

Development Agreement
Camp Young Judaea

by & among
City of Woodcreek &
Camp Young Judaea, Inc.

August ____, 2020

DEVELOPMENT AGREEMENT

STATE OF TEXAS §
§
COUNTY OF HAYS §

This Development Agreement (“Agreement”) is by and among the CITY OF WOODCREEK (the “City”) a Type A General Law Municipality incorporated and organized under the laws of the State of Texas, and CAMP YOUNG JUDAEA, INC. (“CYJ”), a Texas non-profit corporation (CYJ is sometimes referred to as the “Owner”, and the City and Owner sometimes individually referred to herein as a “Party” and collectively referred to herein as the “Parties”).

RECITALS:

WHEREAS, CYJ owns approximately 81.8 acres of land in the City limits (“Subject Property”) and approximately 166.9 acres of land within the extraterritorial jurisdiction (“ETJ”) of the City, in Hays County, Texas (the “County”), all of which is more fully described on the attached Exhibit A (collectively, the approximately 248.7 acres of land including the Subject Property and land within the ETJ is referred to as the “CYJ Land”); and

WHEREAS, CYJ intends to continue to maintain a camp on the CYJ Land, which will inevitably require ongoing maintenance and renovations, redevelopment and new facilities, including, but not limited to buildings, structures, landscaping, drives, sidewalks, and paths; and

WHEREAS, the CYJ facilities have been used for various activities, including, but not limited to, youth camps, retreats, religious ceremonies, family events, and weddings, and as fully set forth in section 3.1.2 herein; and

WHEREAS, this Agreement grants the Owner a measure of predictability in terms of applicable municipal regulations and development fees; and

WHEREAS, this Agreement provides the City with certainty that use of the CYJ land shall remain consistent with what has come to be expected over the course of time;

WHEREAS, the Owner and the City have enjoyed a working relationship for many years that has included “Woodcreek Day at CYJ”;

WHEREAS, Owner and the City wish to enter into this Agreement to provide a development framework, to allow for the development of the land consistent with this agreement, and provide a level of certainty of regulatory requirements throughout the term of this Agreement; and

WHEREAS, the City is statutorily authorized by Chapter 51 of the Local Government Code to enter into such agreements with Owner of property located in the City and the City’s ETJ; and

WHEREAS, the City held an open meeting pursuant to Chapter 551 of the Texas Government Code in which public comment was permitted and a quorum of the City Council was present and a majority of Council voted to approve this Agreement; and

NOW THEREFORE, FOR GOOD & VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the City and Owner agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 **Agreement.** “Agreement” shall mean this contract between the City of Woodcreek, Texas, and Owner, including all Exhibits, which are incorporated herein for all intents and purposes.
- 1.2 **Applicable Rules.** “Applicable Rules” shall mean the City Rules that, as may be modified by this Agreement, exist at the Effective Date of this Agreement and will be applicable to the development of the Subject Property, and where applicable and permitted by State law or City ordinance, the CYJ Land.
- This term does not include Building Codes, which shall apply to the Project as they exist on the date a completed application for a specific permit is submitted to the City.
- This Term does not include regulations mandated by state law, or that are necessary to prevent imminent harm to human safety or property as determined by state law.
- 1.3 **Building Codes.** “Building Codes” shall mean the most current version of the Codes of the International Code Council.
- 1.4 **City.** “City” shall mean the City of Woodcreek, Texas, an incorporated Type A, general law municipality located in Hays County, Texas.
- 1.5 **City Manager.** “City Manager” shall mean the chief administrative officer of the City, or an alternate individual appointed by the City Council.
- 1.6 **City Council.** “City Council” shall mean the governing body of the City, including the Mayor.
- 1.7 **City Engineer.** “City Engineer” shall mean the person or firm designated by the City Council as the engineer for the City.
- 1.8 **City Rules.** “City Rules” shall mean the entirety of the City's ordinances, regulations and official policies, except as may be modified by this Agreement.
- 1.9 **Conceptual Plan.** “Conceptual Plan” shall mean the conceptual plan of the Project approved by the TCEQ and attached as Exhibit B, as it may be amended from time to time in accordance with this Agreement.
- 1.10 **County.** “County” shall mean Hays County, Texas.
- 1.11 **Effective Date.** “Effective Date” shall mean the date upon which this Agreement is executed by all Parties.

1.12 **Impervious Cover Percentage.** “Impervious Cover Percentage” shall mean the percentage calculated by dividing the total acres of impervious cover on the CYJ Land by the total number of acres included in the CYJ Land. Whether or not outdoor decks are included in the calculation of impervious cover shall be determined by the City Engineer based on the deck design and materials.

In the calculation of impervious cover, the following shall be characterized as pervious for all purposes: open space, greenbelt, mitigation land, park, irrigation field, flood plain, water quality and/or drainage facility and/or area, detention facility, swale, irrigation area, playground, athletic fields, granite or pea gravel trail, drive, or parking areas that are not paved.

1.13 **CYJ Land.** “CYJ Land” shall mean the approximately 248.7 acres of land in the City and in the City’s ETJ, Hays County, Texas, more fully described on the attached Exhibit A.

1.14 **Owner.** “Owner” shall mean Camp Young Judaea, Inc. and any subsequent owner(s) of the property described herein, provided however, that the use of the land of any subsequent owner (as provided in Section 5.1.1) remains in compliance with this Agreement.

1.15 **Planning and Zoning.** “Planning and Zoning” shall mean the Planning and Zoning Commission, a volunteer citizen advisory board of the City of Woodcreek that has been granted specific land use and development regulatory authority pursuant to City ordinances and state statutes.

1.16 **Project.** “Project” shall mean the Subject Property, as it will be developed under this Agreement pursuant to the Conceptual Plan, attached as Exhibit B. If subsequent Site Development Plans are consistent with this Agreement, the City shall consider and approve modified Site Development Plans that become necessary for Owner to obtain governmental permits, licenses and other approvals, so long as the Site Development Plans comply with this Agreement; submittal of a Site Development Plan during the term of this Agreement would be voluntary and at the Owner’s discretion. The Owner may change lot lines and interior streets upon receipt of written administrative approval from the City Manager, in consultation with the City Engineer, such approval shall not be unreasonably withheld.

1.17 **Site Development Plan.** “Site Development Plan” shall mean the detailed line drawings and accompanying text clearly describing the development of the Subject Property.

1.18 **Special Event.** “Special Event” includes an occurrence, an unusual or extraordinary activity or happening of significance, an event deviating from the routine or normal, a one-time or infrequently occurring event outside the normal program of activities or day-to-day operation on the Subject Property, or an event, occurrence, and an activity which consists of the attendance of 600 or more persons. Special Event excludes camp drop off days, Youth Camps, Religious Ceremonies, Life-Cycle Events, or any other Land Use authorized in this Agreement.

1.19 **Subject Property.** “Subject Property” shall mean the approximately 81.8 acres of land in the City limits, as identified on Exhibit A.

- 1.20 **TCEQ.** “TCEQ” shall mean Texas Commission on Environmental Quality, or its successor agencies.

**ARTICLE 2. PUBLIC BENEFITS,
INFRASTRUCTURE, ANNEXATION & AMENITIES**

- 2.1 **Orderly Growth and Environmentally Sensitive Development.** This Agreement will benefit the City by facilitating the maintenance, development, and redevelopment of the Owner’s Land and eliminate ambiguity associated with the Owner’s and City’s rights and remedies. Any improvement to the CYJ Land shall be at the sole cost and expense of the Owner.
- 2.2 **City of Woodcreek Streets Improvement.** Owner agrees to help facilitate the maintenance of the City of Woodcreek public streets by contributing five thousand dollars (\$5,000.00) a year during the during term of the agreement solely towards the City’s effort to maintain Jack Miller Drive, Brookhollow Drive, Brookmeadow Drive, Woodcreek Drive, and Augusta Drive between Brookmeadow Drive and Brookhollow Drive. The first of such payments shall be made on or before January 2, 2021 and annually on or before January 2nd of each year during the term of this Agreement. After the first payment of five thousand dollars (\$5,000.00) on or before January 2, 2021, the payments shall increase by 2% each year; the first forty (40) years of payments is reflected on the attached payment schedule. Exhibit C. If Owner ceases to operate or declares bankruptcy, the annual payments set forth in this paragraph will no longer be due or owing.
- 2.3 **Lighting.** With the exception of lighting in connection with the tennis courts, athletic fields, and security, Owner shall follow dark sky standards for any new light fixtures that are installed after the Effective Date.
- 2.4 **Water, Wastewater & Drainage Service.**
- 2.4.1 **Design.** Water and Wastewater infrastructure shall be designed and constructed in accordance with all TCEQ applicable rules and regulations, and the Owner will not have to comply with the City Rules concerning water and wastewater infrastructure, including, but not limited to Chapter 50 of the City Code.
- 2.4.2 **Drainage.** Stormwater drainage facilities, if required under TCEQ rules, will be designed and constructed in compliance with all TCEQ applicable rules and regulations, and the Owner will develop and maintain a regional stormwater management plan that is sealed by a licensed engineer, covers the portion of the CYJ Land within the City, and is filed with the City. The Owner will not have to comply with the City Rules concerning stormwater drainage.
- 2.4.3 **Water Quality.** Water quality facilities, if required under TCEQ rules, will be designed and constructed in compliance with all TCEQ applicable rules and regulations, and the Owner will not have to comply with the City Rules concerning water quality, including, but not limited to Chapter 50 of the City Code.

- 2.5 **Private Streets, Drives, Sidewalks, and Trails.** All roads, drives, trails, sidewalks, or walking paths within the CYJ Land shall be private and shall not be subject to the City Rules, except Fire Code provisions related to private roads.
- 2.6 **Required Environmental Protection.** Owner will only be responsible for implementing and complying with the natural resource laws and regulations of the State of Texas as set forth in the TCEQ rules regulations, including the TCEQ waterway protections, TCEQ water quality requirements, and TCEQ stormwater controls; and the Owner will not have to comply with the City Rules concerning environmental protection. The Owner acknowledges that construction of the project requires the Owner to comply with the TCEQ's General Storm Water Permit for Construction Activities.

ARTICLE 3. PROPERTY DEVELOPMENT

- 3.1 **Governing Regulations.** For purposes of any grandfathering analysis, the Parties agree that the Effective Date shall be construed as the Effective Date of this Agreement, in accordance with Texas Local Government Code Chapter 245, as may be amended. The Applicable Rules, as defined herein, shall govern the Project, unless otherwise expressly provided in this Agreement. For the term of this Agreement, the development and use of the CYJ Land will be controlled by the terms of this Agreement, and the Applicable Rules. To the extent possible, this Agreement and the Applicable Rules, and City Rules shall be read in harmony. However, if there is any conflict between the Applicable Rules and the terms of this Agreement, the terms of this Agreement will control. If City Rules are modified to the benefit of the Owner, the Owner may, in its discretion, select the City Rules that are current at the time of the filing of any application.
- 3.2 **Project Approvals & Entitlements.**
- 3.2.1 **Conceptual Plan.** Except as otherwise noted herein or in the exhibits hereto, the City confirms that the Conceptual Plan approved by the TCEQ attached as Exhibit B complies with the City's 2030 Vision-Master Plan for the City of Woodcreek and that the Site Development Plan has been approved by all requisite City departments, boards and commissions and by the City Council. The City approves the land uses, densities, exceptions, utility and roadway alignments and sizing and other matters shown on the Concept Plan and any previously approved Site Development Plan. The City's execution of this Agreement shall be deemed to be the ratification of the Conceptual Plan, Exhibit B, and any previously approved Site Development Plan; and future modifications of the Conceptual Plan must be filed with the City and shall, if such modification(s) comply with this Agreement (including, but not limited to the impervious cover restrictions herein), be deemed approved and such modified Conceptual Plan(s) must be sealed by an engineer.
- 3.1.2 **Land Use.** For purposes of this Agreement the following shall be allowed within the portion of the Subject Property within the City limits:
- (i) Youth camps. Youth camps includes, indoor and outdoor activities related to camp, staff and camper housing, sports, arts and crafts, entertainment, recreation, educational activities, swimming, fishing, and horseback riding.

(ii) Indoor entertainment. Indoor entertainment includes, but is not limited to, the use of a building, structure, or portion thereof, for activities for amusement such as live entertainment, bounce house attractions, photo booths, face painting, swimming pool, and arcade games. Uses in this category shall be contained entirely within a building or structure. This use does not include uses for theme parks, go-cart tracks, and commercial carnivals/circuses that are open to the public.

(iii) Outdoor entertainment. Outdoor entertainment includes, but is not limited to, the use of a plot of land that includes activities for amusement such as live entertainment, bounce house attractions, photo booths, face painting, arcade games, outdoor swimming pools, outdoor pavilions, outdoor sports courts, and outdoor ropes course. This use does not include uses for commercial theme parks, commercial go-cart tracks, commercial carnivals/circuses, commercial theaters, commercial dance halls and commercial performing arts venues.

(iv) Live entertainment. Live entertainment includes any or all of the following activities, either principal or accessory: performance by musicians, dancers, stand-up comedians or other performance artists, karaoke, live bands or musical acts, or the amplification of recorded music/entertainment by live disk jockeys.

(v) Educational activities. Educational activities include, but is not limited to, activities that teach or provide education related to purposes identified in this Agreement. Educational activities include housing for attendees and staff.

(vi) Retreats. Retreats include gatherings for businesses or organizations held for the purpose of group bonding, education, enrichment, discussion or shared activities for the purpose of building better relationships within the organization or community. Retreats include housing for retreat attendees and staff.

(vii) Religious ceremonies. Religious ceremonies include a ceremony or ritual related to religion including, but is not limited to, services such as baptisms, Shabbat, wedding ceremonies, bar/bat mitzvahs, bris, communions, confirmations and ceremonies celebrating religious holidays. Religious ceremonies include housing for attendees and staff.

(viii) Life-cycle events. Life-cycle events include significant events that occur throughout an individual's life or individuals' lives such as the birth of a child, baby-naming, brit milot, bar/bat mitzvahs, graduations, birthdays, weddings, or anniversaries. Life-cycle events includes housing for attendees and staff.

(ix) Food or alcohol service. Food service includes the serving of food in conjunction with a use identified in this Agreement. Service of alcohol must conform with the rules and regulations of the Texas Alcoholic Beverage Commission, the Texas Alcoholic Beverage Code, the Texas Comptroller of Public Accounts, and the City Applicable Rules.

(x) Infrastructure. Infrastructure includes, but is not limited to, water and wastewater facilities; drainage, detention and water quality facilities; duct banks for telecommunication or electricity; poles, transformers, and other electrical infrastructure;

cellular antennae, cell towers, and satellite dishes; and roads, trails and other vehicular access facilities.

(xi) The City acknowledges that it does not have authority to control or regulate uses on the CYJ Land within the ETJ

(xii) The uses set forth in section 3.1.2 (i) through (x) are collectively referred to as the “Allowed Uses.”

3.1.3 With the exception of Youth Camps, Religious Ceremonies and Life-Cycle Events (even if those events include Indoor Entertainment, Outdoor Entertainment, Live Entertainment, and/or Educational Activities), the other Allowed Uses may only occur insofar as the total number of individuals present during such Allowed Uses does not exceed 600 persons. It is the express intent of the Parties to allow CYJ to engage in the Allowed Uses. If a particular Allowed Use, other than Youth Camps, Religious Ceremonies and Life-Cycle Events, anticipates that the number of individuals present will exceed 500, but remain less than 600, the Owner shall notify the City Manager. With the exception of Youth Camps, Religious Ceremonies and Life-Cycle Events, the Owner shall also have (i) EMS/Medical personnel on hand per every 300 people in attendance, (ii) a designated first aid/EMS/medical station for Allowed Uses with over 300 people, (iii) law enforcement/security personnel for Allowed Uses with over 400 people, and (iv) if alcohol is sold at an event, additional law enforcement/security personnel equal to one law enforcement/security personnel for every 200 people in attendance. For clarity, the requirements set forth in this paragraph 3.1.3 do not apply to Youth Camps, Religious Ceremonies and Life-Cycle Events,

3.1.4 **Traffic Control.** If more than 200 vehicles are anticipated at an event, the Owner shall assign a person to assist with traffic control to ensure residents have the ability to use Doolittle Drive and to assist with the consistent flow of vehicles on to the CYJ Land.

3.1.5 **Sound Amplification.** Owner agrees amplified outdoor sound on the Subject Property is allowed only from 7:00 a.m. to 8:00 p.m. Sunday through Thursday and from 7:00 a.m. to 11:00 p.m. on Fridays and Saturdays.

(i) Other than in cases of emergency, Owner agrees that sound equipment on the Subject Property will not produce sound in excess of 75 decibels at the property line of nearby residences.

(ii) The Camp shall not engage in Special Events on the Subject Property without prior approval of the City of Woodcreek through a Special Event Permit. Because of scheduling, the City Manager will review and approve, approve with conditions, or disapprove of a Special Event Permit for an event on the Subject Property within 14 business days of filing or the permit will be presumed approved as filed; the applicant may appeal the City Manager’s decision on the Special Event Permit to the City Council at the next scheduled City Council meeting.

- 3.3 **Impervious Cover.** Owner shall have the right to apportion impervious cover limits on a use by use basis, not to exceed thirty percent (30%) on the entire CYJ Land. Owner may count in density and impervious cover calculations land designated as greenbelt, open space, mitigation land or similar areas.
- 3.4 **Exemption from Architectural Features and Exterior Masonry Requirement.** The Project is expressly exempt from the City Rules concerning architectural features, including, but not limited, to any City Rules that require any portion of the exterior building surfaces to be covered by masonry, or any other specified materials or in compliance with State law.
- 3.5 **Standard for Review.** The City's review and approval of any submissions by Owner will not be unreasonably withheld or delayed. The City will review any plans, plat or other filing by Owner in accordance with the applicable City's ordinances, state law and this Agreement. If any submittal is not approved, the City will provide written comments within 60 days to Owner specifying in detail all of the changes that will be required for the approval of the submittal; if the City decides not to provide comments within 60 days of the filing of the application, permit or approval sought by the Owner will be deemed approved.
- 3.6 **Building Permits Required; No Further Site Development Plan Required.** Because a Conceptual Plan has been approved for the portion of the Subject Property, no further Site Development Plans will be necessary during the term of this Agreement, but only insofar as development is consistent with the approved Conceptual Plan. For the Subject Property, the Owner will file for Building Permits for any new structures that comply with this Agreement. For any new development that is not consistent with the Conceptual Plan, CYJ will be required to follow the City's code of ordinances.
- 3.7 **Term of Approvals.** The Conceptual Plan, Site Development Plan and any preliminary plat or final plat approved pursuant to this Agreement will be effective for the term of this Agreement unless otherwise agreed by the Parties. Subject to the terms of this Agreement, at any time during the term of this Agreement, the Owner may construct, develop renovate, or maintain any structures, drives, fields, paths, or trails on the CYJ Land.
- 3.8 **Extension of Permits & Approvals.** Any permit or approval under this Agreement or granted by the City pursuant to, or in accordance with, this Agreement shall be extended for any period during which performance by the Owner is prevented or delayed by action of a court or administrative agency, or the Owner is delayed due to failure to receive a governmental permit despite demonstrable diligent efforts to obtain said permit. In no instance shall any permits or approvals be extended beyond the duration of this Agreement.
- 3.9 **Building Code and Fire Code.** Owner agrees that all habitable buildings on the portion of the Subject Property shall be constructed in accordance with all building or construction codes that have been adopted by the City; however, the Owner only must comply with the Building Code adopted by the City and not any local amendments that the City may adopt. Fees for all building permits or building inspections by the City or the City's designee under this section shall be paid by builders. Building permit and building inspection fees are subject to the current fee schedule at the time of application. Compliance with provisions of the Fire Code shall remain within the jurisdiction of the Fire Marshall at the Emergency Service District that covers the CYJ Land and such Fire Marshall shall be responsible for

reviewing and approving compliance with the Fire Code for structures on the CYJ Land, and the City shall not, directly or indirectly, interfere with the Fire Marshall's review of plans.

- 3.10 **Fiscal Security for Improvements.** Owner shall not be required to provide fiscal security prior to any final plan approval, provided that the Owner agrees to construct improvements in a manner as provided herein and approved by the City Engineer.
- 3.11 **Fences.** An eight foot (8') high fence may be constructed by Owner along the boundary of the CYJ Land or any lot line within the CYJ Land, or along any portion of the boundary of the CYJ Land or any portion of any lot line within the CYJ Land, and such fence may be wrought iron, privacy, or a game fence; provided that along Doolittle Drive, City of Woodcreek, TX, the fence closest to Doolittle Drive must provide a minimum of 50% opacity. Any fence may cross lot lines on the CYJ Land.
- 3.12 **Non-Conforming Structures.** All existing structures as of the Effective Date of this Agreement shall be deemed legal non-conforming structures and such designation shall exist and survive after the termination of this Agreement.

ARTICLE 4. AUTHORITY

4.1 Term.

- 4.1.1 **Initial Term.** The term of this Agreement will commence on the Effective Date and continue for forty (40) years thereafter ("Initial Term"), unless sooner terminated under this Agreement.
- 4.1.2 **Termination and Extension.** After the thirty-fourth (34th) anniversary of the Effective Date, and on or before the thirty-fifth (35th) anniversary of the Effective Date, either party may provide written notice that the Agreement will terminate at the conclusion of the Initial Term. If neither party sends written notice of termination before the end of thirty-five (35) years from the Effective Date, then this Agreement will automatically renew for an additional forty (40) years. If either party terminates this Agreement by sending the required written notice more than five (5) years before the end of the Initial Term, then this Agreement will be of no further force and effect at the end of the Initial Term, except that termination will not affect any right or obligation arising from approvals or permits previously granted. Regardless, if this Agreement is terminated, such termination will not affect any right or obligation arising from approval or permits previously granted.
- 4.1.3 **Termination or Amendment.** This Agreement may be terminated or amended as to all of the CYJ Land at any time by mutual written consent of the City and Owner or may be terminated or amended only as to a portion of the CYJ Land by the mutual written consent of the City and the Owner of only the portion of the CYJ Land affected by the amendment or termination. If this Agreement is terminated, CYJ will be subject to the City's code of ordinances in place at the time the termination is effective.

- 4.2 **Authority.** This Agreement is entered under the statutory authority of Chapter 212, Subchapter G, *Local Government Code*. The Parties intend that this Agreement guarantee the continuation of the extraterritorial status of portions of the CYJ Land as provided in this Agreement; authorize certain land uses and development on the Subject Property; provide for the uniform review and approval of plats and development plans for the CYJ Land; provide exceptions to certain ordinances; and provide other terms and consideration, including the continuation of land uses and zoning upon annexation of any portion of the CYJ Land to the City.
- 4.3 **Equivalent Substitute Obligation.** If either Party is unable to meet an obligation under this Agreement due to a court order invalidating all or a portion of this Agreement, preemptive state or federal law, an imminent and bona fide threat to public safety that prevents performance or requires different performance, subsequent conditions that would legally excuse performance under this Agreement, or, the Parties agree to cooperate to revise this Agreement to provide for an equivalent substitute right or obligation as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal valid and enforceable, or other additional or modified rights or obligations that will most nearly preserve each Party's overall contractual benefit under this Agreement.
- 4.4 **Litigation.** In the event of any third party lawsuit or other claim relating to the validity of this Agreement by the Parties hereunder, Owner and the City agree to cooperate in the defense of such suit or claim with each Party paying their own fees and expenses in the defense of such suit, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The filing of any third-party lawsuit relating to this Agreement or the development of the Project will not delay, stop or otherwise affect the development of the Project or the City's processing or issuance of any approvals for the Project, unless otherwise required by a court of competent jurisdiction.

ARTICLE 5. GENERAL PROVISIONS

5.1 Assignment & Binding Effect.

- 5.1.1 **Binding Assignment.** This Agreement, and the rights and obligations of Owner hereunder, may not be assigned by Owner to a subsequent purchaser of all or a portion of the undeveloped property within the Project except by consent from the City in writing. Any assignment must be in writing, specifically describe the property in question: set forth the assigned rights and obligations, that the assignee assumes all of the obligations hereunder, and be executed by the proposed assignee. A copy of the assignment document must be delivered to the City and recorded in the real property records as may be required by applicable law. Upon any such assignment, the assignor will be released of any further obligations under this Agreement as to the property sold and obligations assigned. The obligations created by this Agreement shall run with the CYJ Land. Reference to this Agreement shall be included in restrictive covenants for CYJ Land divided and conveyed.
- 5.2 **Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the Parties that the remainder of this Agreement

not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.

- 5.3 **Governing Law, Jurisdiction & Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The parties acknowledge that this Agreement is performable in *Hays County*, Texas and hereby submit to the jurisdiction of the District courts of that County, and hereby agree that any such District Courts shall be a proper forum for the determination of any dispute arising hereunder.
- 5.4 **No Third-Party Beneficiary.** This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided.
- 5.5 **Mortgagee Protection.** This Agreement will not affect the right of Owner to encumber all or any portion of the CYJ Land by mortgage, deed of trust or other instrument to secure financing for the Project. The City understands that a lender providing financing for the Project (“Lender”) may require interpretations of or modifications to this Agreement and agrees to cooperate with Owner and their Lenders' representatives in connection with any requests for interpretations or modifications. The City agrees not to unreasonably withhold or delay its approval of any requested interpretation or modification if the interpretation or modification is consistent with the intent and purposes of this Agreement. The City agrees as follows:
- 5.5.1 Neither entering into this Agreement, nor any breach of the Agreement, will affect any lien upon all or any portion of the CYJ Land.
- 5.5.2 The City will, upon written request of a Lender given in compliance with Section 5.17, consider, but shall not be obligated to, provide the Lender with a copy of any written notice of default given to Owner under this Agreement within ten (10) days of the date such notice is given to Owner.
- 5.5.3 In the event of default by Owner under this Agreement, a Lender may, but will not be obligated to, cure any default during any cure period extended to Owner, either under this Agreement or under the notice of default.
- 5.5.4 Any Lender who comes into possession of any portion of the CYJ Land by foreclosure or deed in lieu of foreclosure will take such property subject to the terms of this Agreement. No Lender will be liable for any defaults or monetary obligations of Owner arising prior to the Lender's acquisition of title, but a Lender will not be entitled to obtain any permits or approvals with respect to that property until all delinquent fees and other obligations of Owner under this Agreement that relate to the property in question have been paid or performed.
- 5.6 **Certificate of Compliance.** Within thirty (30) days of written request by either Party given accordance with Section 5.17, the other Party will execute and deliver to the requesting

Party a statement certifying that (a) this Agreement is unmodified and in full force and effect or, if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of each modification; (b) lists any known current uncured defaults under this Agreement, and specifies the date and nature of each default; and (c) any other information that may be reasonably requested. A Party's failure to deliver a requested certification within this 30-day period will conclusively be deemed to constitute a confirmation that this Agreement is in full force without modification, and that there are no uncured defaults on the part of the requesting Party. Nothing stated in any Certificate of Compliance will serve to limit, waive or offset any Party's rights under this agreement or the law. The City Manager is authorized to execute any requested certificate on behalf of the City.

- 5.7 **Default.** If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period. The City may issue Stop Work Orders for violations arising under this Agreement or the regulations applied herein.
- 5.8 **Remedies for Default.** If either Party defaults; under this Agreement and fails to cure the default within the applicable cure period, the non-defaulting Party will have all rights and remedies available under this Agreement or applicable law, including the right to institute legal action to cure any default, to enjoin any threatened or attempted violation of this Agreement or to enforce the defaulting Party's obligations under this Agreement by specific performance or writ of mandamus, or to terminate this Agreement. In the event of a default by the City, Owner will be entitled to seek a writ of mandamus, in addition to seeking any other available remedies. All remedies available to a Party will be cumulative and the pursuit of one remedy will not constitute an election of remedies or a waiver of the right to pursue any other available remedy.
- 5.9 **Reservation of Rights.** To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.
- 5.10 **Attorney's Fees.** The prevailing Party in any dispute under this Agreement will be entitled to recover from the non-prevailing Party its reasonable attorney's fees, expenses and court costs in connection with any original action, any appeals, and any post-judgment proceedings to collect or enforce judgment,
- 5.11 **Waiver.** Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement will not, regardless of the length of time during which that failure continues, be deemed a waiver of that Party's right insist upon strict compliance with all terms of this Agreement. In order to be effective as to a Party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A

written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

- 5.12 **Entire Agreement.** This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties. An amendment to this Agreement may only be approved by an affirmative vote of at least three of the five (3 of 5) members of the City Council.
- 5.13 **Exhibits, Headings, Construction & Counterparts.** All exhibits attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and *vice-versa*. Each of the Parties has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in interpreting this Agreement or its exhibits. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the Parties.
- 5.14 **Time.** Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.
- 5.15 **Authority for Execution.** The City certifies, represents, and warrants that the execution of this Agreement has been duly authorized, and that this Agreement has been approved in conformity with City ordinances and other applicable legal requirements. Owner certifies, represents, and warrants that the execution of this Agreement is duly authorized in conformity with their authority.
- 5.16 **Property Rights.** Owner expressly and unconditionally waives and releases the City from any obligation to perform a takings impact assessment under the Texas Private Real Property Rights Preservation Act, Texas Government Code Chapter 2007, as it may apply to this Agreement, the CYJ Land, and the Project.
- 5.17 **Notices.** Any notices or approvals under this Agreement must be in writing may be sent by hand delivery or certified mail, return receipt requested. to the Parties at the following addresses:

CITY: City Manager
City of Woodcreek
41 Champions Circle
Woodcreek, Texas 78676

Copy: _____

OWNER: Camp Young Judaea
Houston Office
5410 Bellaire Blvd
Suite 207
Bellaire, TX 77401
713-723-8354

Copy: 121 Camp Young Judaea Dr.
Woodcreek, Texas 78676
Tel: (512) 847-9564

Any Party may change its mailing address at any time by giving written notice of such change to the other in the manner provided herein at least ten days prior to the date such change is affected. All notices under this Agreement will be deemed given on the earlier of the date personal delivery is affected or on the delivery date or attempted delivery date shown on the return receipt.

5.18 **Exhibits.** The following exhibits are attached to this Agreement, and made a part hereof for all purposes.

- Exhibit A - Metes and Bounds or Legal Description of the CYJ Land
- Exhibit B. – Conceptual Plan
- Exhibit C – Payment Schedule for first Forty (40) Years

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement on the dates indicated below, to be effective on the last party signs.

CITY OF WOODCREEK, TEXAS:

By: _____
GLORIA WHITEHEAD, Mayor

AFFIRMED:

By: _____
Brenton B. Lewis, City Manager
City of Woodcreek

STATE OF TEXAS §

§

COUNTY OF HAYS §

This instrument was executed before me on this the ___ day of _____, 2020 by GLORIA WHITEHEAD, Mayor of the CITY OF WOODCREEK, TEXAS, a general law municipality in the State of Texas, on behalf of said municipality.

Notary Public, State of Texas

CAMP YOUNG JUDAEA, INC.

By: _____

Cheryl Drazin, President

STATE OF TEXAS

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COUNTY OF HAYS

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This instrument was executed before me on this the ____ day of _____, 2020 by Cheryl Drazin, President of CAMP YOUNG JUDAEA, INC., a Texas Corporation, on behalf of said corporation.

Notary Public; State of Texas