

## OLD TOWN DECORATIVE LIGHTING AGREEMENT

THIS OLD TOWN DECORATIVE LIGHTING AGREEMENT (“Agreement”) is entered into by and among the City of Lewisville, Texas, a home rule municipality duly acting by and through its City Manager (“City”), Series 2 of Lizzie B Properties (“Owner”), and the Main & Mill Association, a domestic 501(c)(6) nonprofit organization (“Main & Mill Association”), collectively referred to as Parties (“Parties”).

### W I T N E S S E T H:

**WHEREAS**, the City finds that the installation of decorative lighting improvements in certain areas of Old Town Lewisville would promote local economic development, stimulate business activity, and increase property values in the Old Town area, thereby directly establishing a public purpose; and

**WHEREAS**, the Owner currently owns the property including the building located at 139 Main Street Lewisville, TX 75057 (“Property”), which is more fully described in Attachment A, attached hereto and made a part hereof; and

**WHEREAS**, year-round decorative lighting in Old Town Lewisville will be a draw for both visitors and prospective tenants; and

**WHEREAS**, the current decorative lighting in the Old Town area was installed and maintained by the Old Town Business Association, whose responsibilities have been assumed by the Main & Mill Association; and

**WHEREAS**, the electricity costs for the current decorative lighting in the Old Town area are paid for by the Main & Mill Association; and

**WHEREAS**, the replacement of the current decorative lighting with LED lighting will significantly decrease electricity use, which is part of the City’s Big Move toward sustainability in the Lewisville 2025 plan; and

**WHEREAS**, the Main & Mill Association will continue paying the electricity costs associated with the Decorative Lighting Improvements, as hereinafter defined, and will benefit from decreased electricity costs and transferring of maintenance costs to the City; and

**WHEREAS**, the City considers the proposed Decorative Lighting Improvements to be a significant improvement to the character of the built environment in the Old Town area; and

**WHEREAS**, the Owner desires to have the Decorative Lighting Improvements installed and maintained on the Property.

**NOW THEREFORE**, in consideration of the mutual benefits and promises contained herein and for good and other valuable consideration, the adequacy and receipt of which is hereby acknowledged, which contributes to the economic development of the City and the enhancement of the tax base in the City, the Parties hereto do mutually agree as follows:

## **ARTICLE I TERM**

This Agreement shall be effective upon execution by both Parties (“Effective Date”) and shall continue until the Decorative Lighting Improvements are at end of life and removed, unless terminated earlier in accordance with this Agreement.

## **ARTICLE II DEFINITIONS**

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“**Agreement**” has the meaning set forth in the introductory paragraphs of this Agreement.

“**City**” has the meaning set forth in the introductory paragraphs of this Agreement.

“**Decorative Lighting Improvements**” shall mean cloud controlled, color changing, LED architectural accent light strings of equal or better specifications as stated in Attachment D, attached hereto and incorporated herein, and any equipment needed for the operation or control of such light strings.

“**Effective Date**” shall mean the date established in Article I of this Agreement.

“**Main and Mill Association**” shall have the meaning set forth in the introductory paragraphs of this Agreement.

“**Owner**” shall have the meaning set forth in the introductory paragraphs of this Agreement.

“**Property**” shall have the meaning set forth in the introductory paragraphs of this Agreement.

### **ARTICLE III GENERAL PROVISIONS**

As soon as practical after the Effective Date of this Agreement, the City shall commence installation of the Decorative Lighting Improvements on the Property in accordance with the designs and specifications included herein in Attachment B, including removal of the existing light strings and fasteners on the Property, if needed. The designs and specifications in Attachment B may be amended at any time without affecting this Agreement.

### **ARTICLE IV AGREEMENT CONDITIONS**

4.1 Decorative Lighting Improvements. The City shall, at its own expense, design, purchase, install, and maintain, or cause to be designed, installed and maintained, the Decorative Lighting Improvements on the Property as shown in Attachment B. The City shall retain ownership of the Decorative Lighting Improvements.

4.2 Right of Entry. The Owner shall allow the City and its employees, agents, contractors, and subcontractors access to the exterior of the Property for purposes of design, installation, inspection, maintenance, and control of the Decorative Lighting Improvements under this Agreement. The City must give the Owner reasonable written notice, which may include notice by email, of any such entrance onto the Property, and a representative of the Owner shall have the right to accompany the agent or employee of the City who is accessing the Property for purposes of this Agreement. The City shall be responsible for any damage caused to the Property by the negligent acts of the City when exercising its right of entry and for reimbursing the Owner within sixty (60) days of receiving written notice and supporting documentation of the repair cost.

4.3 Maintenance and Compliance. The City shall be solely responsible for the maintenance of the Decorative Lighting Improvements and shall ensure that the Decorative Lighting Improvements conform with all ordinances, statutes, rules, orders and regulations of any authorized authority of the federal, state or city government.

4.4 Control. The City shall have full control of lighting choices involving the Decorative Lighting Improvements, including, but not limited to, programming of light colors and times of operation.

4.5 Easement. The Owner shall grant the City an easement over portions of the Property as the City deems necessary for the installation and maintenance of the Decorative

Lighting Improvements. Such executed easement is attached as Attachment C and shall be filed by the City in the deed records of Denton County, Texas.

4.6 Electricity Costs. The Main & Mill Association shall be solely responsible for the electricity costs for the Decorative Lighting Improvements.

4.7 Damage to Decorative Lighting Improvements. If the Decorative Lighting Improvements are damaged due to the actions of the Owner or his tenants, employees, agents, contractors, or subcontractors, the City shall repair, or cause to be repaired, the Decorative Lighting Improvements at the Owner's expense. The Owner shall be responsible for reimbursing the City within sixty (60) days of receiving written notice of the repair cost.

4.8 Property Improvements. In the event a permit is issued within the first twelve (12) months after the Effective Date for improvements to the Property that results in the need to relocate, temporarily remove, or alter the location of the Decorative Lighting Improvements then the City, at its own expense, shall relocate, temporarily remove, and/or alter the location of the Decorative Lighting Improvements. After the first twelve (12) months after the Effective Date, any such relocation, temporary removal or alteration of the location of the Decorative Lighting Improvements shall be the responsibility of the Owner; provided, however, that the Owner must obtain written permission from the City prior to any such relocation, temporary removal or alteration of the location.

## **ARTICLE V TERMINATION**

5.1 This Agreement may be terminated upon any one of the following:

5.1.1 By written agreement of the Parties; or

5.1.2 Expiration of the Term; or

5.1.3 By the City, if electric bills are not paid for in full each month or if reimbursements for repair of damage to the Decorative Lighting Improvements are not made as required by this Agreement.

5.2 The City may, at its sole discretion, terminate the Decorative Lighting Improvement program. In the event of such termination, all duties of the Parties outlined herein shall be immediately extinguished, and the easement required by section 4.5 will be abandoned by the City within sixty (60) days of termination of the program.

5.3 In the event of termination or at the end of Term, the City shall have the option of immediately removing the Decorative Lighting Improvements.

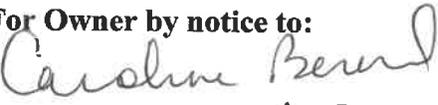
## ARTICLE VI MISCELLANEOUS

6.1 The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. In case of the sale of the Property, this Agreement shall be assigned by the Owner to the new owner of the Property, and any assignee must agree to be bound by all terms and conditions of this Agreement. If, at any point, the Property is leased to a third party, the Owner has the responsibility to ensure that the lessee understands and is willing to be bound by all terms and conditions of this Agreement. It is understood and agreed among the Parties that the Parties, in performing their obligations thereunder, are acting independently, and no party assumes responsibility or liabilities in connection therewith to third parties.

6.2 The City represents and warrants that the Property does not include any property that is owned by a member of the City Council having responsibility for the approval of this Agreement.

6.3 Notices required to be given to Parties to this Agreement shall be given (1) personally; (2) by certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered three (3) days after the date deposited in the United States' mail; or (3) by email to the Party at its email address as set forth below:

**For City by notice to:**  
City of Lewisville  
Attn: Assistant City Manager  
151 W. Church Street  
P.O. Box 299002  
Lewisville, Texas 75057  
cswann@cityoflewisville.com

**For Owner by notice to:**  
  
Cberend@aol.com  
214 563 2561

**For Main & Mill Association by notice to:**  
Main & Mill Business Association, Inc.

132 W. Main Street  
Lewisville, TX 75057  
mainandmillhistoricdistrict@gmail.com

The Parties may change the information related to the notices by giving the other Parties written notice in the manner provided in this paragraph.

6.4 No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

6.5 This Agreement may be modified or rescinded only by a written instrument signed by all of the Parties or their duly authorized agents.

6.6 Venue for any litigation arising from this Agreement shall lie in Denton County, Texas.

**6.7 THE OWNER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY THE OWNER'S BREACH OF THIS AGREEMENT OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF THE OWNER, ITS TENANTS, OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

**6.8 TO THE EXTENT ALLOWED BY LAW, THE CITY AGREES TO DEFEND, INDEMNIFY AND HOLD THE OWNER HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR**

**PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY THE CITY'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OR INTENTIONAL TORT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR CONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE OWNER AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE OWNER'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CITY'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

6.9 This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which in the aggregate shall constitute one agreement.

6.10 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 thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

6.11 Whenever the context requires, all words herein shall be deemed to include the male, female, and neuter gender, singular words shall include the plural, and vice versa.

6.12 This Agreement was authorized by action of the City Council, authorizing the City Manager to execute the Agreement on behalf of the City.

**SIGNATURE PAGE(S) FOLLOW**

DATED this the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF LEWISVILLE, TEXAS**

\_\_\_\_\_  
Donna Barron, City Manager

**ATTEST:**

\_\_\_\_\_  
Julie Worster, City Secretary

**APPROVED TO FORM:**

\_\_\_\_\_  
Lizbeth Plaster, City Attorney

**SERIES 2 OF LIZZIE B PROPERTIES**

By: Caroline Berend  
Name: Caroline Berend  
Title: owner

**MAIN & MILL ASSOCIATION**

By: Heather Cicchino  
Name: HEATHER CICCHINO  
Title: CO-CHAIR

Attachment "A"

LEGAL DESCRIPTION

Save and Except all property dedicated to the City of Lewisville and replatted as Lot 2, Block A of the Wayne Ferguson Plaza Addition:

BEING a tract of land situated in the J. W. King Survey, Abstract No. 696, and being a portion of Block 6 of the Original Town of Lewisville, Texas, as shown on the plat recorded in Volume 75, Page 160, Deed Records, Denton County, Texas, and being a tract of land described as Tract One in a deed from William Howard Holsclaw, Jr. to Linda A. Holsclaw as recorded in Volume 4323, Page 12, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at a found "x" in concrete at the southeast corner of said Holsclaw tract (Tract One) on the north line of W. Main Street (80 foot right-of-way);

THENCE West along the south line of said Holsclaw tract (Tract One) and the north line of said W. main Street a distance 28.42 feet to a point for corner, said point being at the southwest corner of said Holsclaw tract (Tract One) and at the southeast corner of a tract of land described in a deed from George C. Burrell to Brian Burns as recorded by the County Clerk #94-00688, Deed Records, Denton County, Texas;

THENCE North along the west line of said Holsclaw tract (Tract One) and the east line of Burns tract a distance of 132.00 feet to a point for corner, said point being at the northwest corner of said Holsclaw tract (Tract One) at the northeast corner of said Burns tract and being on the south line of the Linda A. Holsclaw tract of land described as Tract Two in Volume 4323, Page 12, Deed Records, Denton County, Texas;

THENCE East along the north line of said Holsclaw tract (Tract One) and the south line of said Holsclaw tract (Tract One) a distance of 28.42 feet to a point for corner, said point being at the northeast corner of said Holsclaw tract (Tract One) and being at the southeast corner of said Holsclaw tract (Tract Two);

THENCE South along the east line of said Holsclaw tract (Tract One) a distance of 132.00 feet to the POINT OF BEGINNING, containing 3,751 square feet or 0.086 of one acre of land.

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Attachment "B"

DECORATIVE LIGHTING IMPROVEMENTS

**Inception Permanent, Color Changing, Cloud-Controlled lights with customizable changing colors to be professionally installed on the top, front façade of the building. Location of lighting shall be installed as follows:**



Example of finished installation is for illustrative purposes only:



**Attachment "C"**  
**EASEMENT**



**TO HAVE AND TO HOLD** the same, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the Grantee, its successors and assigns forever, and Grantor(s) is(are) hereby bound, together with all heirs, executors, administrators, lienholders, mortgagees, or successors, to Warrant and Forever Defend, all and singular the said Easement unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

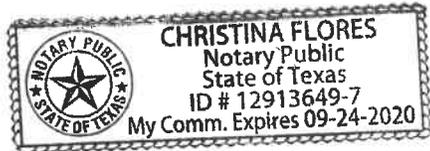
Caroline Berend  
Caroline Berend

**INDIVIDUAL ACKNOWLEDGMENT**

THE STATE OF TEXAS §  
COUNTY OF DENTON §

This instrument was acknowledged before me on the 10<sup>th</sup> day of April, 20 18, by Caroline Berend.

Christina Flores  
Notary Public  
State of Texas



My Commission Expires:  
9-24-2020

**CONSENT AND SUBORDINATION OF LIENHOLDER**

The undersigned \_\_\_\_\_, being the owner and holder of an existing Deed of Trust lien or other lien upon and against the property described above as such mortgagee and lienholder, does hereby consent to the grant of said Decorative Lighting Easement and to the recording of same.

As part of this consent, the holder of the existing Deed of Trust lien or other lien upon and against the property described above subordinates its Deed of Trust lien or other lien upon the property described above to the rights and interests of the easements, such that a foreclosure of the lien(s) shall not extinguish the rights and interests of the easements.

Executed this 9th day of APRIL, 2018.

LIENHOLDER: COMMERCIAL BANK OF TEXAS, N/A

By: Heather Cicirello

Its: AVP

**LIENHOLDER ACKNOWLEDGMENT**

THE STATE OF TEXAS §  
COUNTY OF DENTON §

This instrument was acknowledged before me on the 10th day of April, 2018, by Heather Cicirello of Commercial Bank of Texas a corporation on behalf of said corporation.

Christina Flores  
Notary Public  
State of Texas

My Commission Expires:

9-24-2020

Exhibit "A"

LEGAL DESCRIPTION

Save and Except all property dedicated to the City of Lewisville and replatted as Lot 2, Block A of the Wayne Ferguson Plaza Addition:

BEING a tract of land situated in the J. W. King Survey, Abstract No. 696, and being a portion of Block 6 of the Original Town of Lewisville, Texas, as shown on the plat recorded in Volume 75, Page 160, Deed Records, Denton County, Texas, and being a tract of land described as Tract One in a deed from William Howard Holsclaw, Jr. to Linda A. Holsclaw as recorded in Volume 4323, Page 12, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at a found "x" in concrete at the southeast corner of said Holsclaw tract (Tract One) on the north line of W. Main Street (80 foot right-of-way);

THENCE West along the south line of said Holsclaw tract (Tract One) and the north line of said W. main Street a distance 28.42 feet to a point for corner, said point being at the southwest corner of said Holsclaw tract (Tract One) and at the southeast corner of a tract of land described in a deed from George C. Burrell to Brian Burns as recorded by the County Clerk #94-00688, Deed Records, Denton County, Texas;

THENCE North along the west line of said Holsclaw tract (Tract One) and the east line of Burns tract a distance of 132.00 feet to a point for corner, said point being at the northwest corner of said Holsclaw tract (Tract One) at the northeast corner of said Burns tract and being on the south line of the Linda A. Holsclaw tract of land described as Tract Two in Volume 4323, Page 12, Deed Records, Denton County, Texas;

THENCE East along the north line of said Holsclaw tract (Tract One) and the south line of said Holsclaw tract (Tract One) a distance of 28.42 feet to a point for corner, said point being at the northeast corner of said Holsclaw tract (Tract One) and being at the southeast corner of said Holsclaw tract (Tract Two);

THENCE South along the east line of said Holsclaw tract (Tract One) a distance of 132.00 feet to the POINT OF BEGINNING, containing 3,751 square feet or 0.086 of one acre of land.

**Exhibit B  
DECORATIVE LIGHTING IMPROVEMENTS**

**Inception Permanent, Color Changing, Cloud-Controlled lights with customizable changing colors to be professionally installed on the top, front façade of the building. Location of lighting shall be installed as follows:**



Example of finished installation is for illustrative purposes only:



Attachment "D"  
Inception Lighting Specifications



## INCEPTION LIGHTING SPECIFICATIONS

LEARN ABOUT THE DETAILS OF OUR UNIQUE PRODUCT.

ITEM	SPECIFICATION	
<b>LED LIGHT OUTPUT</b>	BEAM ANGLE	120
	LUMENS	42 per source 10 inch spacing
	LED CHANNELS	Red/Blue/Green
	LUMEN MAINTENANCE	50,000 hours L70 @ 50°C
<b>ELECTRICAL</b>	INPUT VOLTAGE	24V
	POWER CONSUMPTION	.96 Watts Per Meter
<b>CONTROL</b>	LOCALIZED CONTROL	RF Pre-programmed DMX512
	APP-BASED CONTROL	Bluetooth and Wi-Fi Enabled
<b>HOUSING</b>	BASE & COVER DIMENSIONS (H X W X D)	2 x 48 x 1.5 inch
	BASE & COVER - WEIGHT	3 oz. per foot
	BASE & COVER MATERIAL	Base - UV Treated PVC Cover - Modified Acrylic
<b>PHYSICAL</b>	FIXTURE CONNECTIONS (LED STRIPS)	Integrated watertight 4-pin connectors
	TEMPERATURE RANGES	-40°F - 122°F Operating
	WATERPROOFING	IP65 (not submersible in water)
	MAXIMUM FIXTURES PER DATA/POWER SUPPLY	520 feet with localized control 260 feet with web-based control
	UV PROTECTION	10-Year Warranty

ITEM	TYPE		ITEM NUMBER
LED STRIPS	WHITE	Length .5 meter (18 in.)	IL501005W
		Length 1.5 meter (4.9 ft.)	IL501015W
		Length 5 meters (16.4 ft.)	IL501050W
	BLACK	Length .5 meter (18 in.)	IL501005B
		Length 1.5 meter (4.9 ft.)	IL501015B
		Length 5 meters (16.4 ft.)	IL501050B
BASE AND LID	1.2 METERS (4 FT.)	White	IL400340W
		Tan	IL400340T
		Dark Brown	IL400340B
CONTROLLER	LOCALIZED CONTROLLER	Max. 520 ft. of LED strips	IL301520C
	APP-BASED CONTROL	Max. 260 ft. of LED strips	IL301260C
EXTENDER CABLES	10 ft. length (black)		IL101010J
	25 ft. length (black)		IL101025J
SPLITTER	Y-CONNECTOR	1 female/male connects	IL102022J
END CAP	Clear		IL001001M



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