

DEVELOPMENT AND TRANSFER AGREEMENT

THIS DEVELOPMENT AND TRANSFER AGREEMENT (this "**Agreement**") is made and entered into on this ___ day of July, 2016 (the "**Effective Date**"), by and between the CITY OF CARROLLTON, TEXAS, a Texas home rule municipality (the "**City**"), and ARTHUR JAMES, INC., a Texas corporation, and its successors and assigns ("**Developer**").

RECITALS

A. The City is the owner of that certain 41.94 acre tract of real property located in the City of Carrollton, County of Denton, State of Texas, as more particularly described in Exhibit A attached hereto and made a part hereof, along with the McInnish Park soccer field, for the limited purposes of grading for a turf field as set forth in Exhibit F-1 (collectively, the "**City Property**").

B. The City and Blue Sky Sports Center of Carrollton, LP, a Texas limited partnership ("**Blue Sky**"), have entered into a ground lease for such portion of the City Property described in Exhibit B attached hereto and made a part hereof (the "**Blue Sky Tract**").

C. Developer is experienced in the performance of grading land and has agreed to grade the City Property pursuant to the terms of this Agreement.

D. In consideration of the grading of the City Property, City has agreed to transfer to Developer that certain 6.27 acre tract located in the City of Carrollton, County of Denton, State of Texas, as more particularly described in Exhibit C attached hereto and made a part hereof (the "**Developer Tract**"), perform such other actions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged by the parties, City and Developer agree as follows:

AGREEMENTS

1. Definitions. As used herein, the following terms shall have the following definitions:

a. "**Conception Plan**" shall be the Conception Plan (12/22/2015) prepared by Engineer, a copy of which is attached hereto as Exhibit D and made a part hereof. The Conception Plan is not a final, approved plan and is subject to modification.

b. "**Engineer**" shall mean Homeyer Engineering, Inc., a Texas corporation.

c. **“Grading Plan”** shall be the mass grading plan prepared by Engineer for the City Property. A preliminary copy of the Grading Plan is attached hereto as Exhibit E and made a part hereof.

2. Developer Obligations.

a. Developer shall submit the proposed final Grading Plan to the City within thirty (30) days of the Effective Date of this Agreement.

b. Developer shall grade the City Property in accordance with the Grading Plan and as further set out in Section 4 of this Agreement.

c. Developer shall furnish to the City payment and performance bonds in the name of the City and Developer for one hundred percent (100%) of the cost of the grading project. Developer shall furnish all bonds to the City prior to the commencement of the grading of the City Property. The bonds shall meet the requirements of Chapter 2253 of the Texas Government Code.

3. City Obligations. In consideration of Developer grading the City Property, City shall:

a. provide final approval of the Grading Plan within thirty (30) days of Developer submitting the Grading Plan application to City;

b. transfer to Developer, good and indefeasible title to the Developer Tract, free and clear of any and all liens, assessments, unrecorded easements, security interests and other encumbrances, in accordance with Section 5 of this Agreement; and

c. issue a permit to Developer to construct, as evidenced on and in accordance with the Conception Plan, one or more of the following: (i) a deceleration lane on Sandy Lake Road, adjacent to the Northern boundary of the Developer Tract, (ii) two (2) curb cuts on the Northern boundary of the Developer Tract providing access to Sandy Lake Road, and (iii) a median opening and left turn lane on Sandy Lake Road. Upon issuance of the permit(s), Developer shall have the option, but not the obligation, to construct the aforementioned deceleration lane, curb cuts, median opening and left turn lane.

4. Grading of the City Property. Developer shall, at its sole cost and expense, grade the City Property in accordance with the Grading Plan and Exhibit F attached hereto and made a part hereof and subject to the following terms and conditions:

a. Within sixty (60) days of the final approval of the Grading Plan by both City and Developer, Developer shall commence grading the City Property. Approval of the Grading Plan shall not be unreasonably, withheld, conditioned or delayed.

b. Commencing on the Effective Date and continuing until final approval by the Engineer of the grading on the City Property, City shall grant Developer full, free and complete access to the City Property and McInnish Park at all times to enable Developer to perform the grading services on the City Property. During the period upon which Developer is performing its grading services, the City shall not enter onto the City Property without the express prior written consent of Developer, which shall not be unreasonably denied. Any request by City to enter onto the City Property during this period shall be made at least one (1) business day in advance.

c. Subject to the terms of Exhibit F, Developer shall have the exclusive power to accomplish the arranging, supervising, coordinating and completing all aspects of the grading of the City Property. Subject to Exhibit F, Developer may make non-material changes to the Grading Plan as Developer may, in the exercise of its sole judgment, deem necessary to complete the grading of the City Property.

d. Developer shall have the right to add or remove soil, dirt and other fill on the City Property necessary to comply with the Grading Plan.

e. During the period upon which Developer is performing its grading services, Developer may, at its sole cost and expense, install temporary signs on the City Property to identify Developer as the party performing the grading services and to provide warnings regarding entering onto the City Property.

f. Final written approval of the grading shall be made by the Engineer, which approval shall not be unreasonably withheld, conditioned or delayed. Engineer shall provide such written approval by providing Developer, Blue Sky and the City with a letter confirming that the work performed by Developer complies with the Grading Plan. Engineer's approval of the grading shall occur within fifteen (15) days after Developer notifies Engineer, in writing, of Developer's completion of the grading services.

g. Blue Sky and/or the City shall provide Developer with the most recent copy of a Phase I performed in relation to the City Property.

h. Developer shall not be liable for any pre-existing environmental issues related to the City Property, unless Developer fails to comply with the Grading Plan which results in an environmental issue to the City Property.

i. Except as otherwise specifically provided in this Agreement, upon completion of the grading of the City Property, Developer shall have no further obligation with regard to the City Property.

5. Transfer of Developer Tract. Upon Developer's completion and approval by the Engineer of the grading of the City Property in accordance with Grading Plan, City shall transfer to Developer good and indefeasible title to the Developer Tract, free and clear of any and all liens, assessments, unrecorded easements, security interests and other encumbrances and in accordance with the following terms and conditions:

a. The Developer Tract shall be transferred to Developer by Special Warranty Deed immediately upon completion of the grading of the City Property. The transfer of the Developer Tract shall be together with all of City's right, title and interest appurtenant to such land, including, without limitation, all of City's right, title and interest, if any, in and to all access, air, water, riparian, development, and utility rights pertaining thereto, and all improvements and personal property located on the Developer Tract. The City shall have the right to maintain easements on the boundaries of the Developer Tract for any and all public utilities, drainage and water/wastewater, or other public rights and necessities. Said easements shall not interfere with Developer's use of the Developer Tract.

b. As of the Effective Date, in accordance with the applicable standards and regulations of the Texas Commission on Environmental Quality, Developer may conduct inspections of the Developer Tract to conduct feasibility studies regarding Developer's intended use of the Developer Tract. Developer's studies may include, but not be limited to, core borings; environmental and architectural tests and investigations and physical inspections of all subsurface soils. Developer, its agents, employees, consultants and invitees shall have the right of reasonable entry onto the Developer Tract for purposes of said inspections, tests and examinations deemed necessary by Developer. All said studies, tests and inspections shall be at Developer's sole cost and expense.

c. Developer shall only be responsible for such ad valorem taxes and/or operating expenses incurred on the Developer Tract subsequent to the transfer of the Developer Tract to Developer.

6. Rezoning of Developer Tract. As of the Effective Date, Developer may begin taking such actions to rezone the Developer Tract to a Local Retail District (LR-1 or LR-2). The Developer Tract is limited to uses in accordance with a City Council-approved rezoning classification for LR-1 or LR-2. The City will use all good-faith efforts to assist in the rezoning process.

7. Cross-Easement and Parking Agreement. Subsequent to the transfer of the Developer Tract to Developer, Developer will enter into a mutual access easement and parking agreement with Blue Sky. The terms of this Section 7 shall survive the termination of this Agreement.

8. Construction Easement.

a. Blue Sky Tract. City and Blue Sky hereby grant, bargain, sell and convey unto Developer, a non-exclusive, perpetual temporary construction easement on, over, across, along, under and through the Blue Sky Tract to permit the construction and development of the Developer Tract, provided; however, that the use of this construction easement shall be kept to a minimum, shall not unreasonably interfere with City's or Blue Sky's use of the Blue Sky Tract, and that such area shall be restored by Developer to its original condition at no expense to City or Blue Sky. The construction easement shall be for ingress and egress only for persons, vehicles, materials, machinery and equipment in, over, on, across, under and through such portions of the construction easement as are, and only to the extent, reasonably necessary for Developer to construct and develop the Developer Tract. Developer may file a memorandum of the easement in the Dallas County Real Property Records so that legal notice of the easement is provided to all persons. Furthermore, Developer may require City and/or Blue Sky to execute the memorandum of the easement in a mutually-acceptable form. This construction easement shall expire upon one and one-half (1½) years after the final approval of the grading of the City Property by Developer. The terms of this Section 8 shall survive the termination of this Agreement.

b. McInnish Park. City hereby grants, bargains, sells and conveys unto Developer, a non-exclusive, perpetual temporary construction easement on, over, across, along, under and through McInnish Park to permit the construction and development of the City Property, provided; however, that the use of this construction easement shall be kept to a minimum, shall not unreasonably interfere with City's use of the McInnish Park, and that such area shall be restored by Developer to its original condition at no expense to City. The construction easement shall be for ingress and egress only for persons, vehicles, materials, machinery and equipment in, over, on, across, under and through

such portions of the construction easement as are, and only to the extent, reasonably necessary for Developer to construct and develop the City Property.

9. Insurance.

a. From the commencement of the grading of the City Property through the final approval by the Engineer of the grading on the City Property (the “**Insurance Period**”), Developer shall, at Developer’s expense, maintain in full force and effect from an insurer authorized to operate in Texas, public liability insurance naming City and Blue Sky as additional insureds with policy limits on an occurrence basis in a minimum amount of \$1,000,000.

b. Prior to the Insurance Period, Developer must provide City and Blue Sky with a copy of insurance certificate evidencing the required coverage. If the insurance coverage is renewed or changes in any manner or degree at any time during the Insurance Period, Developer must, not later than ten (10) days after the renewal or change, provide City and Blue Sky a copy of an insurance certificate evidencing the renewal or change.

c. If Developer fails to maintain the required insurance in full force and effect at all times during the Insurance Period, after written notice from City to Developer and reasonable opportunity for Developer to cure such failure, City may:

i. purchase insurance that will provide City the same coverage as the required insurance and Developer must immediately reimburse City for such expense; or

ii. exercise Landlord’s remedies under Section 12.

10. Liability. Except as otherwise provided in this Agreement, City is not responsible to Developer or Developer’s employees, guests, or invitees for any damages, injuries, or losses to person or property incurred on the City Property caused by:

a. an act, omission, or neglect of: Developer’s agents, Developer’s guests, Developer’s employees, or Developer’s invitees; or

b. fire, flood, water leaks, ice, snow, hail, winds, explosion, smoke, riot, strike, interruption of utilities, theft, burglary, robbery, assault, vandalism, other persons, environmental contaminants, or other occurrences or casualty losses.

11. Indemnity. FROM AND AFTER EXECUTION OF THIS AGREEMENT, DEVELOPER ASSUMES ALL RISKS OF ITS OWN OPERATIONS, AND THOSE OF ITS AGENTS, INDEPENDENT CONTRACTORS, AND ANY LICENSEES ON THE CITY PROPERTY. DEVELOPER AND ITS AGENTS, INDEPENDENT CONTRACTORS, AND ANY LICENSEES, SHALL INDEMNIFY, DEFEND AND HOLD CITY, ITS EMPLOYEES, DIRECTORS, OFFICERS AND AGENTS HARMLESS FROM AND AGAINST, ANY AND ALL DEMANDS, CLAIMS, CAUSES OF ACTION, FINES, PENALTIES, DAMAGES (INCLUDING CONSEQUENTIAL DAMAGES), LIABILITIES, JUDGEMENTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPERT WITNESS FEES) WHICH ARISE OUT OF OR RELATE TO (1) THE GRADING OF THE CITY PROPERTY; (2) ANY ACTIVITY, WORK, OR THING DONE OR PERMITTED BY DEVELOPER IN OR ABOUT THE CITY PROPERTY; (3) ANY BREACH BY DEVELOPER OR ITS EMPLOYEES, AGENTS, CONTRACTORS OR INVITEES OF THIS AGREEMENT; AND (4) ANY INJURY, LOSS OR DAMAGE TO THE PERSON, PROPERTY OR BUSINESS OF DEVELOPER, ITS EMPLOYEES, AGENTS, OR CONTRACTORS OR ANY INVITEES ENTERING UPON THE CITY PROPERTY UNDER THE EXPRESS OR IMPLIED INVITATION OF DEVELOPER. IF ANY ACTION OR PROCEEDING IS BROUGHT AGAINST CITY OR ITS EMPLOYEES, DIRECTORS, OFFICERS OR AGENTS BY REASON OF ANY SUCH CLAIM FOR WHICH DEVELOPER HAS INDEMNIFIED CITY, DEVELOPER, UPON WRITTEN NOTICE FROM CITY, WILL DEFEND THE SAME AT DEVELOPER'S EXPENSE WITH COUNSEL REASONABLY SATISFACTORY TO CITY. DEVELOPER'S OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR OTHER TERMINATION OF THIS AGREEMENT.

12. Defaults and Remedies.

a. Developer Default. Each of the following shall constitute a "***Developer Default***" hereunder:

i. Failure of Developer to comply with any material provision of this Agreement and the continuation of such failure for a period of thirty (30) days after receipt of written notice from the City of such failure.

ii. Failure of Developer to complete grading in accordance with the terms of this Agreement within ninety (90) days from the date of final approval of the Grading Plan by both City and Developer, as further described in Section 3.a. of this Agreement (the "***Completion Date***"); however, the Completion Date shall be extended by one day for each day Developer cannot perform its obligations under this Agreement due to adverse weather conditions. The City shall, in its sole reasonable discretion, determine what constitutes adverse weather conditions.

Upon the occurrence of any Developer Default, City shall have the right, at any time after the final expiration of the curative period prescribed above, and while such Developer Default continues, (A) to enforce specific performance of this Agreement; or (B) to bring suit for damages against Developer, or both, or (C) to exercise any other remedies that may be provided by law or in equity. In the event of Developer Default, the easement rights granted hereunder shall immediately terminate on the date of the final expiration of the curative period. Upon termination of this Agreement, City shall have no further claims, demands or actions against Developer in connection with the terms of this Agreement, except for such provisions in this Agreement the survive the termination of this Agreement.

b. City Default. Each of the following shall constitute a “*City Default*” hereunder:

i. Failure of City to transfer the Developer Tract to Developer upon completion, in accordance with the terms of this Agreement, and acceptance of the grading of the City Property.

ii. Failure of City to comply with any material provision of this Agreement and the continuation of such failure for a period of thirty (30) days after receipt of written notice from the Developer of such failure.

Upon the occurrence of any City Default, Developer shall have the right, at any time after the final expiration of the curative period prescribed above, and while such City Default continues, (A) to enforce specific performance of this Agreement; or (B) to bring suit for damages against City, or both, or (C) to exercise any other remedies that may be provided by law or in equity. Upon termination of this Agreement, Developer shall have no further claims, demands or actions against City.

c. Other Remedies. In the event of the occurrence of either a Developer Default or a City Default hereunder, the aggrieved party (Developer or City, as the case may be) shall, in addition to its other rights and remedies hereunder, have the right to recover from the party in default all reasonable costs and expenses incurred by the aggrieved party in enforcing its rights and remedies hereunder, including reasonable attorneys’ fees. The termination of this Agreement by either Developer or City by reason of default by the other party, as aforesaid, shall not relieve either party of any of its obligations theretofore accrued under this Agreement prior to the effective date of such termination.

13. Miscellaneous.

a. Notice. Any notice or communication required or permitted hereunder shall be given in writing, sent by (i) personal delivery; or (ii) United States mail, postage prepaid, first class, registered or certified mail, return receipt requested; or (iii) overnight delivery by a nationally recognized overnight courier service (e.g. UPS, Federal Express), addressed as follows:

If to City: City of Carrollton
City Manager's Office
1945 E. Jackson Rd.
Carrollton, Texas 75006
Attention: _____

If to Developer: Arthur James, Inc.
1017 Colonial Drive
Coppell, Texas 75019
Attention: Arthur James

If to Blue Sky: Blue Sky Sports Center of Carrollton, LP
1278 FM 407, Suite 109
Lewisville, Texas 75077
Attention: Greg Bertrand

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable parties sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of delivery to the party's address provided herein, or in the case of mail, as of three (3) days after postmark when sent by United States mail to the address and in the manner provided herein. Either party may from time to time, by written notice to the other party in accordance with the terms hereof, designate a different address for notice.

b. Captions. The titles or captions contained in this Agreement shall have no effect and shall neither limit nor amplify the provisions of the Agreement itself.

c. Entire Agreement. This Agreement, when signed by both City and Developer, constitutes a final written expression of all the terms of this Agreement and is a complete and exclusive statement of those terms relating to the subject matter hereof. This Agreement shall not be amended or changed except by written instrument signed by the party to be charged therewith.

d. Severable Provisions. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any

extent, then the other provisions of this Agreement, the provision in question to any other extent, and the application thereof to any other person or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

e. Governing Law and Venue. This Agreement has been entered into in the State of Texas, is performable in the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in Dallas County, Texas, for any lawsuit between the parties hereto with respect to any matter covered by this Agreement.

f. Non-Assignable without the Consent of the Other Party. Neither City nor Developer shall assign, transfer, mortgage, pledge or otherwise encumber or dispose of this Agreement or all or any part of its rights and interests hereunder except to an affiliated entity, and any attempted assignment, mortgage, pledge, encumbrance or disposition shall be void ab initio.

g. Parties Bound. This Agreement shall be binding upon and inure to the benefit of City and the Developer and their respective successors and assigns.

h. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had all signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages. This Agreement may be executed by facsimile signatures and such signatures shall be deemed an original.

i. Force Majeure. Whenever a period of time is prescribed in this Agreement for the taking of any action (other than monetary obligations) by a party, no party shall be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays resulting from (a) acts or occurrences beyond the reasonable control of such party (including fire, explosion, power failure, lightning, severe weather, acts of God, war, revolution, or civil commotion); or (b) labor unrest (including strikes, slowdowns, picket-lines, and boycotts whether primary or secondary), and without regard to whether such labor unrest could have been settled by acceding to the demands of a labor organization. In such event, the party whose performance is directly affected by the circumstances shall be excused from such performance on a day-for-day basis to the extent of the interference. If such excuse of the performance of the directly affected party shall prevent related performance by the other party, then the

performance of the other party shall be excused from such performance on a day-for-day basis to the extent of the interference. In the event that any such event of force majeure shall continue for more than sixty (60) days, then the parties shall enter into good faith negotiations directed toward a mutually acceptable resolution of outstanding obligations hereunder.

j. Confidentiality. Except as and to the extent required by law or as may otherwise be provided in the Agreement, without the prior written consent of the other party, no party shall, and each party shall direct their respective officers, directors, shareholders, members, managers, partners, employees and other representatives not to, disclose (except to their respective accountants, attorneys and other professionals having a bona fide need to know) the contents, terms or conditions contained in this Agreement and the other documents and instruments executed in connection herewith. If one party is required by law to make any such unauthorized disclosure, it must first provide to the other party the content of the proposed disclosure, the reasons that such is required, and the time and place such disclosure will be made. The terms of this Section 11.j. shall survive the termination of this Agreement.

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EXECUTED as of the Effective Date.

CITY:

CITY OF CARROLLTON,
a Texas home rule municipality

By: _____
Name: _____
Title: _____

DEVELOPER:

ARTHUR JAMES, INC.,
a Texas corporation

By:  _____
Name: ~~ARTHUR JAMES~~ JAMES _____
Title: ~~PRESIDENT~~ _____

Acknowledged and agreed to for purposes of Section 4.f.:

HOMEYER ENGINEERING, INC.,
a Texas corporation

By:  _____
Name: STEVEN HOMEYER _____
Title: PRESIDENT _____

Acknowledged and agreed to for purposes of Sections 4.g., 7. and 8.a.:

BLUE SKY SPORTS CENTER OF CARROLLTON, LP,
a Texas limited partnership

By: Blue Sky Carrollton Management, Inc.,
a Texas corporation,
its general partner

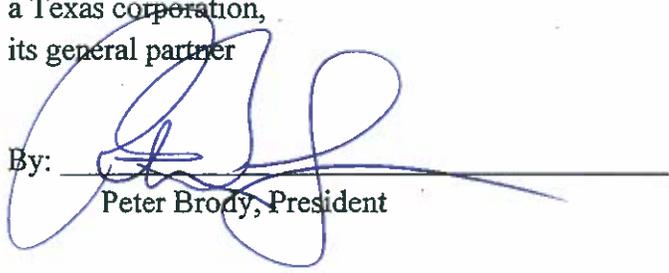
By: 
Peter Brody, President



EXHIBIT A

City Property

EXHIBIT B

Blue Sky Tract

EXHIBIT C

Developer Tract

EXHIBIT D
Conception Plan

EXHIBIT E

Grading Plan

Exhibit F

Obligations of Arthur James relating to grading and other issues for the Blue Sky Tract

1. Arthur James shall be responsible for grading of Blue Sky Tract, including parking, drive aisles, fire lanes, fields and common areas. All grades are to vary no more than 0.1 feet of grades established by Homeyer Engineering. With regard to the seven outdoor soccer fields, Arthur James will provide the addition of sufficient top soil as established by Homeyer Engineering.
2. Arthur James shall be responsible for the Blue Sky Tract building pad preparation to specifications as established by geotech by Geoscience and the RCS Enterprises (the structural engineering firm). Grade of the Blue Sky building pads to be within 0.1 feet of the final grade as set forth in the grading plans by Homeyer Engineering.
3. Arthur James shall provide all grading equipment, labor and materials.
4. Arthur James shall provide for all import or export of soils needed for grading and select fill placement and compaction under buildings.
4. Arthur James shall be responsible for the backfilling of curbs and final grading shall be included.
5. Arthur James shall also provide all necessary water for site work on the Blue Sky Tract.
6. Arthur James shall be responsible for all grading of the "off site" soccer field located at McInnish Park, along with modifying the existing McInnish Park soccer field to a condition which is ready to install artificial turf according to the specifications of AstroTurf USA as set forth in Exhibit F-1.
7. Arthur James shall be responsible for all Field Survey work associated with grading.
8. Arthur James shall be responsible for all testing of soils related to the grading work.