not be considered a business or trade within the meaning of this Section.

This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Property or its use of any Lots which it owns within the Property.

Section 11.26 Leasing of Lots. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity or emolument. All Leases shall be in writing. Lots may be leased only in their entirety. No fraction or portion may be leased. There shall be no subleasing of Lots or assignment of leases unless prior written approval is obtained from the Board. No transient tenants may be accommodated in a Lot. All leases shall be in writing and shall be for an initial term of no less than twelve (12) months, except with the prior written consent of the Board. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of the Governing Documents. In the event of a tenant's violation of the Governing Documents, the Owner is responsible for his or her tenant's compliance. If the Owner fails or refuses to enforce his or her tenant's compliance, the Association may pursue the remedies of a landlord under the lease and state law for the default, including eviction of the tenant. The Owner is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Governing Documents against the Owner's tenant. The Board may adopt reasonable rules regulating leasing and subleasing.

Section 11.27 Laws and Ordinances. Every Owner and occupant of any Lot, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Property. Any violation may be considered a violation of this Declaration. However, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

Section 11.28 Single Family Occupancy. No Residence shall be occupied by more than a single family. For purposes of this restriction, a single family shall be defined as any number of persons related by blood, adoption or marriage living with not more than one person who is not so related as a single household unit, or no more than two persons who are not so related living together as a single household unit, and the household employees of either such household unit; provided, however, that nothing herein shall be interpreted to restrict the ability of one or more adults meeting the definition of a single-family from residing with any number of persons under the age of eighteen (18) over whom such persons have legal authority.

Section 11.29 Window Treatments. All window treatments within a Residence that are visible from the street or another Residence must be maintained in good condition and must not detract from the appearance of the Property. The ARB may require an Owner to change or remove a window treatment that the ARB determines to be inappropriate or unattractive. The ARB may prohibit the use of certain colors or materials for window treatments.

Section 11.30 Wetlands, Lakes and Other Water Bodies. All wetlands, lakes, ponds and streams within the Property, if any, shall be aesthetic amenities only. Except for fishing, swimming, and use of non-motorized boats, no other use thereof is permitted, including, without limitation, water skiing, motorized boating or jet skiing, without the prior approval of the Board. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds or streams within the Property. The Association shall not be responsible for stocking any lake, pond or stream with fish. No docks, piers or other structures shall be constructed on or over any body of water within the Property, except such as may be constructed by the Declarant or the Association. This Section 11.30 shall not apply to prohibit use by the Association or the Declarant of lakes, ponds, or streams within the Property for irrigation of the Common Area.

Section 11.31 On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Property. However, up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

ARTICLE XII **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders of First Mortgages on Lots in the Property. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

12.1 Notices of Action. An institutional holder, insurer or guarantor of a First Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the Lot number, therefore becoming an "Eligible Mortgage Holder") will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder;

(b) any delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a First Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; or

(c) any lapse, cancellation or material modification of any insurance policy maintained by the Association.

12.2 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of

any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.3 Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

12.4 Other Provisions for Mortgagees. To the extent possible under Texas law:

(a) Any restoration or repair of the Property after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Mortgage Holders of First Mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to Mortgages held by such Eligible Mortgage Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Mortgage Holders of First Mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to Mortgages held by such Eligible Mortgage Holders are allocated.

12.5 Amendments by Board. Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD or VA subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

12.6 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request; provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

12.7 Applicability of Article XII. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws or Texas law for any of the acts set out in this Article.

ARTICLE XIII **EASEMENTS**

Section 13.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such

encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of the Person claiming the benefit of such easement.

Section 13.2 Easements for Utilities, etc. There are hereby reserved unto Declarant, during the Development Period, and to the Association and the designees of each (which may include, without limitation, Tarrant County, Texas, and any utility) access and maintenance easements upon, across, over and under all of the Property (but not through a structure) to the extent reasonably necessary for the purpose of replacing, repairing and maintaining cable systems, fiber-optic systems, security and similar systems, roads, walkways, drainage systems, street lights, signage and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas and electricity and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Property. Notwithstanding anything to the contrary herein, these easements shall not entitle the holders to construct or install any of the foregoing systems, facilities or utilities over, under or through any existing Residence on a Lot and any damage to a Lot resulting from the exercise of these easements shall promptly be repaired by, and at the expense of, the Person exercising these easements. The exercise of these easements shall not unreasonably interfere with the use of any Lot.

Without limiting the generality of the forgoing, there are hereby reserved for the local water supplier, electric company, and natural gas supplier easements across all the Common Area for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the Residence on any Lot. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the Property except as may be approved by the Board or as provided by Declarant.

Section 13.3 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents. Except in an emergency situation (i.e. imminent damage to or loss of life or property), entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any Residence without permission of the Owner except by emergency personnel acting in their official capacities. The easement granted hereunder shall not create an obligation or duty on the part of Declarant or the Association to provide for the safety or security within the Property. In exercising this easement right, neither the Declarant nor the Association shall be liable to the Owner for trespass.

Section 13.4 Easement for Entry Features. The Association is hereby granted a perpetual easement (the "Entry Feature Easement") over each Lot that abuts or contains a portion of the Property's formal entrances, for the purposes stated in this Section 13.4, regardless of whether or how the Plat shows the easement or entry features.

(a) Entrance Lots. On recording of this Declaration, Declarant burdens any Lots on which

the formal entrances are located with the Entry Feature Easement.

(b) Purpose of Easement. The purpose of the Entry Feature Easement is to provide for the existence, repair, improvement, and replacement of the Property's formal entrances, to be maintained by the Association as a Common Area. In exercising this easement, the Association may construct, maintain, improve, and replace improvements reasonably related to the entrance of a residential subdivision, including: screening walls; fences and/or berms; planter beds; landscaping and plant material; electrical and water meters and equipment, including light fixtures and sprinkler systems; and signage related to the Property.

(c) Rights Reserved. The Owners of the Lots burdened by this easement will have the continual use and enjoyment of their respective Lots for any purpose that does not unreasonably interfere with or prevent the Association's use and easement rights hereunder.

(d) Temporary Easement. In addition to the easement granted herein, the Association has the temporary right, from time to time, to use as much as the surface of the burdened Lot as may be reasonably necessary for the Association to perform its contemplated work on the easement.

(e) Duration, Termination & Assignment of Easement. This easement is perpetual. This easement will terminate, if at all, if and when the purpose of the easement ceases to exist, is abandoned by the Association, or becomes impossible to perform. The Association may unilaterally assign this easement, or any portion thereof, to the Town if the Town agrees to accept the assignment.

Section 13.5 Easements for Certain Owners. There is hereby reserved to each Lot reciprocal appurtenant easements for access over, across and upon the adjacent Lot (exclusive of Residences) and the adjacent Common Area for the construction, maintenance and repair of Residences or party structures to a distance of not more than five feet (5'), as measured from any point on the common boundary along a line perpendicular to such boundary. The use of said easement by an Owner shall not exceed a total of thirty (30) days each year for maintenance unless approved in writing by the Board. Any landscaping or irrigation systems damaged by the Owner during the construction, maintenance or repair of his or her residential Residence or party structure shall be repaired or replaced, if necessary, at the expense of the Owner causing such damage. If the Owner fails properly to perform such repairs or replacements, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment in accordance with Section 9.4. However, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when immediate entry is required due to an emergency situation.

There is also hereby reserved to each Lot reciprocal appurtenant easements of encroachment over, across and upon the adjacent Lot and adjacent Common Area for water drainage from the roof of the Residences or other structures. Owners shall not attach any object to a Residence of an adjacent Lot or disturb the grading of the area located between the adjacent Residences or otherwise act with respect to such area in any manner which would damage the adjacent Lot. In the event of a dispute arising out of the rights and obligations created under this Section 13.5, the parties agree to resolve the dispute in accordance with Section 5.5(e).

Section 13.6 Construction and Sale Period Easement. Notwithstanding any provisions contained in the Governing Documents, until expiration of the Development Period, Declarant reserves an easement across the Property for Declarant and any Builder to maintain and carry on, upon such portion of the Property as Declarant may reasonably deem necessary, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient or incidental to the construction, completion, management, maintenance, leasing, marketing or sale of such Lots including, but not limited to, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, commercial vehicles of every type, business offices, signs, sales offices and model Residences.

Section 13.7 Easement to Inspect and Right to Correct. During the Development Period, Declarant reserves for itself and Builders, and their respective employees, agents and representatives, the right to inspect, monitor, test, redesign, correct, relocate, and replace any structure, improvement, material, or condition that may exist on any portion of the Property, including the Lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Any damage to a Lot resulting from the exercise of these easements shall promptly be repaired by, and at the expense of, the Person exercising these easements.

Section 13.8 Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access and development of adjoining property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

Section 13.9 Easements for Lakes and Pond Maintenance and Flood Water The Declarant reserves for itself and its successors, assigns and designees the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams and wetlands located within the Common Area to (i) install, keep, maintain and replace pumps and related equipment; (ii) construct, maintain and repair any bulkhead, levee, wall, dam or other structure retaining water; (iii) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration; and (iv) spray pesticides and chemicals for the control of insects and other pests, each Lot being hereby burdened with an easement for the over-spray of such pesticides and chemicals, if any, from the exercise of such easement. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association and their designees shall have an access easement over and across any of the Property abutting or containing any portion of any of the lakes, ponds, streams or wetlands

to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Declarant, the Association and their designees, a perpetual, non-exclusive right and easement of access and encroachment over the Common Area and Lots (but not the Residences thereon) adjacent to or within fifty (50) feet of lake beds, ponds and streams within the Property, in order to (i) temporarily flood and back water upon and maintain water over such portions of the Property, (ii) fill, drain, dredge, deepen, clean, fertilize, dye and generally maintain the lakes, ponds, streams and wetlands within the Common Area, (iii) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams and wetlands and (iv) enter upon and across such portions of the Property for the purpose of exercising its rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage from flooding due to heavy rainfall or other natural disasters.

All lakes and wetlands within the Property are designed as water management areas and not for as aesthetic features. Because of fluctuations in water elevations within the immediate area, the water level of lakes, creeks, and streams will rise and fall. Declarant has no control over such elevations. Therefore, each Owner releases Declarant and the local municipality, and their affiliates, successors and assigns, from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including attorney's fees and costs and appellate fees and costs, related to or arising out of the water elevations, including the absence of any water in the lakes, creeks, streams and ponds. Neither the Association nor any Owner shall alter, modify, expand, or fill any lakes or wetlands located on or in the vicinity of the Property, without the prior written approval of the Declarant during the Development Period and such local, state, and federal authorities as may have jurisdiction over such matters.

Section 13.10 Assumption of Risk and Indemnification. Each Owner, by its purchase of a Lot in the vicinity of the lakes, acknowledges the inherent dangers associated with living in proximity to a lake and hereby expressly assumes the risk of personal injury, property damage or other loss caused by maintenance, operation and general use of the lake including, without limitation (a) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around or before sunrise or after sunset); (b) noise caused by lake activities; (c) use of pesticides or chemicals to control such items as algae or pests; (d) view restrictions caused by maturation of trees and shrubbery; (e) odors from the occurrence of algae growth or wastewater effluents or storm water drainage; and (f) reduction in privacy caused by lake activities.

Each Owner agrees that neither Declarant, any successor Declarant, any Builder, the Association, or any of their successors, successors-in-title or assigns, any entity managing the Property, any officer, director or partner of any of the foregoing, or any officer or directors of any partner, or any organizer or sponsor of any tournament or special event (collectively, for purposes of this Section 11.5, the "Released Parties") shall be liable to any Owner claiming any loss, injury or damage based upon, due to, arising from, directly or indirectly, or otherwise related to the proximity of such Owner's Lot to the lakes, the management of the lakes, or the exercise of the easement rights set forth in this Article XIII, even if such loss, damage or injury is caused in whole or in part by the negligence of any of the Released Parties. Each Owner hereby

agrees to indemnify, defend and hold harmless the Released Parties from and against any and all such claims as set forth in the preceding sentence by Owner or Owner's lessees, licensees, invitees and employees with respect to tenants of such Owner's Lot for injury, loss or damage, whether known or unknown, foreseen or unforeseen, arising from or resulting from, directly or indirectly, acts or omissions of the Released Parties, even if caused in whole or in part by the negligence of the Released Parties. **THE FOREGOING RELEASE AND INDEMNITY IS INTENDED TO RELEASE AND INDEMNIFY THE RELEASED PARTIES FROM AND AGAINST THEIR OWN NEGLIGENCE.**

Section 13.11 Easement for Access. The Declarant hereby creates a perpetual, nonexclusive easement for access, ingress and egress over the private streets within the Common Area, for law enforcement, fire-fighting, paramedic, rescue and other emergency vehicles, equipment and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; for other government employees in pursuit of their official duties; and for vehicles, equipment and personnel providing utility service or garbage collection service to the Property; provided, such easement shall not authorize any such Persons to enter the Property except while acting in their official capacities. The existence of this easement shall not preclude the Association from maintaining gates or other devices or systems designed to limit general vehicular access to the Property, provided that the Association at all times maintains systems and/or procedures to permit the entry of Persons authorized to exercise the easements granted in this Section without unreasonable interference or delay.

ARTICLE XIV **ANNEXATION AND WITHDRAWAL OF PROPERTY**

Section 14.1 Annexation Without Approval of Membership. The Declarant shall have the right, until December 31, 2025, to subject to the provisions of this Declaration all or any portion of the property located within a mile radius of the property described in Exhibit "A". The Declarant may transfer or assign this right, in whole or in part, to any other Person who is the developer of at least a portion of the real property described in Exhibit "A" or the property subject to annexation. Such transfer or assignment shall be memorialized in a written, recorded instrument executed by the Declarant.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any property in any manner whatsoever.

Such annexation shall be accomplished by filing a Supplemental Declaration annexing such property in the County Clerk official records of Tarrant County, Texas. Such Supplemental Declaration shall not require the consent of Members but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Section 14.2 Annexation With Approval of Membership. Subject to the consent of the owner thereof, the Association may, following the expiration of the Declarant's right to annex in Section 14.1, subject any property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such

purpose.

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the County Clerk official records of Tarrant County, Texas. Any such Supplemental Declaration shall be signed by the President of the Association and by the owner of the property being annexed. Any such annexation shall be effective upon filing unless otherwise provided therein.

Section 14.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration unilaterally at any time during the Development Period without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Property then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Property desired to be effected by the Declarant.

Section 14.4 Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by supplemental declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant.

ARTICLE XV

DECLARANT'S RIGHTS

Section 15.1 General. Without limiting the rights of the Declarant as otherwise provided by the Governing Documents, the Declarant shall have the following additional rights as Declarant, exercisable at Declarant's sole discretion, at any time during the Development Period:

(a) Changes to Development Plan. Declarant may modify from time to time the development plan applicable to the Property to respond to changes or perceived changes in the marketplace, subject to the approval requirements of any governmental agency. Such changes may include, without limitation, (i) changes to the size, dimensions, and configurations of Lots and streets; (ii) changes to the minimum dwelling size; (iii) changes to building setback requirements; (iv) changes to the initial design and construction standards; and (v) changes to any other feature of the Property.

(b) Construction Activities. Declarant and Builders authorized by Declarant in writing may construct and maintain and carry on upon portions of the Common Area, or upon Lots owned by Declarant or a Builder, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient or incidental to the construction, completion, management, maintenance, leasing, marketing or sale of such Lots, including, but not limited to, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, commercial vehicles of every type, business offices, signs, sales offices and model Residences. Declarant and authorized Builder(s) shall have easements for access to and use of

such facilities.

(c) Marketing Activities. Declarant may require its approval (which may not be unreasonably withheld) of all documents and materials used by a Builder in connection with the development and sale of Lots and Residences, including, without limitation, promotional materials, deed restrictions, forms for deeds, Lot sales and Lot closings. Declarant reserves for itself an easement and right to place, maintain, locate, relocate, replace, remove or install from time to time signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that may be prohibited to other Owners and Residents, for the purposes of promoting, identifying, and marketing the Property, Declarant's homes, lots, developments or other products located outside the Property. Declarant also reserves the right to sponsor marketing events—such as open houses, MLS tours, and broker parties—at the Property, including the recreational facilities, to promote the sale of Lots and Residences. Declarant further reserves (i) the right to permit Builders to place signs and promotional materials on the Property; and (ii) the right to exempt Builders from the sign restriction in this Declaration, subject to the Declarant's right to approve all such signs and materials in advance or to remove those signs or materials that have not been approved or are objectionable to the Declarant.

(d) Builder Approval. Declarant reserves the right to determine and change from time to time the minimum qualifications of Builders who are eligible to construct homes and other original improvements on a Lot. Declarant may refuse to allow a Builder to construct a home in the Property if the Builder fails to meet the minimum qualifications set by the Declarant, or Declarant may disqualify a Builder who was previously approved as a Builder from constructing additional homes in the Property if the Builder is no longer eligible under the qualifications, or if the Builder has violated the Governing Documents. Prior to the commencement of Work on a Lot, a Builder must submit an application in writing to the Declarant for eligibility as a Builder and the Declarant must approve of the Builder's eligibility in writing. Declarant has the right to limit the number of eligible Builders constructing Residences in the Property at any given time.

(b) Use of Name of Development. No Person shall use the name "Quail Hollow" or any derivative of such name in any printed or promotional material without Declarant's and the Board's prior written consent. However, Owners and Builders may use the name "Quail Hollow" in printed or promotional material where such term is used solely to specify that particular property is located within the Property and the Association shall be entitled to use the name "Quail Hollow" in its name.

Section 15.2 Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent. Any attempted recordation without compliance herewith shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the public records.

Section 15.3 Assignment. Any or all of the Development Period Rights and obligations of the Declarant set forth in the Governing Documents may be transferred, in whole or in part,

temporarily or permanently, to other Persons; provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in the Governing Documents. Furthermore, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the County Clerk Official Records of Tarrant County, Texas.

ARTICLE XVI **DISPUTE RESOLUTION**

Section 16.1 Consensus for Association Action.

(a) Except as provided in this Article, the Association may not commence a judicial or administrative proceeding without the approval of at least a majority of the Class "A" Members who are present and voting at a duly called meeting of the Association and the consent of the Declarant, if any. This Article shall not apply, however, to (i) actions brought by the Association to enforce any of the Governing Documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of Assessments; (iii) actions brought by the Association to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (iv) proceedings involving challenges to *ad valorem* taxation; (v) counterclaims, cross-claims or other challenges brought by the Association in proceedings instituted against the Association, including condemnation proceedings; and (vi) actions to obtain a temporary restraining order or equivalent emergency relief when circumstances do not provide the Board with sufficient time to seek and obtain the prior consents of Owners.

(b) The Association may not commence a judicial or administrative proceeding against the Declarant, the Class "B" Member, or a Declarant-appointed officer or director of the Association, without the approval of at least seventy-five percent (75%) of the Class "A" Members who are present and voting at a duly called meeting of the Association. Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an alleged defect of any improvement, Declarant shall have the right to be heard by the Board, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

(c) The Association may unilaterally negotiate, settle or compromise any legal or administrative proceeding, and may execute any documents related thereto, including settlement agreements and releases of claims.

Section 16.2 Alternative Method for Resolving Disputes.

Declarant, its officers, directors, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration; and any person not otherwise subject to this Declaration who agrees to submit to this Article (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 16.3 (collectively, "Claims") to the procedures set forth in Section 16.4.

Section 16.3 Claims.

Unless specifically exempted below, all Claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including, but not limited to Claims (a) arising out of or relating to the interpretation, application or enforcement of the Governing Documents or the rights, obligations and duties of any Bound Party under the Governing Documents; (b) relating to the design or construction of improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party shall be subject to the provisions of Section 16.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 16.4:

(a) any Claim by the Association against any Bound Party to enforce the provisions of Article IX;

(b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Articles X or XI, or the Declarant's ability to exercise any right granted to the Declarant under the Governing Documents, including, without limitation, any Development Period Right;

(c) any suit between or among Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

(d) any suit in which any indispensable party is not a Bound Party.

Section 16.4. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being individually, as a "Party", or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the proposed remedy; and

(iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(ii) If the Parties do not resolve the Claim within thirty (30) days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have to days to submit the Claim to mediation under the auspices of a mediation center or individual on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator or an elected judge unless both parties agree to waive these requirements.

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). Thereafter, Claimant may file or initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 16.4 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 16.4. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

ARTICLE XVII
GENERAL PROVISIONS

Section 17.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Property, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded. After such time, the covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years,

agreeing to terminate the same, in which case this Declaration shall be terminated.

Section 17.2 Amendment.

(a) By Declarant. In addition to the specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, the Declarant may unilaterally amend this Declaration for any purpose.

(b) By Class "A" Members. Except as provided above and otherwise specifically provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing sixty-seven percent (67%) of the total Class "A" votes in the Association, including sixty-seven percent (67%) of the Class "A" votes other than the Declarant, and the consent of the Declarant, so long as the Declarant owns any property subject to this Declaration.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. To be effective, any amendment must be recorded in the County Clerk Official Records of Tarrant County, Texas. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

Section 17.3 Severability. Invalidation of any provision or portion of a provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 17.4 Liberal Construction. The terms and provisions of each Governing Document are to be liberally construed to give effect to the purposes and intent of the Governing Documents.

Section 17.5 Notice of Sale or Transfer of Title. Within thirty (30) days after acquiring an interest in a Lot, an Owner shall provide the Association with the following information: (i) the name and address (physical and electronic mail address) of the purchaser or transferee, (ii) the name, address and loan number, if any, of the Mortgagee, (iii) a recorded copy of the deed or other instrument transferring title to the Lot, (iv) the name and phone number of any tenant, (v) the name, address and phone number of the Owner's managing agent, if any, and (vi) such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot coming due

MORTGAGEE'S CONSENT AND SUBORDINATION

The undersigned, beneficiary under a recorded Deed of Trust which encumbers the property (the "Property") described on Exhibit "A" attached to the Declaration of Covenants, Conditions and Restrictions for Quail Hollow to be recorded in the Deed Records of Tarrant County, Texas (the "Declaration"), hereby consents to the submission of the Property to the Declaration, and to the jurisdiction of the Quail Hollow Westlake Homeowners Association, Inc., a Texas non-profit corporation, and further agrees to subordinate its lien to the covenants, conditions and restrictions set forth in the Declaration, such that a foreclosure of its lien does not extinguish said restrictions; provided, however, that this consent shall not be construed or operate as a release of any lien owned or held by the undersigned mortgagee, its successors and/or assigns, or any portion thereof.

MORTGAGEE:

**FIRST NATIONAL BANK d/b/a FIRST NATIONAL
BANK TOWN SQUARE**

By: _____
Jason McMahon, Senior Vice President

EXHIBIT "A"

Property Initially Subject to Declaration

**LEGAL DESCRIPTION
PHASE ONE**

EXHIBIT "B"

Bylaws

EXHIBIT "C"

Certificate of Formation

EXHIBIT "D"

General Architectural Provisions



TYPE OF ACTION

Regular Meeting - Action Item

**Westlake Town Council Meeting
Monday, November 14, 2016**

TOPIC: Public Hearing and Consideration Regarding an Ordinance Amending and Expanding Tax Abatement Reinvestment Zone No. 4, in the Town of Westlake, Tarrant and Denton Counties, Texas for the Project Commonly known as Charles Schwab & Co. Westlake Corporate Office Campus.

STAFF CONTACT: Thomas E. Brymer, Town Manager/ Superintendent

Strategic Alignment

<u>Vision, Value, Mission</u>	<u>Perspective</u>	<u>Strategic Theme & Results</u>	<u>Outcome Objective</u>
Planned / Responsible Development	People, Facilities, & Technology	High Quality Planning, Design & Development - We are a desirable well planned, high-quality community that is distinguished by exemplary design standards.	Optimize Planning & Development Capabilities
<u>Strategic Initiative</u>			
Outside the Scope of Identified Strategic Initiatives			

Time Line - Start Date: November 14, 2016 **Completion Date:** November 14, 2016

Funding Amount: N/A **Status -** N/A **Source -** N/A

EXECUTIVE SUMMARY (INCLUDING APPLICABLE ORGANIZATIONAL HISTORY)

On June 16, 2016 the Town Council adopted Resolution 16-26 approving an Economic Development Agreement with CS Kinross Lake Parkway and its Affiliate Charles Schwab & Co. This Economic Development Agreement provides for economic development incentives for the Schwab corporate office complex announced to be located in the Town of Westlake. One of those incentives is tax abatement of Town ad valorem taxes under certain terms and conditions (i.e. 10 year term on the “qualified facility” beginning at 100% and declining at 10% over the 10 year term). This public hearing and consideration of this ordinance is the next step required under the

law to implement this tax abatement offered in the Economic Development Agreement approved by Resolution 16-26. Notices have been sent, as required by law, to the other local government entities in which this Reinvestment Zone would be located (Northwest ISD and Denton County). Denton County is offering tax abatement incentives of Denton County's ad valorem taxes for this project as well. Also as required by law, notice for this public hearing has been published in the Town's newspaper of official record.

Tax abatement can be granted by Texas local governments by either 380 Economic Development Grants or by this method, establishing a Tax Reinvestment Zone (TRZ). Since Denton County prefers the later methodology, the Town is cooperating by utilizing this methodology as well, i.e. establishing a tax reinvestment zone.

On August 22, 2016 the Town Council, following a duly given public notice, held a public hearing and adopted Ordinance 799 establishing Tax Reinvestment Zone #4 for this project. Since then, the Charles Schwab organization has advised Town staff that they wish to expand this zone by placing their entire acreage in Westlake (which they purchased from Hillwood) into this expanded reinvestment zone. To accomplish this, Staff has re-advertised and provided required notices for this public hearing to consider this ordinance which, if adopted, would amend and expand TRZ #4 to include all the acreage (74.131 acres) Schwab now owns in Westlake.

This zone, Tax Reinvestment Zone #4 (TRZ #4), is located in the northwest portion of Westlake, near the intersection of State Highways 170 and 114 as shown on the map attached to the proposed ordinance establishing this zone. The public notice describes the location of the this TRZ as "...generally located in the north portion of the Town, east of Ottinger Road and south of SH 114, located on the Circle T Ranch." The zone is site specific with a field note description that is an exhibit to the ordinance that would establish this amended and expanded tax reinvestment zone.

Additionally, it should be noted that the Schwab project is one part, the Schwab office complex portion, of an even larger project called, until recently, Project Blizzard. North of and adjacent to this expanded re-investment zone, will be a mixed use project developed by Hillwood Properties and their partner Howard Hughes Corporation. That project is not connected in any way to the tax abatement incentives contemplated for the Charles Schwab project.

RECOMMENDATION

Recommend holding the public hearing on this proposed amended and expanded TRZ #4. Following closure of the public hearing, staff recommends Council adoption of the ordinance amending and expanding the Tax Reinvestment Zone #4 (TRZ #4) for the Charles Schwab Project.

ATTACHMENTS

Ordinance Amending and Expanding Town of Westlake Tax Reinvestment Zone #4 (TRZ #4).

TOWN OF WESTLAKE

ORDINANCE NO. 803

AN ORDINANCE OF THE TOWN OF WESTLAKE, TEXAS, AMENDING AND EXPANDING TAX ABATEMENT REINVESTMENT ZONE NO. 4, IN THE TOWN OF WESTLAKE, TARRANT AND DENTON COUNTIES, TEXAS; PROVIDING AN EFFECTIVE DATE; AND PROVIDING A SEVERABILITY CLAUSE.

WHEREAS, the Town Council ("Council") of the Town of Westlake, Texas ("Town"), desires to promote the development or redevelopment of a certain contiguous geographic area within its jurisdiction by the creation of a reinvestment zone ("Zone) for commercial/industrial tax abatement, as authorized by Chapter 312, Property Redevelopment and Tax Abatement Act, Texas Tax Code, Subchapter B, Sections 312.201 and 312.202, as amended (the "Code"); and

WHEREAS, the Town of Westlake (Town) and CS Kinross Lake Parkway, a Delaware limited liability company, its affiliate Charles Schwab & Co., Inc. (the Owner) desire to enter into a partnership to continue this planned growth through an economic development agreement which sets out responsibilities for the Owner and the Town as it relates to the development in Westlake as established in Resolution 16-26, approved on June 16, 2016: and,

WHEREAS, the Town has elected to become eligible to participate in tax abatement; and

WHEREAS, a public hearing at a regularly scheduled meeting before the Board was held at 6:30 p.m. on the 14th day of November, 2016, such date being at least seven (7) days after the date of publication of the notice of such public hearing in a newspaper having general circulation in the Town as required by the Code; and

WHEREAS, notice of the public hearing was delivered to the presiding officer of the governing body of each taxing unit located within the proposed reinvestment zone at least seven (7) days before the date of the public hearing; and

WHEREAS, the Town at such hearing invited all interested persons, or their representatives, to appear and speak for or against the amendment and expansion of the proposed reinvestment zone, the boundaries of the proposed reinvestment zone, whether all or part of the territory described in this ordinance should be included in such proposed reinvestment zone, and the concept of tax abatement; and

WHEREAS, all interested persons spoke and the proponents of the amendment and expansion of Reinvestment Zone #4 offered evidence, both oral and documentary, in favor of the creation of the proposed reinvestment zone and the proponents also submitted evidence as to the proposed improvements; and

WHEREAS, the Town Council of the Town of Westlake, Texas, approving the ordinance is of the opinion that it is in the best interests of the town and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS:

SECTION 1: That the facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct and are incorporated herein in their entirety.

SECTION 2: The Council, after conducting such hearings and having heard such evidence and testimony, has made the following findings and determinations based on the testimony and evidence presented to it:

- (a) That a public hearing on the amending and expansion of Reinvestment Zone #4 has been properly called, held and conducted and that notices of such hearings have been published as required by law and delivered to all taxing units located within the proposed reinvestment zone; and
- (b) That the boundaries of the reinvestment zone should be the area as described in the metes and bounds description attached hereto and identifies as **Exhibit "A"**, which are incorporated herein for all purposes and which area is within the taxing jurisdiction of the Town; and
- (c) That the amendment and expansion of Reinvestment Zone #4 for commercial/industrial tax abatement, with boundaries as described in **Exhibit "A"** attached hereto will result in benefits to the Town and to the land included in the Zone and to the Town after the expiration of any Tax Abatement Agreement entered into and the improvements sought within the Zone are feasible and practical; and
- (d) That the reinvestment zone as defined in **Exhibit "A"** attached hereto meets the criteria for the creation of a reinvestment zone as set forth in the Code, as amended, in that it is reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the Zone that would be a benefit to the property and that would contribute to the economic development of the Town; and
- (e) That the reinvestment zone as defined in **Exhibit "A"** attached hereto meets the criteria for the creation of a reinvestment zone as set forth in the Town of Westlake Tax Abatement Policy, which Policy establishes guidelines and criteria governing tax abatement agreements by the Town and provide for the availability of tax abatement for both new facilities and structures and for the expansion or modernization of existing facilities and structures.

SECTION 3: That pursuant to the Code, the Town hereby amends and expands Reinvestment Zone #4 for commercial/industrial tax abatement encompassing only the area described by the metes and bounds in **Exhibit "A"** attached hereto and such reinvestment zone is hereby designated and shall continue to be designated as **Reinvestment Zone No. 4**, Town of Westlake, Texas.

SECTION 4: That the Town shall deliver to the Texas Comptroller's Office a general

description of the reinvestment zone, including its size, the types of property located in it, its duration, and the guidelines and criteria established for the reinvestment zone under Section 312.002 of the Code, including subsequent amendments and modifications of the guidelines or criteria.

SECTION 5: That the Zone shall take effect on the 14th day of November 2016.

SECTION 6: That this Ordinance shall be cumulative of all other Town Ordinances and all other provisions of other Ordinances adopted by the Town which are inconsistent with the terms or provisions of this Ordinance are hereby repealed.

SECTION 7: It is hereby declared to be the intention of the Town Council of the Town of Westlake, Texas, that sections, paragraphs, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared legally invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such legal invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance since the same would have been enacted by the Town Council of the Town of Westlake without the incorporation in this Ordinance of any such legally invalid or unconstitutional, phrase, sentence, paragraph or section.

SECTION 8: This ordinance shall take effect immediately from and after its passage as the law in such case provides.

PASSED AND APPROVED ON THIS 14th DAY OF NOVEMBER 2016.

ATTEST:

Laura Wheat, Mayor

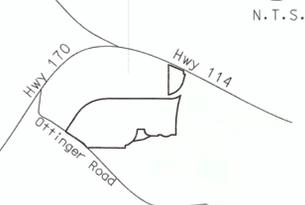
Kelly Edwards, Town Secretary

Thomas E. Brymer, Town Manager

APPROVED AS TO FORM:

L. Stanton Lowry, Town Attorney

TPPLS Firm Reg. No. 1077700
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Vicinity Map

NO.	DELTA	RADIUS	LENGTH	BEARING	DISTANCE
C1	90°00'00"	30.00'	47.12'	S 44°27'07" W	42.43'
C2	33°59'06"	512.38'	303.92'	N 73°00'16" E	299.48'
C3	31°03'30"	412.38'	223.54'	S 62°53'41" W	220.81'
C4	43°51'24"	408.29'	312.52'	N 21°22'49" E	304.95'
C5	90°00'00"	30.00'	47.12'	S 44°27'07" W	42.43'
C6	11°06'00"	174.93'	33.89'	N 28°08'22" W	33.84'
C7	60°21'43"	194.92'	205.35'	N 60°53'56" W	195.99'
C8	90°00'00"	30.00'	47.12'	N 44°27'07" E	42.43'
C9	11°06'00"	174.93'	33.89'	S 28°08'22" E	33.84'
C10	60°21'43"	194.92'	205.35'	S 60°53'56" E	195.99'

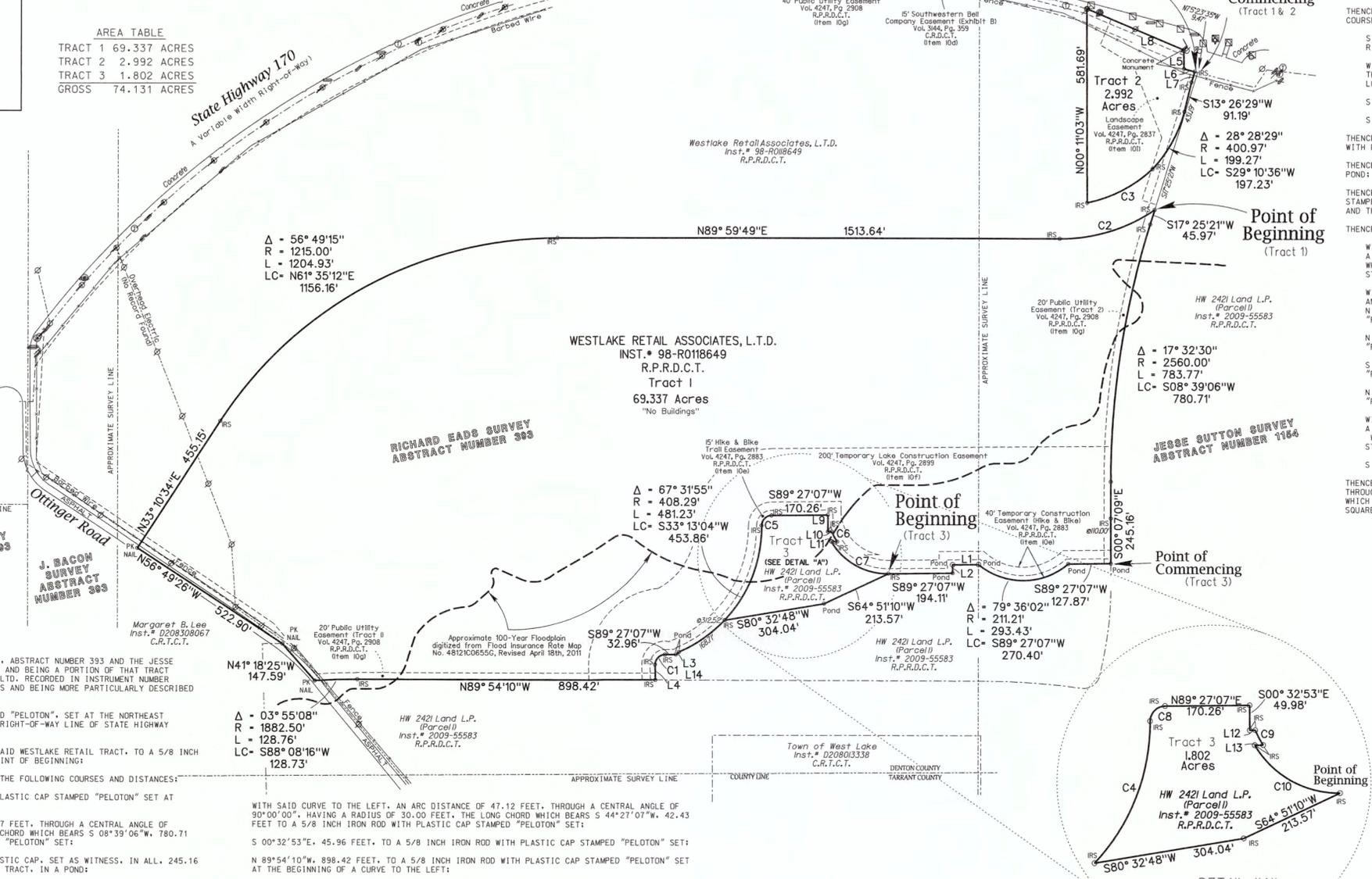
AREA TABLE	
TRACT 1	69.337 ACRES
TRACT 2	2.992 ACRES
TRACT 3	1.802 ACRES
GROSS	74.131 ACRES

NO.	BEARING	DISTANCE
L1	S89°27'07"W	78.72'
L2	S00°32'53"E	25.20'
L3	S50°57'18"W	12.08'
L4	S00°32'53"E	45.96'
L5	S00°31'47"E	57.12'
L6	S75°23'35"E	33.32'
L7	S17°10'09"W	32.91'
L8	S67°10'21"E	317.59'
L9	N00°32'53"W	49.98'
L10	S89°27'07"W	11.14'
L11	N89°27'07"E	16.72'
L12	N89°27'07"E	11.14'
L13	S89°27'07"W	16.72'

- Legend**
- SIGN
 - ⊕ TELEPHONE PEDESTAL
 - ⊙ TELEPHONE MANHOLE
 - ⊕ BURIED CABLE MARKER / TELEPHONE
 - ⊕ WATER MANHOLE
 - ⊕ PIPELINE MARKER
 - ⊕ LIGHT POLE
 - ⊕ POWER POLE
 - ⊕ SERVICE POLE
 - ⊕ GUIDE WIRE
 - ⊕ GAS MANHOLE
 - ⊕ SIGNAL BOX
 - ⊕ SIGNAL POLE

DESCRIPTION TRACT 1
BEING A TRACT OF LAND SITUATED IN THE RICHARD EADS SURVEY, ABSTRACT NUMBER 393 AND THE JESSE SUTTON SURVEY, ABSTRACT NUMBER 1154, DENTON COUNTY, TEXAS AND BEING A PORTION OF THAT TRACT OF LAND DESCRIBED BY DEED TO WESTLAKE RETAIL ASSOCIATES, L.T.D. RECORDED IN INSTRUMENT NUMBER 98-0118649 OF REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:
COMMENCING AT A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE NORTHEAST CORNER OF SAID RETAIL ASSOCIATES TRACT, IN THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 114 (A VARIABLE WIDTH RIGHT-OF-WAY);
THENCE S 17°25'21"W, 431.19 FEET, WITH THE EAST LINE OF SAID WESTLAKE RETAIL TRACT, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE POINT OF BEGINNING;
THENCE WITH THE EAST AND SOUTH LINE OF SAID RETAIL TRACT THE FOLLOWING COURSES AND DISTANCES:
17°25'21"W, 45.97 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE BEGINNING OF A CURVE TO THE LEFT;
WITH SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 783.77 FEET, THROUGH A CENTRAL ANGLE OF 17°32'30", HAVING A RADIUS OF 2560.00 FEET, THE LONG CHORD WHICH BEARS S 08°39'06"W, 780.71 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;
S 00°07'09"E, AT 110.00 FEET A 5/8 INCH IRON ROD WITH PLASTIC CAP, SET AS WITNESS, IN ALL, 245.16 FEET, TO THE SOUTHEAST CORNER OF SAID WESTLAKE RETAIL TRACT, IN A POND;
S 89°27'07"W, 127.87 FEET, DEPARTING SAID EAST LINE, TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, IN A POND;
WITH SAID NON-TANGENT CURVE TO THE RIGHT, AN ARC DISTANCE OF 293.43 FEET, THROUGH A CENTRAL ANGLE OF 79°36'02", HAVING A RADIUS OF 211.21 FEET, THE LONG CHORD WHICH BEARS S 89°27'07"W, 270.40 FEET, IN A POND;
S 89°27'07"W, 78.72 FEET, IN A POND;
S 00°32'53"E, 25.20 FEET, IN A POND;
S 89°27'07"W, 194.11 FEET, LEAVING SAID POND, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE BEGINNING OF A CURVE TO THE RIGHT;
WITH SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 205.35 FEET, THROUGH A CENTRAL ANGLE OF 60°21'43", HAVING A RADIUS OF 194.92 FEET, THE LONG CHORD WHICH BEARS N 60°53'56"W, 195.99 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;
N 89°27'07"E, 16.72 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT;
WITH SAID NON-TANGENT CURVE TO THE RIGHT, AN ARC DISTANCE OF 33.89 FEET, THROUGH A CENTRAL ANGLE OF 11°06'00", HAVING A RADIUS OF 174.93 FEET, THE LONG CHORD WHICH BEARS N 28°08'22"W, 33.84 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;
S 89°27'07"W, 11.14 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;
N 00°32'53"E, 49.98 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;
S 89°27'07"W, 170.26 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET, AT THE BEGINNING OF A CURVE TO THE LEFT;
WITH SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 47.12 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", HAVING A RADIUS OF 30.00 FEET, THE LONG CHORD WHICH BEARS S 44°27'07"W, 42.43 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;
WITH SAID CURVE TO THE RIGHT, AT AN ARC LENGTH OF 312.52 FEET A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET, AS WITNESS, IN ALL, AN ARC DISTANCE OF 481.23 FEET, THROUGH A CENTRAL ANGLE OF 67°31'55", HAVING A RADIUS OF 408.29 FEET, THE LONG CHORD WHICH BEARS S 33°13'04"W, 453.86 FEET, IN A POND;
S 50°57'18"W, 12.08 FEET, IN A POND;
S 89°27'07"W, 32.96 FEET, LEAVING SAID POND, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE BEGINNING OF A CURVE TO THE LEFT;

SURVEYORS CERTIFICATION
TO: REPUBLIC TITLE OF TEXAS, INC., AS AGENT FOR FIRST AMERICAN TITLE INSURANCE COMPANY; CS KINROSS LAKE PARKWAY LLC, A DELAWARE LIMITED LIABILITY COMPANY; AND FIRST AMERICAN TITLE INSURANCE COMPANY.
THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 2, 4, 7, 8, 9, 11, AND 14 OF TABLE A THEREOF.
THE FIELDWORK WAS COMPLETED APRIL 8, 2016.
TODD A. BRIDGES
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 4940



DESCRIPTION TRACT 2
BEING A TRACT OF LAND SITUATED IN THE JESSE SUTTON SURVEY, ABSTRACT NUMBER 1154, DENTON COUNTY, TEXAS AND BEING A PORTION OF THAT TRACT OF LAND DESCRIBED BY DEED TO WESTLAKE RETAIL ASSOCIATES, L.T.D. RECORDED IN INSTRUMENT NUMBER 98-0118649 OF REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:
COMMENCING AT A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET, AT THE NORTHEAST CORNER OF SAID RETAIL TRACT IN THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 114 (A VARIABLE WIDTH RIGHT-OF-WAY);
THENCE N 75°23'35"W, 9.47 FEET, WITH THE NORTH LINE OF SAID RETAIL TRACT AND SAID SOUTHERLY RIGHT-OF-WAY, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET FOR THE POINT OF BEGINNING;
THENCE S 17°10'09"W, 32.91 FEET, DEPARTING SAID COMMON LINE, OVER AND ACROSS SAID RETAIL TRACT, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;
THENCE OVER AND ACROSS SAID RETAIL TRACT THE FOLLOWING COURSES AND DISTANCES:
S 13°26'29"W, 91.19 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE BEGINNING OF A CURVE TO THE RIGHT;
WITH SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 199.27 FEET, THROUGH A CENTRAL ANGLE OF 28°28'29", HAVING A RADIUS OF 400.97 FEET, THE LONG CHORD WHICH BEARS S 29°10'36"W, 197.23 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;
WITH SAID NON-TANGENT CURVE TO THE RIGHT, AN ARC DISTANCE OF 223.54 FEET, THROUGH A CENTRAL ANGLE OF 31°03'50", HAVING A RADIUS OF 412.38 FEET, THE LONG CHORD WHICH BEARS S 62°53'41"W, 220.81 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;
N 00°11'03"W, 581.69 FEET TO A TXXOT MONUMENT FOUND IN THE SOUTH RIGHT-OF-WAY LINE OF AFOREMENTIONED STATE HIGHWAY 114;
S 67°10'21"E, 317.59 FEET, WITH SAID SOUTH RIGHT-OF-WAY LINE, TO A TEXAS DEPARTMENT OF TRANSPORTATION (HEREINAFTER CALLED TXXOT) DISK IN CONCRETE, FOUND
S 00°31'47"E, 57.12 FEET, CONTINUING WITH SAID SOUTH RIGHT-OF-WAY LINE, TO A TXXOT MONUMENT FOUND;
THENCE S 75°23'35"E, 33.32 FEET, CONTINUING WITH SAID SOUTH RIGHT-OF-WAY LINE, TO THE POINT OF BEGINNING AND CONTAINING 130,346 SQUARE FEET OR 2.992 ACRES OF LAND MORE OR LESS.

DESCRIPTION TRACT 3
BEING A TRACT OF LAND SITUATED IN THE RICHARD EADS SURVEY, ABSTRACT NUMBER 393, DENTON COUNTY, TEXAS, AND BEING A PORTION OF THAT TRACT OF LAND DESCRIBED BY DEED TO HW 2421 LAND, L.P., RECORDED IN INSTRUMENT NUMBER 2009-55583 OF THE REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS AND BEING A PORTION OF THAT AREA DEFINED AS THE "LAKE AREA" IN THE DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS RECORDED IN VOLUME 4247, PAGE 2837, SAID PUBLIC RECORDS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:
COMMENCING AT THE SOUTHEAST CORNER, IN A POND, OF THAT TRACT OF LAND DESCRIBED BY DEED TO WESTLAKE RETAIL ASSOCIATES, L.T.D., RECORDED IN INSTRUMENT NUMBER 98-0118649 OF REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS AND BEING THE NORTHEAST CORNER OF SAID HW 2421 LAND TRACT;
THENCE WITH THE SOUTH LINE OF SAID WESTLAKE RETAIL TRACT, IN A POND, THE FOLLOWING COURSES AND DISTANCES:
S 89°27'07"W, 127.87 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT;
WITH SAID NON-TANGENT CURVE TO THE RIGHT, AN ARC DISTANCE OF 293.43 FEET, THROUGH A CENTRAL ANGLE OF 79°36'02", HAVING A RADIUS OF 211.21 FEET, THE LONG CHORD WHICH BEARS S 89°27'07"W, 270.40 FEET;
S 89°27'07"W, 78.72 FEET;
S 00°32'53"E, 25.20 FEET;
THENCE S 89°27'07"W, 194.11 FEET, LEAVING SAID POND, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE POINT OF BEGINNING;
THENCE S 64°51'10"W, 213.57 FEET, OVER AND ACROSS SAID HW 2421 TRACT, IN A POND;
THENCE S 80°32'48"W, 304.04 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET IN THE SOUTH LINE OF AFOREMENTIONED RETAIL ASSOCIATES TRACT, AND THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT;
THENCE WITH THE SOUTH LINE OF SAID RETAIL TRACT THE FOLLOWING COURSES AND DISTANCES:
WITH SAID NON-TANGENT CURVE TO THE LEFT, AN ARC DISTANCE OF 312.52 FEET, THROUGH A CENTRAL ANGLE OF 43°51'24", HAVING A RADIUS OF 408.29 FEET, THE LONG CHORD WHICH BEARS N 21°22'49"E, 304.95 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE BEGINNING OF A CURVE TO THE RIGHT;
WITH SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 47.12 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", HAVING A RADIUS OF 30.00 FEET, THE LONG CHORD WHICH BEARS N 44°27'07"E, 42.43 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;
N 89°27'07"E, 170.26 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;
S 00°32'53"E, 49.98 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;
N 89°27'07"E, 11.14 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET, AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT;
WITH SAID NON-TANGENT CURVE TO THE LEFT, AN ARC DISTANCE OF 33.89 FEET, THROUGH A CENTRAL ANGLE OF 11°06'00", HAVING A RADIUS OF 174.93 FEET, THE LONG CHORD WHICH BEARS S 28°08'22"E, 33.84 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;
S 89°27'07"W, 16.72 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT;
THENCE WITH SAID NON-TANGENT CURVE TO THE LEFT, AN ARC DISTANCE OF 205.35 FEET, THROUGH A CENTRAL ANGLE OF 60°21'43", HAVING A RADIUS OF 194.92 FEET, THE LONG CHORD WHICH BEARS S 60°53'56"E, 195.99 FEET TO THE POINT OF BEGINNING AND CONTAINING 78,498 SQUARE FEET OR 1.802 ACRES OF LAND MORE OR LESS.

- NOTES:**
- THIS SURVEY WAS PERFORMED WITH THE BENEFIT OF A COMMITMENT OF THE INSURANCE ISSUED BY FIRST AMERICAN TITLE INSURANCE COMPANY UNDER NUMBER 1002-17131-RTT, AND HAVING AN EFFECTIVE DATE OF MARCH 14, 2016, ISSUED APRIL 8, 2016, AND WAS RELIED ON FOR EASEMENTS AND OTHER MATTERS OF RECORD.
 - BASIS OF BEARINGS IS THE TEXAS COORDINATE SYSTEM, NORTH CENTRAL, ZONE 4202, NAD83.
 - ALL CORNERS SET ARE 5/8 INCH IRON RODS WITH PLASTIC CAP STAMPED "PELTON" UNLESS OTHERWISE NOTED.
 - 100 YEAR FLOOD PLAIN LINE DOES AFFECT SUBJECT TRACT AS DETERMINED FROM DIGITIZED FLOOD INSURANCE RATE MAP NUMBER 481210055 G, REVISED DATE OF APRIL 18, 2011, THE SURVEYOR ASSUMES NO LIABILITY FOR THAT MAP.
 - NUMBERED TRACTS (TRACT 1) LISTED IN THE NOTES BELOW ARE SHOWN ON THE FACE OF THE MAP FOR REFERENCE ONLY.
 - RESTRICTIVE COVENANTS RECORDED IN VOLUME 4247, PAGE 2837 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS THE SUBJECT TRACT AS SHOWN. RESTRICTIVE COVENANTS RECORDED IN CCR 95-0029595 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACT 1 AND 2, AND IS BLANKET IN NATURE. (ITEM 81)
 - EASEMENT TO SOUTHWESTERN BELL TELEPHONE COMPANY RECORDED IN VOLUME 3144, PAGE 359 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACT 2 AS SHOWN. (ITEM 100)
 - HIKE & BIKE TRAIL CONSTRUCTION, EASEMENT AND REIMBURSEMENT AGREEMENT RECORDED IN VOLUME 4247, PAGE 2883 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACT 1 AS SHOWN. (ITEM 100b)
 - TEMPORARY LAKE CONSTRUCTION EASEMENT AGREEMENT RECORDED IN VOLUME 4247, PAGE 2899 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACT 2 AS SHOWN. (ITEM 100f)
 - UNDERGROUND UTILITY EASEMENT AGREEMENT RECORDED IN VOLUME 4247, PAGE 2837 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACT 1 AND 2 AS SHOWN. (ITEM 100g)
 - AGRICULTURAL LEASE RECORDED IN VOLUME 4247, PAGE 2920 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACTS 1 AND 2, AND IS BLANKET IN NATURE. (ITEM 100h)
 - TERMS, PROVISIONS, CONDITIONS, OBLIGATIONS, ASSESSMENTS AND LIENS RECORDED IN VOLUME 4247, PAGE 2837 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACTS 1 AND 2, AND IS BLANKET IN NATURE. (ITEM 101)
 - RESERVATION OF ALL OIL, GAS AND OTHER MINERALS, WITH WAIVER OF SURFACE RIGHTS, CONTAINED IN SPECIAL WARRANTY DEEDS RECORDED IN VOLUME 4247, PAGE 2876 AND VOLUME 4247, PAGE 2869 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACTS 1 AND 2, AND IS BLANKET IN NATURE. (ITEM 101j)
 - WATER AND ALL RIGHTS PRIVILEGES AND IMMUNITIES TO INDEPENDENCE WATER RECORDED IN INSTRUMENT NUMBER 2011-57098, COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACT 3. (ITEM 100m)
 - MINERAL LEASE TOGETHER WITH ALL RIGHTS, PRIVILEGES AND IMMUNITIES RECORDED IN INSTRUMENT NUMBER 2012-31094, COUNTY RECORDS, DENTON COUNTY TEXAS, AFFECTS TRACT 1, 2 AND 3. (ITEM 100n)
 - MINERAL ESTATE AND INTEREST IN COAL, LIGNITE AND OTHER MINERALS RECORDED IN VOLUME 5298, PAGE 2153, COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACTS 1, 2 AND 3. (ITEM 100o)
 - LOCATIONS OF EXISTING UTILITIES ARE FROM VISIBLE SURFACE EVIDENCE ONLY.

AN ALTA / NSPS LAND TITLE SURVEY
74.131 Acres

OF LAND BEING THREE TRACTS OF LAND SITUATED IN THE RICHARD EADS SURVEY, ABSTRACT NUMBER 393, THE JESSE SUTTON SURVEY, ABSTRACT NUMBER 1154 AND THE J. BACON SURVEY ABSTRACT NUMBER 1565, DENTON COUNTY, TEXAS

AN ALTA / NSPS LAND TITLE SURVEY

74.131 Acres

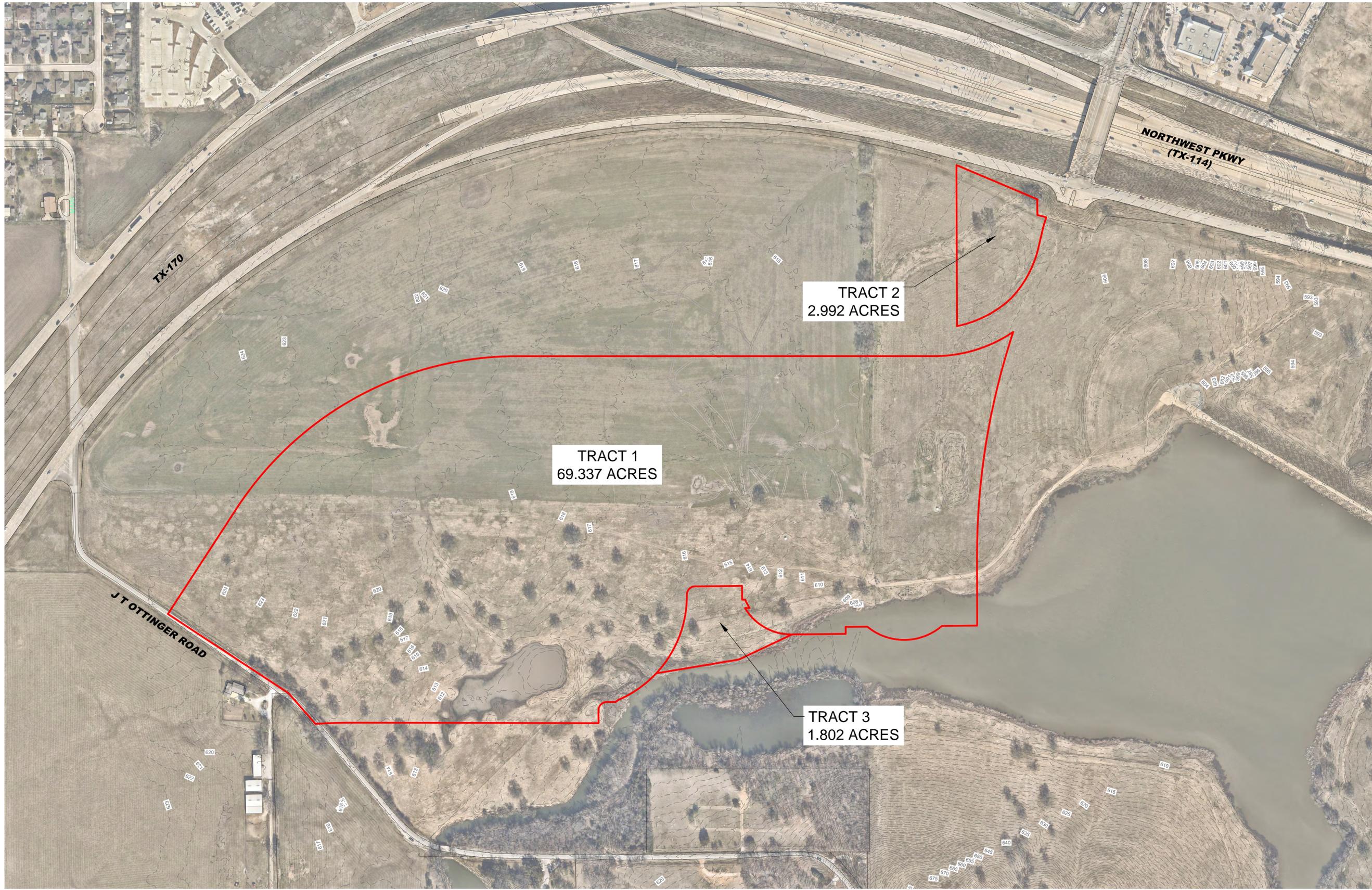
OF LAND BEING THREE TRACTS OF LAND SITUATED IN THE RICHARD EADS SURVEY, ABSTRACT NUMBER 393, THE JESSE SUTTON SURVEY, ABSTRACT NUMBER 1154 AND THE J. BACON SURVEY ABSTRACT NUMBER 1565, DENTON COUNTY, TEXAS

PELTON LAND SOLUTIONS
6761 KRUGGER DR. STE. 186 | KELLER, TX 76244 | 817-962-3366

SHEET

Job #:	Drawn By:	Checked By:	Date:
HWA15032	W.Bridges	T.Bridges	2.23.2016

Revisions:



TRACT 1
69.337 ACRES

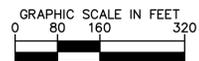
TRACT 2
2.992 ACRES

TRACT 3
1.802 ACRES

TX-170

NORTHWEST PKWY
(TX-114)

J.T. OTTINGER ROAD



BOUNDARY EXHIBIT

WESTLAKE, TEXAS

OCTOBER 2016

Kimley»Horn

12750 MERIT DRIVE, SUITE 1000, DALLAS, TX 75251
PHONE: 972-770-1300 FAX: 972-239-3820
WWW.KIMLEY-HORN.COM TX F-529

NOTE: THIS PLAN IS CONCEPTUAL IN NATURE AND HAS BEEN PRODUCED WITHOUT THE BENEFIT OF SURVEY, TOPOGRAPHY, UTILITIES, CONTACT WITH THE CITY, ETC.

KIMLEY-HORN AND ASSOCIATES, INC. (KHA) HAS PREPARED THIS PLAN FOR THE CLIENT'S USE ONLY. IT IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE PLAN IS CONCEPTUAL IN NATURE AND HAS BEEN PRODUCED WITHOUT THE BENEFIT OF SURVEY, TOPOGRAPHY, UTILITIES, CONTACT WITH THE CITY, ETC.



TYPE OF ACTION

Regular Meeting - Action Item

**Westlake Town Council Meeting
Monday, November 14, 2016**

TOPIC: Consideration for Adoption of a Resolution Amending and Expanding Neighborhood Empowerment Zone #4 in the Town of Westlake Related to the Charles Schwab & Co. Corporate Office Campus Site.

STAFF CONTACT: Thomas E Brymer, Town Manager/ Superintendent

Strategic Alignment

<u>Vision, Value, Mission</u>	<u>Perspective</u>	<u>Strategic Theme & Results</u>	<u>Outcome Objective</u>
Planned / Responsible Development	People, Facilities, & Technology	High Quality Planning, Design & Development - We are a desirable well planned, high-quality community that is distinguished by exemplary design standards.	Optimize Planning & Development Capabilities
<u>Strategic Initiative</u>			
Outside the Scope of Identified Strategic Initiatives			

Time Line - Start Date: November 14, 2016 **Completion Date:** November

Funding Amount: N/A **Status -** **Not Funded** **Source -** N/A

EXECUTIVE SUMMARY (INCLUDING APPLICABLE ORGANIZATIONAL HISTORY)

On June 16, 2016, the Westlake Town Council adopted Resolution 16-26 which approved an Economic Development Incentives Agreement (the Agreement) between the Town of Westlake (Town) and CS Kinross Lake Parkway, a Delaware limited liability company, and its affiliate Charles Schwab & Co., Inc. (the Owner). This Agreement established the parameters for Town economic development incentives offered by the Town to the Owner for the project known as the Charles Schwab & Co. Westlake corporate office campus.

Further, in the Agreement, the Town agreed to establish a Neighborhood Empowerment Zone (NEZ) for the Schwab project. A Neighborhood Empowerment Zone (NEZ) is a tool available

pursuant to Chapter 378 of the Texas Local Government Code which local government may, under certain criteria, use for a number of uses, including economic development. The Town of Westlake last approved use of an NEZ in connection with the Deloitte University project in 2008.

On August 22, 2016, the Town Council, following creation of the Tax Reinvestment Zone #4 via Ordinance 790, approved Resolution 16-31 which created the Neighborhood Empowerment Zone which boundaries matched the original Tax Abatement Zone provide by Schwab. Since then, the Charles Schwab organization has advised Town staff that they wish to expand this zone by placing their entire acreage in Westlake (which they purchased from Hillwood) into this expanded zone. To accomplish this, the creating resolution must be amended to reflect the new boundary, which will be identical to the new Reinvestment Zone #4 and amends and expands NEZ #4 to include all the acreage (74.131 acres) Schwab now owns in Westlake

RECOMMENDATION

The Economic Development Agreement approved by the Town on June 16, 2016, and recommended for approval tonight for the Schwab project provides that the Town will establish this NEZ. Staff recommends approval of this resolution amending and expanding this particular NEZ. Additional agreements would be required for utilization of this NEZ for economic development, this resolution only establishes as a tool that the Town and Charles Schwab & Co. might use for this project.

ATTACHMENTS

Resolution amending and expanding this NEZ with attachment showing specific area to be designated as such on the Charles Schwab & Co. property in Westlake.

TOWN OF WESTLAKE

RESOLUTION NO. 16-38

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS, AMENDING RESOLUTION 16-31, DESIGNATING NEIGHBORHOOD EMPOWERMENT ZONE #4 IN THE TOWN OF WESTLAKE, TARRANT AND DENTON COUNTIES, TEXAS, TO AMEND THE BOUNDARIES OF NEIGHBORHOOD EMPOWERMENT ZONE #4 IN THE TOWN OF WESTLAKE.

WHEREAS, the Town Council (“Council”) of the Town of Westlake, Texas, (“Town”) approved Resolution 16-31 designating Neighborhood Empowerment Zone #4 in the Town of Westlake, Tarrant and Denton Counties, Texas, and

WHEREAS, the Town and CS Kinross Lake Parkway a Delaware limited liability company, its affiliate Charles Schwab & Co., Inc, (“Schwab”) desire to amend the Economic Developer Agreement which sets out responsibility for Schwab and the Town as it relates to development in Westlake as established in Resolution 16-31, approved on August 22, 2016;

WHEREAS, the Council desires to amend the boundaries of Neighborhood Empowerment Zone #4 in the Town of Westlake; and

WHEREAS, the Town Council finds that the passage of this Resolution is in the best interest of the citizens of Westlake.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS:

SECTION 1: That, all matters stated in the Recitals hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

SECTION 2: That the Town of Westlake Town Council does hereby find and determine that:

- a) That the amending of Neighborhood Empowerment Zone (“Zone”) would promote and increase in economic development in the Zone;
- b) the attached as *Exhibit “A”*, shall be the property to be contained within the Zone and is incorporate herein in its entirety
- c) That the amendment and expansion of the Zone benefits and is for the public purpose of increase public health, safety and welfare of the person in the Town, and the expansion and amending of the Zone satisfied the requirements of Section 312. 202 of the Teas Tax Code.

SECTION 3: That pursuant to Chapter 378 of the Texas Local Government Code, the Council hereby amends and expands the Zone in the earlier described Exhibit A, attached here to and incorporated herein.

SECTION 4: That the Zone shall take effect on the 14th date of November 2016.

SECTION 5: If any portion of this Resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the Council hereby determines that it would have adopted this Resolution without the invalid provision.

SECTION 6: That this resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provision hereof and the Council here by determines that it would have adopted this Resolution without the invalid provision.

PASSED AND APPROVED ON THIS 14TH DAY OF NOVEMBER 2016.

ATTEST:

Laura L. Wheat, Mayor

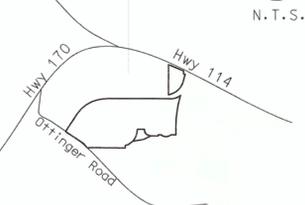
Kelly Edwards, Town Secretary

Thomas E. Brymer, Town Manager

APPROVED AS TO FORM:

L. Stanton Lowry, Town Attorney

TPPLS Firm Reg. No. 1077700
Copyright © 2016 Peloton Land Solutions, Inc.
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4/12/2016
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Vicinity Map

CURVE TABLE					
NO.	DELTA	RADIUS	LENGTH	BEARING	DISTANCE
C1	90°00'00"	30.00'	47.12'	S 44°27'07" W	42.43'
C2	33°59'06"	512.38'	303.92'	N 73°00'16" E	299.48'
C3	31°03'30"	412.38'	223.54'	S 62°53'41" W	220.81'
C4	43°51'24"	408.29'	312.52'	N 21°22'49" E	304.95'
C5	90°00'00"	30.00'	47.12'	S 44°27'07" W	42.43'
C6	11°06'00"	174.93'	33.89'	N 28°08'22" W	33.84'
C7	60°21'43"	194.92'	205.35'	N 60°53'56" W	195.99'
C8	90°00'00"	30.00'	47.12'	N 44°27'07" E	42.43'
C9	11°06'00"	174.93'	33.89'	S 28°08'22" E	33.84'
C10	60°21'43"	194.92'	205.35'	S 60°53'56" E	195.99'

AREA TABLE	
TRACT 1	69.337 ACRES
TRACT 2	2.992 ACRES
TRACT 3	1.802 ACRES
GROSS	74.131 ACRES

LINE TABLE		
NO.	BEARING	DISTANCE
L1	S89°27'07"W	78.72'
L2	S00°32'53"E	25.20'
L3	S50°57'18"W	12.08'
L4	S00°32'53"E	45.96'
L5	S00°31'47"E	57.12'
L6	S75°23'35"E	33.32'
L7	S17°10'09"W	32.91'
L8	S67°10'21"E	317.59'
L9	N00°32'53"W	49.98'
L10	S89°27'07"W	11.14'
L11	N89°27'07"E	16.72'
L12	N89°27'07"E	11.14'
L13	S89°27'07"W	16.72'

- Legend**
- SIGN
 - ⊕ TELEPHONE PEDESTAL
 - ⊙ TELEPHONE MANHOLE
 - BURIED CABLE MARKER / TELEPHONE
 - ⊕ WATER MANHOLE
 - PIPELINE MARKER
 - ⊙ LIGHT POLE
 - ⊙ POWER POLE
 - SERVICE POLE
 - GUIDE WIRE
 - ⊙ GAS MANHOLE
 - ⊙ SIGNAL BOX
 - ⊙ SIGNAL POLE

DESCRIPTION TRACT 1
BEING A TRACT OF LAND SITUATED IN THE RICHARD EADS SURVEY, ABSTRACT NUMBER 393 AND THE JESSE SUTTON SURVEY, ABSTRACT NUMBER 1154, DENTON COUNTY, TEXAS AND BEING A PORTION OF THAT TRACT OF LAND DESCRIBED BY DEED TO WESTLAKE RETAIL ASSOCIATES, L.T.D. RECORDED IN INSTRUMENT NUMBER 98-0118649 OF REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE NORTHEAST CORNER OF SAID RETAIL ASSOCIATES TRACT, IN THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 114 (A VARIABLE WIDTH RIGHT-OF-WAY):

THENCE S 17°25'21"W, 431.19 FEET, WITH THE EAST LINE OF SAID WESTLAKE RETAIL TRACT, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE POINT OF BEGINNING;

THENCE WITH THE EAST AND SOUTH LINE OF SAID RETAIL TRACT THE FOLLOWING COURSES AND DISTANCES:

S 17°25'21"W, 45.97 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE BEGINNING OF A CURVE TO THE LEFT;

WITH SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 783.77 FEET, THROUGH A CENTRAL ANGLE OF 17°32'30", HAVING A RADIUS OF 2560.00 FEET, THE LONG CHORD WHICH BEARS S 08°39'06"W, 780.71 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;

S 00°07'09"E, AT 110.00 FEET A 5/8 INCH IRON ROD WITH PLASTIC CAP, SET AS WITNESS, IN ALL, 245.16 FEET, TO THE SOUTHEAST CORNER OF SAID WESTLAKE RETAIL TRACT, IN A POND;

S 89°27'07"W, 127.87 FEET, DEPARTING SAID EAST LINE, TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, IN A POND;

WITH SAID NON-TANGENT CURVE TO THE RIGHT, AN ARC DISTANCE OF 293.43 FEET, THROUGH A CENTRAL ANGLE OF 79°36'02", HAVING A RADIUS OF 211.21 FEET, THE LONG CHORD WHICH BEARS S 89°27'07"W, 270.40 FEET, IN A POND;

S 89°27'07"W, 78.72 FEET, IN A POND;

S 00°32'53"E, 25.20 FEET, IN A POND;

S 89°27'07"W, 194.11 FEET, LEAVING SAID POND, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE BEGINNING OF A CURVE TO THE RIGHT;

WITH SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 205.35 FEET, THROUGH A CENTRAL ANGLE OF 60°21'43", HAVING A RADIUS OF 194.92 FEET, THE LONG CHORD WHICH BEARS N 60°53'56"W, 195.99 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;

N 89°27'07"E, 16.72 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT;

WITH SAID NON-TANGENT CURVE TO THE RIGHT, AN ARC DISTANCE OF 33.89 FEET, THROUGH A CENTRAL ANGLE OF 11°06'00", HAVING A RADIUS OF 174.93 FEET, THE LONG CHORD WHICH BEARS N 28°08'22"W, 33.84 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;

S 89°27'07"W, 11.14 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;

N 00°32'53"E, 49.98 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;

S 89°27'07"W, 170.26 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET, AT THE BEGINNING OF A CURVE TO THE LEFT;

WITH SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 47.12 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", HAVING A RADIUS OF 30.00 FEET, THE LONG CHORD WHICH BEARS S 44°27'07"W, 42.43 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE BEGINNING OF A CURVE TO THE RIGHT;

WITH SAID CURVE TO THE RIGHT, AT AN ARC LENGTH OF 312.52 FEET A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET, AS WITNESS, IN ALL, AN ARC DISTANCE OF 481.23 FEET, THROUGH A CENTRAL ANGLE OF 67°31'55", HAVING A RADIUS OF 408.29 FEET, THE LONG CHORD WHICH BEARS S 33°13'04"W, 453.86 FEET, IN A POND;

S 50°57'18"W, 12.08 FEET, IN A POND;

S 89°27'07"W, 32.96 FEET, LEAVING SAID POND, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE BEGINNING OF A CURVE TO THE LEFT;

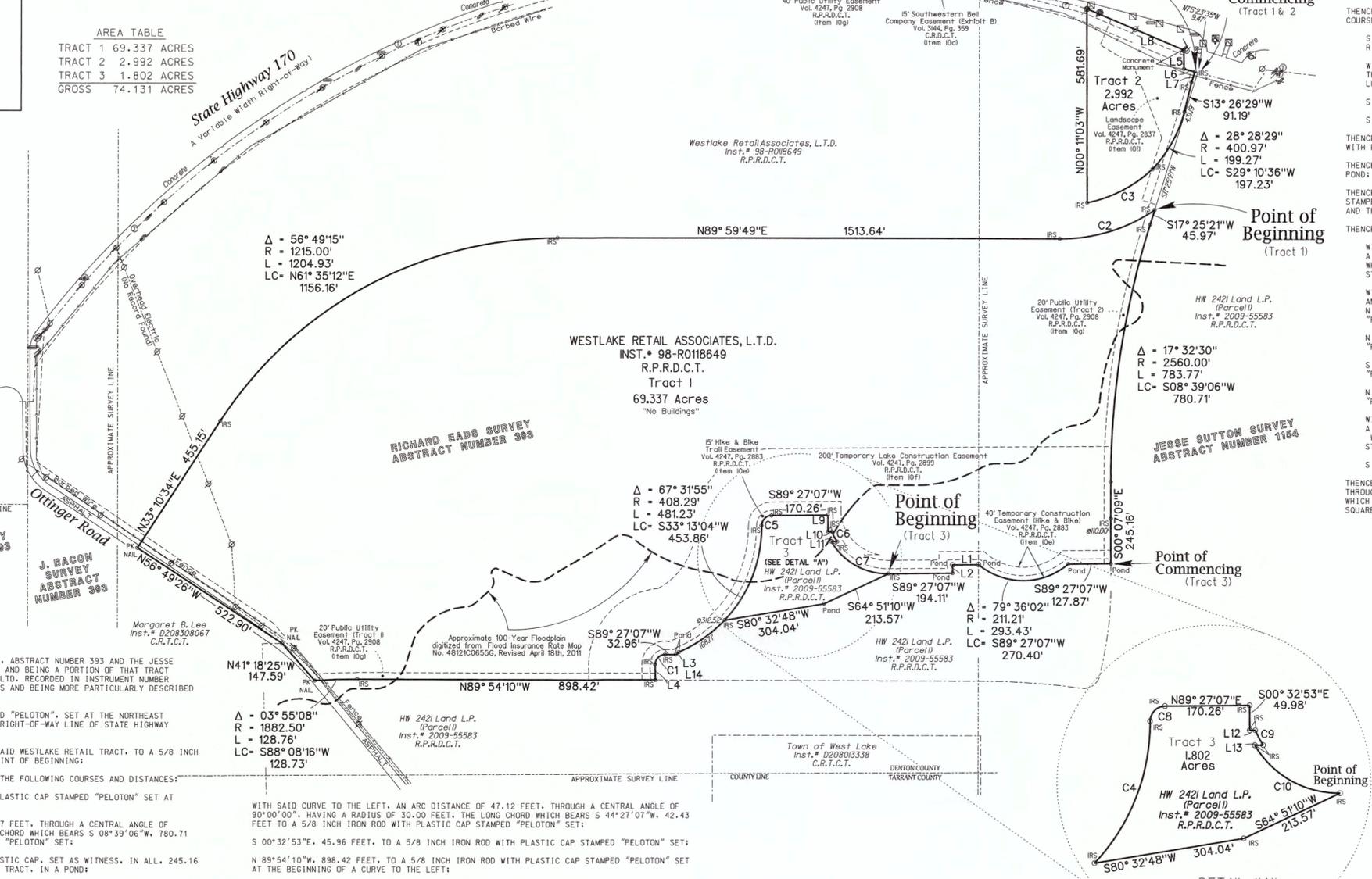
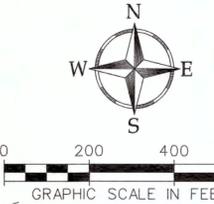
SURVEYORS CERTIFICATION

TO: REPUBLIC TITLE OF TEXAS, INC., AS AGENT FOR FIRST AMERICAN TITLE INSURANCE COMPANY; CS KINROSS LAKE PARKWAY LLC, A DELAWARE LIMITED LIABILITY COMPANY; AND FIRST AMERICAN TITLE INSURANCE COMPANY.

THIS IS TO CERTIFY THAT THIS MAP OR PLAN AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 2, 4, 7, 8, 9, 11, AND 14 OF TABLE A THEREOF.

THE FIELDWORK WAS COMPLETED APRIL 8, 2016.

Todd A. Bridges 4-12-16
TODD A. BRIDGES
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 4940



DESCRIPTION TRACT 2
BEING A TRACT OF LAND SITUATED IN THE JESSE SUTTON SURVEY, ABSTRACT NUMBER 1154, DENTON COUNTY, TEXAS AND BEING A PORTION OF THAT TRACT OF LAND DESCRIBED BY DEED TO WESTLAKE RETAIL ASSOCIATES, L.T.D. RECORDED IN INSTRUMENT NUMBER 98-0118649 OF REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET, AT THE NORTHEAST CORNER OF SAID RETAIL TRACT IN THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 114 (A VARIABLE WIDTH RIGHT-OF-WAY):

THENCE N 75°23'35"W, 9.47 FEET, WITH THE NORTH LINE OF SAID RETAIL TRACT AND SAID SOUTHERLY RIGHT-OF-WAY, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET FOR THE POINT OF BEGINNING;

THENCE S 17°10'09"W, 32.91 FEET, DEPARTING SAID COMMON LINE, OVER AND ACROSS SAID RETAIL TRACT, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;

THENCE OVER AND ACROSS SAID RETAIL TRACT THE FOLLOWING COURSES AND DISTANCES:

S 13°26'29"W, 91.19 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE BEGINNING OF A CURVE TO THE RIGHT;

WITH SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 199.27 FEET, THROUGH A CENTRAL ANGLE OF 28°28'29", HAVING A RADIUS OF 400.97 FEET, THE LONG CHORD WHICH BEARS S 29°10'36"W, 197.23 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;

WITH SAID NON-TANGENT CURVE TO THE RIGHT, AN ARC DISTANCE OF 223.54 FEET, THROUGH A CENTRAL ANGLE OF 31°03'50", HAVING A RADIUS OF 412.38 FEET, THE LONG CHORD WHICH BEARS S 62°53'41"W, 220.81 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;

N 00°11'03"W, 581.69 FEET TO A TXXOT MONUMENT FOUND IN THE SOUTH RIGHT-OF-WAY LINE OF AFOREMENTIONED STATE HIGHWAY 114;

S 67°10'21"E, 317.59 FEET, WITH SAID SOUTH RIGHT-OF-WAY LINE, TO A TEXAS DEPARTMENT OF TRANSPORTATION (HEREINAFTER CALLED TXXOT) DISK IN CONCRETE, FOUND

S 00°31'47"E, 57.12 FEET, CONTINUING WITH SAID SOUTH RIGHT-OF-WAY LINE, TO A TXXOT MONUMENT FOUND;

THENCE S 75°23'35"E, 33.32 FEET, CONTINUING WITH SAID SOUTH RIGHT-OF-WAY LINE, TO THE POINT OF BEGINNING AND CONTAINING 130,346 SQUARE FEET OR 2.992 ACRES OF LAND MORE OR LESS.

DESCRIPTION TRACT 3
BEING A TRACT OF LAND SITUATED IN THE RICHARD EADS SURVEY, ABSTRACT NUMBER 393, DENTON COUNTY, TEXAS, AND BEING A PORTION OF THAT AREA DEFINED AS THE "LAKE AREA" IN THE DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS RECORDED IN VOLUME 4247, PAGE 2837, SAID PUBLIC RECORDS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER, IN A POND, OF THAT TRACT OF LAND DESCRIBED BY DEED TO WESTLAKE RETAIL ASSOCIATES, L.T.D., RECORDED IN INSTRUMENT NUMBER 98-0118649 OF REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS AND BEING THE NORTHEAST CORNER OF SAID HW 2421 LAND TRACT:

THENCE WITH THE SOUTH LINE OF SAID WESTLAKE RETAIL TRACT, IN A POND, THE FOLLOWING COURSES AND DISTANCES:

S 89°27'07"W, 127.87 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT;

WITH SAID NON-TANGENT CURVE TO THE RIGHT, AN ARC DISTANCE OF 293.43 FEET, THROUGH A CENTRAL ANGLE OF 79°36'02", HAVING A RADIUS OF 211.21 FEET, THE LONG CHORD WHICH BEARS S 89°27'07"W, 270.40 FEET;

S 89°27'07"W, 78.72 FEET;

S 00°32'53"E, 25.20 FEET;

THENCE S 89°27'07"W, 194.11 FEET, LEAVING SAID POND, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE POINT OF BEGINNING;

THENCE S 64°51'10"W, 213.57 FEET, OVER AND ACROSS SAID HW 2421 TRACT, IN A POND;

THENCE S 80°32'48"W, 304.04 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET IN THE SOUTH LINE OF AFOREMENTIONED RETAIL ASSOCIATES TRACT, AND THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT;

THENCE WITH THE SOUTH LINE OF SAID RETAIL TRACT THE FOLLOWING COURSES AND DISTANCES:

WITH SAID NON-TANGENT CURVE TO THE LEFT, AN ARC DISTANCE OF 312.52 FEET, THROUGH A CENTRAL ANGLE OF 43°51'24", HAVING A RADIUS OF 408.29 FEET, THE LONG CHORD WHICH BEARS N 21°22'49"E, 304.95 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET AT THE BEGINNING OF A CURVE TO THE RIGHT;

WITH SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 47.12 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", HAVING A RADIUS OF 30.00 FEET, THE LONG CHORD WHICH BEARS N 44°27'07"E, 42.43 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;

N 89°27'07"E, 170.26 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;

S 00°32'53"E, 49.98 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;

N 89°27'07"E, 11.14 FEET, TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET, AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT;

WITH SAID NON-TANGENT CURVE TO THE LEFT, AN ARC DISTANCE OF 33.89 FEET, THROUGH A CENTRAL ANGLE OF 11°06'00", HAVING A RADIUS OF 174.93 FEET, THE LONG CHORD WHICH BEARS S 28°08'22"E, 33.84 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PELTON" SET;

S 89°27'07"W, 16.72 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT;

THENCE WITH SAID NON-TANGENT CURVE TO THE LEFT, AN ARC DISTANCE OF 205.35 FEET, THROUGH A CENTRAL ANGLE OF 60°21'43", HAVING A RADIUS OF 194.92 FEET, THE LONG CHORD WHICH BEARS S 60°53'56"E, 195.99 FEET TO THE POINT OF BEGINNING AND CONTAINING 78,498 SQUARE FEET OR 1.802 ACRES OF LAND MORE OR LESS.

- NOTES:**
- THIS SURVEY WAS PERFORMED WITH THE BENEFIT OF A COMMITMENT OF THE INSURANCE ISSUED BY FIRST AMERICAN TITLE INSURANCE COMPANY UNDER NUMBER 1002-17131-RTT, AND HAVING AN EFFECTIVE DATE OF MARCH 14, 2016, ISSUED APRIL 8, 2016, AND WAS RELIED ON FOR EASEMENTS AND OTHER MATTERS OF RECORD.
 - BASIS OF BEARINGS IS THE TEXAS COORDINATE SYSTEM, NORTH CENTRAL, ZONE 4202, NAD83.
 - ALL CORNERS SET ARE 5/8 INCH IRON RODS WITH PLASTIC CAP STAMPED "PELTON" UNLESS OTHERWISE NOTED.
 - 100 YEAR FLOOD PLAIN LINE DOES AFFECT SUBJECT TRACT AS DETERMINED FROM DIGITIZED FLOOD INSURANCE RATE MAP NUMBER 481210055 G, REVISED DATE OF APRIL 18, 2011. THE SURVEYOR ASSUMES NO LIABILITY FOR THAT MAP.
 - NUMBERED TRACTS (TRACT 1) LISTED IN THE NOTES BELOW ARE SHOWN ON THE FACE OF THE MAP FOR REFERENCE ONLY.
 - RESTRICTIVE COVENANTS RECORDED IN VOLUME 4247, PAGE 2837 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS THE SUBJECT TRACT AS SHOWN. RESTRICTIVE COVENANTS RECORDED IN CCR 95-0029595 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACT 1 AND 2, AND IS BLANKET IN NATURE. (ITEM 81)
 - EASEMENT TO SOUTHWESTERN BELL TELEPHONE COMPANY RECORDED IN VOLUME 3144, PAGE 359 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACT 2 AS SHOWN. (ITEM 100)
 - HIKE & BIKE TRAIL CONSTRUCTION, EASEMENT AND REIMBURSEMENT AGREEMENT RECORDED IN VOLUME 4247, PAGE 2883 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACT 1 AS SHOWN. (ITEM 100b)
 - TEMPORARY LAKE CONSTRUCTION EASEMENT AGREEMENT RECORDED IN VOLUME 4247, PAGE 2899 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACT 2 AS SHOWN. (ITEM 10f)
 - UNDERGROUND UTILITY EASEMENT AGREEMENT RECORDED IN VOLUME 4247, PAGE 2837 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACT 1 AND 2 AS SHOWN. (ITEM 10g)
 - AGRICULTURAL LEASE RECORDED IN VOLUME 4247, PAGE 2920 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACTS 1 AND 2, AND IS BLANKET IN NATURE. (ITEM 10h)
 - TERMS, PROVISIONS, CONDITIONS, OBLIGATIONS, ASSESSMENTS AND LIENS RECORDED IN VOLUME 4247, PAGE 2837 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACTS 1 AND 2, AND IS BLANKET IN NATURE. (ITEM 10i)
 - RESERVATION OF ALL OIL, GAS AND OTHER MINERALS, WITH WAIVER OF SURFACE RIGHTS, CONTAINED IN SPECIAL WARRANTY DEEDS RECORDED IN VOLUME 4247, PAGE 2876 AND VOLUME 4247, PAGE 2869 OF THE COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACTS 1 AND 2, AND IS BLANKET IN NATURE. (ITEM 10j)
 - WATER AND ALL RIGHTS PRIVILEGES AND IMMUNITIES TO INDEPENDENCE WATER RECORDED IN INSTRUMENT NUMBER 2011-57098, COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACT 3. (ITEM 10m)
 - MINERAL LEASE TOGETHER WITH ALL RIGHTS, PRIVILEGES AND IMMUNITIES RECORDED IN INSTRUMENT NUMBER 2012-31094, COUNTY RECORDS, DENTON COUNTY TEXAS, AFFECTS TRACT 1, 2 AND 3. (ITEM 10n)
 - MINERAL ESTATE AND INTEREST IN COAL, LIGNITE AND OTHER MINERALS RECORDED IN VOLUME 5298, PAGE 2153, COUNTY RECORDS, DENTON COUNTY, TEXAS, AFFECTS TRACTS 1, 2 AND 3. (ITEM 10o)
 - LOCATIONS OF EXISTING UTILITIES ARE FROM VISIBLE SURFACE EVIDENCE ONLY.

74.131 Acres

OF LAND BEING THREE TRACTS OF LAND SITUATED IN THE RICHARD EADS SURVEY, ABSTRACT NUMBER 393, THE JESSE SUTTON SURVEY, ABSTRACT NUMBER 1154 AND THE J. BACON SURVEY ABSTRACT NUMBER 1565, DENTON COUNTY, TEXAS

AN ALTA / NSPS LAND TITLE SURVEY

74.131 Acres

OF LAND BEING THREE TRACTS OF LAND SITUATED IN THE RICHARD EADS SURVEY, ABSTRACT NUMBER 393, THE JESSE SUTTON SURVEY, ABSTRACT NUMBER 1154 AND THE J. BACON SURVEY ABSTRACT NUMBER 1565, DENTON COUNTY, TEXAS

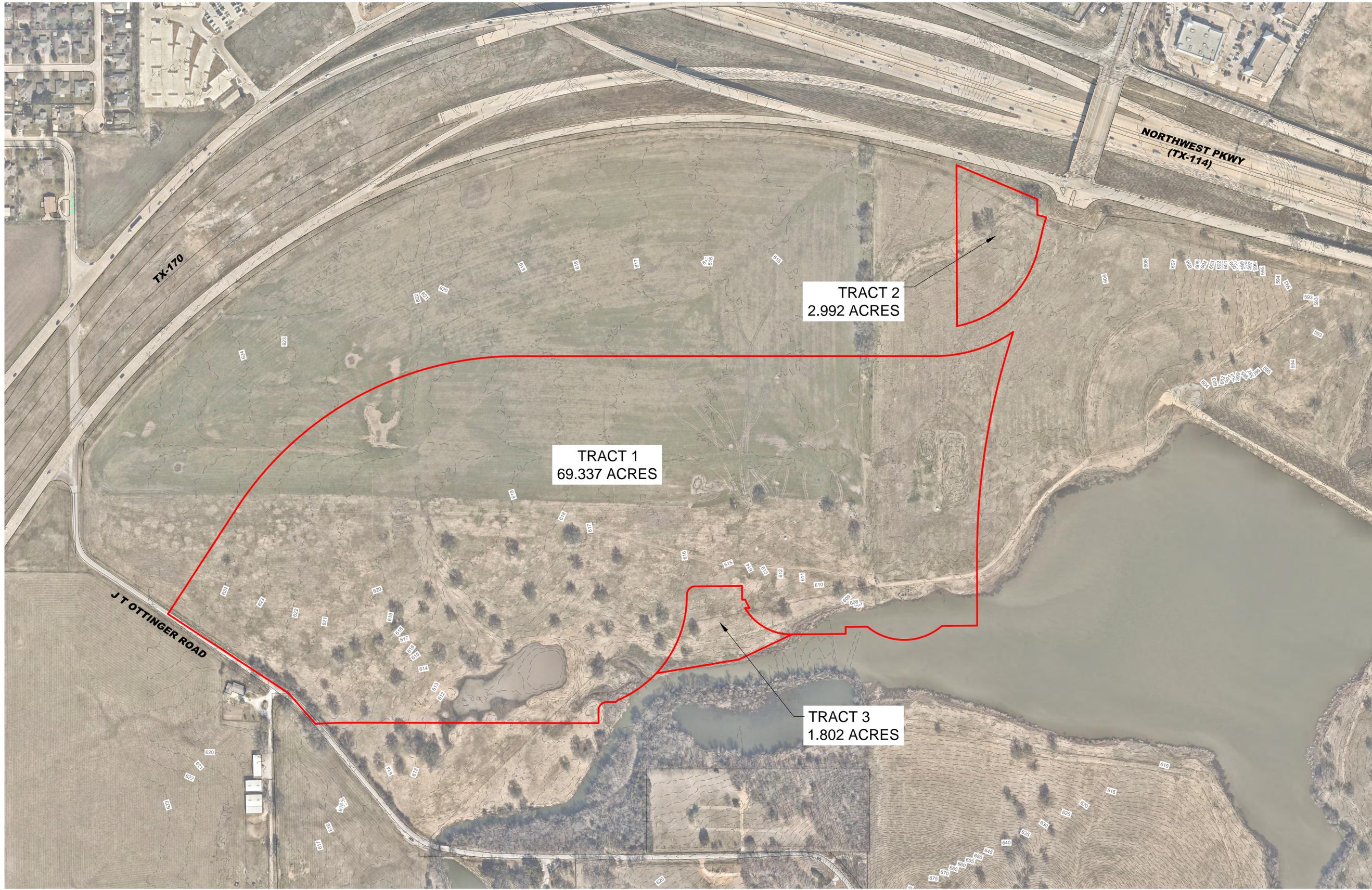
PELTON LAND SOLUTIONS

6761 KRUGGER DR. STE. 185 | KELLER, TX 76244 | 817-962-3366

SHEET

Job #:	Drawn By:	Checked By:	Date:
HWA15032	W.Bridges	T.Bridges	2.23.2016

Revisions:



TRACT 1
69.337 ACRES

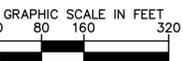
TRACT 2
2.992 ACRES

TRACT 3
1.802 ACRES

TX-170

NORTHWEST PKWY
(TX-114)

J.T. OTTINGER ROAD



BOUNDARY EXHIBIT

WESTLAKE, TEXAS

OCTOBER 2016

Kimley»Horn

12750 MERIT DRIVE, SUITE 1000, DALLAS, TX 75251
PHONE: 972-770-1300 FAX: 972-239-3820
WWW.KIMLEY-HORN.COM TX F-529

NOTE: THIS PLAN IS CONCEPTUAL IN NATURE AND HAS BEEN PRODUCED WITHOUT THE BENEFIT OF SURVEY, TOPOGRAPHY, UTILITIES, CONTACT WITH THE CITY, ETC.

KIMLEY-HORN AND ASSOCIATES, INC. (KHA) HAS PREPARED THIS PLAN FOR THE CLIENT'S USE ONLY. IT IS NOT TO BE USED FOR ANY OTHER PURPOSE. KHA AND ITS CONSULTANTS SHALL BE RESPONSIBLE ONLY FOR THE DESIGN AND CONSTRUCTION OF THE PROJECT DESCRIBED HEREIN. NO OTHER DESIGN OR CONSTRUCTION SHALL BE THE RESPONSIBILITY OF KHA OR ITS CONSULTANTS. THIS PLAN IS CONCEPTUAL IN NATURE AND HAS BEEN PRODUCED WITHOUT THE BENEFIT OF SURVEY, TOPOGRAPHY, UTILITIES, CONTACT WITH THE CITY, ETC.



TYPE OF ACTION

Regular Meeting - Action Item

**Westlake Town Council Meeting
Monday, November 14, 2016**

TOPIC: Consider Approval of a Resolution Amending and Restating the Economic Development Agreement and Adopting a Tax Abatement Agreement, Pursuant to Chapter 312 of the Texas Tax Code, with CS Kinross Lake Parkway, a Delaware Limited Liability Company, and its Affiliate Charles Schwab & Co., Inc.

STAFF CONTACT: Thomas E. Brymer, Town Manager/ Superintendent

Strategic Alignment

<u>Vision, Value, Mission</u>	<u>Perspective</u>	<u>Strategic Theme & Results</u>	<u>Outcome Objective</u>
Planned / Responsible Development	People, Facilities, & Technology	High Quality Planning, Design & Development - We are a desirable well planned, high-quality community that is distinguished by exemplary design standards.	Optimize Planning & Development Capabilities
<u>Strategic Initiative</u>			
Outside the Scope of Identified Strategic Initiatives			

Time Line - Start Date: November 14, 2016 **Completion Date:** November 14, 2016

Funding Amount: N/A **Status -** N/A **Source -** N/A

EXECUTIVE SUMMARY (INCLUDING APPLICABLE ORGANIZATIONAL HISTORY)

On June 16, 2016 the Town Council adopted Resolution 16-26 approving an Economic Development Incentive Agreement with CS Kinross Lake Parkway and its Affiliate Charles Schwab & Co. This Economic Development Agreement provides for economic development incentives for the Schwab corporate office complex announced to be in the Town of Westlake. One of those incentives is tax abatement of Town ad valorem taxes under certain terms and

conditions (i.e. 10-year term on the “qualified facility” beginning at 100% and declining at 10% over the 10-year term). This public hearing and consideration of this ordinance was the next step required under the law to implement this tax abatement offered in the Economic Development Agreement approved by Resolution 16-26. Notices were sent, as required by law, to the other local government entities in which this Reinvestment Zone would be located (Northwest ISD and Denton County). Denton County is offering tax abatement incentives of Denton County’s ad valorem taxes for this project as well. Also, as required by law, notice for this public hearing was published in the Town’s newspaper of official record.

Tax abatement can be granted by Texas local governments by either 380 Economic Development Grants or by this method, establishing a Tax Reinvestment Zone (TRZ). Since Denton County prefers the later methodology, the Town is cooperating by utilizing this methodology as well, i.e. establishing a tax reinvestment zone.

On August 22, 2016, the Town Council, following a duly given public notice, held a public hearing and adopted Ordinance 799 establishing Tax Reinvestment Zone #4 for this project. Since then, the Charles Schwab organization has advised Town staff that they wish to expand this zone by placing their entire acreage in Westlake (which they purchased from Hillwood) into this expanded reinvestment zone. To accomplish this, Staff re-advertised and provided required notices for the public hearing necessary to consider the ordinance which amends and expands TRZ #4 to include all the acreage (74.131 acres) Schwab now owns in Westlake.

This zone, Tax Reinvestment Zone #4 (TRZ #4), is in the northwest portion of Westlake, near the intersection of State Highways 170 and 114 as shown on the map attached to the proposed ordinance establishing this zone. The public notice describes the location of the this TRZ as “...generally located in the north portion of the Town, east of Ottinger Road and south of SH 114, located on the Circle T Ranch.” The zone is site specific with a field note description that is an exhibit to the ordinance that would establish this amended and expanded tax reinvestment zone.

Additionally, it should be noted that the Schwab project is one part, the Schwab office complex portion, of an even larger project called, until recently, Project Blizzard. North of and adjacent to this expanded re-investment zone, will be a mixed-use project developed by Hillwood Properties and their partner Howard Hughes Corporation. That project is not connected in any way to the tax abatement incentives contemplated for the Charles Schwab project.

Approval of this resolution would amend the Economic Development Incentive Agreement for the Schwab project that the Council originally approved on June 16, 2016. This amended agreement adds into the Economic Development Incentive Agreement the actual terms of tax abatement the Town would provide for this project (as opposed to tax abatement being in another separate agreement) and defines what facilities will be eligible for tax abatement on this Tax Reinvestment Zone #4 as well as the terms and conditions for said tax abatement.

RECOMMENDATION

Recommend adoption of this resolution that would approve this amended Economic

Development Agreement with the terms and conditions for tax abatement in Tax Reinvestment Zone #4 for the Schwab project.

ATTACHMENTS

Resolution approving the amended Economic Development Agreement with said Agreement attached as an exhibit to this resolution.

TOWN OF WESTLAKE

RESOLUTION 16-39

A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS, AMENDING AND RESTATING A ECONOMIC DEVELOPMENT AGREEMENT AND ADOPTING A TAX INCENTIVE AGREEMENT, PURSUANT TO CHAPTER 312 OF THE TEXAS TAX CODE, WITH CS KINROSS LAKE PARKWAY, A DELAWARE LIMITED LIABILITY COMPANY, AND ITS AFFILIATE CHARLES SCHWAB & CO., INC.

WHEREAS, the Town is a duly created and validly existing Type A General Law Municipality, created under the laws of the State of Texas, including particularly, but not by way of limitation, Chapter 51, Texas Local Government Code (“LGC”); and

WHEREAS, the Town of Westlake is experiencing planned growth through the attraction of economic development projects such as Fidelity Investments and Deloitte University, residential developments such as Vaquero, Glenwyck Farms, Terra Bella, and Granada, and Entrada which are consistent with the Town’s Comprehensive Plan, as well as enrollment growth at Westlake Academy, all of which contribute to demand for improvements to Westlake’s infrastructure and public buildings: and,

WHEREAS, the Town of Westlake (Town) and CS Kinross Lake Parkway, a Delaware limited liability company, its affiliate Charles Schwab & Co., Inc. (the Owner) desire to enter into a partnership to continue this planned growth through an amended economic development agreement which sets out responsibilities for the Owner and the Town as it relates to the development in Westlake: and,

WHEREAS, the Economic Development Policy and the Tax Abatement Policy constitute appropriate guidelines and criteria governing economic development agreements to be entered into by the Town as contemplated by Chapter 378 and Chapter 380 of the LGC and Chapter 312 of the Tax Code, providing for the availability of economic incentives for new facilities and structures; and

WHEREAS, Schwab (or one of its Affiliates), as the owner of land located within the Town, intends to develop and construct two (2) or more buildings on the Land (as defined herein in the amended Economic Development Incentive Agreement), and the development and construction on such Land is expected to significantly enhance the economic and employment base of the Town; and

WHEREAS, the Constitution and laws of the State of Texas, including, but not by way of limitation, Chapter 378 and Chapter 380 of the LGC, Chapter 312 of the Tax Code and the Texas Constitution, authorize the Town to enter into economic development agreements and tax abatement agreements with companies such as Schwab; and

WHEREAS, the Town has an economic development policy adopted by Resolution 06-19; and

WHEREAS, the Town Council has approved an Economic Development Incentive Agreement for the Schwab project on June 16, 2016 (Res. 16-26) and, the Town and Schwab desire to amend and restate the Original Economic Development Agreement to clarify certain aspects of the Project and, upon execution and approval, this Agreement shall amend, restate and supersede the original Economic Development Incentive Agreement in its entirety; and

WHEREAS, the Town Council established Tax Reinvestment Zone #4 on August 22, 2016 (Ordinance No. 790) for the Schwab project and amended said zone by ordinance on November 14, 2016, and

WHEREAS, the Town Council desires to adopt a Tax Abatement Agreement with Schwab, and this Agreement includes all the necessary provisions under the Tax Code and will be the Tax Abatement Agreement for the Zone; and

WHEREAS, the Town Council finds that the passage of this Resolution is in the best interest of the citizens of Westlake.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS:

SECTION 1: That, all matters stated in the Recitals hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

SECTION 2: That, the Town Council of the Town of Westlake, Texas, hereby approves this amended Economic Development Program Agreement with the Owner attached hereto as **Exhibit “A”**; and further authorizes the Town Manager to execute said agreement and pursue any necessary procedures on behalf of the Town of Westlake.

SECTION 3: If any portion of this Resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provision ns hereof and the Council hereby determines that it would have adopted this Resolution without the invalid provision.

SECTION 4: That this resolution shall become effective from and after its date of passage.

PASSED AND APPROVED ON THIS 14th DAY OF NOVEMBER, 2016.

Laura Wheat, Mayor

ATTEST:

Kelly Edwards, Town Secretary

Thomas E. Brymer, Town Manager

APPROVED AS TO FORM:

Stan Lowry, Town Attorney

WHEREAS, on August 22, 2016, the Town Council of the Town (the “Council”) adopted Resolution No. 16-30 in accordance with the LGC renewing and updating the Town’s Economic Development Incentive Policy (the “Economic Development Policy”) that includes a Tax Abatement Policy (“Tax Abatement Policy”) for qualifying businesses the Town will, on a case-by-case basis, give consideration to providing tax abatements, economic development grants, loans, and other incentives (collectively referred to as "Incentives") as may be allowed by law as stimulation for selected economic development within the Town. Tax abatement is one of the incentives available under the Economic Development Policy, which is attached hereto as Exhibit “A” and incorporated herein for all purposes; and

WHEREAS, the Economic Development Policy and the Tax Abatement Policy constitute appropriate guidelines and criteria governing economic development agreements to be entered into by the Town as contemplated by Chapter 378 and Chapter 380 of the LGC and Chapter 312 of the Tax Code, providing for the availability of economic incentives for new facilities and structures; and

WHEREAS, on August 22, 2016, the Council adopted Ordinance No. 790 (the “Original Designating Ordinance”), which is attached hereto as Exhibit “B” and incorporated herein for all purposes, establishing Reinvestment Zone No. 4, Town of Westlake, Texas, (the “Zone”) for commercial-industrial tax abatement as authorized by Chapter 312 of the Tax Code and

WHEREAS, on August 22, 2016, the Council passed Resolution No. 16-31, which is attached hereto as Exhibit “C” and incorporated herein for all purposes, designating a Neighborhood Empowerment Zone in the Town of Westlake, Texas, as authorized by Chapter 378 of the LGC, the boundaries of which are identical to the boundaries of Reinvestment Zone No. 4, Town of Westlake, Texas, as designated in the Original Designating Ordinance (the “Neighborhood Empowerment Zone”); and

WHEREAS, the Town and Schwab desire to amend and restate the Original Economic Development Agreement to clarify certain aspects of the Project (as defined herein) and, upon execution and approval, this Agreement shall amend, restate and supersede the Original Economic Development Agreement in its entirety; and

WHEREAS, this Agreement includes all the necessary provisions under the Tax Code and will be the Tax Abatement Agreement for the Zone; and

WHEREAS, on November 14, 2016, the Council adopted Ordinance No. ____ (the “Revised Designating Ordinance”), which is attached hereto as Exhibit “D” and incorporated herein for all purposes, expanding the boundaries of Reinvestment Zone No. 4, Town of Westlake, Texas, to be consistent with the boundaries of the Land as defined herein; and

WHEREAS, on November 14, 2016, the Council passed Resolution No. ____, which is attached hereto as Exhibit “E” and incorporated herein for all purposes, expanding the boundaries of the Neighborhood Empowerment Zone, as authorized by Chapter 378 of the LGC, such that the boundaries of the Neighborhood Empowerment Zone are identical to the boundaries of

Reinvestment Zone No. 4, Town of Westlake, Texas, as expanded by the Revised Designating Ordinance; and

WHEREAS, the Council finds that the terms of this Agreement, the Project and the proposed Qualified Facilities (herein defined) meet the applicable guidelines and criteria heretofore adopted by the Council and contained in the Economic Development Policy and Tax Abatement Policy; and

WHEREAS, the Council finds that the improvements proposed for the Land are feasible and practical and would be of benefit to the Town, and will maintain and enhance the commercial and industrial economic and employment base of the Town and Denton County; and the Council finds that it is in the best interest of the citizens of the Town to enter into this Agreement in accordance with the Economic Development Policy, the Tax Abatement Policy, the Tax Code and the LGC; and

WHEREAS, written notice that the Town intends to enter into this Agreement, along with a copy of this Agreement, has been furnished in the manner prescribed by the Tax Code, to the presiding officers of the governing bodies of each of the taxing units in which the Land is located.

NOW, THEREFORE, the Town and Schwab, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, which consideration includes the attraction of major investment in the Zone and increased payroll that contributes to the economic development of the Town, the enhancement of the tax base in the Town and Denton County and the economic development and tax abatement incentives set forth therein below, as authorized by Chapter 378 and Chapter 380 of the LGC and Chapter 312 of the Tax Code, as amended, do hereby contract, covenant and agree as follows:

Section 1. Definitions.

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

“Affiliate” shall mean any entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Schwab, or a Schwab Successor, and the successors in interest to Schwab or Schwab Successor.

“Certificate of Occupancy” shall mean the certificate of occupancy issued by the Town for a Qualified Facility constructed during the Initial Phase.

“Council” shall mean the Town Council of the Town of Westlake.

“Effective Date” shall mean June 13, 2016, the date of execution and approval of the Original Economic Development Agreement.

“First Use” shall mean the designation of the Town as the situs for use tax purposes with respect to any purchases made by Schwab or its Affiliates which are subject to the Town’s Sales and Use Taxes.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of Schwab and its Affiliates, including, without limitation, acts of God or the public enemy, epidemic, war, riot, civil-commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omissions of Schwab or its Affiliates), fire, explosions, floods, or strikes.

“Jobs” shall mean all positions held by an employee, partner or principal of Schwab or any of its Affiliates, in which such employee, partner or principal works on a full-time basis for Schwab or any of its Affiliates and has an office in, or works primarily from, the Qualified Facilities.

“Land” shall mean certain real property consisting of 74.131 acres in total, comprised of the following tracts of land: (i) approximately 69.337 acres in size (identified as the “Campus Property”); (ii) approximately 2.992 acres in size (identified as the “Pad Site”); and (iii) approximately 1.802 acres in size (identified as the “Notch Property”), which tracts of land are located in Denton County, Texas, and are generally described in “Exhibit F” attached hereto and made a part hereof for all purposes, together with, all and singular, the rights and appurtenances pertaining to each such tract.

“Minimum Threshold Eligibility Requirements” shall mean (i) the construction and maintenance of a minimum 500,000 gross square feet on the Land, which includes the construction and maintenance of a minimum fifteen hundred (1,500) space parking garage; (ii) the existence of at least nineteen hundred (1,900) Jobs; and (iii) the expenditure of no less than \$100,000,000 on Project Costs.

“Phase” shall mean each portion of the Project, as developed in such order and containing such acreage as Schwab, in its sole discretion, may determine.

“Initial Phase” shall mean a portion of the Project to be constructed on the Land on or before December 31, 2021, which is projected to be five hundred thousand (500,000) gross square feet of Project space as defined within this Agreement, including a fifteen hundred (1,500) space parking garage constructed as the Initial Phase of the Project.

“Project” shall mean the improvements, related infrastructure and/or modifications approved as part of this Agreement and in accord with the Town’s Planned Development Regulations to be constructed on the Land in the Initial Phase, by or on behalf of Schwab or its Affiliates.

“Project Costs” shall mean all costs incurred by Schwab or its Affiliates with respect to the acquisition, construction, reconstruction, improvement, and expansion, as the case may be, of the Project, whether paid or incurred prior to or after the date of this Agreement, including the cost of the acquisition of all land, rights-of-way, property rights, easements, and interests; the cost of all machinery and equipment, information technology and telecommunications equipment, furniture, fixtures and other personal property; the cost of engineering and legal services; plans, specifications, surveys, and estimates of cost and of revenue; other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving, and expanding the Project; and administrative expenses.

“Qualified Facilities or Qualified Facility” shall mean building(s) and other structural components of the facility to be constructed by or on behalf of Schwab or its Affiliates as part of the Initial Phase of the Project and shall consist of office campus development such as office space, parking facilities, mechanical/engineering and information technology support services and buildings otherwise necessary to support the business operations of Schwab. Qualified Facilities shall not include any building intended to be used for: (i) service retail or general retail; (ii) residential housing; (iii) healthcare; (iv) hospitality; or (v) entertainment, unless such uses under (i)-(v) are uses related to the principal financial services business of Schwab. Any building constructed on the Land that is not a Qualified Facility (an “Ineligible Facility”) will not be eligible for tax abatement under Section 1 or for the refund of sales tax under Section 11, but any such Ineligible Facility shall be considered for purposes of determining if Schwab has met the Minimum Threshold Eligibility Requirements. Notwithstanding the forgoing, and for purposes of clarification, an office building or dedicated facility that provides amenities for the benefit of Schwab employees, such as food service, fitness activities and wellness/healthcare services, shall be deemed a Qualified Facility.

“Simple Interest” for purposes of Section 4.C. is defined as the annual rate of interest applied only to the aggregate amount of tax abatement savings that remains due and owing. By way of example, if the aggregate amount of tax abatement savings is \$10,000 and it is required to be paid back at four and one-half percent (4.50%) interest five years later, the total amount subject to repayment would be $\$10,000 + [5 \times (\$10,000 \times 0.045)]$, which is \$12,250.

“Situs Sales Tax” shall mean the Sales and Use Tax collected by the Town during construction, finish and equipping of the Qualified Facilities attributable to the purchase of taxable items or services. The Situs Sales Tax shall be limited to fifty percent (50%) of the 1% Sales and Use Taxes collected by the Town (excluding the ½ cent 4B Sales Taxes and the Town’s ½ cent sales tax to lower property taxes) as a result of the construction, finish and equipping of the Qualified Facilities. The parties expressly acknowledge and agree that the sales and use tax receipts described herein are being used only as a measurement of the Town’s payment of grants through the use of general funds.

“State” shall mean the State of Texas and all taxing authorities thereof, including, without limitation, the Comptroller of Public Accounts of the State of Texas.

“Zone” shall mean Reinvestment Zone No. 4, Town of Westlake, Texas, created by the Town pursuant to the Original Designating Ordinance and expanded by the Revised Designating Ordinance, the boundaries of which are generally consistent with the boundaries of the Land.

Section 1. Tax Abatement.

General Provisions.

- A. The Qualified Facilities are not, and shall not be, an improvement project financed by tax increment bonds.
- B. The Land is not owned or leased by any member of the Town Council, any member of the Planning and Zoning Commission of the Town or any member of the governing body of taxing units with jurisdiction over the Land.

- C. This Section is intended to comply with the requirements of the LGC and the Tax Code and is authorized by the Texas Property Redevelopment and Tax Abatement Act of the Texas Tax Code, Chapter 312, by Chapter 378 and Chapter 380 of the LGC, by the Economic Development Policy, the Tax Abatement Policy and by the resolution of the Town Council authorizing execution of this Agreement. The Town represents that it has due authority to enter into this Agreement and to take actions under the relevant laws cited herein.
- D. The Town hereby agrees to a ten (10) year tax abatement of all real property ad valorem taxes attributable to the Land which may hereafter be assessed by the Town and which may be abated under Ch. 312 of the Tax Code (or any successor statute) beginning with the 2016 tax year, which is payable in 2017, and terminating after the tenth (10th) year of assessment in 2025, which will be paid in 2026. The amount of tax abatement shall begin at 100% for the first year and decrease by 10% each subsequent year until the expiration of the Term as follows:

Year 1	100%
Year 2	90%
Year 3	80%
Year 4	70%
Year 5	60%
Year 6	50%
Year 7	40%
Year 8	30%
Year 9	20%
Year 10	10%

- E. The Town hereby agrees to a ten (10) year tax abatement for real and personal property ad valorem taxes attributable to construction of the Qualified Facilities on the Land in accordance with this Agreement, which may hereafter be assessed by the Town and which may be abated under Ch. 312 of the Tax Code (or any successor statute) beginning with the first year of assessments attributable to new construction, which is payable in the following year, and terminating after the tenth (10th) year of assessment, which will be paid in the 11th year. The amount of tax abatement shall begin at 100% for the first year and decrease by 10% each subsequent year until the expiration of the Term as follows:

Year 1	100%
Year 2	90%
Year 3	80%
Year 4	70%
Year 5	60%
Year 6	50%
Year 7	40%

Year 8	30%
Year 9	20%
Year 10	10%

(a) Parcel Map and Legal Description

Prior to the issuance of a Certificate of Occupancy by the Town for each Qualified Facility, Schwab will submit to the Town a map and legal description that covers only the footprint of the newly constructed Qualified Facility. The Town will review this map and if in agreement, will then submit it to the applicable appraisal district upon issuance of the Certificate of Occupancy along with the Abatement Schedule in Section 1. E.

(b) Assessments Levied during Construction Periods

It is the intent that each Qualified Facility will enjoy not more than ten (10) years of abatement starting in the first-year assessments are levied. If the appraisal district assesses new partial value during a Qualified Facility’s construction, then Schwab may elect to pay those assessments on the partial construction value and still retain the first year 100% tax abatement on the completed construction value after the issuance of a Certificate of Occupancy

1. If Schwab negotiates a settlement with the appraisal district related to a Qualified Facility’s value during the construction year, then Schwab will provide that letter agreement to the Town and the tax abatement will begin in the first year of the negotiated value agreed upon by and between the appraisal district and Schwab.

Section 2. Term and Completion Deadline.

A. Unless earlier terminated as provided for in Section 4.F., this Agreement shall remain in full force and effect from the Effective Date until the expiration of the period during which Schwab is entitled to a real and personal property tax abatement under Section 1 or a grant under Section 11 and until any such final property tax abatement has been applied or any grant payment has been received by Schwab (the “Term”). The tax abatements, grants and other economic development incentives granted hereby to Schwab for the Qualified Facilities and the Project shall continue for the duration of the specified term and, once all applicable conditions specified herein have been fulfilled, shall not be lost through Force Majeure events or other circumstances beyond the reasonable control of Schwab or its Affiliates, except to the extent otherwise specified in Section 4 hereof.

- B. Schwab shall notify the Town in writing upon completion of the Minimum Threshold Eligibility Requirements. Such written notice must occur on or before December 31, 2021 (the “Completion Deadline”). Following receipt of such written notice, the Town shall promptly verify whether the Minimum Threshold Eligibility Requirements have been met. Upon such verification, the Town shall provide Schwab with written confirmation that the Minimum Threshold Eligibility Requirements were met (the date of such written confirmation being the “Completion Date”). Following the Completion Date and at all times thereafter during the Term of this Agreement, Schwab shall use the Land, the Qualified Facilities and personal property installed at the Qualified Facilities for the purpose of operating the business concerns of Schwab. The parties hereto agree that such use of the Land is consistent with the general purpose of encouraging development of the Zone during the Term of this Agreement.

Section 3. Records and Inspections.

- A. Not later than February 15 of each year during the Term of this Agreement, Schwab shall certify to the Town (i) the number of Jobs as of January 1 of such year, (ii) if changed from the previous year, the aggregate number of gross square feet of the Qualified Facilities contained within the Zone as of January 1 of such year, as reasonably calculated by an architect selected by Schwab; and (iii) for each year following the year in which the first Certificate of Occupancy is issued, that Schwab is in compliance with all terms and conditions of this Agreement.
- B. The Town has the right to reasonable inspection of the Qualified Facilities and pertinent records of Schwab as necessary to verify compliance by Schwab with the provisions of this Agreement. Inspections shall be preceded by at least seventy-two (72) hours’ notice by telephone to the head of the Qualified Facility or other person designated by Schwab, and may be attended by Schwab representatives. Such inspections shall not include any rights to access Schwab’s computer systems. Inspections shall be conducted so as not to interfere with the business operations of Schwab and its Affiliates and shall comply with Schwab’s security and safety standards and may, at Schwab’s option, be held at a location in Denton or Tarrant County, Texas other than the Qualified Facility, except for compliance requirements that can only be inspected on site. The Town acknowledges and agrees that the work of constructing, installing, configuring, and operating the Qualified Facilities may be of a highly sensitive nature and, therefore, the Town agrees that it will not make any type of recording or photographic record of the interior of the facility and agrees to keep all information relating to its contents and operations confidential to the maximum extent allowed by law. Inspections will be limited to review of information reasonably necessary to verify Schwab’s compliance with the requirements of this Agreement. The Town will attempt to achieve all necessary compliance verification with one annual inspection trip; however, the Town may schedule additional inspections where determined necessary and with written explanation to Schwab as to the need for such additional inspections(s).

- C. Schwab shall also provide the Town, in a timely manner, reasonably satisfactory evidence of all sales and use taxes collected and/or paid by the Procurement Company, Schwab or its Affiliates, or any contractors or third parties acting on behalf of Schwab in connection with the construction, finish and equipping of the Qualified Facilities, in each case for which Schwab seeks a grant pursuant to Section 11 below.
- D. The Town, at the Town's sole cost and expense, shall have the right to audit the financial and business records of Schwab that solely relate to Schwab's operations at the Project (collectively, the "Records") at any time during the Term and for one (1) year thereafter (but no more often than one time per calendar year) solely in order to verify that the Land is being used for the commercial purposes as defined herein. Upon at least thirty (30) days advance written notice by the Town to Schwab, Schwab shall make all related Records available to the Town at the Qualified Facilities during reasonable business hours and shall otherwise cooperate fully with the Town during any audit. This Section 3.D. shall survive the termination or expiration of this Agreement, but shall expire four years from the date of termination or expiration of this Agreement.

Section 4. Breach and Remedy; Termination.

- A. If Schwab fails to notify the Town in writing on or before the Completion Deadline that the Minimum Threshold Eligibility Requirements have been completed, and provided that such failure to complete the Minimum Threshold Eligibility Requirements is not due to a Force Majeure event, the Town shall have the right to terminate this Agreement immediately upon provision of written notice to Schwab.
- B. The occurrence of the following conditions shall constitute an event of default ("Event of Default") hereunder: (i) the Qualified Facilities for which Schwab or any of its Affiliates has received an abatement hereunder fail to satisfy the Minimum Threshold Eligibility Requirements at any time during the period commencing on January 1, 2022 through the expiration or earlier termination of the Term; or (ii) Schwab fails to comply with any of the material terms or conditions of this Agreement, and any such failure (hereinafter, a "breach") specified in either clause (i) or (ii), above, remains uncured for ninety (90) days following Schwab's receipt of written notice (the "Breach Notice") from the Town, delivered in accordance with Section 13 hereof, of the event and nature of such breach; provided, however, that if such breach is not reasonably susceptible of cure within such ninety (90) day period and Schwab has commenced and is continuing to pursue the cure of such breach, then after first advising the Town of such cure efforts, Schwab shall automatically receive an additional ninety (90) day period within which to cure such breach. The Town may authorize additional time to cure any such breach, but is not obligated to grant such additional time. Notwithstanding anything expressed or implied herein to the contrary, no Event of Default shall exist if the failure of Schwab to fully perform its obligations hereunder is the result of a Force Majeure event. Further time for cure of a breach by Schwab shall be extended by the reasonable time Schwab is delayed by a Force Majeure event.

- C. Upon the occurrence and during the continuation of any uncured Event of Default, the Town shall have the right to suspend the tax abatements and grants specified in Sections 1 and 11, hereof, pursuant to a notice (the "Suspension Notice") delivered in accordance with Section 12 hereof. In the event such Event of Default is not cured within any applicable cure period provided for in subsection A. above, upon the expiration of any such cure period, the Town may deliver a notice (the "Repayment Notice") delivered in accordance with Section 12 hereof requiring Schwab to pay, as liquidated damages, a sum equal to an amount not to exceed (i) the amount of all ad valorem taxes which were assessed against the Qualified Facilities and which would have been paid to the Town by Schwab or its Affiliates but for this Agreement, for each year in which the Event of Default occurred and was continuing, without the benefit of abatement (after taking into account any applicable exemptions), and (ii) Simple Interest thereon charged at the rate of four and one-half percent (4.50%) per year and calculated for the period commencing on the date such taxes would have been delinquent and continuing through the date of payment of such liquidated damages. The calculation of liquidated damages shall not include any penalties or late charges. Such liquidated damages shall be due and payable to the Town within thirty (30) days of the receipt by Schwab of the Repayment Notice. If the Town delivers a Suspension Notice pursuant to this Section 4, then Schwab shall thereafter have no right to receive the tax abatements and grants specified in Sections 9 and 12 unless and until Schwab has cured the breach or breaches specified in the Breach Notice.
- D. Notwithstanding the foregoing or anything in this Agreement to the contrary, if at any time during the Term Schwab determines that it cannot comply with the terms of this Agreement, Schwab will have the opportunity to present a full and complete explanation of the reasons for the failure to comply along with Schwab's plans to achieve compliance or reasons that compliance cannot be achieved. Upon receipt of such explanation, the Town may, at its sole discretion, agree to work with Schwab to develop a mutually agreeable amendment to this Agreement with which Schwab can comply, or exercise the Town's rights as provided in this Section 4.
- E. The remedies of Town provided herein are exclusive; all other remedies of Town including, without limitation, the remedy of specific performance or the right to seek any damages other than the liquidated damages specified above, being hereby waived.
- F. This Agreement shall terminate upon the expiration of the Term, or earlier as follows:
- (a) By Schwab, immediately upon written notice to the Town, if the Town fails to pay any grant within the applicable time period provided under this Agreement;
 - (b) Immediately upon written notice from Schwab to the Town, upon any breach by the Town of its obligations under Section 15 hereof with respect to Confidential Tax Information;

(c) By the Town as a result of an uncured Event of Default by Schwab by delivery of written notice to Schwab after the expiration of any applicable cure periods set forth in Section 4.B; or

(d) By the Town if Schwab fails to complete the Minimum Threshold Eligibility Requirements by the Completion Deadline and provided such failure was not a result of a Force Majeure event.

Section 5. Right of Protest.

- A. Schwab and its Affiliates shall have the right to protest, contest or litigate: (a) any assessment of the value of the Project by any appraisal district which appraises real or personal property on all or any part of the Project; and, (b) any tax imposed on the Project by any taxing authority. The tax abatement (or, if applicable, the grants) provided for herein shall be applied to the amount of taxes finally determined to be due as a result of any such protest, contest or litigation.
- B. Except as expressly provided, this Agreement shall not be construed to in any way modify or limit Schwab's or any of its Affiliates' right to protest, contest or litigate any and all impact fees, ad valorem taxes or any other taxes, fees or charges which may be levied or assessed by the Town or any other entity on the Project or Schwab's or any of its Affiliates' operations at the Project. Notwithstanding the foregoing, in the absence of either a casualty to the Qualified Facilities or a reduction in average property value in the Town (as measured against the average property value in the Town as of the date of this Agreement) of 25% or greater, any protest of ad valorem taxes by Schwab or its Affiliates after the completion of the Initial Phase resulting in an aggregate appraised value for the Qualified Facilities, the Ineligible Facilities and the Land of less than \$85,000,000 shall constitute an Event of Default.

Section 6. Annual Application for Tax Exemption.

It shall be the responsibility of Schwab, pursuant to Section 11.43 of the Tax Code to file an annual exemption application form with the chief appraiser for each appraisal district in which the Project has situs.

Section 7. Payment to the Town for the Benefit of Westlake Academy and Consulting Fees

Schwab (or one of its Affiliates) shall make a \$500,000 contribution (the "Contribution") to the Town for capital improvements to Westlake Academy. The Contribution shall be due and payable to the Town upon the approval of the final plat for the Project by the Town Council and prior to the filing of the Final Plat in Denton County. The Contribution is a one-time, non-refundable Contribution. In addition, Schwab (or one of its Affiliates) shall pay the Town \$10,000 for consulting fees incurred by the Town to prepare this Agreement. The \$10,000 payment shall be due and payable to the Town within 30 days of the Effective Date of this Agreement.

Section 8. Sale, Assignment or Lease of Property.

Schwab shall have the right, without the Town's consent, to transfer, convey or lease all or any portion of the Land, the Project or the Qualified Facilities to one or more of its Affiliates and, in connection therewith, to assign to such Affiliates all or any portion of Schwab's rights and obligations under this Agreement, provided that each assignee assumes the applicable terms and conditions of this Agreement including the limitations related to the allowable uses to be considered a Qualified Facility. All other assignments of all or any portion of Schwab's rights and obligations under this Agreement shall require the prior approval of the Council. Schwab shall notify the Town pursuant to Section 12 of any proposed assignment requiring the Council's approval at least fifteen (15) days prior to the proposed effective date of such assignment. The approval of the Council of such assignment shall not be unreasonably withheld.

Section 9. Permitting Process.

- A. The Town agrees that any permit or application submitted in connection with the Qualified Facilities that requires action by the Town, including, but not limited to, applications for:
- (a) zoning;
 - (b) site plan and plat approval;
 - (c) building permits;
 - (d) certificates of occupancy; and
 - (e) water, sewer and/or drainage improvements or connections

shall be entitled to priority and shall be reviewed and approved as expeditiously as possible.

Section 10. Mutual Assistance.

The Town hereby agrees to cooperate with Schwab and its Affiliates in filing, whether solely or in conjunction with other parties, appropriate applications with county, state or federal agencies for grants, loans or other economic, non-economic, and infrastructure cost assistance, to benefit the Project, if requested by Schwab.

Section 11. Chapter 380 Grant Based Upon Sales/Use Taxes Sitused in Westlake for Construction and Finish.

- A. During the Term of this Agreement, Schwab, subject to applicable laws of the State of Texas and rules, regulations and guidelines adopted by the Texas State Comptroller, may choose to situs all purchases related to the construction and finish

of the Qualified Facilities in the Town of Westlake for the purpose of computing sales taxes (“the Situs Sales Taxes”). Pursuant to the authority granted by Chapter 380 of the LGC, the Town will reimburse fifty percent (50%) of the 1% Sales and Use Taxes collected by the Town (excluding the ½ cent 4B Sales Taxes and the Town’s ½ cent sales tax to lower property taxes) on Situs Sales Taxes collected for the Qualified Facilities. It shall be incumbent upon Schwab to obtain necessary permits from the State Comptroller and verify Situs Sales Taxes to the Town. Schwab shall use good faith efforts to manage all relevant costs related to the Qualified Facilities to maximize, to the extent practicable and reasonable for Schwab, the amount of Situs Sales Taxes collected by the Town in accordance with all applicable law.

- B. The sales/use tax grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by the Town. The Town will ensure that the amount of funds appropriated is sufficient to ensure the payment of grants in the amount identified in subsection 12.A. above. Under no circumstances shall the Town’s obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.
- C. All grants referenced herein shall be paid quarterly to Schwab within sixty (60) days following the end of the calendar quarter in which the relevant Situs Sales Tax sales tax receipts were received by the Town. The amount to be granted shall be determined based on the relevant Situs Sales Tax sales tax receipts received by the Town pertaining to the Project, by or on behalf of Schwab or its Affiliates.

Section 12. Notice.

Any notice, demand, or other communication required to be given or to be served upon any party hereunder, shall be void and of no effect unless given in accordance with the provisions of this Section. All notices shall be in writing and shall be delivered personally or sent by overnight courier service, by certified or registered mail, postage pre-paid, or by facsimile transmission and shall be deemed received, in the case of personal delivery, when delivered, in the case of overnight courier service, on the next business day after delivery to such service, in the case of mailing, on the third day after mailing (or, if such day is a day on which deliveries of mail are not made, on the next succeeding day on which deliveries of mail are made) and, in the case of facsimile transmission, upon transmittal. All notices, demands and other communications shall be given to the parties hereto at the following addresses:

Schwab:

Charles Schwab & Co., Inc.
211 Main Street
San Francisco, CA 94105
Attn: Glenn Cooper
Senior Vice President of Corporate Real Estate

With Copy to:

Charles Schwab & Co., Inc.
Corporate Real Estate Lease Administration
P.O. Box 881566
San Francisco, CA 94188-1566

Town:

Tom Brymer
Town Manager
Town of Westlake
3 Village Circle, Suite 202
Westlake, Texas 76262

With copy to:

L. Stanton Lowry
Boyle & Lowry L.L.P.
4201 Wingren, Ste. 108
Irving, Texas 75062

Each party may change the address to which notice may be sent to that party by giving notice of such change to the other parties in accordance with the provisions of this Agreement.

Section 13. Town Authorization.

This Agreement was authorized by resolution of the Council that was approved by the affirmative vote of a majority of the Council at its regularly scheduled Council meeting on the ____th day of _____, 2016, authorizing the Town Manager to execute this Agreement on behalf of the Town. Town represents and warrants to Schwab that Town may lawfully perform its obligations under this Agreement.

Section 14. Schwab Authorization.

The individual executing this Agreement on behalf of Schwab represents to the Town that all appropriate and necessary action has been taken to authorize such individual to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement, and that such authorization is valid and effective on the date hereof.

Section 15. Confidentiality.

Except as disclosure is required by law, the Town agrees to keep all non-public information and documentation relating to Schwab or its Affiliates that it obtains in connection with this Agreement (the "Confidential Tax Information") confidential. The Town will only provide access to the Confidential Tax Information to its employees on a "need-to-know" basis. The Town will

use the Confidential Tax Information solely for the purposes of determining the respective amount of each grant and for no other purpose, and the Town will not, without Schwab's prior written authorization: (a) disclose to any other person, use or exploit the Confidential Tax Information (other than as expressly permitted above) or (b) discuss Schwab or its affairs with any person other than Schwab's representatives. The Town's obligations under this Section 16 shall survive the termination of this Agreement. Notwithstanding the above, the Town and Schwab expressly understand and agree that should any third party request the Confidential Tax Information pursuant to the Texas Public Information Act, the Town's sole responsibility shall be to seek a written determination from the Texas Attorney General as to whether any or all of the Confidential Tax Information must be released as a public record; provided, however, that in the event such written determination requires disclosure of Confidential Tax Information, the Town shall provide immediate notice to Schwab and an opportunity to appeal such determination prior to disclosure.

Section 16. Severability.

In case any one 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 any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 17. Estoppel Certificate.

Any party hereto may request an estoppel certificate from another party hereto so long as the certificate is requested in connection with a bona fide business purpose, and each party agrees to promptly execute and deliver any estoppel certificate requested pursuant to this Section. The certificate, which will upon request be addressed to Schwab, or a lessee, purchaser or assignee of Schwab, shall include, but not necessarily be limited to, statements (qualified to the best knowledge of the party providing the estoppel) that this Agreement is in full force and effect without default (or if a default exists, the nature of such default and any curative action which should be undertaken to cure same), the remaining term of this Agreement, and such other matters reasonably requested by the party(ies) to receive the certificate. Any such certificate on behalf of the Town shall be executed by the Mayor of the Town.

Section 18. Dispute Resolution.

In the event of a dispute under this Agreement between the parties to this Agreement that could result in litigation, as a condition precedent to filing any lawsuit, the parties agree to mediate any such dispute with the Denton County Alternative Dispute Resolution Program. Unless all parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in Texas Civil Remedies and Practice Code, Section 154.073, unless all parties agree, in writing, to waive such confidentiality.

Section 19. Applicable Law.

This Agreement shall be construed under the laws and court decisions of the State of Texas. Venue for any action under this Agreement shall be the State District Court of Denton County, Texas. This Agreement is performable in Denton County, Texas.

Section 20. Recordation of Agreement.

A copy of this Agreement in recordable form may be recorded by either party in the Real Property Records of Denton County, Texas.

Section 21. Entire Agreement.

This Agreement constitutes the entire agreement between the parties regarding the subject matter contained herein, supersedes any prior understanding or written or oral tax abatement agreements or representations between the parties regarding the matters contained herein, including without limitation the Original Economic Development Agreement, and can be modified only by a written instrument subscribed to by both parties. This Agreement may be executed in multiple counterparts, each of which shall be considered an original for all purposes.

Section 22. Successors and Assigns.

Subject to the provisions of Section 6 hereof, this Agreement shall be binding on, and shall inure to the benefit of, the legal representatives, successors and assigns of the Town and Schwab.

Section 23. Further Assurances.

The Town and Schwab shall timely take all actions reasonably necessary and/or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out the terms and provisions of this Agreement to allow for the full development of the Project.

(SIGNATURE PAGES FOLLOW)

EXECUTED to be effective as of the date first set forth above.

TOWN OF WESTLAKE, TEXAS,
a municipal corporation

By: _____
Name: Thomas E. Brymer
Title: Town Manager

ATTEST:

By: _____
Kelly Edwards, TRMC, Town Secretary

APPROVED AS TO FORM

By: L. Stanton Lowry
Town Attorney

CHARLES SCHWAB & CO., INC.,
a California Corporation

By: _____
Name: _____
Title: _____

CS KINROSS PARKWAY, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
§
COUNTY _____ §

This instrument was acknowledged before me on _____, 2016, by Thomas E. Brymer, Town Manager of the Town of Westlake, Texas, a municipal corporation, on behalf of said municipal corporation.

Notary Public in and for the State of Texas

Printed/Typed Name of Notary

My Commission Expires: _____

STATE OF _____ §
§
COUNTY _____ §

This instrument was acknowledged before me on _____, 2016, by _____, in his/her capacity as a partner/principal of Schwab, on behalf of said partnership.

Notary Public in and for the State of _____

Printed/Typed Name of Notary

My Commission Expires: _____

Exhibit A
Town of Westlake Economic Development Policy

Exhibit B
“Original Designating Ordinance”
Town of Westlake Ordinance No. 790

Exhibit C

**Resolution Designating Neighborhood Empowerment Zone
Town of Westlake Resolution No. 16-31**

Exhibit D

**“Revised Designating Ordinance”
Town of Westlake Ordinance No. ____**

Exhibit E

**Resolution Expanding Neighborhood Empowerment Zone
Town of Westlake Resolution No. _____**

Exhibit F
“Land” Approximately 74.131 Acres



TYPE OF ACTION

Regular Meeting - Consent

**Westlake Town Council Meeting
Monday, November 14, 2016**

TOPIC: Consider approval of a Resolution approving United HealthCare as the Town’s Health and Vision insurance carrier and MetLife as the Town’s dental insurance carrier for 2017.

STAFF CONTACT: Todd Wood, Director of HR & Administrative Services
Amanda DeGan, Assistant Town Manager

Strategic Alignment

<u>Vision, Value, Mission</u>	<u>Perspective</u>	<u>Strategic Theme & Results</u>	<u>Outcome Objective</u>
Fiscal Responsibility	Fiscal Stewardship	Exemplary Service & Governance - We set the standard by delivering unparalleled municipal and educational services at the lowest cost.	Attract, Recruit, Retain & Develop the Highest Quality Workforce
<u>Strategic Initiative</u>			
Outside the Scope of Identified Strategic Initiatives			

Time Line - Start Date: January 1, 2017 **Completion Date:** December 31, 2017

Funding Amount: \$500,726 **Status -** **Funded** **Source - General Fund**

EXECUTIVE SUMMARY (INCLUDING APPLICABLE ORGANIZATIONAL HISTORY)

Staff recently issued a Request for Proposal (RFP) for our annual health insurance plan, effective January 2017 through December 2017. This resolution would approve health, dental, and vision insurance for municipal employees.

RECOMMENDATION

Staff recommends approving the resolution of United HealthCare as the Town’s Health and Vision insurance carrier and MetLife as the Town’s Dental insurance carrier for 2017.

ATTACHMENTS

Resolution

TOWN OF WESTLAKE

RESOLUTION 16-40

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS, APPROVING UNITED HEALTH CARE AS THE TOWN'S HEALTH AND VISION INSURANCE CARRIER AND APPROVING RENEWAL OF METLIFE AS THE TOWN'S DENTAL INSURANCE CARRIER FOR THE 2017 CALENDAR YEAR.

WHEREAS, Town of Westlake desires to maintain a comprehensive health and dental insurance benefits for its employees that is competitive to surrounding cities; and

WHEREAS, the leaders of the Town of Westlake desire to exercise exceptional levels of stewardship with all financial resources; and,

WHEREAS, the Town Council finds that the passage of this Resolution is in the best interest of the employees and citizens of the Town of Westlake.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WESTLAKE, TEXAS:

SECTION 1: That, all matters stated in the recitals hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

SECTION 2: That, the Westlake Town Council hereby approves United Health Care as the Town's health and vision insurance carrier for a twelve (12) month period, beginning January 1, 2017, with an estimated annual employer cost of \$472,393.

SECTION 3: That, the Westlake Town Council hereby approves the renewal of MetLife as the Town's dental insurance carrier for a twelve (12) month period, beginning January 1, 2017, with an estimated annual employer cost of \$28,333.

SECTION 4: If any portion of this resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the Council hereby determines that it would have adopted this Resolution without the invalid provision.

SECTION 5: That this Resolution shall become effective from and after its date of passage.

PASSED AND APPROVED ON THIS 14TH DAY NOVEMBER, 2016.

ATTEST:

Laura Wheat, Mayor

Kelly Edwards, Town Secretary

Thomas E. Brymer, Town Manager

APPROVED AS TO FORM:

L. Stanton Lowry, Town Attorney

Town Council

Item # 9 – Executive Session

EXECUTIVE SESSION

- a. Sec. 551.071 Consultation with Attorney (1) when the governmental body seeks the advice of its attorney about: Land Sale
- b. Section 551.087 Deliberation Regarding Economic Development Negotiations (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1) for the following:
 - Maguire Partners-Solana Land, L.P., related to Centurion's development known as Entrada and Granada
 - Project Lynx
 - CS Kinross Lake Parkway, a Delaware limited liability company, its affiliate Charles Schwab & Co., Inc.
- c. Section 551.072 to deliberate the purchase, exchange, lease or value of real property regarding Town Hall offices, Fire Station site and Town owned property
- d. Section 551.074(a)(1): Deliberation Regarding Personnel Matters – to deliberate the appointment, employment, evaluation, reassignment, duties, of a public officer or employee: Town Manager

Town Council

Item # 10 – Reconvene
Council Meeting

Town Council

Item # 11 – Necessary Action

NECESSARY ACTION

- a. Sec. 551.071 Consultation with Attorney (1) when the governmental body seeks the advice of its attorney about: Land Sale
- b. Section 551.087 Deliberation Regarding Economic Development Negotiations (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1) for the following:
 - Maguire Partners-Solana Land, L.P., related to Centurion's development known as Entrada and Granada
 - Project Lynx
 - CS Kinross Lake Parkway, a Delaware limited liability company, its affiliate Charles Schwab & Co., Inc.
- c. Section 551.072 to deliberate the purchase, exchange, lease or value of real property regarding Town Hall offices, Fire Station site and Town owned property
- d. Section 551.074(a)(1): Deliberation Regarding Personnel Matters – to deliberate the appointment, employment, evaluation, reassignment, duties, of a public officer or employee: Town Manager

Town Council

Item # 12 – Future Agenda Items

FUTURE AGENDA ITEMS: Any Council member may request at a workshop and / or Council meeting, under “Future Agenda Item Requests”, an agenda item for a future Council meeting. The Council Member making the request will contact the Town Manager with the requested item and the Town Manager will list it on the agenda. At the meeting, the requesting Council Member will explain the item, the need for Council discussion of the item, the item’s relationship to the Council’s strategic priorities, and the amount of estimated staff time necessary to prepare for Council discussion. If the requesting Council Member receives a second, the Town Manager will place the item on the Council agenda calendar allowing for adequate time for staff preparation on the agenda item.

None

Town Council

Item # 13 – Adjournment
Regular Session
