

## SUBDIVISION IMPROVEMENT AGREEMENT

### For PARK IMPROVEMENTS

STATE OF TEXAS

COUNTY OF DENTON

This Subdivision Improvement Agreement (the "**Agreement**") is made and entered into by and between Josey Lane LLC, a Texas limited liability company (the "**Owner**") and the City of Lewisville, Texas, (the "**City**"), hereinafter collectively referred to as the "**Parties**".

WHEREAS, the Owner owns the tract of real property described in Exhibit A and made a part hereof (the "**Property**"); and

WHEREAS, the City's Unified Development Code (the "UDC") requires the Owner to dedicate a certain amount of land to the City for use as parkland ("Parkland Dedication"), or pay a fee to the City in lieu of such dedication ("Cash-in-Lieu Fee") for a residential project being developed by Owner at 1717 Main Street, Ste 2600, Dallas, TX 75201 (the "Project") for the purposes set forth in Chapter X.1 of the UDC, and

WHEREAS, the UDC further requires the Owner to pay the City a park development fee for the purposes set forth in Chapter X.1 of the UDC ("Park Development Fee"); and

WHEREAS, the Owner wishes to fully develop a park (the "Park") on the land designated for Parkland Dedication with improvements (the "Park Improvements") meeting or exceeding the City's park improvement standards and subsequently dedicate such Park to the City; and

WHEREAS, the City wishes to escrow the Owner's Park Development Fee until such time as the developed Park is completed, determined to meet or exceed the City's park improvement standards, and dedicated to and accepted by the City, and return the escrowed fee at that time, pursuant to section X.1.4.B of the UDC; and

WHEREAS, the Owner has agreed to dedicate a portion of the property for the Park to the City as shown in Exhibit B as part of its Parkland Dedication requirements; and

WHEREAS, the City wishes to waive the Owner's remaining Cash-in-Lieu Fee in order to ensure that a park is built and dedicated to the City at the specific location set forth for the Park; and

WHEREAS, pursuant to section X.1.4.A of the UDC, the Parties wish to enter into this Agreement detailing certain information regarding the completion of the Park improvements, the dedication of the Park to the City, and the escrow of the Owner's Park Development Fee.

NOW, THEREFORE, the Parties agree as follows:

## **I. Term**

1.1 The term of this Agreement shall commence on the date executed by authorized representatives of both Parties (the "Effective Date") and shall continue in full force and effect until the Park Development Fee escrowed hereunder is refunded to the Owner, unless earlier terminated by either Party as set forth herein.

## **II. Owner Obligations**

### **2.1 Park Improvements.**

2.1.1 **Approval of Improvements.** The Owner shall submit a park plan including all proposed Park Improvements for the Park in accordance with section X.1.4.A.5 of the UDC (the "Park Plan") for approval by the City's Director of Parks and Recreation (the "Director"). Such approval shall be provided in writing. The Park Plan shall be approved if found to be in compliance with all City ordinances and this Agreement. Owner shall not begin construction or installation of the Park Improvements until the Park Plan is approved as set forth herein. Once approved, the Park Plan shall be attached hereto as **Exhibit C**.

2.1.2 **Park Plan.** The Park Plan shall adhere to development standards established in the Healthy Infrastructure Plan and guidelines used by the Parks and Recreation Department, attached hereto as **Exhibit D**. No deviation from a standard in those documents which would require approval by the City's Director of Parks and Recreation will be accepted.

2.1.3 **Construction, Installation and Inspection.** The Owner shall construct and install all Park Improvements in a good and workmanlike manner in accordance with all ordinances and the approved Park Plan. The Director of Parks and Recreation, or her designee, will be permitted to conduct periodic inspections during installation and provide a final inspection to verify conformance with the Park Plan prior to City's acceptance of the Park.

2.1.4 **Completion.** Within 5 days of completion of the Park Improvements, the Director of Parks and Recreation or her designee shall perform a final inspection to ensure that Park Improvements were constructed and installed in accordance with the Park Plan. If the Director of Parks and Recreation is satisfied that the Park Improvements have been constructed and installed in accordance with the Park Plan and this Agreement, the Director shall issue a written letter outlining such to the Owner (the "Completion Letter"). Within 30 days of receipt of the Completion Letter, Owner will provide the City with all documentation regarding design, maintenance, warranties, or other documentation necessary for the ongoing maintenance of the Park Improvements. The Park Improvements shall be completed no later than December 31, 2026, subject to force majeure. The Director of Parks and Recreation may, but is not required to, extend this deadline by up to 120 days in her sole and absolute discretion.

2.2 **Conveyance.** Upon completion of the Park Improvements and issuance of the Completion Letter as set forth in section 2.1.4, above, Owner shall convey the Park, including all Park Improvements, to the City, at no cost to the City. The conveyance must be by and through dedicating the lot in fee simple to the City on a plat, or by separate instrument filed with the appropriate county, free of all liens and encumbrances. The conveyance of the Park shall be completed, including filing any necessary documents with the appropriate county, by no later than March 31, 2027, subject to force majeure. The Director of Parks and Recreation may, but is not required to, extend this deadline by up to 120 days in her sole and absolute discretion.

2.3 Fee Escrow. Owner shall pay to the City the Park Development Fee of \$149,600 prior to the release of the first building permit as set forth in Ordinance No. 0645-24-ZON . Any interest earned on such fee shall belong to the City. Upon completion and acceptance of the Park, including the Park Improvements, by the City as set forth in section 2, below, and the conveyance of the Park to the City, the Owner may request that the escrowed fees be returned to the Owner in accordance with section 3.3, below.

2.4 Warranty for Maintenance Period. The Owner warrants the Park Improvements will be designed and constructed in strict accordance with the Park Plan and free from defects. The Owner agrees to maintain and correct any defects for a period of two (2) years from the date the City accepts the construction of the Park Improvements (the "**Maintenance Period**"). The Owner shall correct and repair, or cause to be corrected and repaired, any defects in materials or workmanship of the Park Improvements that occur before and during the Maintenance Period due to any cause.

### **III. City's Obligations**

3.1 Inspection and Approval. The City may inspect the Park Improvements during and at the completion of construction to ensure compliance with the Park Plan, and the Director of Parks and Recreation, or her designee, may accept the Park Improvements in writing by issuing a Completion Letter, as set forth in section 2.1.4, above.

3.2 Notice of Defect. The City will notify the Owner if an inspection reveals that any portion of the Park Improvements is not constructed in accordance with the Park Plan or is otherwise defective. The City is not responsible for the construction of the Park Improvements, the quality of the material, or the construction or installation methods utilized. In addition, the City is not responsible under this Agreement for making continuous on-site inspections of the construction work and the City has no privity with or responsibility for the construction or installation contractor or any subcontractors.

3.3 Refund of Escrowed Park Development Fee. Upon completion and acceptance of the Park, including the Park Improvements, by the City, and the conveyance of the Park to the City, the Owner may request that the escrowed Park Development Fee be returned to the Owner. Such request shall be made in writing to the Director of Parks and Recreation within 120 days of the conveyance of the Park to the City. The City shall refund the escrowed Park Development Fee within 30 days of receipt of the request from the Owner. Any interest earned on the escrowed Park Development Fee shall remain with the City.

3.4 Waiver of Remaining Cash-in-Lieu Requirement. By this Agreement, the City waives the Owner's remaining cash-in-lieu fee of \$101,311 for the Project.

### **IV. Events of Default and Termination**

4.1 Events of Default. The following shall constitute an Event of Default:

4.1.1 Either Party's failure to comply with any material provision of this Agreement shall constitute an Event of Default; or

4.1.2 Owner's sale of the Property or any portion of the Property upon which the Park is located during the Term of this Agreement without assigning Owner's interest in this Agreement to the purchaser as set forth in section 5.6, below.

4.2 City's Remedies. Upon an Event of Default by the Owner, the Director of Parks and Recreation, or her designee, shall provide the Owner with written notice of the Event of Default, outlining the specific failure/s to comply with a material provision of this Agreement. The Owner shall have the opportunity to cure for a period of thirty (30) days following the date of such written notice. At the end of such cure period, if all outstanding failures to comply with this Agreement are not rectified, this Agreement shall automatically terminate.

4.3 Owner's Remedies. Upon an Event of Default by the City, the Owner shall provide the Director of Parks and Recreation with written notice of the Event of Default, outlining the specific failure/s to comply with a material provision of this Agreement. The City shall have the opportunity to cure for a period of thirty (30) days following the date of such written notice. At the end of such cure period, if all outstanding failures to comply with this Agreement are not rectified, the Owner may elect to terminate this Agreement by providing written notice to the City.

4.4 Effect of Termination. Upon termination of this Agreement by either Party for any reason, the Park Development Fee shall no longer be escrowed, but shall permanently convey to the City for use for the purposes set forth in Chapter X.1 of the UDC for park development fees, and the cash-in-lieu fee waived by section 3.4, above, shall become immediately due and payable to the City by the Owner. Nothing in this section shall limit the City's remedies in case of termination.

## **V. Miscellaneous**

5.1 No Impact Fee. Nothing in this Agreement, the Agreement itself, and the dealings between the Parties shall be considered an impact fee. Owner agrees and stipulates that all terms of Local Government Code section 212.904 have been met by the City, and that the City has not required as a condition of approval for Owner's development, or any portion thereof, that Owner bear a portion of the costs of municipal infrastructure improvements by the making of dedications, the payment of fees, or the payment of construction costs. Except in connection with Owner's enforcement of Section 4.4 of this Agreement or the City's breach of Section 5.14, Owner, its related entities, successors and assigns fully and forever releases and discharges the City, its past and present employees, officers, councilmembers, attorneys and other representatives, including City consultants (including city attorney and city engineer, and city bond counsel), from any and all claims, demands, controversies, and causes of action of every conceivable character, without limitation, including for breach of contract (including under Local Government Code sections 271.151-271.160), takings, exactions, negligence, and for any claims under any statute or code, local, state or federal, including under Local Government Code chapter 395, and the Private Real Property Rights Preservation Act, Chapter 2007, Texas Government Code, including that the City's execution or performance of this Agreement or any authorized amendment or supplements hereto may constitute, either now or in the future, a "Taking" of Owner's, Owner's grantee's, or a grantee's successor's "Private Real Property," as such terms are defined in the Private Real Property Rights Preservation Act. Any claims against the City, the City consultants (including city attorney, city engineer, and city bond counsel) and their respective employees and agents which are not specifically released above are hereby assigned in full to the City.

5.2 Remedies. The remedies available to the City and the Owner under this Agreement and Texas law are cumulative in nature.

5.3 No Third-Party Beneficiaries. This Agreement is solely for the benefit of Owner and the City and is not intended to be nor shall it be construed to be for the benefit of any third party. It is understood and agreed between the Parties that the Owner, in performing its obligations thereunder, is acting independently, and the City assumes no responsibility or liabilities in connection therewith to third parties.

5.4 Indemnification. **OWNER ASSUMES THE ENTIRE RESPONSIBILITY AND LIABILITY FOR, AND AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, REPRESENTATIVES AND INSURERS HARMLESS FROM ANY AND ALL LIABILITIES, CLAIMS, COSTS, EXPENSES, JUDGMENTS, ATTORNEYS FEES, LITIGATION EXPENSES, CAUSES OF ACTION, DEMANDS, LOSSES AND/OR DAMAGES ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY INCIDENTAL TO THE PERFORMANCE OF WORK OR SERVICES BY OWNER, ITS AGENTS, EMPLOYEES, REPRESENTATIVES AND INDEPENDENT CONTRACTORS. THIS INDEMNITY IS TO BE CONSTRUED AS BROADLY AS POSSIBLE TO INCLUDE ANY AND ALL LIABILITIES, CLAIMS, COSTS, EXPENSES, JUDGMENTS, CAUSES OF ACTION, DEMANDS, LOSSES WHATSOEVER, INCLUDING BUT NOT LIMITED TO CAUSES OF ACTION OR DAMAGES SOUNDING IN TORT, PERSONAL INJURIES, CONTRACT DAMAGES, ECONOMIC DAMAGES, PUNITIVE DAMAGES, STRICT LIABILITY, COMMON LAW NEGLIGENCE AND GROSS NEGLIGENCE, INTENTIONAL TORTS, FEDERAL AND STATE STATUTORY AND COMMON LAW, CLAIMS UNDER THE TEXAS TORT CLAIMS ACT, EMPLOYMENT DISPUTES, FEDERAL AND STATE CIVIL RIGHTS, CLAIMS FOUNDED IN CONTRACT OR QUASI-CONTRACT, BREACH OF WARRANTY, CLAIMS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, AND ANY AND ALL CLAIMS CAUSES OF ACTION OR DEMANDS WHEREBY ANY LOSS IS SOUGHT AND/OR INCURRED AND/OR PAYABLE BY CITY, ITS AGENTS, EMPLOYEES, REPRESENTATIVES AND/OR INSURERS OR RISK POOLS. THIS PROVISION IS TO BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS, AND IT IS EXPRESSLY RECOGNIZED BY ALL PARTIES THAT IT COMPLIES WITH THE CONSPICUOUSNESS REQUIREMENT AND THE EXPRESS NEGLIGENCE TEST, AND IS VALID AND ENFORCEABLE AGAINST OWNER, ITS AGENTS, EMPLOYEES, REPRESENTATIVES, AND INDEPENDENT CONTRACTORS. OWNER HAS CAREFULLY READ, FULLY UNDERSTANDS, AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS PROVISION—AND THE INDIVIDUAL SIGNING THIS AGREEMENT ON BEHALF OF OWNER HAS FULL AUTHORITY TO BIND OWNER TO TIDS AGREEMENT AND TIDS INDEMNITY PROVISION. IT IS FURTHER RECOGNIZED AND AGREED, THAT SHOULD ANY PARTICULAR PORTION OR PROVISION OF TIDS INDEMNITY PROVISION BE HELD INVALID, VOID AND/OR UNENFORCEABLE, IT SHALL NOT AFFECT THE VALIDITY AND ENFORCEABILITY OF THE REMAINDER OF THIS PROVISION. THIS PROVISION SURVIVES TERMINATION OR COMPLETION OF THIS AGREEMENT AND THE OBLIGATIONS CONTAINED HEREIN.**

5.5 No Waiver. The waiver of any provision of this Agreement will not constitute a waiver of any other provision, nor will it constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement. The City's failure to enforce any provision of this Agreement will not constitute a waiver or estoppel of the right to do so.

5.6 Successors and Assigns. The terms and conditions of this Agreement are binding upon the successors and assigns of all Parties hereto. This Agreement cannot be assigned by the Owner unless written permission is first granted by the City, the assignee agrees to be bound by all terms and conditions of this Agreement, and the assignment includes a statement signed by the Owner and the requested assignee assigning the escrowed Park Development Fee to the assignee contingent upon the City's approval of the assignment of this Agreement; provided, however, that Owner may assign its rights and obligations under this Agreement without the consent of City in connection with Owner's sale of all or any portion of the Property, provided and on the condition that: (i) Owner shall have given City written notice of the assignment and the identity of the assignee at least five (5) business days prior to closing of all or such portion of the Property (including the name, vesting and signature block of the assignee; and (ii) such assignee shall have assumed Buyer's obligations hereunder by a written instrument of assumption such that assignee shall (a) agrees to be bound by all terms and conditions of this Agreement, and the assignment includes a statement signed by the Owner and the assignee assigning the escrowed Park Development Fee to the assignee, (b) have assumed all of Owner's obligations and liabilities under this Agreement, and (c) be deemed to have been made, for the benefit of City hereunder, all representations and warranties of Owner set forth in this Agreement, as of the date of such assignment. Any assignment made without meeting the required conditions is void. The City may assign some or all of its rights under this Agreement and any such assignment shall be effective upon notice to the Owner.

5.7 Notice. Notices required to be given to either Party to this Agreement shall be given by email, personally, or by nationally-recognized overnight courier or certified mail with return receipt requested to the party at its address as set forth below, and shall be deemed delivered one (1) day after the date deposited with the overnight courier and three (3) days after the date deposited in the United States' mail at the address provided below. Notice delivered by email will be deemed to have been received when sent, even if the sender receives a machine-generated message that delivery has failed. If a party sending an email notice under this agreement receives a machine-generated message that delivery has failed, for that notice to be valid the sender must no later than ten business days after sending the email message deliver a tangible copy of that notice as otherwise set forth herein.

For Owner by notice to:  
Josey Lane LLC  
John Mears, Vice President  
1717 Main Street Ste 2600,  
Dallas, Texas 75201  
tandrews@trigatecapital.com

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For City by notice to:

Director of Parks and Recreation  
City of Lewisville, Texas  
191 Civic Circle  
Lewisville, Texas 75067  
sanaya@cityoflewisville.com

with a copy to:

City Manager  
City of Lewisville, Texas  
151 W. Church Street  
Lewisville, Texas 75057  
clairepowell@cityoflewisville.com

Either Party may change the address or email address to which notices are to be sent by giving the other Party written notice in the manner provided in this paragraph.

5.9 Severability. If any provision contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. In lieu of each invalid, illegal or unenforceable provision, there shall be added a new provision by written agreement of the Parties as similar in terms to such invalid, illegal or unenforceable provision as may be possible and yet be valid, legal and enforceable.

5.10 Jurisdiction and Venue. This Agreement concerns real property located in Lewisville, Texas, and shall be governed and construed under Texas law. Venue for any action arising under this Agreement shall be exclusively in Denton County, Texas.

5.11 Captions Immaterial. The captions or headings of the paragraphs of this Agreement are for convenience only and shall not be considered in construing this Agreement.

5.12 Modifications. This Agreement may be modified only by a writing signed by both of the Parties or their duly authorized agents.

5.13 Survival. This Agreement shall survive for the later of (i) one (1) year following the Cash-in-Lieu, or (ii) the expiration of the Maintenance Period.

5.14 Authority. The individual signing this Agreement on behalf of Owner has full authority to bind Owner to this Agreement, including, without limitation, Section 5.4. The individual signing this Agreement on behalf of the City has full authority to bind the City to this Agreement, including, without limitation, Section 3.4.

*[signatures on the following page]*

DATED this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**CITY OF LEWISVILLE, TEXAS**

\_\_\_\_\_  
Claire Powell, City Manager

**ATTEST:**

\_\_\_\_\_  
Jennifer Malone, City Secretary

**APPROVED AS TO FORM:**

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

**OWNER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

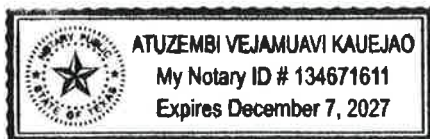
Date: \_\_\_\_\_

**OWNER'S ACKNOWLEDGEMENT**

STATE OF TEXAS

COUNTY OF ~~DENTON~~ DALLAS

This instrument was acknowledged before me on (date) by (name of acknowledging member, manager, authorized officer, or agent), a (member, manager, authorized officer, or agent) of Josey Lane LLC on behalf of Josey Lane LLC, a limited liability company.



\_\_\_\_\_  
Notary - State of Texas

Atuzembi Vejambuavi Kauejao



## **EXHIBIT A – PROPERTY DESCRIPTION**

## **EXHIBIT B – PARK SITE PLAN**

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**EXHIBIT C – PARK PLAN (ATTACHED UPON APPROVAL)**

**EXHIBIT D**  
**PARK DEVELOPMENT STANDARDS ESTABLISHED IN THE HEALTHY**  
**INFRASTRUCTURE PLAN AND GUIDELINES USED BY THE PARKS AND**  
**RECREATION DEPARTMENT**