

STATE OF TEXAS  
COUNTY OF COLLIN

§  
§  
§  
§

TRAIL DEVELOPMENT AGREEMENT  
(STACY GREEN)

This Development Agreement ("Agreement") is made by and between the City of Allen ("City"), a Texas home rule municipality, and Stacy 75 Partners LP ("Developer"), a Texas limited partnership, acting by and through their duly authorized representatives. City and Developer are referred to herein collectively as "the Parties" or individually as "Party."

**RECITALS**

**WHEREAS**, Developer is the owner of the Development Property and desires and intends to develop the Development Property in accordance with the Development Regulations; and

**WHEREAS**, Section 4.08.17.5 of the ALDC requires the owner of property to dedicate open space in planned development districts; and

**WHEREAS**, Section 8.13.3 of the ALDC requires the final plat of property being developed within City's incorporated limited to designate the area of the 100-year floodplain as determined by the most recent maps produced by FEMA in accordance with the NFIP and the real property within that area conveyed to City; and

**WHEREAS**, Article X of the ALDC requires the owner of property to be developed for residential purposes to convey land to City, or pay park fees to City, or a combination of the foregoing, in lieu of dedicating or constructing public parks within the property being developed; and

**WHEREAS**, Developer's plans for development of the Development Property will result in the removal of a significant number of Protected Trees; and

**WHEREAS**, Section 7.06 of the ALDC requires that an owner that removes Protected Trees resulting in (i) a net balance of negative tree removal credits and/or (ii) the loss of Protected Trees over fifteen (15) caliper inches in diameter, must plant a sufficient number of caliper inches of Replacement Trees to offset the loss of the Protected Trees being removed as part of the development or, under certain circumstances, make payment to City in lieu of planting Replacement Trees; and

**WHEREAS**, Developer's plans for development of the Development Property, the related removal of Protected Trees, and the inability to plant a sufficient quantity of Replacement Trees on the Development Property will result in a negative tree credit as calculated in accordance with Section 7.06.3 of the ALDC; and

**WHEREAS**, the Parties desire to enter into this Agreement for various purposes including, but not limited to, (i) setting forth Developer's obligations regarding mitigation of the Protected Trees being removed from the Development Property and the manner in which Developer will

satisfy its obligations to provide payment to City in lieu of planting Replacement Trees on the Development Property, (ii) setting forth Developer's obligations regarding the dedication and/or conveyance of land and/or payment of park fees to City in lieu of dedicating or constructing public parks within the Development Property; and (iii) the construction and maintenance of certain improvement within the floodplain and open space areas of the Development Property and the property conveyed to City pursuant to this Agreement;

**NOW THEREFORE**, in consideration of the premises and the mutual covenants contained herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged by the Parties, the Parties agree as follows:

## **AGREEMENT**

### **Article I Definitions**

As used in this Agreement, the following words and phrases shall have the following meanings unless a different meaning is clearly intended by the context of its use:

**"ALDC"** means the Allen Land Development Code, as amended from time to time.

**"Approved Plans"** means those certain "Construction Plan for Stacy Green Hike & Bike Trail" dated June 8, 2018, prepared by Winklemann & Associates, Inc, and approved by the City on or about June 13, 2018, a true and correct copy of which are on file in the office of the City's Director of Engineering and incorporated herein by reference.

**"Completion of Construction"** means the point in time when (i) with respect to the Trails, TDLR has reasonably determined that the Trails comply in all material respects with all applicable Texas Accessibility Standards, (ii) with respect to the Trails, the Directors have reasonably determined construction and/or installation of the Trails has been substantially completed in accordance with the Approved Plans and approved the Trails for acceptance by City at Closing, which approval shall not be unreasonably withheld, and (iii) with respect to planting any turf grasses and other landscaping and the installation of irrigation systems in accordance with the Approved Plans, a mowable stand of permanent, warm-season turfgrass has been established and installation of all related irrigation systems is substantially complete and all such landscaping and irrigation improvements have been accepted by the Parks Director, which shall not be unreasonably withheld.

**"Development Property"** means the real property located in the City of Allen described in Exhibit "A" hereto owned by Developer as of the Effective Date that Developer intends to develop and use in accordance with the PD Ordinance.

**"Development Regulations"** mean the ordinances, regulations, and policies adopted by City applicable to the use and development of the Development including, but not limited to, the ALDC, as amended, and the PD-45 Ordinance, as amended.

**“East Floodplain Property”** means, collectively, (i) the 3.560± acre tract of land and (ii) 0.773± acre tract of land conveyed to Developer pursuant to that certain Special Warranty Deed effective January 5, 2018, and recorded January 8, 2018, as Instrument No. 20180108000032140, Official Public Records, Collin County, Texas, and described in **Exhibit “B”** hereto.

**“East Trail”** means a concrete trail not less than twelve feet (12.0’) wide extending from the eastern boundary of the Development Property easterly beneath the U.S. 75 overpass of Cottonwood Creek, through Tract 1 of the East Floodplain Property, to create a connection to City’s existing public trail system which has termination points on City’s property located north and south of Tract 1 of the East Floodplain Property, the approximate location of said East Trail being depicted in **Exhibit “C”** hereto, and all related turf grass and irrigation systems constructed and/or installed described in the Approved Plans.

**“Effective Date”** means the date this Agreement has been signed by authorized representatives of all of the Parties.

**“FEMA”** means Federal Emergency Management Agency.

**“Floodplain Properties”** means, collectively, the East Floodplain Property and West Floodplain Property.

**“Force Majeure”** means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

**“NFIP”** means National Flood Insurance Program.

**“Parks Director”** means City’s Director of Parks and Recreation or his designee.

**“PD-45 Ordinance”** means City of Allen Ordinance No. 3529-10-17 establishing the use and development regulations for the Development approved by City’s City Council on October 24, 2017, including any amendments thereto.

**“Plat”** means that certain plat of Lots 1-9, Block A, and Lots 1-11, Block B of the Stacy Green Addition, an Addition to the City of Allen, Texas, recorded under Document No. 20180703010003060, Real Property Records of Collin County, Texas.

**“Protected Trees,” “Replacement Trees,” and “Tree Caliper”** shall have the same meaning given to those phrases in Appendix “A” of the ALDC.

**“Title Company”** means Republic Title of Texas, Inc., c/o Tammie Cooper, Vice President, 2626 Howell Street, 10<sup>th</sup> Floor, Dallas, Texas 75204.

“**TDLR**” means the Texas Department of Licensing and Regulation and, in the case of inspection of the Trails, any contractor acting on TDLR’s behalf with respect to inspection of the Trails for compliance with the Texas Accessibility Standards, as amended.

“**TxDOT**” means the Texas Department of Transportation.

“**TxDOT Trail Permit**” means that certain *Permit to Construct Access Driveway Facilities on Highway Right-of-Way* (Permit No. 20180761US75) issued to City by TxDOT on July 31, 2018, a copy of which is attached hereto as **Exhibit “D”**.

“**Trail Design Standards**” means City’s Trail Design Standards as set forth in Appendix I of the ALDC, as amended from time to time.

“**Trails**” means, collectively, the East Trail and the West Trail.

“**West Floodplain Property**” means Lot 11, Block B of the Stacy Green Addition, an Addition to the City of Allen, Texas, as set forth in that certain final plat recorded under Document No. 20180703010003060, Real Property Records of Collin County, Texas.

“**West Trail**” means a concrete pedestrian and bicycle trail not less than twelve feet (12.0’) wide extending through the West Floodplain Property and connecting to the East Trail, along with all related turf grass and irrigation systems constructed and/or installed as described in the Approved Plans.

## **Article II**

### **Conveyance of East Floodplain Property**

**2.1     Conveyance.** Developer agrees to convey to City, and City agrees accept title to, the Floodplain Properties as provided in this Article II, including any and all improvements located thereon.

**2.2     Title and Survey.**

(a) Not later than twenty (20) days after the Effective Date, Developer will, at Developer’s expense, cause Title Company to issue, with respect to the Floodplain Properties, the following:

(1) a current commitment for an Owner’s Policy of Title Insurance for the Floodplain Properties from the Title Company setting forth the state of title to the Floodplain Properties together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening the Floodplain Properties, together with all exceptions or conditions to such title;

(2) best available copies of all documents referenced in the Title Commitment;



(3) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years; and

(4) any environmental tests, studies, or assessment reports prepared for or in the possession of Developer with respect to the Floodplain Properties.

(b) Not later than thirty (30) calendar days after the Effective Date, Developer shall, at Developer's expense and option, obtain a survey (the "Survey") of the Floodplain Properties prepared by a duly licensed Texas Registered Public Land Surveyor. The Survey shall be staked on the ground, and the plat shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, easements, and rights-of-way on or adjacent to the Floodplain Properties, if any, and shall contain the surveyor's certification that there are no encroachments on the Floodplain Properties other than what are listed on the Title Commitment and shall set forth a metes and bounds description of the Floodplain Properties. The legal description contained in said Survey shall be used by the Parties as the legal description contained in the Special Warranty Deed. Otherwise, if there are no save and exception portions of the platted lot, then the platted lot legal description will be used in the Special Warranty Deed. Notwithstanding the foregoing to the contrary, Developer may provide to City and Title Company (i) a copy of the survey of the East Floodplain Property dated September 22, 2017, referenced in Exhibit "B" hereto and/or a prior survey in the possession of Developer with respect to the West Floodplain Property (collectively "the Prior Survey") along with an affidavit (if required) in a form acceptable to the Title Company that will permit the Title Company to accept the Prior Survey for purposes of providing the survey deletion on the Title Policy.

(c) City shall, not later than ten (10) days after City's receipt of the last of the Survey or Prior Survey, whichever is applicable, and the Title Commitment, notify Developer and Title Company in writing of any objections to the Survey (or Prior Survey) or Title Commitment related to the Floodplain Properties. If City timely delivers to Developer written objections in accordance with this Section 2.2(c), Developer may, but shall be under no obligation to, attempt to satisfy same prior to Closing. Developer shall not be required to incur any cost to cure any of City's objections. If Developer does not deliver written notice to City on or before the tenth (10th) day after Developer's receipt of City's objections that Developer is willing to satisfy such objections, City may, as its sole and exclusive remedy, either (i) waive such objections and accept such title as Developer is able to convey prior to Closing, or (ii) terminate this Agreement by written notice to Developer and the Title Company, in which case neither Party shall have any further rights or obligations hereunder except as to those rights or obligations which are stated to expressly survive the such Sections. Any exception to title to which City does not timely object in accordance with this Section 2.2(c) or to which City objects but are subsequently waived by City shall be deemed to be Permitted Exceptions.

(d) Notwithstanding anything in Section 2.2(c) to the contrary, upon completion of the East Trail and/or West Trail and satisfaction of all other conditions to Closing, the Title Commitment shall be updated and delivered to the Parties. Not later than

five (5) calendar days after receipt of such updated Title Commitment, City shall notify Developer and Title Company of any objections to exceptions to title shown on Schedule B on the updated Title Commitment which were not present on the original Title Commitment ("the Additional Objections"). If City timely delivers to Developer written objections in accordance with this Section 2.2(d), Developer may, but shall be under no obligation to, attempt to satisfy same prior to Closing. Developer shall not be required to incur any cost to cure any of City's objections. If Developer does not deliver written notice to City on or before the tenth (10<sup>th</sup>) day after Developer's receipt of City's objections that Developer is willing to satisfy such objections, City may, as its sole and exclusive remedy, either (i) waive such objections and accept such title as Developer is able to convey prior to Closing, or (ii) terminate this Agreement by written notice to Developer and the Title Company, in which case neither Party shall have any further rights or obligations hereunder except as to those rights or obligations which are stated to expressly survive the termination of this Agreement. Any exception to title to which City does not timely object in accordance with this Section 2.2(d) or to which City objects but are subsequently waived by City shall be deemed to be Permitted Exceptions

### **2.3 Inspections.**

(a) After the Effective Date, City and its agents, employees, or contractors shall have the right to enter upon the Floodplain Properties during regular business hours upon reasonable notice to Developer and conduct such inspections, tests and studies as City may deem necessary; provided, any intrusive testing shall require the prior written consent of Developer, not to be unreasonably withheld.

(b) City may enter the Floodplain Properties to conduct its inspection but shall be solely responsible for any damages caused thereby, and any claims arising therefrom. City shall restore any such damages within ten (10) days after any entry on to the Floodplain Properties by City or any of its employees, agents, contractors or consultants. City shall be responsible for and shall pay all costs, liabilities, damages and expenses arising in connection with any entry on to or inspections of the Floodplain Properties by City or any of its employees, agents, contractors or consultants. City's obligations under this paragraph shall survive any termination of this Agreement.

**2.4 Closing.** The closing of the sale of the Floodplain Properties in accordance with the terms of this Agreement (the "Closing") shall occur on or before the Closing Date at the Title Company or by mail or overnight delivery service, or at such other time as may be agreeable to the Parties.

### **2.5 Closing Deliverables.**

(a) At the Closing, Developer shall deliver to the Title Company:

(1) a special warranty deed, in form and substance reasonably acceptable to City, conveying good and indefeasible title to the Floodplain

Properties to City, free and clear of any and all encumbrances except the Permitted Exceptions (as defined in Section 2.8 hereof) (the "Special Warranty Deed");

(2) if requested by City, a bill of sale, in form and substance reasonably acceptable to City, conveying good and indefeasible title to the East Trail or West Trail, as applicable, to City, free and clear of any and all encumbrances and security interests, subject to the Permitted Exceptions;

(3) such other documents as may be reasonably required by Title Company in order to cause Title Company to issue a Texas owner's policy of title insurance (or equivalent) in the amount of the current market value of the Floodplain Properties established by the Collin Central Appraisal District, insuring such title to City; and

(4) possession of the Floodplain Properties free of parties in possession except as set out in Schedule B of the Title Commitment, as depicted in the Survey (or Prior Survey, if applicable), and as provided by law in the lien in favor of taxing authorities for real property taxes not yet due and payable.

(b) At the Closing, City shall deliver to Developer through the Title Company:

(i) such documents as may be reasonably required by the Title Company; and

(ii) such written confirmation addressed to Developer acknowledging that Developer's completion of the East Trail or West Trail, as applicable, has satisfied the condition necessary to obtain the Parkland Dedication Fee Credit and Tree Mitigation Fee Credit, as provided in Section 5.1 and Section 5.3, respectively, of this Agreement.

**2.6 Taxes.** Developer shall pay at or before Closing all ad valorem taxes, plus any penalties, interest, court costs, and attorneys' fees, if any, due on delinquent amounts not paid, for tax years prior to the year in which Closing occurs, except as hereinafter provided. In addition, Developer will pay at Closing the pro-rated amount of ad valorem taxes for the Property for the calendar year of Closing in accordance with Texas Tax Code §26.11. CITY IS A POLITICAL SUBDIVISION OF THE STATE OF TEXAS AND EXEMPT FROM PAYMENT OF AD VALOREM TAXES ON PROPERTY OWNED BY IT FROM AND AFTER THE DATE OF ITS CONVEYANCE TO CITY.

**2.7 Closing Costs.**

(a) Developer shall pay and be responsible for the following closing costs:

(1) All costs related to obtaining any release of mortgage and liens arising by, through or under Developer, on the Floodplain Properties, including the costs or preparation and recording of any related releases of liens; and

- (2) The fees and premiums for the Basic Owners Title Insurance Policy;
- (3) One-half of Title Company's escrow fees;
- (4) Costs for any tax certificates issued;
- (5) All costs and fees for the Survey or Prior Survey and related affidavit, whichever is applicable;
- (6) Developer's attorneys' fees, if any;
- (7) The recording fee for the Special Warranty Deed; and
- (8) Such other incidental costs and fees customarily paid by sellers of property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

(b) City hereby agrees to pay and be responsible for the following closing costs:

- (1) All fees and premiums for any other amendments and endorsements to the Basic Owner's Title Policy which City requests, including the deletion of the standard survey exception;
- (2) One-half of Title Company's escrow fees;
- (3) City's attorneys' fees; and
- (4) Such other incidental costs and fees customarily paid by purchasers of property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

**2.8 Permitted Exceptions.** The (i) lien for current taxes not yet due and payable, (ii) any matters shown on the Title Commitment which are promulgated by law to appear in any title insurance commitment or policy, (iii) any exceptions to title to which City does not timely object in accordance with Sections 2.2(c) and/or 2.2(d) above or to which City objects but are subsequently waived by City, (iv) zoning ordinances, (v) existing oil and gas leases and reservations of the mineral estate, and (vi) items shown on the Survey/Prior Survey, shall not be valid objections to title and shall be deemed to be "Permitted Exceptions". Subject to the foregoing, as a condition of Closing, Developer must resolve, at Developer's sole cost, the items that are listed on Schedule C of the Title Commitment (original or updated) which are by their nature Developer's responsibility, remove all liquidated liens arising by, through or under Developer, remove all exceptions that arise by, through, or under Developer after the Effective Date of this Agreement (including, but not limited to, any and all mechanics' and materialman's liens assessed against either the East Floodplain Property and/or the West Floodplain Property relating to construction of the Trails), and use due diligence to cure the title and survey objections

that Developer has agreed in writing to cure pursuant to Sections 2.2(c) and/or 2.2(d), above, if any.

## **2.9 Representations and Covenants.**

(a) Developer represents and covenants that: (i) it has authority to enter into this Agreement, and that this Agreement represents the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms; (ii) to Developer's actual knowledge, without duty of inquiry, no other person has any interests in or claims against the Floodplain Properties (other than as reflected by the Title Commitment or the Survey); (iii) except as may be set forth in the documents delivered by Developer to City pursuant to Section 2.2(a), Developer has no actual knowledge, without duty of inquiry, of any uncured violation of applicable laws, rules, regulations, codes or ordinances with respect to the Floodplain Properties, nor of any existence, release or disposal of any toxic or hazardous substance or waste upon or affecting the Floodplain Properties, nor of any pending or threatened litigation affecting the Floodplain Properties; and (iv) it will not hereafter encumber the Floodplain Properties without City's written consent.

(b) City represents that it has authority to enter into this Agreement and that this Agreement represents the legal, valid and binding obligation of City, enforceable against City in accordance with its terms.

(c) The representations set forth in this Section 2.9 shall survive Closing for a period of six (6) months.

## **2.10 Floodplain Properties Conveyed As Is.**

(a) City represents that as of the Closing Date that it:

(i) will have fully inspected, or been provided the opportunity to inspect, the Floodplain Properties; and

(ii) will have made all investigations as it deems necessary or appropriate and will be relying solely upon its inspection and investigation of the Floodplain Properties for all purposes whatsoever, including, but not limited to, the determination of the condition of the structures, improvements, soils, subsurface, drainage, surface and groundwater quality, and all other physical characteristics; availability and adequacy of utilities; compliance with governmental laws and regulations; access; encroachments; acreage and other survey matters and the character and suitability of the Floodplain Properties.

(b) Except as provided in Section 2.12, below, City acknowledges and agrees that the Floodplain Properties are being conveyed "AS IS" with all faults and defects, whether patent or latent, as of the Closing. THE CONVEYANCE OF THE FLOODPLAIN PROPERTIES AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS, WHERE IS,

WITH ALL FAULTS" BASIS, AND CITY EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENTS OF DEVELOPER HEREIN, EXCEPT AS OTHERWISE SPECIFIED HEREIN, DEVELOPER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IN RESPECT OF THE FLOODPLAIN PROPERTIES.

(c) Except with respect to the warranty of the title to the Floodplain Properties being conveyed by Developer pursuant to this Agreement, such warranty to be included in the Special Warranty Deed, City acknowledges and agrees that Developer has made no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Floodplain Properties, their condition, or any other matters whatsoever, made to or furnished to City by Developer or any employee or agent of Developer, except as specifically set forth in this Agreement.

**2.11 Closing Date.** The "Closing Date" for the conveyance of the Floodplain Properties to City shall be on or before the thirtieth (30<sup>th</sup>) day after Completion of Construction of the Trails.

### **Article III**

#### **Design and Construction of the Trails**

**3.1 TDLR Approval.** The Approved Plans provide for a full stand of permanent warm-season grass to be established. Developer and/or the Trails Architect will register with the TDLR's Architectural Barriers Program, have the Approved Plans reviewed and approved by a Registered Accessibility Specialist (RAS), and pay associated project registration and plan review fees. The Approved Plans shall not become final until they have been approved by the RAS acting on behalf of TDLR.

**3.2 Construction of the Trails.** Developer shall construct and install the Trails at Developer's cost subject to the following:

(1) Commencement of Construction of the Trails shall commence not later than sixty (60) days after the date of this Agreement.

(2) Completion of Construction of the Trails shall occur not later than one hundred eighty (180) days after Commencement of Construction, subject to any delay caused by force majeure.

(3) Except as otherwise provided in this Agreement, the construction of the Trails shall be in accordance with the construction standards adopted by the City of Allen as of the date of Commencement of Construction.

(4) Developer shall be solely responsible for prosecuting all elements relating to construction and installation of the Trails including, but not limited to (i) obtaining a qualified contractor, entering into all necessary contracts, and construction contract



management; (ii) survey for design and staking; (iii) the cost of all utilities for the Trails during construction until Closing; (iv) repair and maintenance of the Trails until Closing; and (v) obtaining all required TDLR inspection of the Trails for compliance with the Texas Accessibility Standards, including inspection fees due any third party inspector acting on behalf of TDLR.

(5) In addition to such inspections as may be required by applicable ordinances of the City of Allen relating to the construction and installation of the Trails, City shall be authorized to enter the Floodplain Properties during construction of the Trails at reasonable times to conduct such reasonable inspections of the work being performed on the Floodplain Properties to ensure compliance of such work with the Approved Plans. Not later than the fifteenth (15<sup>th</sup>) day of any such inspection, City will notify Developer in writing of any non-compliance with the Approved Plans. Failure of City to notify Developer of any non-compliance with the Approved Plans of which City becomes aware shall not constitute a waiver of City's right under this Agreement to require such compliance as a condition for determining Completion of Construction has occurred, unless City intentionally failed to disclose such noncompliance. Notwithstanding anything contained herein to the contrary, City's right to enter the Floodplain Properties during construction shall not entitle City, while onsite, to direct the contractors performing work on the Floodplain Properties but City shall deliver to Developer any recommendations regarding the work to be performed by a contractor and/or any disclosures of non-compliance.

**3.3 Bonds; Manufacturer Warranties.** At or prior to Closing, Developer shall cause its general contractor to deliver to City a maintenance bond for a period of one (1) year following the Completion of Construction of the Trails for the materials and workmanship for the respective portion of the Trails and shall cause the assignment to City of all manufacturer's standard warranties for all components of the comprising the Trails that are subject to manufacturer warranties.

**3.4 Grant of License.** Subject to the terms, conditions, and restrictions set forth in this Agreement, in the event City requests or otherwise agrees to Close on the conveyance of the Floodplain Properties or any portion thereof to City prior to completion of construction of the Trails, City hereby grants to Developer a revocable, non-exclusive license to enter onto and use the Floodplain Properties or portion thereof for the purpose of (i) constructing the Trails, and (ii) to perform such other tasks that this Agreement obligates Developer and its contractors to perform with respect to construction of the Trails. This Agreement and the license granted hereby is subject to any existing public or private easement and/or facility located in, on, under, above, across or upon the Floodplain Properties, to all vested rights presently owned by any utility or communication company, public or private, for the use of the Floodplain Properties for facilities presently located within the boundaries of the Floodplain Properties.

**3.5 TxDOT Trail Permit.** City has obtained the TxDOT Trail Permit for the purpose of obtaining consent from TxDOT to construct the portion of the East Trail within the right-of-way of U.S. Highway 75. The Parties recognize that the TxDOT Trail Permit will expire if the segment of the East Trail has not been constructed within six (6) months from the issuance date of

the TxDOT Trail Permit, which date is January 31, 2019. Developer shall be responsible for constructing the portion of the East Trail within the U.S. Highway 75 right-of-way, which construction shall be performed in accordance with the provisions of the TxDOT Trail Permit. Developer agrees to hold harmless the State of Texas and its duly appointed agents and employees against any action for personal injury or property damage sustained by reason of Developer's exercise of the rights under the TxDOT Trail Permit and shall require all contractors performing work within the U.S. Highway 75 right-of-way to similarly hold harmless the State of Texas and its duly appointed agents and employees. The State of Texas shall have the right to enforce and benefit from the provisions of this Section 3.5 without the necessity of acknowledging such benefit or being a party to this Agreement.

**3.6 Indemnity Against Design Defects.** Approval of the Directors or other City employee, officer, or consultant of any plans, designs or specifications submitted by Developer under this Agreement shall not constitute or be deemed to be a release of the responsibility and liability of Developer, its engineers, contractors, employees, officers, or agents for the accuracy and competency of their design and specifications. Such approval shall not be deemed to be an assumption of such responsibility or liability by City for any defect in the design and specifications prepared by the Developer's consulting engineer, its officers, agents, servants, or employees, it being the intent of the parties that approval by the Directors or other City employee, officer or consultant signifies City approval of only the general design concept of the improvements to be constructed. **Developer shall indemnify and hold harmless City, its officers, agents, and employees, after the written approval and acceptance of the Trails by the City from any loss, damage, liability or expense on account of damage to property and injuries, including death, to any and all persons which may arise out of any defect, deficiency or negligence of the designs and specifications to the extent prepared or caused to be prepared by Developer and incorporated into any improvements constructed in accordance therewith, and Developer shall defend at Developer's own expense any suits or other proceedings brought against City, its officers, agents, employees, or any of them, on account thereof, to pay all reasonable expenses and satisfy all judgments which may be incurred by or rendered against them, collectively or individually, personally or in their official capacity, in connection herewith.**

#### **Article IV Trail Maintenance**

**4.1 East Trail.** Upon Completion of Construction of the East Trail and Closing on the conveyance of the East Floodplain Property to City, Developer, its successors and assigns shall have no further obligation or responsibility to maintain the East Trail or any portion of the East Floodplain Property, including the portion of the East Trail located within the U.S. Highway 75 right-of-way.

**4.2 West Trail.** Upon Completion of Construction of the West Trail and Closing on the conveyance of West Floodplain Property to City, the maintenance of the West Trail and West Floodplain Area shall be as follows:

- (a) Developer shall be responsible for the maintenance, including all mowing, of all landscaping and turf grass within the area of the West Floodplain Property shown on

**Exhibit "E"** hereto as the Developer's obligation, including a ten foot (10.0') wide strip immediately adjacent to both sides of the concrete portion of the West Trail; and

(b) Developer shall have no responsibility for the maintenance, repair, replacement, and removal of the West Trail structure and those areas of the West Floodplain Area shown on **Exhibit "E"** hereto.

Developer's maintenance of the area required by paragraph (a), above, shall be in accordance with City's minimum standards for maintenance of similar areas within City's public trails system.

**4.3 Grant of License.** Subject to the terms, conditions, and restrictions set forth in this Agreement, City hereby grants to Developer a revocable, non-exclusive license to enter onto and use the West Floodplain Property for the purpose of performing the maintenance of the West Trail areas as required by Section 4.2. This Agreement and the license granted hereby is subject to any existing public or private easement and/or facility located in, on, under, above, across or upon the Floodplain Properties, to all vested rights presently owned by any utility or communication company, public or private, for the use of the Floodplain Properties for facilities presently located within the boundaries of the Floodplain Properties. The license granted by this Section 4.3 shall be subject to Sections 4.4 and 4.5, below.

**4.4 Release and Indemnification.** Developer shall defend, protect and keep City, its officers, agents, employees and invitees forever harmless and indemnified against and from any penalty, or any damage, or charge, imposed for any violation of any law, ordinance, rule or regulation arising out of the construction, installation, maintenance, repair and use of the West Floodplain Property and the West Trail by Developer, whether occasioned by the neglect of Developer, its employees, officers, agents, contractors, successors, or assigns or those holding under Developer. Developer shall at all times defend, protect and indemnify and it is the intention of the parties hereto that Developer hold City, its officers, agents, employees and invitees harmless against and from any and all loss, cost, damage, or expense, including reasonable attorney's fee, arising out of or from any accident or other occurrence on or about the West Floodplain Property causing personal injury, death or property damage resulting from use of the West Trail or West Floodplain Property by Developer, its agents, employees, customers and invitees as authorized herein, except when caused by the negligence or willful misconduct of City, its officers, employees or agents, and only then to the extent of the proportion of any fault determined against City for its willful misconduct. Developer shall at all times defend, protect, indemnify and hold the City, its officers, agents, employees and invitees harmless against and from any and all loss, cost, damage, or expense, including reasonable attorney's fees arising out of, or from any and all claims or causes of action resulting from any failure of Developer, its officers, employees, agents, contractors, successors, or assigns in any respect to comply with and perform all the requirements and provisions of this Agreement.

**4.5 Insurance.** Throughout the Term of this Agreement, Developer shall, at Developer's expense obtain and maintain the following insurance policies and in accordance with the following terms and conditions:

(a) Commercial General Liability insurance for bodily injury, death or property damage, insuring Developer and naming City as an additional insured, against all claims, demands, or actions relating to the West Floodplain Property on an occurrence basis, issued by and binding upon a solvent insurance company licensed to do business in Texas, with a minimum combined single limit of not less than \$1,000,000 per occurrence for injury to persons (including death), and for property damage or destruction, including loss of use. Said Commercial General Liability insurance shall include provisions for insuring operations hazard, independent contractor hazard, contractual liability and products and completed operations liability, in limits not less than \$1,000,000 combined single limit for each occurrence for bodily injury, personal injury and property damage liability. Notwithstanding the foregoing to the contrary, at no time shall the minimum coverage amounts set forth in this Section 4.5(a) be less than twice the amount of the maximum liability of a municipality for bodily injury or death for a single occurrence as established by Texas Civil Practices and Remedies Code Section 101.023(c), as said statute is from time to time amended or replaced.

(b) Worker's Compensation and Employer's Liability insurance.

(c) Prior to entering the West Floodplain Property to perform its obligations pursuant to Section 4.2, Developer shall furnish to City certificates of insurance showing that Developer is in compliance with the insurance coverage requirements of this Section 4.5 and indicating the exclusions from coverage, if any. All insurance required by this Section 4.5 shall be primary and noncontributing with any insurance that may be carried by City. City reserves the right, from time to time throughout the term of this Agreement, to reasonably increase the minimum insurance limits set out herein to ensure that adequate insurance is being maintained.

(d) All insurance and certificate(s) of insurance shall contain the following provisions: (i) name City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (ii) provide for at least thirty (30) days prior written notice to City for cancellation, non-renewal, or material change of the insurance; (iii) provide for a waiver of subrogation against City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

**4.6 Failure to Obtain Insurance.** In the event Developer or Developer's successor in title fails to obtain the insurance required by this Article IV on or before the tenth (10th) calendar day after City provides written notice and demand to obtain such insurance, City may obtain such insurance on Developer's behalf, the cost of which shall become a debt owed by the then current Developer to City and which shall be paid to City on written demand of City to Developer of the Property. Amounts due City by Developer pursuant to this Section 4.6 shall accrue interest at the highest rate permitted by law if not paid on or before the 30th day after written demand is made for such payment.

## **Article V**

### **Additional Consideration**

**5.1 Parkland Dedication Fee Credit.** In consideration of Developer's performance of this Agreement, City agrees to provide a credit in the amount of \$645 per dwelling unit, not to exceed 416 Urban Residential and/or Townhome dwelling units (i.e. not to exceed \$268,320) (the "Parkland Dedication Fee Credit") for dwelling units constructed on Lot 9, Block B of the Development Property as shown on the Plat and the Site Plan to the PD-45 Ordinance, said credit to be granted against amounts due as money in lieu of dedication of park land pursuant to Article X of the Allen Land Development Code, as amended, in relation to the development of all of the Development Property.

**5.2 Floodplain Modeling.** Developer shall engage a stream hydraulics engineer to perform a floodplain study along Cottonwood Creek, mutually acceptable to both Developer and City (the "Floodplain Study"). This Floodplain Study shall include modeling of the 100-year FEMA and the City of Allen Ultimate 100-year floodplains, with backup documentation to provide reliable data on which the design and construction of a future pedestrian bridge across Cottonwood Creek may be achieved without causing an adverse impact (i.e. no rise in the water surface elevation, no increase in velocity, and no decrease in valley storage). The selected engineer shall report and present an initial 100-year FEMA and City of Allen Ultimate 100-year flood study to City Floodplain Administrator. The studies will be reviewed by City to determine the impact to the floodplain. If errors are found, the studies shall be revised and resubmitted to City in an effort to ensure accurate models prior to City's Floodplain Administrator's determination of impact. If the Floodplain Study determines impacts to the FEMA 100-year floodplain will occur, Developer shall have the consulting engineer prepare and submit a Conditional Letter of Map Revision (CLOMR) and a Letter of Map Revision (LOMR) to FEMA. The CLOMR / LOMR will need to be approved by City's Floodplain Administrator prior to submission to FEMA to ensure compliance with City's requirements. All submittal fees to FEMA and design cost associated with this effort shall be borne entirely by Developer. Developer shall cause the Floodplain Study to be completed and delivered to City not later than 270 days after the Effective Date.

**5.3 Tree Mitigation.** Upon Closing and conveyance of the East Floodplain Property to City with the completed East Trail in accordance with this Agreement, City agrees:

(a) the number of Hackberry Trees that would otherwise be applied to the negative tree credits resulting from the removal of trees from the Development Property shall be reduced by 25% in accordance with the Allen Land Development Code section 7.06, as amended; and

(b) if the Protected Trees removed from the Development Property in relation to the development of Phases I, II, and III are not fully mitigated through the planting of Replacement Trees on the Development Property, Developer shall pay City funds to be deposited in the Tree Fund and/or provide Replacement Trees to City Tree Farm on or before the issuance of a certificate of occupancy for any structure to be constructed in Phase III or a building permit for any structure within Phase IV.



## **Article VI Miscellaneous**

**6.1 Notices.** When notice is permitted or required by this Agreement, it shall be in writing and shall be deemed delivered when delivered in person or on the date when placed, postage prepaid in the United States mail, certified return receipt requested, and addressed to the Parties at the address set forth below. Either Party may designate from time to time another and different address for receipt of notice by giving notice of such change or address.

**If intended for Developer, to:**

Stacy 75 Partners LP  
10210 N Central Expressway, Suite 300  
Dallas, Texas 75231  
Attn: Julian Hawes

**With Copies to::**

Cherry Petersen Landry Albert LLP  
Attn: Kevin Cherry  
8350 North Central Expressway, Suite 1500  
Dallas, Texas 75206

**In intended for City to:**

City of Allen, Texas  
Attn: City Manager  
305 Century Parkway  
Allen, Texas 75013

**With Copies to:**

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
500 N. Akard St., Suite 1800  
Dallas, Texas 75201

Director of Engineering  
City of Allen, Texas  
305 Century Parkway  
Allen, Texas 75013

**6.2 Binding Effect.** This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns, provided, however, the benefit and obligations of this Agreement shall be personal to Developer, and will not run with title to the Property, unless the obligations are assigned to the POA, as set forth below.

**6.3 Assignment.** Developer shall not assign or transfer its rights or obligations under this Agreement in whole or in part to any other person or entity without the prior written consent of City, which consent will not be unreasonably withheld; provided, however, Developer may assign or transfer, in whole or in part, its rights or obligations under this Agreement to any property owner's association established by Developer for the management of a portion of the Development Property including Lot 9, Block B (the "POA") without the prior consent of City, but only if Developer provides City notice of the assignment to the POA. The POA agrees that any assignment or transfer of any of the obligations under this Agreement by Developer to the POA will constitute an assumption of such assigned obligations, without amendment, from and after the date of such assignment. Developer acknowledges and agrees that Developer shall remain responsible for the duties and obligations accruing to Developer prior to the date of such assignment to the POA. The Parties agree that upon any such assignment to the POA, Developer shall be released from any duties or obligations under this Agreement from and after the date of



the assignment; provided, however, Developer shall not be released from any obligations accruing prior to the date of release.

**6.4 Severability.** In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall be enforceable and shall be enforced as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

**6.5 Governing Law.** The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in a State Court of competent jurisdiction in Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

**6.6 Entire Agreement.** This Agreement embodies the entire Agreement between the Parties and supersedes all prior Agreements, understandings, if any, relating to the Property and the matters addressed herein and may be amended or supplemented only by written instrument executed by the Party against whom enforcement is sought.

**6.7 Recordation of Agreement.** This Agreement or a certified copy of this Agreement shall be recorded in the Real Property Records of Collin County, Texas.

**6.8 Recitals.** The Recitals to this Agreement are incorporated herein as part of this Agreement.

**6.9 Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

**6.10 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**6.11 Headings.** The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereto.

**6.12 Exculpated Parties.** Notwithstanding anything to the contrary contained in this Agreement, none of the shareholders, directors, members, managers, partners, officers, employees or contractors of Developer or City or of any entity comprising Developer, whether disclosed or undisclosed (each an "Exculpated Party") will have any obligation or liability in their individual capacity under this Agreement. Developer and City, for themselves, their successors and assigns, will not assert any claim under this Agreement and will not seek to enforce any of its rights under this Agreement against any Exculpated Party in their individual capacities and waive any right to do so.

**6.13 Limitation on Damages.** In no event will any party to this Agreement ever be entitled to recover punitive, consequential, speculative or any damages other than actual damages in any action for the breach of this Agreement or (not including fraud or intentional misconduct)

otherwise arising under or relating to this Agreement and the transaction contemplated by this Agreement. No claim for damages of any type whatsoever or for a breach of any representation, warranty, covenant or agreement of either party under this Agreement will be actionable or payable if the breach in question results from or is based on a condition, state of facts or other matter which was actually known to the other party as of the date of this Agreement.

**(Signatures on Following Pages)**

**SIGNED AND AGREED** this \_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF ALLEN, TEXAS**

By: \_\_\_\_\_  
Peter H. Vargas, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Shelley B. George, TRMC, City Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Peter G. Smith, City Attorney

**City's Acknowledgment**

State of Texas       §  
                              §  
County of Collin    §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2018,  
by Peter H. Vargas, City Manager of the City of Allen, a Texas home rule municipality, on behalf of  
said municipality.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

SIGNED AND AGREED this \_\_\_\_ day of \_\_\_\_\_, 2018.

**STACY 75 PARTNERS LP,**  
a Texas limited partnership

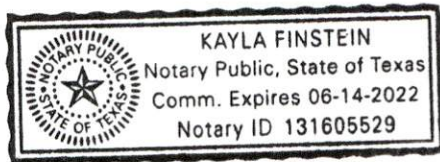
By: STACY 75 PARTNERS GP LLC,  
a Texas limited liability company,  
its general partner

By: [Signature]  
Name: BRENT WILLE  
Title: VICE PRESIDENT

**Developer's Acknowledgment**

STATE OF TEXAS           §  
                                     §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on this 7 day of November, 2018, by Brent Wille, the Vice President of STACY 75 PARTNERS GP LLC, a Texas limited liability company, the general partner of STACY 75 PARTNERS LP, a Texas limited partnership, on behalf of said limited partnership.



(SEAL)

Kayla Finstein  
Notary Public, State of Texas  
My Commission Expires: 6-14-2022

**Exhibit "A"**  
**Description of the Development Property**

Lots 1, 2, 3, 4, 7, 8, 9, 10 and-11, Block B, of the Stacy Green Addition, an Addition to the City of Allen, Texas, as set forth in that certain final plat recorded under Document No. 20180703010003060, Real Property Records of Collin County, Texas.

Lots 1R and 2R, Block A, of the Stacy Green Addition, an Addition to the City of Allen, Texas, as set forth in that certain final plat recorded under Document No. 20181010010004730, Real Property Records of Collin County, Texas.

Lots 3R and 4R, Block A, of the Stacy Green Addition, an Addition to the City of Allen, Texas, as set forth in that certain final plat recorded under Document No. 20181010010004690, Real Property Records of Collin County, Texas.

Lots 5R and 6R, Block A, of the Stacy Green Addition, an Addition to the City of Allen, Texas, as set forth in that certain final plat recorded under Document No. 20181010010004710, Real Property Records of Collin County, Texas.

Lots 7R, 8R, and 9R, Block A, of the Stacy Green Addition, an Addition to the City of Allen, Texas, as set forth in that certain final plat recorded under Document No. 20181010010004720, Real Property Records of Collin County, Texas.

Lots 5R and 6R, Block B, of the Stacy Green Addition, an Addition to the City of Allen, Texas, as set forth in that certain final plat recorded under Document No. 20181010010004700, Real Property Records of Collin County, Texas.

**Exhibit "B"**  
**Description of East Floodplain Property**

**TRACT 1:**

BEING a tract of land situated in the L. K. PEGUES SURVEY, ABSTRACT NO. 702, in the City of Allen, Collin County, Texas, and being the remainder of a tract of land described in Correction Special Warranty Deed from Doyle S. Stacy to Nimbus Partners, L.P. as recorded in Volume 6074, Page 3762 (County Clerk's Instrument No. 2005-0181905), Official Public Records, Collin County, Texas, and also being the remainder of a tract of land described in Special Warranty Deed from Dorothy Stacy Wood to Brookside Partners, Ltd. as recorded in Volume 4066, Page 1846 (County Clerk's Instrument No. 97-0109660), Official Public Records, Collin County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with red plastic cap stamped "WAI" set for corner on the Southeast right-of-way of U.S. Highway 75, a variable width right-of-way, said iron rod being the most Westerly Southwest corner of Tract 2, The Village at Allen, an addition to the City of Allen, Collin County, Texas, according to the Plat thereof recorded in Volume 2008, Page 126, Official Public Records, Collin County, Texas,

THENCE South 54 deg 57 min 30 sec East, departing the Southeast right-of-way of said U.S. Highway 75, along the Southwest line of said Tract 2 and the Southwest line of Lot 2, Block D, The Village at Allen Addition, an addition to the City of Allen, Collin County, Texas, according to the Plat thereof recorded in Volume 2010, Page 376, Official Public Records, Collin County, Texas, a distance of 417.86 feet to a 1/2-inch iron rod with red plastic cap stamped "WAI" set for corner on the Westerly right-of-way of a tract of land described in Correction Deed to Dallas Area Rapid Transit, a 100-foot right-of-way, as recorded in Volume 5443, Page 5532, Official Public Records, Collin County, Texas, said point being the Southeast corner of said Lot 2, Block D;

THENCE South 10 deg 38 min 56 sec West, along the Northwest right-of-way of said Dallas Area Rapid Transit right-of-way, a distance of 432.01 feet to a 1/2-inch iron rod with plastic cap stamped "JDJR" found for the Northeast corner of Lot 2, Block A, Cornerstone/Allen Addition, an addition to the City of Allen, Collin County, Texas, according to the Plat thereof recorded in Volume M, Page 316, Official Public Records, Collin County, Texas;

THENCE South 89 deg 24 min 47 sec West, departing the Northwest right-of-way of said Dallas Area Rapid Transit right-of-way, along the Northerly line of said Lot 2, Block A, a distance of 153.02 feet to a 1/2-inch iron rod with plastic cap stamped "JDJR" found for corner;

THENCE North 10 deg 44 min 47 sec East, continuing along the Northerly line of said Lot 2, Block A, a distance of 137.36 feet to a 1/2-inch iron rod with red plastic cap stamped "WAI" set for corner;

THENCE North 25 deg 28 min 13 sec West, continuing along the Northerly line of said Lot 2, Block A, a distance of 124.32 feet to a 1/2-inch iron rod with red plastic cap stamp "WAI" set for corner;



THENCE North 40 deg 19 min 13 sec West, along a portion of the Northerly line of said Lot 2, Block A and the Northeasterly line of a tract of land described in deed to the City of Allen as recorded County Clerk's Instrument No. 20061227001815650, Official Public Records, Collin County, Texas, and the Northeasterly line of a tract of land described in deed to the City of Allen as recorded in Volume 6036, Page 4705, Official Public Records, Collin County, Texas, a distance of 297.53 feet to a ½ inch iron rod with the red plastic cap stamped "WAI" set for the North corner of said City of Allen tract (Volume 6036, Page 4705) on the Southeasterly right-of-way of said U.S. Highway 75;

THENCE North 30 deg 03 min 12 sec East, along the Southeasterly right-of-way of said U.S. Highway 75, a distance of 221.84 feet to the POINT OF BEGINNING.

CONTAINING within these metes and bounds 155,055 square feet or 3.560 acres of land, more or less. Bearings shown hereon are based upon on-the-ground Survey performed in the field on the 22<sup>nd</sup> day of September, 2017, utilizing a G.P.S. bearing related to the Texas Coordinate System, North Texas Central Zone (4202), NAD 83, grid values from the GeoShac VRS Network.

## **Tract 2**

BEING a tract of land situated in the L. K. PEGUES SURVEY, ABSTRACT NO. 702, in the City of Allen, Collin County, Texas, and being a portion of a tract of land described as Save and Except tract to Tract III in deed to LLG Lands, Inc. as recorded in County Clerk's Instrument No. 93-0102562, Official Public Records, Collin County, Texas, said property being the same property being commonly known as the Crescent as referenced in Agreed Final Judgement, styled Brookside Partners, Ltd., and Nimbus Partners, L.P., Doyle S. Stacy and Dorothy Stacy vs. LLG Lands, Inc. and the City of Allen, Cause No. 219-4253-05, in the District Court of Collin County, Texas, 219<sup>th</sup> Judicial District, and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod with a plastic cap stamped "JDJR" found for corner on the Westerly right-of-way of a tract of land described in Correction Deed to Dallas Area Rapid Transit, a 100-foot right-of-way, as recorded in Volume 5443, Page 5532, Official Public Records, Collin County, Texas, said point being the Northeast corner of Lot 2, Block A, Cornerstone/Allen Addition, an addition to the City of Allen, Collin County, Texas, according to the Plat thereof recorded in Volume M, Page 316, Official Public Records, Collin County, Texas;

THENCE South 89 deg 24 min 47 sec West, departing the Westerly right-of-way of said Dallas Area Rapid Tract right-of-way tract, along the most Easterly North line of said Lot 2, Block A, a distance of 153.02 feet to a 1/2-inch iron rod with a plastic cap stamped "JDJR" found for corner;

THENCE South 10 deg 44 min 47 sec West, departing the Northerly line of said Lot 2, Block A, over and across said Lot 2, Block A, a distance of 227.60 feet to a 1/2-inch iron rod with a red plastic cap stamped "WAI" set for corner;

THENCE South 10 deg 44 min 47 sec West, along the Easterly line of said Save and Except tract. 1150.4 feet West of an parallel to the Westerly right-of-way of said Dallas Area Rapid Transit

tract, a distance of 482.50 feet to 1/2-inch iron rod with a red plastic cap stamped "WAI" set for corner;

THENCE North 37 deg 43 min 13 sec West along the most Southerly line of said Save and Except tract, a distance of 37.00 feet to a 1/2-inch iron rod with a red plastic cap stamped "WAI" set for corner;

THENCE North 15 deg. 43 min 13 sec West, along the Southwesterly line of said Save and Except tract, a distance of 117.50 feet to a 1/2-inch iron rod with a red plastic cap stamped "WAI" set for corner;

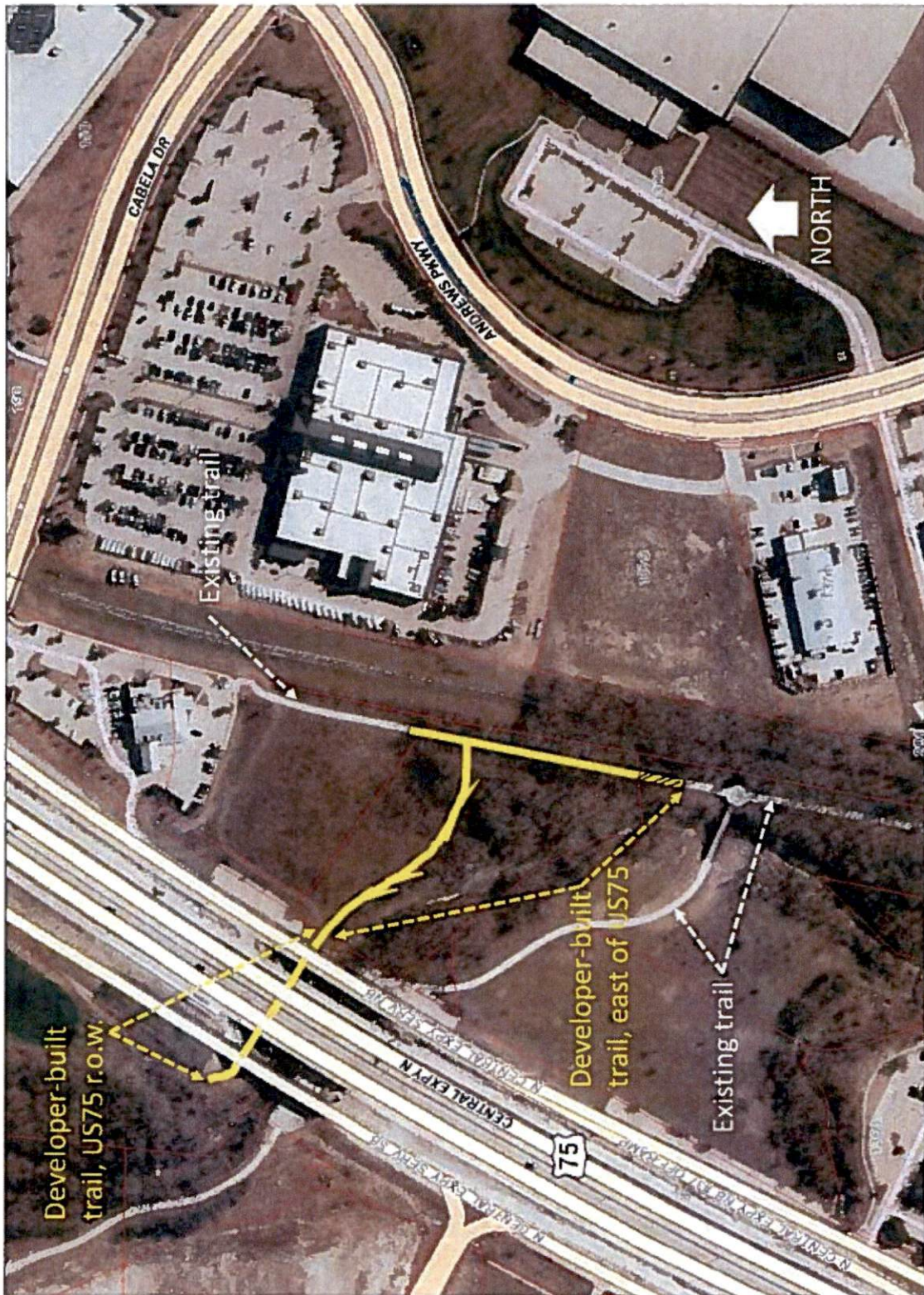
THENCE North 12 deg 46 min 47 sec East, along the Northwesterly line of said Save and Except tract, a distance of 139.00 feet to a 1/2-inch iron rod with a red plastic cap stamped "WAI" set for corner;

THENCE North 43 deg 12 min 21 sec East, along the Northwesterly line of said Save and Except tract, a distance of 189.81 feet to the POINT OF BEGINNING.

CONTAINING within these metes and bounds 33,678 square feet or 0.773 acres of land, more or less. Bearings shown hereon are based upon on-the-ground Survey performed in the field on the 22<sup>nd</sup> day of September, 2017, utilizing a G.P.S. bearing related to the Texas Coordinate System, North Texas Central Zone (4202), NAD 83, grid values from the GeoShac VRS Network.




Exhibit "C"  
Depiction of East Trail Location





**Exhibit "D"**  
**Copy of TxDOT Trail Permit**

|   |   |  |
|---|---|--|
|  | <b>Permit to Construct Access Driveway Facilities<br/>on Highway Right of Way</b> | Form 1058<br>(Rev. 12/17)<br>Page 1 of 2 |
|---|---|--|

|   |                             |                  |      |
|---|-----------------------------|------------------|------|
| PERMIT NUMBER: 2018   |                             | 2018 07 31 05 75 |      |
| REQUESTOR   | GPS*                        | ROADWAY          |      |
|   | LATITUDE, LONGITUDE         | HWY NAME         | U.S. |
|   | 33 165900, -96 627921       |                  | 75   |
|   |                             | FOR TxDOT'S USE  |      |
|   |                             | CONTROL          |      |
|   |                             | SECTION          |      |
| NAME  | City of Allen               |                  |      |
| MAILING ADDRESS   | 305 Century Parkway         |                  |      |
| CITY, STATE, ZIP  | Allen, Texas 75013          |                  |      |
| PHONE NUMBER  | Chris Flanigan 214-509 4578 |                  |      |
| *GLOBAL POSITIONING SYSTEM COORDINATES AT INTERSECTION OF DRIVEWAY CENTERLINE WITH ABUTTING ROADWAY |                             |                  |      |

The Texas Department of Transportation, hereinafter called the State, hereby authorizes City of Allen/ HIKE & BIKE TRAIL *For Stacy Green*  
hereinafter called the Permittee, to ☒ construct / ☐ reconstruct a Pedestrian trail (residential, convenience  
store, retail mall, farm, etc.) access driveway on the highway right of way abutting highway number 75 in Collin County  
County, located Underneath U.S. 75 abutting Cottonwood Creek

USE ADDITIONAL SHEETS AS NEEDED

Subject to the Access Driveway Policy described on page 2 and the following:

1. The undersigned hereby agrees to comply with the terms and conditions set forth in this permit for construction and maintenance of an access driveway on the state highway right of way.
2. Design of facilities shall be as follows and/or as shown on sketch on page 2 and is subject to conditions stated below:  

Place additional information/sketch in the Second page.

- \* Lane Closure must be between 9:00 A.M. to 3:30 P.M. COPY OF THIS DOCUMENT MUST BE KEPT ON JOBSITE
- \* Minimum of 10 ft. asphalt pavement to State Road are required when state roadway are paved with asphalt.
- \* No irrigation apparatus allowed in the State ROW & Re-vegetation must be established prior to final inspection.
- \* The Permittee shall contact the the state's representative when state ROW portion of work is complete for final inspection.

All construction of materials shall be subject to inspection and approval by the State.

3. Maintenance of facilities constructed hereunder shall be the responsibility of the Permittee, and the State reserves the right to require any changes, maintenance or repairs as may be necessary to provide protection of life or property on or adjacent to the highway. Changes in design will be made only with approval of the State.
4. The Permittee shall hold harmless the State and its duly appointed agents and employees against any action for personal injury or property damage sustained by reason of the exercise of this permit.
5. Except for regulatory and guide signs at county roads and city streets, the Permittee shall not erect any sign on or extending over any portion of the highway right of way, and vehicle service fixtures such as fuel pumps, vendor stands, or tanks and shall be located at least 12 feet from the right of way line to ensure that any vehicle services from these fixtures will be off the highway right of way.
6. The State reserves the right to require a new access driveway permit in the event of a material change in land use or change in driveway traffic volume or vehicle types.
7. This permit will become null and void if the above-referenced driveway facilities are not constructed within six (6) months from the issuance date of this permit.
8. The Permittee will contact the State's representative Danny Murphy (972) 547 2326  
telephone, ( 972 ) 542 2345, at least twenty-four (24) hours prior to beginning the work authorized by this permit.
9. The requesting Permittee will be provided instructions on the appeal process if this permit request is denied by the State.

7/31/2018

Date of Issuance

Brian D. Young, P.E.  
State Authorized Representative

The undersigned hereby agrees to comply with the terms and conditions set forth in this permit for construction and maintenance of an access driveway on the highway right of way.

Date: May 31, 2018

Signed: [Signature]  
(Property owner or owner's representative)

# **Exhibit "E"** **West Trail Maintenance Obligation Map**

