

Denton County  
Juli Luke  
County Clerk

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Instrument Number: 90487

ERecordings-RP  
AGREEMENT

Recorded On: July 27, 2016 09:48 AM

Number of Pages: 7

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**\*\* Examined and Charged as Follows: \*\***

Total Recording: 50.00

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\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*  
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 90487  
Receipt Number: 20160727000120  
Recorded Date/Time: July 27, 2016 09:48 AM  
User:  
Station: Station 20

**Record and Return To:**



STATE OF TEXAS  
COUNTY OF DENTON

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time  
printed heron, and was duly RECORDED in the Official Records of Denton County, Texas.

Juli Luke  
County Clerk  
Denton County, TX

After executing, please return to:  
 Town of Flower Mound  
 Town Secretary's Office  
 2121 Cross Timbers Rd.  
 Flower Mound, TX 75028

**DEVELOPMENT AGREEMENT FOR CONSTRUCTION OF TURN LANES  
 AND DRIVEWAY IMPROVEMENTS**

THIS DEVELOPMENT AGREEMENT FOR CONSTRUCTION OF TURN LANES AND DRIVEWAY IMPROVEMENTS ("Agreement") is made and entered into this 18<sup>th</sup> day of July, 2016, by and between the Town of Flower Mound, Texas, a Texas home rule municipality ("Town"), and Lakeside DFW Land, Ltd., a Texas limited partnership ("Lakeside DFW").

**WITNESSETH:**

WHEREAS, the Lakeside DFW Project ("Lakeside" or "Project") encompasses approximately one hundred forty-nine (149) acres of land in Flower Mound (the "Property") being developed along the shores of Lake Grapevine; and

WHEREAS, on November 19, 2012, the Town entered into a Development Agreement ("the 2012 Agreement") with Lakeside DFW to complete construction of certain aspects of the Project governing the development of the Property; and

WHEREAS, the Town and Lakeside DFW now desire to address additional roadway construction work on the Property which was not addressed by the 2012 Agreement as set forth herein;

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Town and Lakeside DFW covenant and agree as follows:

1. Separate Agreement. The Town and Lakeside DFW agree that the provisions and terms contained in the 2012 Agreement, as amended, remain in full force and effect and shall continue to be applicable to the development of Lakeside. The Town and Lakeside DFW further agree that this Agreement is a separate agreement and does not modify or conflict with the 2012 Agreement, as amended.
2. Lakeside DFW 7-11 Development. The Town has previously approved the Lakeside DFW 7-11 Development numbered RC16-0008 ("7-11 Development"), and a plat thereof is recorded in the Plat Records of Denton County, Texas (the "Plat"). The 7-11 Development includes all improvements to be constructed on Lot 3 (the "7-11 Tract"), the regional detention system, the construction of an eastbound right turn lane on Lakeside Parkway as provided for in Section 4 of this Agreement, and the construction of driveway improvements as provided for in Section 5 of this Agreement.
3. Construction of Northbound Right Turn Lane on F.M. 2499. The Town agrees to design, construct, and pay for a northbound right turn lane on F.M. 2499 at Lakeside Parkway ("F.M. 2499 Turn Lane") in accordance with Exhibit "A" attached hereto. Said design and construction shall occur at a time of the Town's choosing, provided, however, such design and construction shall occur on or before ten (10) years after the date of this Agreement. Town acknowledges that all right-of-way and easement property required for F.M. 2499 Turn Lane has previously been dedicated to the Town pursuant to the Plat.

4. Construction of Eastbound Right Turn Lane on Lakeside Parkway. Lakeside DFW agrees to design, construct, and pay for an eastbound right turn lane on Lakeside Parkway ("Lakeside Turn Lane") as depicted on Exhibit "A." The Lakeside Turn Lane shall be completed and accepted by the Town before any building to be located on the 7-11 Tract as contemplated in the 7-11 Development receives a certificate of occupancy from the Town. Town agrees it will act reasonably and diligently in determining such acceptance. Town acknowledges that the Lakeside Turn Lane may be constructed within the existing right-of-way of Lakeside Parkway as previously approved on the Plat.

5. Driveway Improvements. Lakeside DFW agrees to use commercially reasonable efforts to acquire the necessary property rights in order to construct improvements to the existing driveway located in the Home Depot – Silveron Addition so that it aligns with the existing commercial driveway on the north side of Lakeside Parkway as depicted on Exhibit "A" ("Driveway Improvements"). In the event Lakeside DFW is successful in acquiring such property rights, then Lakeside DFW agrees to design, construct, and pay for the Driveway Improvements in accordance with the Plat, and in such event, the Driveway Improvements shall be completed and accepted by the Town before any building to be located on the 7-11 Tract as contemplated in the 7-11 Development receives a certificate of occupancy from the Town. However, in the event Lakeside DFW is not successful in acquiring such property rights, then (i) it shall notify Town in writing, and Town may, at its option, attempt to obtain such property rights (which efforts may include exercise of the Town's powers of eminent domain), and (ii) completion and acceptance of the Driveway Improvements shall not be a condition to the Town's issuance of a certificate of occupancy for any building to be located on the 7-11 Tract. If Town acquires such property rights, it shall notify Lakeside DFW and Lakeside DFW shall design, construct, and pay for the Driveway Improvement.

6. Term. The term of this Agreement shall begin on the date of execution and shall end when the Town accepts the Improvements provided for in Section 3, Section 4, and Section 5 herein or when the construction of the building on the 7-11 Tract is completed, whichever is later.

7. Indemnification. **LAKESIDE DFW SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE TOWN, ITS OFFICERS, OFFICIALS, CONSULTANTS, AGENTS AND EMPLOYEES, IN BOTH THEIR PRIVATE AND OFFICIAL CAPACITIES, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LOSSES, AND EXPENSES OF ANY CHARACTER, NAME, AND DESCRIPTION, INCLUDING, BUT NOT LIMITED TO, COURT COSTS AND REASONABLE ATTORNEY'S FEES, ARISING ON ACCOUNT OF ANY NEGLIGENT ACT OF LAKESIDE DFW, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS IN CONSTRUCTION OR DESIGN OF THE IMPROVEMENTS PROVIDED FOR HEREIN, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM, DAMAGE, LOSS OR EXPENSE ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND SHALL PAY ANY JUDGMENT, WITH COSTS, WHICH MAY BE OBTAINED AGAINST THE TOWN GROWING OUT OF ANY SUCH CLAIM. NOTHING HEREIN SHALL WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE TOWN**

**UNDER TEXAS LAW. LAKESIDE DFW'S INDEMNITY OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

8. Applicable Laws and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in Denton County, Texas.

9. Notices. Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the Town:                                      The Town of Flower Mound, Texas  
2121 Cross Timbers Road  
Flower Mound, Texas 75028  
Attn: Town Manager's Office

If to Lakeside DFW:                                  Lakeside DFW Land, Ltd.  
909 Lake Carolyn Parkway, Suite 150  
Irving, Texas 75039  
Attn: Jimmy Archie

10. Attorneys' Fees. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal). Nothing herein shall constitute a waiver of any claim or defense that could be asserted in any litigation related to this Agreement, and the parties agree that this Agreement is not subject to Subchapter I of Chapter 271 of the Texas Local Government Code.

11. Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

12. Binding Obligation. Upon execution of this Agreement by all signatories hereto, the Agreement shall become a binding obligation on the signatories. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to same. Lakeside DFW warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Lakeside DFW to same. Further, this Agreement is and shall be binding upon Lakeside DFW, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

13. Mediation. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to mediation.

14. Roughly Proportionate Determination under Texas Law. Lakeside DFW has been represented by legal counsel in the negotiation of this Agreement and been advised, or has had the opportunity to have legal counsel review this Agreement and advise Lakeside DFW, regarding Lakeside DFW's rights under Texas and federal law. Lakeside DFW hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town in this Agreement, if any, are roughly proportionate to the Project's anticipated impact. Lakeside DFW specifically reserves its right to appeal the apportionment of municipal infrastructure costs under this Agreement in accordance with Section 212.904 of the Texas Local Government Code and acknowledges that the time line for commencing such appeal commences upon execution of this Agreement. Notwithstanding the foregoing, Lakeside DFW hereby waives and releases the Town from any and all liability under Section 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure improvements required by this Agreement.

15. Rough Proportionality Determination under Federal Law. Lakeside DFW hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Texas Local Government Code in regard to this Agreement. Both Lakeside DFW and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements in this Agreement, if any, mandated by the United States Supreme Court in Dolan v. City of Tigard, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Agreement. Lakeside DFW acknowledges the receipt of good and valuable consideration for the release and waiver of such claims.

16. Exhibits. The following exhibits are attached hereto and incorporated into this Agreement for all purposes:

Exhibit A: Map depicting F.M. 2499 Turn Lane, Lakeside Turn Lane, and Driveway Improvements

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date first above written.

**THE TOWN OF FLOWER MOUND, TEXAS**

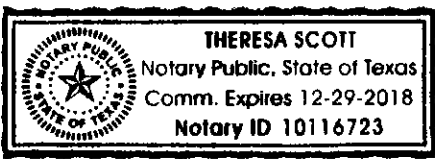
By: Thomas E Hayden  
Name: Thomas E. Hayden  
Mayor, Town of Flower Mound



STATE OF TEXAS                    §

COUNTY OF DENTON §  
§

This instrument was acknowledged before me on this the 18 day of July, 2016 by Thomas E. Hayden, Mayor of the Town of Flower Mound, Texas, on behalf of the Town of Flower Mound, Texas.



Theresa Scott  
Notary Public, State of Texas

**LAKESIDE DFW LAND, LTD.,**  
A Texas limited partnership

By: Lakeside DFW, Inc.,  
A Texas corporation, its General Partner

By: [Signature]  
Name: Peter B. Stewart, its President

STATE OF TEXAS §  
§  
COUNTY OF DALLAS §

This instrument was acknowledged before me on this the 25<sup>th</sup> day of July, 2016 by Peter B. Stewart, President of Lakeside DFW Inc., a Texas corporation, General Partner of Lakeside DFW Land, Ltd., a Texas limited partnership, on behalf of said corporation and limited partnership.



[Signature]  
Notary Public, State of Texas

# EXHIBIT "A"

