

**CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF RIVER OAKS AND ELATE FUND I LLC**

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of River Oaks, Texas (the "City"), a home rule municipality located in Tarrant County, Texas, acting by and through its city manager Marvin Gregory and Elate Fund I, LLC ("EFI" or "Developer"), a limited liability company, acting by and through Juan Omar Mancera, its Manager.

RECITALS

WHEREAS, EFI is a residential developer that plans to develop approximately 4 acres located at 5910 Black Oak Lane River Oaks, Texas 76114; and

WHEREAS, the new housing development will be a great asset to the City with an estimated capital investment of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00), building twenty (20) homes with a minimum size of 2,300 sq. ft. within the City; and

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the grant of public funds to promote economic development and to stimulate business and commercial activity in the City; and

WHEREAS, numerous economic development studies have shown that business and retail development follow residential development; and

WHEREAS, the City Council finds and determines that it is necessary to increase the number and quality of the housing stock in the City to stimulate business and commercial activity in the City; and

WHEREAS, the City desires to provide the incentive herein to assist EFI with costs related to construction of the infrastructure for the Development; and

WHEREAS, EFI desires to participate in the Program by entering into this Agreement; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program by encouraging EFI to fast-track homebuilding in the City, which will aid in the validation and development of the residential housing market, and encourage retail businesses to locate in the City; and

WHEREAS, the Development will generate approximately Sixty Thousand Dollars (\$60,000.00) in ad valorem taxes per year to the City after payment of the Program Payment.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I. AUTHORIZATION AND PROGRAM

The City Council finds and determines that this Agreement is authorized and governed by Section 380.001 of the Texas Local Government Code. A Program is hereby established to fast-track quality home building in the City. This Agreement implements the Program.

ARTICLE II. TERM

This Agreement shall be effective as of the Effective Date and shall end when the last Program Payment is made, unless otherwise terminated as provided for in this Agreement.

ARTICLE III. DEFINITIONS

Agreement, City, EFI, and Developer shall have the meanings set forth in the recitals.

Commence Construction means that the construction and development plans are approved, and the developer is actively constructing the required infrastructure.

Development means the site development/horizontal development (including general conditions, mobilization, demolition, excavation, utilities (electrical, water, sewer, storm water, gas), roads, engineering, design, applications, permits, inspections by City employees, plan reviews by City employees) and vertical/building construction (including applications, permits, inspections by City employees, plan reviews by City employees), of twenty (20) homes with a square footage of no less than 2,300 sq. ft. on the Property, with quality and appearance substantially in conformity with those set forth in current building standards and depicted on Ordinance Nos. 1209-2018 and 1321-2021.

Effective Date means the date this Agreement is signed by both parties.

Force Majeure means any acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action, (except actions taken by the City pursuant to or permitted by the terms of this Agreement, and except actions taken as a result of acts or omissions of Developer), fire, explosion or flood, and strikes or other act beyond the reasonable control of Developer, or the City, but not including the lack of funds.

Letter of Construction Completion means the certificate issued by the City building official reflecting that construction has been completed in conformance with all city codes and the homes can be occupied for residential use.

Program Payment means the payment by the City to Developer pursuant to Article V of this Agreement.

Property means the parcels/tracts located at 5910 Black Oak Lane, River Oaks, Texas 76114 and as depicted on **Exhibit "A"** to this Agreement and as outlined on City Ordinance Nos. 1209-2018 and 1321-2021.

ARTICLE IV. COVENANTS OF DEVELOPER

In consideration and as a prerequisite to receiving the City's Program Payments under this Agreement, Developer agrees to the following:

- (a) Commence Construction of the Development no later than nine (9) months after the Effective Date and shall complete all of the houses within 2 years from the date that the construction and development permits are approved in order to be eligible for waiving of construction fees provided in this Agreement. Otherwise after the completion of the two-year time period, Developer must pay full permit fees for all remaining homes not completed or permitted
- (b) Comply with all City development codes and state law, and construct the homes in conformity with the standards plus the requirements set forth in Ordinance Nos. 1209-2018 and 1321-2021;
- (c) Receive a Letter of Construction Completion for at least five (5) homes by April 2023;
- (d) Remain current on all ad valorem taxes owed to the City or any other entity for the Property, provided Developer retains the right to timely and properly contest the same; and
- (e) Certify that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended, in carrying out its obligations under this Agreement. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of the prime rate plus two percent (2%) per annum, not later than the 120th day after the date the City notifies Developer of the violation.
- (f) Developer will make an effort to utilize local area contractors when possible.

ARTICLE V. CITY OBLIGATIONS

Subject to Developer's full compliance with this Agreement and performance of its obligations and covenants, the City shall grant Developer the following Program Payments: Provided Developer remains in compliance with this Agreement, the City will waive all development and building construction fees for the Development in the years 2021 through 2024, with the exception of:

- (1) Third party engineering review fees/costs directly associated with the Development and the Property. will be paid by Developer.
- (2) Third party inspections/inspector service fees/costs directly associated with the Development and the Property will be paid by Developer.
- (3) Meter box, water meter, and water meter set fees/costs directly associated with the Development and the Property will be paid by Developer.
- (4) Impact fees/costs owed to the City of Fort Worth directly associated with the Development and the Property will be paid by Developer.
- (5) Vertical/building construction: mechanical, electrical, and plumbing permit fees will be paid by each individual subcontractor.

By way of clarification, Developer/Applicant must submit construction blueprints for each house, which will be considered by the city building Official under the laws applicable and approved only if they meet all requirements other than the payment of the waived fees. *Only the permit and plan checking fees will be waived.* Developer/Applicant agrees that it must abide by all applicable laws, codes, ordinances, and rules. All contractors must meet all registration and bonding requirements and those fees will not be waived. The permit issuance will be unmodified, except that the fees will be waived. These waived fees do not include the demolition permit for the church. A calculation of all fees to be waived is included herein as Exhibit B, with the understanding that this calculation is not a guarantee of payment.

ARTICLE VI. GENERAL PROVISIONS

1. **Termination and Default.** If a party should default (the "Defaulting Party") with respect to any of its obligations hereunder and should fail, within thirty (30) days after delivery of written notice of such default from another party (the "Complaining Party") to cure such default, the Complaining Party may terminate this Agreement, and by action or proceeding at law or in equity, may be awarded its damages and/or specific performance for such default. Notwithstanding the previous, should an event of Force Majeure occur, the parties to this agreement may mutually agree to terminate the agreement or, in the absence of such an agreement to mutually terminate, the obligations of the parties shall

be abated for so long as the event of Force Majeure shall persist, and such delay shall not constitute a default under this section.

2. **Mutual Assistance.** Developer and the City shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms and provisions hereof.

3. **Representations and Warranties.** Developer represents and warrants to the City that it is a duly organized limited liability company and has the requisite authority to enter into this Agreement.

4. **Section or Other Headings.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

5. **Indemnification.** IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT, DEVELOPER IS ACTING INDEPENDENTLY, AND THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH DEVELOPER'S BUSINESS OR PROPERTY. THE CITY SHALL NOT BE LIABLE TO DEVELOPER, ITS AGENTS, EMPLOYEES OR CONTRACTORS, FOR ANY DAMAGE TO PERSONS OR PROPERTY. IN THIS RESPECT, DEVELOPER AGREES TO INDEMNIFY AND HOLD THE CITY HARMLESS AGAINST ANY AND ALL CLAIMS, LIABILITY, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING FROM THE CONDUCT OR MANAGEMENT OF DEVELOPER, OR FROM ANY BREACH ON THE PART OF DEVELOPER OF ANY CONDITIONS OF THIS AGREEMENT OR FROM ANY ACT OF NEGLIGENCE OF DEVELOPER, ITS AGENTS, CONTRACTORS, OR EMPLOYEES.

6. **Attorney's Fees.** In the event any legal action or process is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its necessary and reasonable attorneys' fees and expenses incurred by reason of such action.

7. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein.

8. **Amendment.** This Agreement may only be amended, altered, or revoked by a written instrument signed by Developer and the City.

9. **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. Developer may not assign all or any part of its rights and obligations hereunder without prior written approval of the City.

10. **Right of Offset.** The City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due and owing to the

City from Developer, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

11. **Rough Proportionality.** As additional consideration for the Program Payment received by Developer under this Agreement, Developer hereby agrees to donate the land necessary to construct the public improvements serving the Development to the City and Developer further agrees that such land is roughly proportional to the need for such land and Developer hereby waives any claim therefor that it may have. Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any costs incurred relative to said donation are related both in nature and extent to the impact of the improvements. Developer waives and releases all claims against the City related to any and all rough proportionality and individual determination requirements mandated by Subchapter Z of Chapter 212, Texas Local Government Code, as well as other requirements of a nexus between development conditions and the projected impact of the Improvements.

12. **Notice.** Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

Developer: Elate Fund I, LLC
 Attention: Juan Omar Mancera
 6149 Sundown Drive
 Fort Worth, Texas 76114

City: City of River Oaks
 Attention: Marvin C. Gregory, III
 4900 River Oaks Blvd.
 River Oaks, Texas 76114

13. **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

14. **Applicable Law.** This Agreement is made and shall be construed and interpreted under the laws of the State of Texas and venue shall lie exclusively in Tarrant County, Texas.

15. **Severability.** In the event that any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable, a provision shall be added


to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

16. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

17. **No Joint Venture.** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.

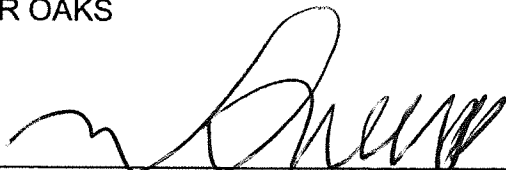
18. **Approval by City of River Oaks, Texas.** This Agreement was approved by the City Council at its meeting on September 28, 2021

ELATE FUND I, LLC

SIGNATURE: 
By: Juan Omar Mancera
Its: Manager

Date: 11/02/2021

CITY OF RIVER OAKS

SIGNATURE: 
By: Marvin C. Gregory, III
Its: City Manager

Date: 11/02/2021

STATE OF TEXAS §
 §
COUNTY OF Tarrant §

BEFORE ME, the undersigned authority in and for Tarrant County, Texas on this day personally appeared Juan Omar Mancera, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the Manager of Elate Fund I, LLC, and that he is authorized by said to execute the foregoing instrument as the act of such entity for the purpose and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 2 day of November, 2021.



Blythe M. Reaves
Notary Public in and for the State of Texas

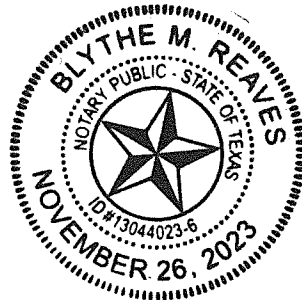
Blythe M. Reaves
Type or Print Notary's Name

My Commission Expires:
November 26, 2023

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority in and for Tarrant County, Texas on this day personally appeared Marvin C. Gregory, III, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the City Manager of the City of River Oaks, and that he is authorized by said to execute the foregoing instrument as the act of such City for the purpose and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 2 day of November, 2021.



Blythe M Reaves
Notary Public in and for the State of Texas

Blythe M Reaves
Type or Print Notary's Name

My Commission Expires:

November 26, 2023



EXHIBIT "A"

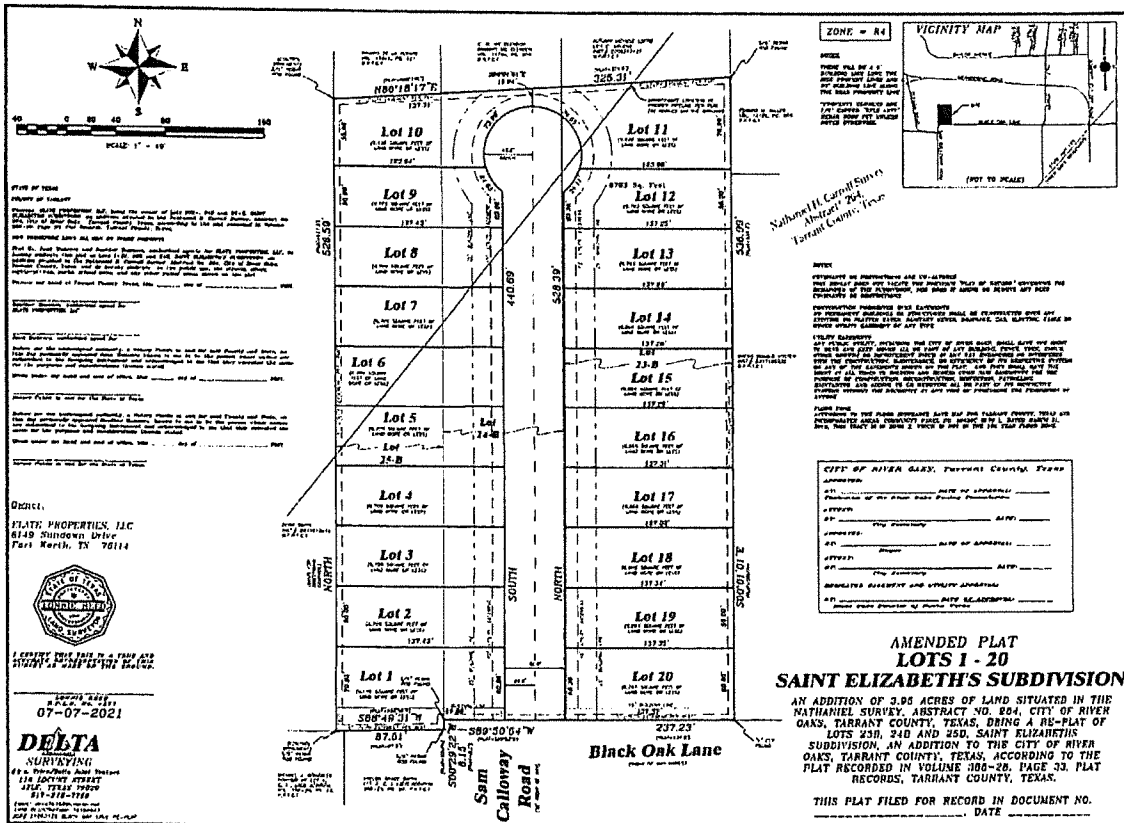


EXHIBIT "B"

The request is to waive building permit fees, concrete approach and flatwork permit fees, fence permit fees and Irrigation Permit Fees for a period of 2 years from the date of the constructing and development approval including replatting and site plan approval as follows:

- Building Permit & Plan Checking Fees = \$1,708 per house x 20 homes = \$34,160.00 total
- Misc other construction fees (includes permit fees for drive approach, concrete flat work, sidewalk, fencing & irrigation systems = \$6,850.00 total
- Development fees (2% right of way development fee + replat + site plan + completeness determination application fees) = \$8,106.73 total
- **Total Estimated Cost of all waived fees being proposed = \$49,116.73**
- **Waived Fees Broken down by house = \$49,116.73/20 = \$2,455.84**