

PARTIAL ASSIGNMENT OF ENCROACHMENT AGREEMENTS

THIS PARTIAL ASSIGNMENT OF ENCROACHMENT AGREEMENTS (this “**Assignment**”) is made as of the ____ day of August, 2022 (the “**Effective Date**”), by **CHESMAR HOMES, LLC**, a Texas limited liability company (“**Assignor**”), and the **CITY OF GEORGETOWN, TEXAS**, a Texas home-rule municipal corporation (“**Assignee**”).

RECITALS

WHEREAS, Assignor is the owner of those certain 24.958 and 6.720 acre tracts located in Williamson County, Texas more particularly described on **Exhibit A** attached to that certain Special Warranty Deed from ABG Water Oak Partner, Ltd., to Chesmar Homes, LLC, dated March 3, 2020, and recorded at Document No. 2020022090, Official Public Records of Williamson County, Texas (the “**Property**”); and

WHEREAS, Seminole Pipeline Company, LLC (“**Seminole**”) is the beneficiary/holder of that certain right of way easement upon, over under and through the Property more particularly described in that certain Grant of Easement from Ella J. Fletcher to Seminole dated July 1, 1981, and recorded in Volume 844, Page 624, in the Real Property Records of Williamson County, Texas (the “**624 Easement**”), pursuant to which Seminole has constructed and operates a portion of the pipeline known as line C138, Midland to Sealy #2 Seminole Loop Segment (the “**C138 Pipeline**”), such C138 Pipeline, together with valves, meters, equipment and other appurtenances thereto being the “**C138 Facilities**”; and

WHEREAS, Seminole, as the beneficiary/holder of the 624 Easement, has constructed and operates a portion of the pipeline known as line 1, Seminole Mainline pipeline (the “**Line 1 Pipeline**”), such Line 1 Pipeline, together with valves, meters, equipment and other appurtenances thereto being the “**Line 1 Facilities**”; and

WHEREAS, Whitehorn Pipeline Company, LLC (“**Whitehorn**”) is the beneficiary/holder of that certain right of way easement upon, over under and through the Property more particularly described in that certain Permanent Easement Agreement from Water Oak at San Gabriel Homeowner’s Association, Inc. to Enterprise Crude Pipeline, LLC dated January 21, 2016, and recorded as Document No. 2016010602, in the Official Public Records of Williamson County, Texas (the “**602 Easement**”), pursuant to which Whitehorn owns and operates a portion of the pipeline known as line C129, Midland to Sealy pipeline (the “**C129 Pipeline**”), such C129 Pipeline, together with valves, meters, equipment and other appurtenances thereto being the “**C129 Facilities**” (the C138 Facilities, Line 1 Facilities, and the C129 Facilities shall be collectively referred to herein as the “**Pipeline Facilities**”); and

WHEREAS, during Assignor’s development of the Real Property as the Water Oak North, Section 6 Subdivision in Williamson County, Texas (the “**Subdivision**”), Assignor and Seminole entered into (i) that certain Encroachment Agreement recorded at Document No. 2021169449, Official Public Records of Williamson County, Texas (the “**Line 1 Encroachment Agreement**”) whereby Seminole has permitted and consented to the encroachment of Assignor’s subdivision improvements within the 624 Easement, including roadways, water lines, wastewater lines, storm

sewer lines and dry utility conduit defined comprehensively in the Line 1 Encroachment Agreement as the “**Line 1 Encroachment**”, and (ii) that certain Encroachment Agreement recorded at Document No. 2021169450, Official Public Records of Williamson County, Texas (the “**C138 Encroachment Agreement**”) whereby Seminole has permitted and consented to the encroachment of Assignor’s subdivision improvements within the 624 Easement, including roadways, water lines, wastewater lines, storm sewer lines and dry utility conduit defined comprehensively in the C138 Encroachment Agreement as the “**C138 Encroachment**”; and

WHEREAS, during Assignor’s development of the Subdivision, Assignor and Whitehorn entered into (i) that certain Encroachment Agreement recorded at Document No. 2021169451, Official Public Records of Williamson County, Texas (the “**C129 Encroachment Agreement**”) whereby Whitehorn has permitted and consented to the encroachment of Assignor’s subdivision improvements within the 602 Easement, including roadways, water lines, wastewater lines, storm sewer lines and dry utility conduit defined comprehensively in the C129 Encroachment Agreement as the “**C129 Encroachment**”; and

WHEREAS, the Line 1 Encroachment Agreement, the C138 Encroachment Agreement and the C129 Encroachment shall be referred to hereinafter comprehensively as the “**Encroachment Agreements**”; and

WHEREAS, the Line 1 Encroachment, the C138 Encroachment and the C129 Encroachment shall be referred to herein comprehensively as the “**Encroachments**”; and

WHEREAS, a portion of the Encroachments is comprised of (i) an eight (8) inch PVC wastewater line, and (ii) and eight (8) inch PVC water line serving the Subdivision more particularly described in the Encroachment Agreements as part of the Encroachments (together, the “**W & WW Encroachments**”); and

WHEREAS, in connection with Assignor’s recordation of the plat of the Subdivision, the W & WW Encroachments, as part of the larger water and wastewater improvements constructed by Assignor within the Subdivision, are to be dedicated and transferred to Assignee for operation and maintenance upon the recordation of the final plat of the Subdivision and Assignee’s acceptance of such water and wastewater improvements; and

WHEREAS, in connection with such dedication and transfer of the water and wastewater improvements within the Subdivision to Assignee for maintenance and repair, Assignor and Assignee have agreed that Assignor shall assign, and Assignee shall accept and assume Assignor’s rights, duties and obligations under the Encroachment Agreements with respect to the W & WW Encroachments, subject to the terms and conditions of this Assignment.

AGREEMENT

NOW, THEREFORE, in connection with the dedication of the water and wastewater improvements within the Subdivision to Assignee, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee have agreed as follows:

1. Assignment. Assignor hereby transfers, assigns and conveys to Assignee all of Assignor's rights, duties and obligations under the Encroachment Agreements with respect to the W & WW Encroachments only. In connection with such assignment, Assignor agrees to, immediately upon demand, indemnify, defend and save harmless Assignee from and against any and all claims, demands, damages, judgements and expenses of any kind or character (including, without limitation, attorney's fees) which may arise out of any act or omission of Assignor prior to the Effective Date, and any demand or claim asserted by Seminole or Whitehorn, for any default or violation, or claimed default violation, of Assignor's duties and obligations under the Encroachment Agreements with respect to the W & WW Encroachments only.

2. Assumption. Except as identified herein and only to the extent allowed by law, Assignee hereby accepts and assumes all rights, duties and obligations of Assignor under the Encroachment Agreements with respect to the W & WW Encroachments only.

A. GENERAL INDEMNITY REGARDING W & WW ENCROACHMENTS: NOTWITHSTANDING ANYTHING IN THIS ASSIGNMENT OR THE ENCROACHMENT AGREEMENTS TO THE CONTRARY, ASSIGNOR DOES NOT ASSIGN ANY DUTIES OR OBLIGATIONS OF THE ENCROACHMENT AGREEMENTS TO DEFEND, INDEMNIFY, OR HOLD HARMLESS ANY OF THE INDEMNIFIED PARTIES (AS DEFINED IN THE RESPECTIVE ENCROACHMENT AGREEMENTS). INSTEAD, EXCEPT WITH RESPECT TO CLAIMS RELATING TO BODILY INJURY OR DEATH OF AN EMPLOYEE (AS DEFINED IN PARAGRAPH (B) BELOW), ASSIGNOR HEREBY AGREES TO AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS (COLLECTIVELY "INDEMNIFY") ASSIGNEE AND ITS EMPLOYEES, AGENTS, OFFICERS, LICENSEES, AND INVITEES, AS WELL AS COMPANY (AS DEFINED IN THE RESPECTIVE ENCROACHMENT AGREEMENTS) AND ITS AFFILIATES, PARTNERS, MEMBERS, DIRECTORS, OFFICERS, AGENTS, CONTRACTORS AND EMPLOYEES (COLLECTIVELY THE "INDEMNIFIED PARTIES" OR INDIVIDUALLY AN "INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEMANDS, INJURIES, JUDGMENTS, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY'S FEES (COLLECTIVELY "CLAIMS"), FOR BODILY OR PERSONAL INJURIES, INCLUDING, BUT NOT LIMITED TO, DEATH, TO ANY PERSON OR DAMAGES TO OR DESTRUCTION OF PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE LOSS OF USE THEREOF, ACTUALLY OR ALLEGEDLY CAUSED BY, CONTRIBUTED TO OR ARISING OUT OF, IN WHOLE OR IN PART, THE W & WW ENCROACHMENTS, THE CONSTRUCTION OF THE W & WW ENCROACHMENTS, THE MAINTENANCE OR OPERATION OF THE W & WW ENCROACHMENTS, THE ENCROACHMENT AGREEMENTS (WITH RESPECT TO THE W & WW ENCROACHMENTS ONLY), OR THIS ASSIGNMENT, INCLUDING, BUT NOT LIMITED TO, CLAIMS CAUSED BY, CONTRIBUTED TO OR ARISING OUT OF, IN WHOLE OR IN PART, THE NEGLIGENCE, GROSS NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, VIOLATION OF ANY STATUTE, RULE OR REGULATION OR OTHER ACT OR OMISSION BY ASSIGNOR OR ITS RESPECTIVE AGENTS, CONTRACTORS OR EMPLOYEES, OR ANY OTHER PARTY FOR WHOSE ACTS ASSIGNOR IS LIABLE (EACH AN "ASSIGNOR PARTY"). ASSIGNOR'S OBLIGATION TO INDEMNIFY SHALL APPLY EVEN IF SUCH CLAIMS ARE ACTUALLY OR ALLEGEDLY CAUSED IN PART BY THE STRICT LIABILITY OR THE ACTS, OMISSIONS, OR NEGLIGENCE OF AN INDEMNIFIED PARTY, EVEN IF SUCH NEGLIGENCE OR OTHER ACTS OR OMISSIONS ARE ACTIVE OR PASSIVE, DIRECT OR INDIRECT, SOLE OR CONCURRENT. THIS PARAGRAPH (A) IS INTENDED TO INDEMNIFY THE INDEMNIFIED PARTIES

FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, AS PROVIDED ABOVE; BUT THE INDEMNIFIED PARTIES SHALL NOT BE ENTITLED TO INDEMNIFICATION UNDER THIS PARAGRAPH (A) FOR ANY CLAIMS TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNIFIED PARTY. NOTWITHSTANDING THE FOREGOING, IF SUBCHAPTER C OF CHAPTER 151 OF THE TEXAS INSURANCE CODE APPLIES TO THE ENCROACHMENT AGREEMENTS, THIS INDEMNITY PROVISION SHALL NOT APPLY TO THE EXTENT THAT IT REQUIRES ASSIGNOR TO INDEMNIFY AN INDEMNIFIED PARTY AGAINST A CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF THE INDEMNIFIED PARTY, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNIFIED PARTY, OTHER THAN ASSIGNOR OR ITS AGENTS, EMPLOYEES OR CONTRACTORS OF ANY TIER.

B. INDEMNITY FOR EMPLOYEE CLAIMS: ASSIGNOR AGREES TO AND SHALL INDEMNIFY THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS FOR BODILY INJURY OR DEATH OF ANY EMPLOYEE OF (i) ASSIGNOR, (ii) ANY OTHER ASSIGNOR PARTY OR (iii) THEIR RESPECTIVE AGENTS (COLLECTIVELY “EMPLOYEE” FOR THE PURPOSE OF THIS SECTION), ACTUALLY OR ALLEGEDLY CAUSED BY, CONTRIBUTED TO OR ARISING OUT OF, IN WHOLE OR IN PART, THE W & WW ENCROACHMENTS, THE CONSTRUCTION OF THE W & WW ENCROACHMENTS, THE ENCROACHMENT AGREEMENTS (WITH RESPECT TO THE W & WW ENCROACHMENTS ONLY), OR THIS ASSIGNMENT, INCLUDING, BUT NOT LIMITED TO, CLAIMS DUE TO NEGLIGENCE, GROSS NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, VIOLATION OF ANY STATUTE, RULE OR REGULATION OR OTHER ACT OR OMISSION BY ANY ASSIGNOR PARTY OR EMPLOYEE. ASSIGNOR’S OBLIGATION TO INDEMNIFY SHALL APPLY EVEN IF SUCH CLAIMS ARE ACTUALLY OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE STRICT LIABILITY OR THE ACTS, OMISSIONS, OR NEGLIGENCE OF AN INDEMNIFIED PARTY REGARDLESS OF WHETHER SUCH NEGLIGENCE OR OTHER ACTS OR OMISSIONS ARE ACTIVE OR PASSIVE, DIRECT OR INDIRECT, SOLE OR CONCURRENT. THIS PARAGRAPH (B) IS INTENDED TO INDEMNIFY THE INDEMNIFIED PARTIES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, AS PROVIDED ABOVE.

3. Additional Documents. Assignee and Assignor agree to execute and deliver, upon request by the other, such further documents as may be reasonably necessary to evidence the assignment and assumption set forth herein and contemplated hereby.

4. Binding Effect. This Assignment inures to the benefit of, and binds, all parties hereto, their heirs, administrators, executors, successors and assigns.

5. Governing Law. This Assignment shall be construed and interpreted according to the laws of the State of Texas and venue with respect to any litigation shall be exclusively in Williamson County, Texas.

6. Counterparts; Modification. This Assignment may be executed in multiple, separate counterparts, and such counterparts shall constitute one and the same document. This Assignment may not be modified or amended except by a writing signed by both Assignor and Assignee.

7. Severability. If any provision of this Assignment or the application thereof to any entity, person or circumstance shall be invalid or unenforceable to any extent, then the remainder of this Assignment and the application of such provisions to other entities, persons, governmental agencies or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

[Signature pages to follow]

IN WITNESS WHEREOF, Assignor and Assignee have executed this and Assignment as of the Effective Date.

ASSIGNOR:

CHESMAR HOMES, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of August, 2022, by _____, _____ of Chesmar Homes, LLC, a Texas limited liability company, on behalf of said company.

Notary Public, State of _____

[signatures and acknowledgments continue on following page]

ASSIGNEE:

CITY OF GEORGETOWN, TEXAS,
A Texas home-rule municipal corporation

By: _____
Name: Joshua Schroeder
Title: Mayor

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on the ____ day of August, 2022, by Joshua Schroeder, Mayor of City of Georgetown, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

ATTEST:

Robyn Densmore, City Secretary

APPROVED AS TO FORM:

Skye Masson, City Attorney

After recording, please return to:

City of Georgetown
ATTN: Real Estate Services
P.O. Box 409
Georgetown, TX 78627