

This Amended and Restated Landscape Maintenance Agreement (this “Restated Agreement”) is entered into by and between the City of Farmers Branch, Texas, a municipal corporation of the State of Texas and a home rule city (“City”) and Mercer Crossing North Master Property Owners Association, Inc., a Texas non-profit corporation (the “Association” and/or “Owner”) (each a “Party” or collectively the “Parties”), acting by and through their authorized representatives.

## RECITALS

**WHEREAS**, the City entered into that certain Landscape Maintenance Agreement with American Realty Trust, Inc., Art One Hickory Corporation, Art Palm Limited Partnership, Art Two Hickory Corporation, Art Walker Cummings, Inc., Downtown Development, Inc., ART GNB, Inc., Income Opportunity Realty Investors, Inc., and Transcontinental Realty Investors, Inc., effective October 16, 2006, relating to the perpetual and exclusive license the City granted to the existing owners to use, construct and maintain improvements on medians owned by the City for the benefit of the owners (the “Agreement”); and

**WHEREAS**, the City acknowledges that the original owners listed in the Agreement lawfully assigned their interest(s) vested within the Agreement to subsequent owners, and such owners are now collectively identified as Mercer Crossing North Master Property Owners Association, Inc. (hereinafter listed “Owner” within this Restated Agreement); and

**WHEREAS**, the Parties have determined it is in the best interest for the City to assume and hereinafter maintain 15 medians located on City-owned right of way, as identified in **Exhibit A** (the “15 Medians”), located within the Mercer Development and that the Agreement shall be amended and replaced in its entirety by and in accordance with this Restated Agreement.

**NOW, THEREFORE**, in consideration of the recitals set forth above and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confessed by each of the Parties, the Parties agree as follows:

- 1. Incorporation of Recitals and Exhibits.** The Recitals of this Restated Agreement and the Exhibits attached hereto are incorporated herein by reference as if set forth in full and constitute a material part thereof.
- 2. Conditions Precedent.** The following are conditions precedent to the City's obligation of maintaining the 15 Medians ("City's Conditions Precedent"):
  - (a) Owner shall at its own costs and Texas licensed irrigator of choice:

- (i) inspect and repair the irrigation system for leaks, inoperative sprinkler heads, improper spray patterns, and appropriate water volume,
  - (ii) separate meters for irrigation systems on each of the 15 Medians from any master irrigation accounts owned or managed by the Owner, rights-of-way, or common areas, and
  - (iii) transfer the separated irrigation accounts for the 15 Medians to the City ((i) – (iii)) hereinafter collectively “the Work”); and
- (b) upon completion of the Work by the Owner and acceptance of the same by the City, Owner shall return all groundcover, plants, trees, shrubs, or other vegetation back as close to previous conditions, before the commencement of the Work, (the “Landscaping Repairs”) as further described in **Exhibit “B”** (“Summary Restoration of Mercer North Medians”) and in an amount not to exceed One Hundred Sixty-eight Thousand Three Hundred Twenty-eight Dollars (\$168,328.00); and
- (c) the City shall have the right to conduct its own inspections and testing of the Work and Landscaping Repairs to determine its completeness, sufficiency, and satisfaction of the same; and
- (d) if there are conflicts between the Owner and the City related to the completeness of the Work and Landscaping Repairs, then the Parties shall coordinate in good faith to resolve any such conflicts; and
- (e) the Owner shall tender a one-time payment to the City in the amount of \$120,000.00.

The Owner shall satisfy and complete all of the City’s Conditions Precedent, (a) – (e), within sixty (60) days after this Restated Agreement’s Effective Date.

3. **Term:** This Restated Agreement shall become effective upon the date of final execution by the City and Owner (the “Effective Date”) and shall remain in effect until terminated or modified in writing and signed by both Parties as hereinafter provided.
4. **Coverage.** This Restated Agreement prescribes the responsibilities of the City relating to the maintenance of landscape elements and irrigation on the 15 Medians within the Mercer Crossing development and graphically identified on **Exhibit A**. Maintenance and repairs of any medians or other open spaces not identified in Exhibit A are outside the scope of this Restated Agreement and solely the responsibility of the Owner.
5. **City’s Responsibilities.** Subject to the satisfaction and completeness of the City’s Conditions Precedent, the City will maintain all landscape elements within the identified medians from curb to curb as shown in **Exhibit A**. Landscape maintenance elements will be maintained according to all City ordinances and in a functional and aesthetically pleasing condition as determined by the City.

6. **Irrigation.** Subject to the completion of conditions precedent included within this Agreement, within 60 days, the City, at its own costs, shall be responsible for irrigating the 15 medians identified on **Exhibit A**, including the repair and replacement of the existing irrigation systems for each respective median. The Owner, at their own costs, shall irrigate and maintain such irrigation systems for all other property and medians not identified on **Exhibit A**.
7. **Recording.** Upon execution by all Parties, the City and Owner agree that the City will file this Restated Agreement in the Real Property Records of Dallas County, repealing and replacing Dallas County File Record 200600450012 dated December 7, 2006. The City shall furnish a copy of this filed Restated Agreement to the Owner via certified mail within five (5) business days of filing with the County.
8. **Termination.** The Parties agree that should either Party fail to properly fulfill its obligations as herein outlined, the other Party may terminate this Restated Agreement upon thirty days written notice. Additionally, this Restated Agreement may be amended and/or terminated by mutual agreement and written consent of the Parties.
9. **Notices.** All notices regarding any provision of this Restated Agreement shall be in writing and mailed via certified mail to the address provided by the Party to whom such notice is directed.

Mercer Crossing North Master Property Owners Association, Inc. C/O Essex Association Management, LP 4570 Westgrove Drive, Suite 220 Addison, Texas 75001 ATTN: Michael Morgan mmorgan@essexhoa.com 972-428-2030

City of Farmers Branch, Texas: 13000 William Dodson Parkway Farmers Branch, Texas 75234 ATTN: Robert Diaz robert.diaz@farmersbranchtx.gov 972-919-2620

10. **Miscellaneous.**
  - A. This Restated Agreement restates and replaces the Agreement in its entirety by and in accordance with the terms set forth herein.
  - B. If any provision of this Restated Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this Restated Agreement; (b) the unenforceable provision shall, to the extent possible and upon mutual written agreement of the Parties, be rewritten to be enforceable and to give effect to the intent of the Parties; and if such mutual written agreement cannot be met, such unenforceable provision shall be deleted; and (c) the remainder of this Restated Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.
  - C. This Restated Agreement may be executed in one (1) or more counterparts, each of which when taken together shall constitute one and the same instrument.

- D. City represents and warrants that the individual executing this Restated Agreement on behalf of City has been duly authorized to do so. Owner represents and warrants that this Restated Agreement has been approved by appropriate action of the Association and that the individual executing this Restated Amendment on behalf of the Association has been duly authorized to do so.
- E. This Restated Agreement shall be governed by the laws of the State of Texas without regard to any choice of law rules; and the venue for any action concerning this Restated Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

**SIGNED AND AGREED** on this \_\_\_\_ day of March, 2025.

**CITY OF FARMERS BRANCH, TEXAS**

By: \_\_\_\_\_  
Benjamin Williamson  
City Manager

**SIGNED AND AGREED** on this 18 day of March, 2025.

**MERCER CROSSING NORTH MASTER  
PROPERTY OWNERS ASSOCIATION, INC.**

By: Travis Biber  
Travis Biber  
President of the Board of Directors

## CORPORATE ACKNOWLEDGMENTS

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

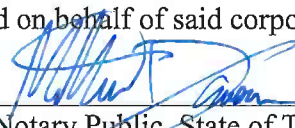
This instrument was acknowledged before me, the undersigned authority on \_\_\_\_ day of March 2025, by Benjamin Williamson, City Manager for the City of Farmers Branch, a municipal corporation of the State of Texas, for and on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

My commission expires: \_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me, the undersigned authority on 18<sup>th</sup> day of March 2025, by Travis Biber, Board President for Mercer Crossing North Master Property Association, Inc., a Texas corporation, for and on behalf of said corporation.

  
\_\_\_\_\_  
Notary Public, State of Texas

My commission expires: 7-5-2026

