

PRIVATE STREET AGREEMENT

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This Private Street Agreement (hereinafter “Agreement”) is entered into between the City of League City (hereinafter the “City”) and RIG Member, LLC (hereinafter the “Developer”) on date(s) set forth below.

Recitals:

WHEREAS, “Developer” is an entity which has constructed, or is seeking to construct, a private street in League City, Texas upon and across EPICENTER, PHASE 1, League City, Galveston County, Texas, according to the plat thereof recorded in Plat Record _____, Map Number _____ of the Map Records of _____ County, Texas, and is requesting the approval thereof pursuant to the terms of Ordinance Nos. 82-35, 91-99, and 94-76, as amended; and

WHEREAS, the Developer has filed plans with the City for the construction of the proposed private street(s) (the “Street(s)”), which Street(s) shall be located and described as Gilley Way, a 28’ R.O.W. as shown on the attached Exhibit “A”; and

WHEREAS, the City believes that it is appropriate to grant such approval to the Developer in accordance with the terms of Ordinance Nos. 82-35, 91-99, and 94-76, as amended, and this Agreement, and that therefore the parties agree to the following:

The Developer agrees specifically to abide by the Rules, Regulations and Ordinances of the City with respect to the Street, to include, but not be limited to, the following:

Terms:

1. This Agreement shall be subject to City Council review every five (5) years);
2. The Develop shall convey these Streets and the management/maintenance of these streets to the respective homeowner’s association (“HOA”) or property owner’s association (“POA”) within two (2) years.
3. The Developer herein grants and conveys to the City the necessary non-exclusive easements and rights-of-way over the Street so that the City may provide fire and police protection, sanitary sewer, water, and storm water services or facilities and other normal and usual municipal services to the citizens of the City and the County of Galveston located adjacent to and nearby such Street;
4. The Developer shall construct the Street in accordance with the City’s Ordinances and Codes and shall allow City inspection for purposes of its determination of compliance with all such

applicable City Ordinances and Codes, including the American Associate of State Highway and Transportation Officials (AASHTO) specifications.

5. The Developer shall maintain the surface and condition of such Street as to permit the City to use its easements and rights-of-way over such Street in a reasonably safe and convenient manner. Should the Developer fail to provide the required standard of maintenance after first being given written notice of the nature of such failure and a reasonable time thereafter (not to exceed 90 calendar days) to cure such failure, the City shall have the right to remedy such a failure and receive reimbursements for the actual cost thereof from the Developer, any property owner, any HOA or POA and any of their respective successors/assigns;
6. THE DEVELOPER SHALL NOT HOLD THE CITY OR ANY OF ITS ELECTED OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, OR PERSONNEL OR CITY LICENSED FRANCHISES TO BE GUILTY OF OR LIABLE FOR TRESPASS IN REGARD TO THE USE OF ITS EASEMENTS AND RIGHTS-OF-WAY AS DEFINED HEREIN;
7. The Developer shall not alter, block, or vacate such private Street so as to interfere with or prevent the City from providing the municipal services referred to herein. The Developer may erect signs identifying the private nature of the Street;
8. The Developer shall arrange for the installation of street lighting along the Street and shall bear the responsibility for the annual cost of operation and maintenance of such lighting, subject to the possible assumption by the City of said responsibilities, which assumption is conditioned on the Developer having installed standard Texas-New Mexico street lighting equipment;
9. The Developer shall be responsible for the installation of all service pipes and hydrants on such private street as are required by the operating procedures of the City;
10. The Developer will allow City franchisees to use the Street;
11. The Developer will post speed limits signs and stop signs along the Street in accordance with the Texas Manual of Uniform Traffic Control Devices, or in such a manner as agreed to with the City Engineer. The City shall be able to enforce all applicable traffic regulations, including, but not limited to, stop signs and speed zones within the subdivision. If the City cannot legally enforce these traffic regulations in such property due to the Street being designated as a private street, upon written request of the Developer, the City may pass an ordinance pursuant to which the Street shall become the public property of the City with no compensation being paid by the City to any property owner, HOA, POA or Developer of the subdivision, and any of their respective successors or assigns;
12. If the private Street is not maintained to the City design specifications, and if within 180 calendar days after receiving thirty (30) days written notice, and if the City has theretofore made repairs of such deficiencies respecting the private Street which Developer is otherwise required to make under this Agreement, then on passage of an ordinance by the City, the

Street shall become the public property of the City with no compensation being paid by the City to any property owner, homeowner's association, or Developer of the subdivision, or any of their respective successors or assigns;

13. The Developer's construction plans for the Street must be approved by the Engineering Department, as evidenced by the City Engineer's approval signature on the face of the Developer's construction plans.
14. SUBJECT TO THE FURTHER PROVISIONS HEREOF, THE DEVELOPER AND ITS ASSIGNS AGREES TO AND SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSE OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR ALL CLAIMS AND SUITS, INCLUDING CLAIMS AND SUITS FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE OBLIGATIONS UNDER THIS AGREEMENT, WHETHER OR NOT CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE CITY, ITS AGENTS, OR EMPLOYEES. IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO, BOTH THE DEVELOPER AND THE CITY, THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY BY THE DEVELOPER TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF ANY ACTION OF ANY NATURE WHATSOEVER, AND THE DEVELOPER HERETO EXPRESSLY WAIVES ANY CLAIMS AGAINST THE CITY OF ANY NATURE THAT MIGHT HAVE BEEN A CONTRIBUTING FACTOR TO THE EVENTS AND CIRCUMSTANCES WHICH MIGHT HAVE LED TO THE INJURY OR OTHER EVENTS.
15. This agreement, and all obligations of the Developer hereunder, may, upon written consent of the City Manager, be transferred and assigned to a property owner, HOA or POA, which upon such transfer and assignment, shall be charged with the enforcement of deed restrictions imposed or to be imposed on the Street in the subdivision and on the property and common areas primarily served by the Street. Such transfer and assignment shall be effective upon written approval by the City, by majority vote of its City Council, and the execution by the property owner, HOA or POA of a deed or other instrument respecting the Street pursuant to which the Association assumes the agrees to this Agreement, and to the Developer's obligations hereunder. It is provided, however, in the event of such assignment, that for two (2) additional years, if the property owner, HOA or POA shall fail to perform any of its obligations hereunder assumed by it after the expiration of any notice and cure period provided herein, the original Developer shall, after written notice of such failure from the City specifying the obligations not so performed, have reasonable time, as determined by the City, to, and shall, perform, or cause to be performed such obligations at no cost or expense to the City. If, however, the property owner, HOA or POA have sufficient capital reserves and revenues to continue to maintain the Street to City specifications, or if the Developer provides an adequate performance or maintenance bond, then the City Council may, at its sole discretion, waive all or any portion of the Developer's two (2) year obligation as provided above.

16. The City shall have a public easement on the Street for street lighting to light its access for police and fire fighting purposes and for utility easements. Upon the approval of the City Council, as delineated in the policies written in Ordinance No. 94-11, the City may, but is not required to, assume the responsibility for the payment of all or a portion of the street lighting as to light the City's police and fire fighting easements and utility easements unless prevented by law from doing so.
17. This agreement shall become effective upon its approval or ratification by the City Council of the City and its execution by the parties thereto. The City Council may, at the end of five (5) years, pass an ordinance declaring the Street to be public with no compensation being paid by the City to any property owner, homeowner's association, or Developer with respect to the Subdivision.
18. Prior to acceptance of any conveyance or mandate to accept, the City shall have the right to conduct an independent review of the proposed conveyance and shall have the right to refuse or delay any conveyance if the City Council of the City should determine that such conveyance would operate as a financial, legal, or practical detriment to the City as shall be determined by the City Council of the City in the exercise of its sound legislative discretion.
19. This agreement is performable in Galveston County, Texas and venue for any litigation over any aspects of this Agreement shall be exclusively in the appropriate courts of Galveston County, Texas.
20. All rights, powers, privileges and authority of the parties hereto not restricted or affected by the express terms and provisions hereof are reserved by the parties and, from time to time, may be exercised and enforced by the parties.
21. The provisions of this Agreement are severable, and if any part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and application of any part of this Agreement to other persons or circumstances shall not be affected thereby.
22. This Agreement is for the benefit of the City and the Developer and shall not be construed to confer any benefit on any other person except as expressly provided for herein.
23. This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral.
24. This agreement may be amended only by written instrument duly authorized by the City Council of League City, or its authorized designee and Developer and/or its assigns.

SIGNED and executed this _____ day of _____, 2020.

FOR RIG MEMBER, LLC:

By: _____
James Brockway, Member

STATE OF TEXAS }
 }
COUNTY OF GALVESTON }

Before me, the undersigned authority, on this day personally appeared James Brockway, known to me or having proved to me to be the person whose name is subscribed to the above and foregoing instrument and acknowledged to me that, on behalf of RIG MEMBER, LLC, he/she executed the same for the purposes and consideration therein expressed and in the capacity therein and herein set forth.

Given under my hand and seal of office this _____ day of _____, 20____.

Notary Public in and for the State of Texas

My Commission Expires: _____

SIGNED and executed this _____ day of _____, 20____.

FOR THE CITY OF LEAGUE CITY, TEXAS:

By: _____
John Baumgartner, P.E., City Manager

STATE OF TEXAS }
 }
COUNTY OF GALVESTON }

Before me, the undersigned authority, on this day personally appeared John Baumgartner, as known to me or having proved to me to be the person whose name is subscribed to the above and foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed and in the capacity therein and herein set forth.

Given under my hand and seal of office this _____ day of _____, 20____.

Notary Public in and for the State of Texas

My Commission Expires: _____

ATTEST:

Diana Stapp, City Secretary

APPROVED AS TO FORM:

Nghiem V. Doan, City Attorney

EXHIBIT “A”

(TO BE PROVIDED BY DEVELOPER)