



**TO:** Mayor and Councilmembers

**FROM:**

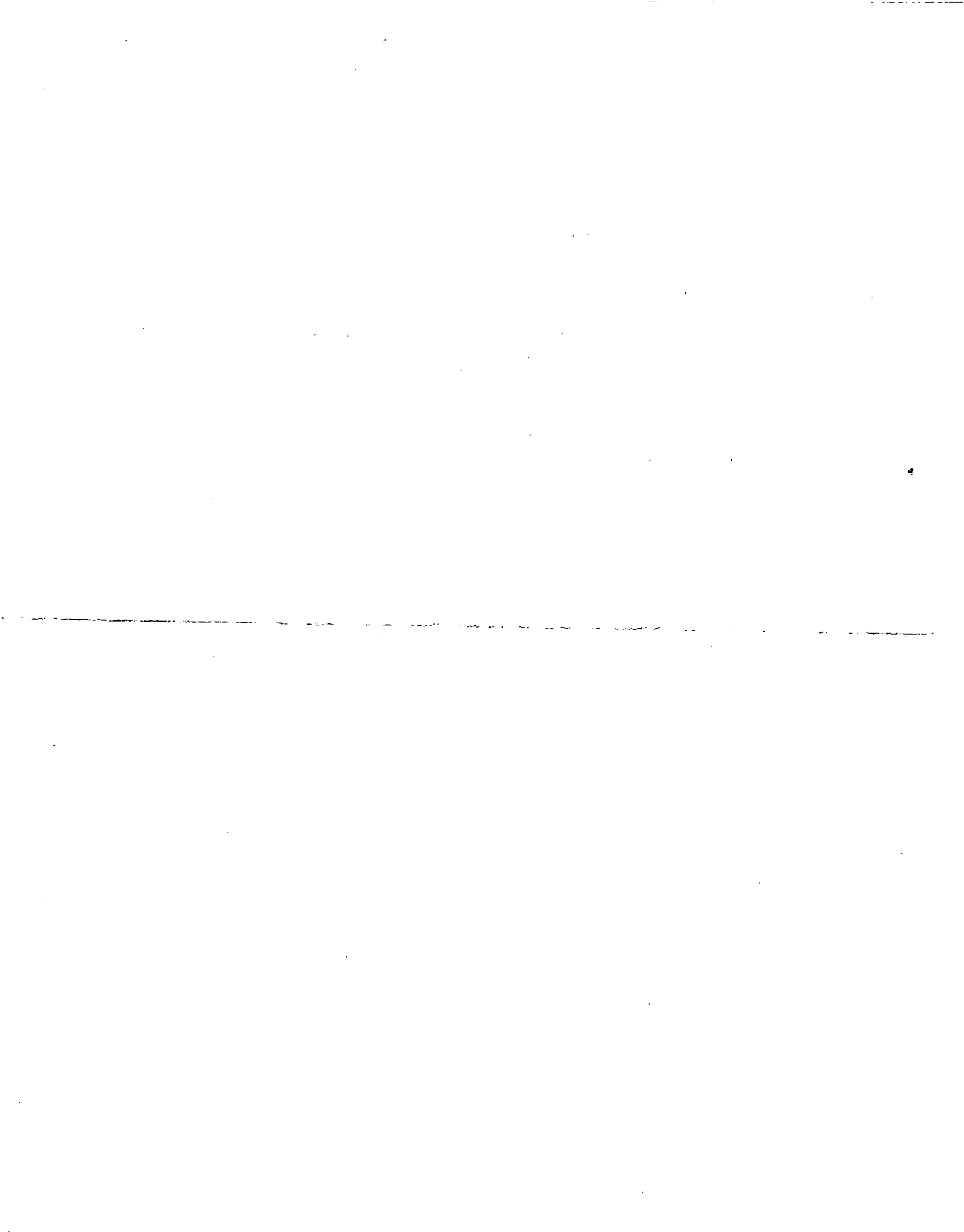
**DATE:** April 12, 2011

**SUBJECT:** Consideration and action regarding approval of standardized facilities agreement template and delegation of authority to the City Manager and/or Public Works Director to approve on behalf of the City

SAMPLE Templates are attached

**ACTION:** Council to give direction regarding Standardized Facilities Agreement Templates.

(VI- D)



AFTER RECORDING, RETURN TO:

Jack Carr, P.E.  
City of McKinney  
P.O. Box 517  
222 N. Tennessee Street  
McKinney, Texas 75069

**City of McKinney, Texas**  
**FACILITIES AGREEMENT**  
*(Delayed Franchise Utility Installation Agreement)*

THIS AGREEMENT, entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_, \_\_\_\_\_, Texas, ("DEVELOPER") witnesseth that:

WHEREAS, the Subdivision Regulations of the City of McKinney, Texas contained in Chapter 40 of the Code of the City of McKinney, Texas (the "Subdivision Regulations") establish procedures and standards for the development and subdivision of real estate and for the surveying and platting thereof, requiring the installation of adequate public facilities to serve the subject property and providing penalties for violations, among other things; and

WHEREAS, Section 40-55(10) of the Subdivision Regulations requires the execution of a Facilities Agreement prior to the issuance of a Development Permit for the clearing, grading, filling, dredging, or construction of public streets, utilities, or drainage, or other improvements, which may affect adjacent or surrounding properties in certain circumstances described in Section 40-31 of the Subdivision Regulations, as amended; and

WHEREAS, the development of the subdivision to be known as \_\_\_\_\_ involves certain pro rata payments, city participation in cost, escrow deposits or other future considerations, and/or other nonstandard development regulations, that trigger the requirement for a Facilities Agreement by and between the CITY and the DEVELOPER in accordance with Section 40-31 of the Subdivision Regulations, as amended; and

WHEREAS, DEVELOPER has installed all of the public facilities, infrastructure and necessary appurtenances thereto that are identified in and required by the Subdivision Regulations to fully serve the Property including, but not limited to, streets, sidewalks, water,

sewer, and storm drainage systems (the "Required Improvements") and is only waiting for the franchise utilities to be installed throughout the Property.

NOW THEREFORE, in consideration of the intent and desire of the DEVELOPER, as set forth herein, and to gain approval of the CITY to record said Plat, the DEVELOPER and CITY agree as follows:

**A. PROPERTY**

This Agreement is for Property located in the City of McKinney, on the \_\_\_\_\_ side of \_\_\_\_\_ in an area west of \_\_\_\_\_ and generally \_\_\_\_\_ of \_\_\_\_\_ and the \_\_\_\_\_ radius of \_\_\_\_\_ containing approximately \_\_\_\_\_ acres of land, more fully described in Exhibit A attached hereto and fully incorporated herein by reference (the "Property").

**B. STORMWATER**

DEVELOPER agrees to abide by all terms of the Official Storm Water Management Ordinance of the City of McKinney, Ordinance No. 99-04-39, as amended. In addition, DEVELOPER agrees as follows:

1. It is understood that franchise utilities have not yet been installed throughout the Property and that DEVELOPER desires to have the other Required Improvements in and about the Property accepted by the CITY prior to completion of the franchise utilities installation, which is delayed by the timing of the franchise utilities installation. This delay will result in delays regarding the establishment of permanent erosion control devices on the Property prior to acceptance of the Required Improvements by the CITY. DEVELOPER desires to proceed with the record plat of the Property and the issuance of building permits for the lots within the Property.
2. DEVELOPER shall submit an Erosion Control Plan for the CITY's approval prior to the approval of the record plat for the Property.
3. DEVELOPER shall deposit with the CITY the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) in an Erosion Control Deposit Account to insure implementation and continued maintenance of the CITY approved Erosion Control Plan. Said Erosion Control Deposit Account is a non-interest bearing account.
4. As a component of DEVELOPER's Erosion Control Plan, and in addition to all other requirements established by CITY, DEVELOPER shall install Curlex (or a similar product) and silt fence per CITY standards together with a strip of sod no less than two feet (2') in width immediately behind the curb.
5. In order to expedite completion, DEVELOPER, or its engineering firm of record, shall perform daily inspections for improvements listed above and the exercise of

best management principles ("BMPs") regarding DEVELOPER's Erosion Control Plan, together with daily coordination with franchise utilities for their installation.

6. DEVELOPER shall possess and retain full maintenance responsibility for the duration of the installation of all franchise utilities for items outlined in conditions (4) and (5) above, and all CITY-owned infrastructure (which is in addition to the required maintenance bonds thereon), including, but not limited to, streets, water, sewer, and storm drainage systems.
7. In the event DEVELOPER shall fail or neglect to fulfill its obligations under this Agreement and the CITY's Storm Water Ordinance, a Two Thousand and No/100 Dollars (\$2,000.00) per day penalty shall be imposed for each day of such failure or neglect, to be an automatic draw-down by CITY if such failure is not corrected within a twenty-four (24) hour period after written notice from CITY of the specific failed or neglected event. In addition to all other remedies available to CITY, CITY may also issue stop work orders, issue citations, and withhold the issuance of any and all pending certificates of occupancy, or withhold inspections of any and all existing permitted dwellings, until such time as any failed or neglected event is corrected. In addition, infrastructure damage not repaired in a timely manner may be repaired by CITY at DEVELOPER's cost.
8. In the event that the amount of DEVELOPER's Erosion Control Deposit Account for the Property reaches Thirty Thousand and No/100 Dollars (\$30,000.00) or less, DEVELOPER agrees to immediately replenish said account to the original established amount of Fifty Thousand and No/100 Dollars (\$50,000.00).
9. Upon completion of the installation of all franchise utilities on the Property, the stabilization of the soil through the establishment of permanent erosion controls, and the completion of repairs to any and all Required Improvements that were damaged or destroyed by, about or through the franchise utilities installation, the DEVELOPER may request the return of the remainder of the Erosion Control Deposit Account.
10. The CITY will not grant certificates of occupancy for the subdivision until the installation of franchise utilities is complete on the Property and all Required Improvements have been completed by DEVELOPER, including any necessary repairs and replacements and finally accepted by the CITY.

### C. REPAIR OF REQUIRED IMPROVEMENTS

DEVELOPER expressly acknowledges and agrees that DEVELOPER shall be responsible for repairing and replacing any Required Improvements which are damaged or destroyed by any person or party for the duration of the installation of all franchise utilities on, about, over or under any area, part or parcel of the Property. The maintenance bond on any and all such repaired or replaced Required Improvements shall run from the date of the repair or

replacement of the Required Improvement in question notwithstanding the CITY's prior acceptance of said Required Improvement, it being understood that the franchise utilities should have been installed prior to the CITY's acceptance of such Required Improvements. If DEVELOPER fails to timely repair any Required Improvements damaged or destroyed by any person or party for the duration of the installation of all franchise utilities the CITY shall be entitled to repair or replace the damaged or destroyed Required Improvements and deduct the costs thereof from the Erosion Control Deposit Account. DEVELOPER shall remain responsible for payment of any amounts in excess of the then remaining funds in the Erosion Control Deposit Account, which amount shall constitute a lien against the Property.

**D. NO WAIVER**

DEVELOPER expressly acknowledges that by entering into this Agreement, DEVELOPER, its successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any Exhibits as waiving any of the requirements of the Zoning Ordinance, Subdivision Regulations, Storm Water Ordinance and/or Storm Water Manual in force by CITY, except as herein agreed.

**E. VARIANCES**

It is expressly acknowledged that no variances to the Zoning Ordinance, Subdivision Regulations, Storm Water Ordinance and/or Storm Water Manual for this Property are granted by this Agreement.

**F. INDEMNITY AND HOLD HARMLESS AGREEMENT**

**DEVELOPER, its successors, assigns, vendors, grantees, and/or trustees do hereby agree to fully indemnify, protect and hold CITY harmless from all third-party claims, suits, judgments, and demands, including its reasonable attorney's fees, arising out of the sole or concurrent negligence of DEVELOPER, and only to the extent or percentage attributable to DEVELOPER, in the subdividing, development, or construction of public improvements, including the negligent maintenance thereof. DEVELOPER shall not be responsible for or be required to indemnify CITY from CITY'S own negligence. The indemnity contained in this Paragraph shall expire five (5) years from the date of final acceptance of each phase of the improvements.**

**G. REVOCATION**

In the event DEVELOPER fails to comply with any of the provisions of this Agreement, CITY shall be authorized to revoke any and all Certificates of Occupancy that may have been previously issued in relation to the subdivision and/or development of Property; and CITY shall be further authorized to file this instrument in the records of Collin County as a Mechanic's Lien against DEVELOPER'S property; and in the alternative, CITY shall be

authorized to levy an assessment against DEVELOPER'S property for public improvements to be held as a tax lien against the Property by CITY.

#### H. CONTINUITY

This Agreement shall be a covenant running with the land, and be binding upon DEVELOPER, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

#### I. ASSIGNABILITY

This Agreement shall not be assignable by DEVELOPER without the prior written consent of the CITY, and such consent shall not be unreasonably withheld, conditioned or delayed.

#### J. TERMINATION AND RELEASE

Upon satisfactory completion by DEVELOPER and final acceptance by CITY of all requirements of this Agreement, this Agreement shall terminate and CITY will execute a release of covenant to DEVELOPER, its heirs, successors, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future. This Agreement shall not terminate until the requirements of all parties have been fulfilled.

#### K. GENERAL PROVISIONS

1. DEVELOPER hereby relieves CITY of any responsibilities for any inadequacies in the preliminary plans, exhibits and cost estimates supplied for the purpose of this Agreement, and further agrees that DEVELOPER will comply with CITY'S Subdivision Regulations, Street Design Standards, Public Improvements Policy and any other applicable policies, rules, regulations and ordinances of CITY regarding development of Property.
2. DEVELOPER agrees, except as provided otherwise herein, that construction shall not begin on any proposed building improvements prior to City Council approval of this Agreement and acceptance of all Required Improvements by the CITY.
3. DEVELOPER agrees that all coordination required with public and/or private utility agencies to eliminate conflicts with proposed street grades or underground improvements shall be the responsibility of DEVELOPER. Likewise, coordination with agencies requiring special conditions (i.e., railroads and the Texas Department of Transportation) shall be the responsibility of DEVELOPER.

**CITY OF MCKINNEY**

By: \_\_\_\_\_  
LAWRENCE W. ROBINSON  
City Manager  
Date Signed: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
SANDY HART, CMC  
City Secretary  
BEVERLY COVINGTON  
Deputy City Secretary

**SAMPLE**

\_\_\_\_\_  
*By and through its General Partner*  
\_\_\_\_\_

a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

THE STATE OF TEXAS  
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared LAWRENCE W. ROBINSON, City Manager of the **CITY OF MCKINNEY**, a Texas Municipal Corporation, known to me to be the person who's name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_  
DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public \_\_\_\_\_ County, Texas  
My commission expires \_\_\_\_\_

THE STATE OF TEXAS,  
County of \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_, in his capacity as \_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing  
instrument, and acknowledged to me that \_\_\_\_\_ is the General Partner of  
\_\_\_\_\_, a \_\_\_\_\_, and that he executed the same on behalf  
of and as the act of the Limited Partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_  
DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public \_\_\_\_\_ County, Texas  
My commission expires \_\_\_\_\_

PREPARED IN THE OFFICES OF:

*BROWN & HOFMEISTER, L.L.P.*  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081  
214/747-6100  
214/747-6111 Fax

**SAMPLE**

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

**SAMPLE**

AFTER RECORDING, RETURN TO:

Jack Carr, P.E.  
City of McKinney  
P.O. Box 517  
222 N. Tennessee Street  
McKinney, Texas 75069

**City Of McKinney, Texas**  
**FACILITIES AGREEMENT**  
*(Escrow for Required Improvements)*

THIS AGREEMENT, entered into effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and \_\_\_\_\_ a \_\_\_\_\_, whose address is \_\_\_\_\_, \_\_\_\_\_, Texas \_\_\_\_\_ ("DEVELOPER") witnesseth that:

WHEREAS, the Subdivision Regulations of the City of McKinney, Texas contained in Chapter 40 of the Code of the City of McKinney, Texas (the "Subdivision Regulations") establish procedures and standards for the development and subdivision of real estate and for the surveying and platting thereof, requiring the installation of adequate public facilities to serve the subject property and providing penalties for violations, among other things; and

WHEREAS, Section 40-55(10) of the Subdivision Regulations requires the execution of a Facilities Agreement prior to the issuance of a Development Permit for the clearing, grading, filling, dredging, or construction of public streets, utilities, or drainage, or other improvements which may affect adjacent or surrounding properties in certain circumstances described in Section 40-31 of the Subdivision Regulations, as amended; and

WHEREAS, the development of the subdivision to be known as \_\_\_\_\_ involves certain pro rata payments, city participation in cost, escrow deposits or other future considerations, and/or other nonstandard development regulations, that trigger the requirement for a Facilities Agreement by and between the CITY and the DEVELOPER in accordance with Section 40-31 of the Subdivision Regulations, as amended; and

WHEREAS, DEVELOPER requests the recording of the Record Plat of the \_\_\_\_\_ subdivision (the "Plat") prior to the completion and acceptance of certain of the public facilities required to serve the subdivision as are identified in attached Exhibits B and C (the "Required Improvements").

WHEREAS, the Subdivision Regulations prohibit recording the Final Plat of a subdivision within the incorporated area of the CITY until the DEVELOPER has completed all of the public facilities that must be dedicated to the CITY or has entered into a Facilities Agreement and guaranteed to the satisfaction of the CITY such improvements will be installed.

NOW THEREFORE, in consideration of the intent and desire of the DEVELOPER, as set forth herein, and to gain approval of the CITY to record said Plat, the DEVELOPER and CITY agree as follows:

A. PROPERTY

This Agreement is for Property located in the City of McKinney, on the \_\_\_\_\_ side of \_\_\_\_\_ in an area \_\_\_\_\_ of \_\_\_\_\_ and generally \_\_\_\_\_ of \_\_\_\_\_ containing approximately \_\_\_\_\_ acres of land, more fully described in Exhibit A attached hereto and fully incorporated herein by reference (the "Property").

B. PUBLIC IMPROVEMENTS

DEVELOPER agrees to escrow funds with the CITY for the construction of the Required Improvements for the subdivision to be known as \_\_\_\_\_ as provided herein below in this Agreement and the attached Exhibits B and C.

DEVELOPER agrees to complete all other required public infrastructure for the subdivision to be known as \_\_\_\_\_ prior to the recording of the record plat save and except those Required Improvements identified herein below in this Agreement and the attached Exhibits; the funds for the design and construction of which public infrastructure is being escrowed contemporaneously with the execution of this Agreement.

1. THOROUGHFARES

DEVELOPER shall dedicate as a part of the Required Improvements and at no cost to CITY, that amount of right-of-way together with all easements appurtenant thereto as may be necessary for the construction of the required public thoroughfare improvements identified in Exhibit B, which is attached hereto and fully incorporated herein by reference.

2. UTILITIES

DEVELOPER shall dedicate as a part of the Required Improvements and at no cost to CITY, all easements as may be necessary for the construction of the required public utility improvements identified in Exhibit C, which is attached hereto and fully incorporated herein by reference.

### C. ESCROW

1. DEVELOPER shall escrow a cash deposit with the CITY in the amount of at least one hundred twenty percent (120%) of the total estimated cost for payment of costs associated with the design and construction of the Required Improvements. (The Required Improvements which are the subject of this Escrow Agreement are more fully described in Exhibit B and Exhibit C attached hereto and incorporated herein by reference.) The CITY shall hold these funds in an interest-bearing escrow account in accordance with this Agreement. The escrow account interest rate shall be established in the CITY's discretion, and may vary. The additional twenty percent (20%) over and above the Construction Contract cost, together with any interest on the escrow account, shall be used by the CITY to cover unexpected or incidental costs of completion, including the CITY's administrative expenses.
2. The cost estimate for the design and construction of the Required Improvements shall be prepared by a professional engineer licensed by the State of Texas. Said cost estimate shall include a projected cost of purchasing a payment bond and performance bond, which meet the requirements of Chapter 252 of the Texas Local Government Code and Chapter 2253 of the Texas Government Code, in the full amount of the Required Improvements. The cost estimate shall also include a projected cost of purchasing a maintenance bond in the amount of fifteen percent (15%) of the estimated cost of the Required Improvements from a reputable and solvent corporate surety, in favor of CITY, to indemnify City against any repairs arising from defective workmanship or materials used in any part of the construction of improvements to Property for a period of two (2) years from the date of final acceptance of such improvements. Said cost estimate shall be subject to the review and approval of the CITY Engineer. In the event of a dispute the CITY Engineer's determination shall control.
3. DEVELOPER agrees and understands that the CITY makes no assurances or representations that the Required Improvements will be constructed and accepted prior to any date certain or in conjunction with the completion or acceptance of any particular phase of the \_\_\_\_\_ subdivision. The CITY shall be allowed to undertake the design, construction and acceptance of the Required Improvements at such time as the CITY deems it desirable or necessary, and in the sole discretion of the CITY.
4. The DEVELOPER agrees that the CITY shall have the right to enter upon DEVELOPER'S property to survey, stake, bore, construct and install the Required Improvements at such time as the CITY deems necessary. The CITY may at its sole option and discretion enter into one or more agreements with third parties who shall be authorized to design and/or construct the Required Improvements and enter upon DEVELOPER'S property to survey, stake, bore, construct and install the Required Improvements at the CITY's direction.

5. DEVELOPER specifically authorizes the CITY to utilize the funds escrowed pursuant to this Agreement to pay for the design and construction of the Required Improvements and all necessary appurtenances to said improvements. Upon acceptance of the Required Improvements and the payment of any and all costs and expenses associated with the Required Improvements, any unused amount of the Escrow Deposit held by CITY shall be returned to DEVELOPER.
6. In the event that DEVELOPER's estimate is more than twenty percent (20%) less than the actual cost and expense of designing and constructing the Required Improvements including, but not limited to, all necessary related costs such as acquiring payment bonds, performance bonds, maintenance bonds and insurance coverage for the design and construction of the Required Improvements DEVELOPER shall reimburse the CITY for any and all additional costs and expenses ("Underpayment"). DEVELOPER shall reimburse the CITY the total amount of any Underpayment within thirty (30) days after the CITY provides DEVELOPER notice of Underpayment. If DEVELOPER fails to timely reimburse the CITY for any Underpayment, CITY shall be authorized to revoke certificates of occupancy previously issued for the Property and shall further be entitled to issue stop work orders and withhold the issuance of any further permits and certificates of occupancy until DEVELOPER or DEVELOPER's successor-in-interest reimburses CITY for the Underpayment.

#### D. CITY DEVELOPMENT ORDINANCES

DEVELOPER shall develop the PROPERTY in accordance with the standards as set forth in City of McKinney zoning, subdivision and land development ordinances, including but not limited to provisions as to drainage, erosion control, pro rata payments, storm water, tree preservation, park land dedication, hike and bike trails, impact fees, Street Design Standards, Public Improvements Policy and construction standards.

#### E. NO WAIVER

DEVELOPER expressly acknowledges that by entering into this Agreement, DEVELOPER its successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any Exhibits as waiving any of the requirements of the Zoning Ordinance or Subdivision Ordinance or any other ordinance of the CITY except as herein specifically agreed.

#### F. VARIANCES

It is expressly acknowledged that only those variances to the Zoning Ordinance and Subdivision Ordinance or other applicable CITY ordinances stipulated in attached Exhibit D, if any, are granted by CITY for this subdivision and/or development. If no variances are granted, Exhibit D shall state "No variances for this Property are granted and none shall be allowed."

## G. INDEMNITY AND HOLD HARMLESS AGREEMENT

**DEVELOPER, its successors, assigns, vendors, grantees, and/or trustees do hereby agree to fully indemnify, protect and hold CITY harmless from all third-party claims, suits, judgments, and demands, including its reasonable attorney's fees, arising out of the sole or concurrent negligence of DEVELOPER, and only to the extent or percentage attributable to DEVELOPER, in the subdividing, development, or construction of public improvements, including the negligent maintenance thereof. DEVELOPER shall not be responsible for or be required to indemnify CITY from CITY'S own negligence. The indemnity contained in this Paragraph shall expire five (5) years from the date of final acceptance of each phase of the improvements.**

## H. REVOCATION

In the event DEVELOPER fails to comply with any of the provisions of this Agreement, CITY shall be authorized to revoke any and all Certificates of Occupancy that may have been previously issued in relation to the subdivision and/or development of Property; and CITY shall be further authorized to file this instrument in the records of Collin County as a Mechanic's Lien against DEVELOPER'S property, and in the alternative, CITY shall be authorized to levy an assessment against DEVELOPER'S property for public improvements to be held as a tax lien against the Property by CITY.

## I. ROUGH PROPORTIONALITY AND WAIVER OF CLAIMS.

DEVELOPER has been represented by legal counsel in the negotiation of this Agreement and been advised, or has had the opportunity to have legal counsel review this Agreement and advise DEVELOPER, regarding DEVELOPER's rights under Texas and federal law. DEVELOPER hereby waives any requirement that the CITY retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the CITY as a condition of approval for the development of this Property are roughly proportional or roughly proportionate to the proposed development's anticipated impact. (These exactions may include but are not limited to the making of dedications or reservations of land, the payment of fees, the construction of facilities, and the payment of construction costs for public facilities.) DEVELOPER specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with Tex. Loc. Gov't Code § 212.904. However, notwithstanding the foregoing, Developer hereby releases the City from any and all liability under Tex. Loc. Gov't Code § 212.904 regarding or related to the cost of those municipal infrastructure improvements required for the development of the Property.

It is the intent of this Agreement that the provision for roadway and utility improvements made herein constitutes a proportional allocation of DEVELOPER's responsibility for roadway and utility improvements for the Property. DEVELOPER hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code. DEVELOPER

further releases CITY from any and all claims based on excessive or illegal exactions; it being agreed that OWNERS' infrastructure contribution(s) (after receiving all contractual offsets, credits and reimbursements) is roughly proportional or roughly proportionate to the demand that is placed on the roadway and utility systems by DEVELOPER's Property. DEVELOPER further acknowledges that the benefits of zoning and platting have been accepted with full knowledge of potential claims and causes of action which may be raised now and in the future, and DEVELOPER acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. **DEVELOPER shall indemnify and hold harmless CITY from any claims and suits of third parties, including but not limited to DEVELOPER's successors, assigns, grantees, vendors, trustees or representatives, brought pursuant to this Agreement or the claims or types of claims described in this paragraph.**

J. CONTINUITY

This Agreement shall be a covenant running with the land, and be binding upon DEVELOPER, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

K. ASSIGNABILITY

This Agreement shall not be assignable by DEVELOPER without the prior written consent of the CITY, and such consent shall not be unreasonably withheld, conditioned or delayed.

L. TERMINATION AND RELEASE

Upon satisfactory completion by DEVELOPER and final acceptance by CITY of all requirements of this Agreement, this Agreement shall terminate and CITY will execute a release of covenant to DEVELOPER, its heirs, successors, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

M. GENERAL PROVISIONS

1. DEVELOPER hereby relieves CITY of any responsibilities for any inadequacies in the preliminary plans, exhibits and cost estimate supplied for the purpose of this Agreement, and further agrees that DEVELOPER will comply with CITY'S Subdivision Regulations, Street Design Standards, Public Improvements Policy and any other applicable policies, rules, regulations and ordinances of CITY regarding development of the Property.
2. DEVELOPER agrees that construction shall not begin on any proposed improvements to the Property prior to City Council approval of this Agreement.

3. DEVELOPER agrees that all coordination required with public and/or private utility agencies to eliminate conflicts with proposed street grades or underground improvements shall be the responsibility of DEVELOPER. Likewise, coordination with agencies requiring special conditions (i.e., railroads and the Texas Department of Transportation), if any, shall be the responsibility of the DEVELOPER.
4. CITY agrees to record said Plat at such time as the Plat complies with the requirements set forth by the Subdivision Regulations of CITY, and has been approved in the manner described therein.

CITY OF MCKINNEY

By: LAWRENCE W. ROBINSON  
City Manager

Date Signed: \_\_\_\_\_

ATTEST:

SANDY HART, CMC  
City Secretary  
BEVERLY COVINGTON  
Deputy City Secretary

\_\_\_\_\_,  
*By and through its General Partner*

a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

THE STATE OF TEXAS,  
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared **Lawrence W. Robinson**, City Manager of the City of McKinney, a Texas Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_  
DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public, \_\_\_\_\_ County, Texas  
My commission expires \_\_\_\_\_

THE STATE OF TEXAS,  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, in his capacity as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that \_\_\_\_\_, is the General Partner of \_\_\_\_\_, a \_\_\_\_\_, and that he executed the same on behalf of and as the act of the Limited Partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_  
DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public \_\_\_\_\_ County, Texas  
My commission expires \_\_\_\_\_

PREPARED IN THE OFFICES OF:

*BROWN & HOFMEISTER, L.L.P.*  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081  
214/747-6100  
214/747-6111 Fax

DESCRIPTION OF PROPERTY

SAMPLE

**EXHIBIT B**

**PUBLIC THOROUGHFARE IMPROVEMENTS**

DEVELOPER is responsible for the construction of the required public thoroughfare improvements detailed below. However, the CITY has requested and the DEVELOPER has concurred to deferring construction of the required public thoroughfare improvements detailed below. The CITY has also agreed to design and/or construct the facilities detailed below, or cause the same to be designed and/or constructed. DEVELOPER has agreed to escrow with the CITY an amount equal to at least one hundred twenty percent (120%) of the costs and expenses associated with such construction in satisfaction of DEVELOPER's obligation under the CITY's Subdivision Regulations. In light of this Escrow Agreement, DEVELOPER is relieved from constructing the facilities described below if DEVELOPER otherwise fully complies with the provisions of this Agreement.

However, the list of required public thoroughfare improvements detailed below is not exhaustive of DEVELOPER's obligation under the CITY's ordinances. Nothing contained herein is intended to relieve DEVELOPER of its obligation to design and construct other improvements required by the CITY's Subdivision Regulations and other development related ordinances.

**THOROUGHFARES.** Construction of thoroughfares includes paving, drainage, striping, street lighting, sidewalks and erosion control. The following Required Improvements are being deferred by, the funds escrowed for, and designed and/or constructed through this Agreement:

- a.
- b. No other thoroughfares are being deferred or escrowed by this Agreement.

**HIKE AND BIKE TRAILS.** The following Required Improvements are being deferred by, the funds escrowed for, and designed and/or constructed through this Agreement:

- a. No hike and bike trails are being deferred or escrowed by this Agreement.
- b.

## EXHIBIT C

### PUBLIC UTILITY IMPROVEMENTS

DEVELOPER is responsible for the construction of the required public utility improvements detailed below. However, the CITY has requested and the DEVELOPER has concurred to deferring construction of the required public utility improvements detailed below. The CITY has also agreed to design and/or construct the facilities detailed below, or cause the same to be designed and/or constructed. DEVELOPER has agreed to escrow with the CITY an amount equal to at least one hundred twenty percent (120%) of the costs and expenses associated with such construction in satisfaction of DEVELOPER's obligation under the CITY's Subdivision Regulations. In light of this Escrow Agreement, DEVELOPER is relieved from constructing the facilities described below if DEVELOPER otherwise fully complies with the provisions of this Agreement.

However, the list of required public utility improvements detailed below is not exhaustive of DEVELOPER's obligation under the CITY's ordinances. Nothing contained herein is intended to relieve DEVELOPER of its obligation to design and construct other improvements required by the CITY's Subdivision Regulations and other development related ordinances.

Water: The following Required Improvements are being deferred by, the funds escrowed for, and designed and/or constructed through this Agreement:

- a.
- b. No other water utility improvements are being deferred or escrowed by this Agreement.

Wastewater: The following Required Improvements are being deferred by, the funds escrowed for, and designed and/or constructed through this Agreement:

- a. No wastewater utility improvements are being deferred or escrowed by this Agreement.
- b.

**EXHIBIT D**

**VARIANCES**

1. The design and construction of the Required Improvements identified in Exhibits B and C, above, are being deferred indefinitely at the request of the CITY and the concurrence of the DEVELOPER.
2. CITY is assuming responsibility for the design and/or construction of the Required Improvements identified in Exhibit B, above, the costs of which improvements shall be reimbursed from the funds that the DEVELOPER has escrowed with the CITY for such purpose pursuant to this Escrow Agreement.
3. CITY is assuming responsibility for the design and/or construction of the Required Improvements identified in Exhibit C, above, the costs of which improvements shall be reimbursed from the funds that the DEVELOPER has escrowed with the CITY for such purpose pursuant to this Escrow Agreement.
4. No other variances for this Property are granted and none shall be allowed.

**SAMPLE**

AFTER RECORDING, RETURN TO:

City Secretary  
City of McKinney  
P.O. Box 517  
222 N. Tennessee Street  
McKinney, Texas 75069

**City of McKinney, Texas  
FACILITIES AGREEMENT**  
*(Defer Construction of Required Improvements)*

THIS AGREEMENT, entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_, Texas \_\_\_\_\_, ("DEVELOPER") witnesseth that:

WHEREAS, the Subdivision Regulations of the City of McKinney, Texas contained in Chapter 142 of the Code of the City of McKinney, Texas (the "Subdivision Regulations") establish procedures and standards for the development and subdivision of real estate and for the surveying and platting thereof, requiring the installation of adequate public facilities to serve the subject property and providing penalties for violations, among other things; and

WHEREAS, Section 142-76(b)(10) of the Subdivision Regulations requires the execution of a Facilities Agreement prior to the issuance of a Development Permit for the clearing, grading, filling, dredging, or construction of public streets, utilities, or drainage, or other improvements which may affect adjacent or surrounding properties in certain circumstances described in Section 142-37 of the Subdivision Regulations, as amended; and

WHEREAS, the development of the subdivision to be known as \_\_\_\_\_ involves certain pro rata payments, city participation in cost, escrow deposits or other future considerations, and/or other nonstandard development regulations, that trigger the requirement for a Facilities Agreement by and between the CITY and the DEVELOPER in accordance with Section 142-37 of the Subdivision Regulations, as amended; and

WHEREAS, the Subdivision Regulations also prohibit recording the Final Plat of a subdivision within the incorporated area of the City until the DEVELOPER has completed all of the public facilities that must be dedicated to the City or has entered into a Facilities Agreement and guaranteed to the satisfaction of the CITY such improvements will be installed; and

WHEREAS, DEVELOPER requests the recording of the Record Plat of a subdivision in the CITY, to be known as \_\_\_\_\_ (the "Plat") prior to the completion and acceptance of certain of the public facilities required to serve the subdivision as are identified in attached Exhibits "B" and "C" (the "Required Improvements"); and

WHEREAS, DEVELOPER agrees that the Required Improvements identified in attached Exhibits "B" and "C" will be installed after recordation of said Plat under the guarantees provided to the CITY as set forth herein.

NOW THEREFORE, in consideration of the intent and desire of the DEVELOPER, as set forth herein, and to gain approval of the CITY to record said Plat, the DEVELOPER and CITY agree as follows:

**A. PROPERTY**

This Agreement is for Property located in the City of McKinney, on the \_\_\_\_\_ side of \_\_\_\_\_ in an area \_\_\_\_\_ of \_\_\_\_\_ and generally \_\_\_\_\_ of \_\_\_\_\_ containing approximately \_\_\_\_\_ acres of land, more fully described in Exhibit A attached hereto and fully incorporated herein by reference (the "Property").

**B. PUBLIC IMPROVEMENTS**

DEVELOPER agrees to complete the Required Improvements for the subdivision to be known as \_\_\_\_\_ within \_\_\_\_\_ (\_\_\_\_) year(s) from and after the date of this Agreement, unless required sooner as provided herein below in this Agreement and the attached Exhibits, according to the construction plans regarding the construction of Required Improvements for said subdivision, which construction plans are on file with and approved by the City Engineer (the "Plans").

All public improvements, including utilities, drainage easements, sidewalks, street lighting, street signage, park land dedication and all other required improvements and dedications, shall be provided by DEVELOPER at no cost to CITY, in accordance with the CITY's Subdivision Ordinance and as approved by CITY Engineer, prior to issuance of any Certificate of Occupancy. Engineering studies,

plan/profile sheets, and other construction documents shall be provided by DEVELOPER at the time of platting as required by the Subdivision Ordinance. Such plans shall be approved by CITY Engineer or his agent prior to the issuance of a Development Permit.

## 1. THOROUGHFARES

DEVELOPER shall dedicate, as a part of the Public Improvements and at no cost to CITY, that amount of right-of-way along perimeter roadways adjacent to the PROPERTY (as reflected on the plat heretofore approved by the CITY) which dedication will yield one-half (1/2) of the ultimate right-of-way width that is not already dedicated by plat or legal instrument as road right-of-way at such time as the PROPERTY is platted or developed. If platting or development of the PROPERTY is delayed and the perimeter roadway right-of-way described above has not previously been dedicated, DEVELOPER shall dedicate the right-of-way along perimeter roadways adjacent to the PROPERTY as required herein above upon receipt of the written request of the CITY's Engineer. DEVELOPER shall dedicate all right-of-way for the interior streets serving the PROPERTY at the time of development. Specific uses may require additional right-of-way dedication at the time of site plan approval.

DEVELOPER shall construct, as part of the Public Improvements and at no cost to CITY, roadway improvements in accordance with the CITY's Subdivision Ordinance and Street Design Standards then in effect. All roadway construction plans must be approved by CITY's Engineer or his agent prior to approval of a Development Permit for any portion of the PROPERTY being developed. The Roadway Improvements that are being deferred by this Agreement to allow the early recording of the Record Plat are described on the attached Exhibit B, which is fully incorporated herein by reference.

## 2. UTILITIES

DEVELOPER shall dedicate all easements and construct, at no cost to CITY, all necessary utility lines specifically including, but not limited to, any necessary off-site and oversize utility improvements to provide service to the PROPERTY in accordance with CITY standards, at such time as demand of the development on the PROPERTY requires or concurrent with the development of the PROPERTY, as determined by CITY. DEVELOPER shall construct all necessary utility lines to serve the interior of the PROPERTY; said lines shall be at least eight inches (8") in diameter or larger as demand of the development on the PROPERTY requires. All utility plans

and improvements are subject to the approval of CITY's Engineer. The Utility Improvements that are being deferred by this Agreement to allow the early recording of the Record Plat are described on the attached Exhibit C, which is fully incorporated herein by reference.

### 3. HIKE AND BIKE TRAILS

DEVELOPER shall, at no cost to the CITY, dedicate the easement or right-of-way for and construct all required concrete hike and bike trail improvements in accordance with the CITY's Subdivision Ordinance and Master Trail Plan. The hike and bike trail shall be tied in or connected to the CITY's trail system or to the location(s)/area(s) identified as planned future extensions of the trail system specifically including, but not limited to, school sites and parkland sites. Final location and all hike and bike trail construction plans shall be subject to review and approval by the Director of Parks and Recreation, and as specified in greater detail in the attached Exhibit "B," which is fully incorporated herein by reference. All hike and bike trail construction plans must be approved by CITY's Parks Director or his agent prior to approval of a Development Permit for any portion of the PROPERTY being developed.

SAMPLE

C. PERFORMANCE BOND; LETTER OF CREDIT

1. The DEVELOPER, in accordance with the requirements established by the Subdivision Ordinance of the CITY and this Agreement, tenders to the CITY a guarantee of surety, specifically identified as: Bond for \_\_\_\_\_ Improvements for the \_\_\_\_\_ Subdivision ("Required Improvements"), in the amount of \_\_\_\_\_ and \_\_\_\_\_ One Hundredths Dollars (\$ \_\_\_\_\_), Bond No. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_, with \_\_\_\_\_ (*Insurance Company Name*), as Surety, by order of the CITY, a copy of which is attached hereto as Exhibit D and fully incorporated herein by reference.

In the alternative, DEVELOPER may provide a standby Letter of Credit ("LOC") issued by a state or national banking association acceptable to CITY in an amount equal to \_\_\_\_\_ and \_\_\_\_\_ One Hundredths Dollars (\$ \_\_\_\_\_) which shall be in the form attached hereto as Exhibit D, assuring completion of the Required Improvements prior to the issuance of any Certificate of Occupancy for any Lot within the Property.

The only requirements for presentment of any Bond or LOC accepted hereunder by CITY shall be the presentation of the original thereof, together with an affidavit executed by the City Manager stating that DEVELOPER is in default under the terms of this Agreement. CITY shall require a local banking association to be named as a confirming bank for purposes of presentment and collection. **The Bond and/or LOC shall be returned to DEVELOPER upon CITY's acceptance of the Required Improvements and filing of a record plat for the PROPERTY.** The amount of the Bond or LOC pursuant to this Agreement was computed as follows: The total cost of constructing the Required Improvements as reflected in the construction contract between DEVELOPER and a contractor, a copy of which contract is attached hereto as Exhibit E and fully incorporated herein by reference, (the "Construction Contract") plus at least twenty percent (20%) of the Construction Contract cost, such additional amount to cover unexpected or incidental costs of completion, including administrative expenses. The Construction Contract shall be assigned to City, as security only, by Contractor's execution hereafter which assignment, attached hereto as Exhibit F, shall grant the City rights, but not obligations thereunder, to require the Contractor's performance under the Construction Contract.

2. In the event the DEVELOPER shall fail or neglect to fulfill its obligations under this Agreement and as required by the Subdivision Ordinance, the DEVELOPER as Principal, and the Guarantor of Surety on the Bond shall be liable to pay for the cost of construction and installation of the Required Improvements, including but not limited to, engineering, legal, administrative and contingent costs together with any damages, either direct or consequential, which the CITY may sustain as a result of the failure of the DEVELOPER to carry out and execute all of the provisions of this Agreement and the provisions of the Subdivision Ordinance.
3. The DEVELOPER and the Surety further jointly and severally agree that the CITY, at its option, shall have the right to enter upon DEVELOPER'S property and construct and install, or pursuant to public advertisement and receipt of bids, cause to be constructed and installed the Required Improvements in the event the DEVELOPER fails or refuses to do so in accordance with the terms of the Agreement. The DEVELOPER shall be liable hereunder to reimburse the CITY the total cost to complete the Required Improvements plus such other and further costs and expenses enumerated in Paragraph 2 herein above. The Surety shall be liable in the amount of the Bond attached hereto.
4. If the DEVELOPER provides a LOC rather than a Bond then the DEVELOPER shall be solely liable to pay for the cost of construction and installation of the Required Improvements, including but not limited to, engineering, legal, administrative and contingent costs together with any damages, either direct or consequential, which the CITY may sustain as a result of the failure of the DEVELOPER to carry out and execute all of the provisions of this Agreement and the provisions of the Subdivision Ordinance. The DEVELOPER further agrees that the CITY, at its option, shall have the right to enter upon DEVELOPER'S property and construct and install, or pursuant to public advertisement and receipt of bids, cause to be constructed and installed the Required Improvements in the event the DEVELOPER fails or refuses to do so in accordance with the terms of the Agreement. The DEVELOPER shall be liable hereunder to reimburse the CITY the total cost to complete the Required Improvements plus such other and further costs and expenses enumerated in this Paragraph. The DEVELOPER shall be entitled to an offset or credit against the costs and expenses enumerated herein for any amount of money paid to the CITY by a financial institution upon presentment, if any, of the LOC.
5. The DEVELOPER agrees to renew the Guaranty of Surety and Bond prior to its expiration so the Guaranty of Surety and Bond shall remain in full force and effect during the entire term of this Agreement, including any extension.

If DEVELOPER provides a LOC in lieu of or in addition to the Guaranty of Surety and Bond, DEVELOPER agrees to renew the LOC prior to its expiration so the LOC shall remain in full force and effect during the entire term of this Agreement, including any extension. Upon renewal, the amount of the Bond and/or LOC shall be in its original amount or such lesser amount equal to the sum agreed to by the CITY's Engineer, such amount being sufficient to complete the remaining Required Improvements plus at least twenty percent (20%) of the then remaining construction amount.

6. DEVELOPER shall provide the CITY evidence that the Guaranty of Surety and Bond or LOC has been renewed at least thirty (30) days prior to its scheduled expiration date. If DEVELOPER fails to timely provide CITY with such verification of renewal CITY shall be authorized to immediately, and at anytime prior to the expiration date of the Bond and/or LOC, assert a claim against the Bond and/or make presentment of the LOC accepted hereunder by CITY by presenting the original thereof, together with an affidavit executed by the City Manager stating that DEVELOPER is in default under the terms of this Agreement.

**D. PARK DEDICATION**

1. DEVELOPER shall dedicate required parkland concurrent with platting and development of the Property to provide for the recreational needs created by such development as set forth herein and as determined by the CITY's Parks Department. The approved parkland site shall be shown on the plat as a fee simple conveyance to the CITY and shall be conveyed to the CITY by General Warranty Deed free of all encumbrances and at no cost to the CITY. DEVELOPER shall also provide the CITY with an owner's title policy of insurance in an amount equal to the value of the land conveyed, which amount shall be determined by the CITY.
2. The DEVELOPER shall also be responsible for, and pay the costs of, providing convenient access by improved streets, sidewalks and, adequate drainage improvements so that the site is suitable for the purpose intended, and shall provide water, sewer and electrical utilities to the Property in accordance with the procedures applicable to other public improvements as specified in the Subdivision Ordinance of the CITY.
3. In the alternative and subject to the determination of the Director of the CITY's Parks Department all or part of the DEVELOPER'S parkland dedication requirements may be satisfied by the payment of money in lieu of land. The amount of cash to be paid in lieu of parkland dedication shall be determined based upon the Collin Central Appraisal District's most recent appraisal of all or

part of the Property at the time the fees are paid for any future phase of development instead of and rather than the appraisal value of the Property at the time of execution of this Agreement.

4. DEVELOPER may pay cash in lieu of dedication in advance of any phase of development for which the CITY's Parks Department has approved fees in lieu of dedication, based on the CITY ordinance requirement of one (1) acre of parkland dedication, outside of any floodplain on the Property, for each fifty (50) single-family residential lots by paying an estimated amount equal to the value of the Property established by the most recent appraisal of all or part of the Property made by the central appraisal district. DEVELOPER acknowledges and understands that the calculations regarding required parkland dedication and fees in lieu of dedication shall change if the number of single-family residential lots is changed. In the event of an increase in the number of single-family residential lots for any phase(s) of the Property following DEVELOPER's pre-payment of the cash in lieu of dedication, the DEVELOPER shall dedicate additional parkland or pay additional fees in lieu of dedication as recalculated by the CITY. In the event of a decrease in the number of single-family residential lots for which DEVELOPER prepaid cash in lieu of dedication under this provision, the DEVELOPER shall be entitled to a pro-rata refund or reimbursement of any "overpayment" upon completion of all phases of the Property and final build out of said lots and Property.
5. In any event, all required parkland shall be dedicated or cash in lieu of dedication shall be paid to CITY prior to the platting of the last phase of the Property. DEVELOPER shall not be allowed to file the plat for the last phase of the Property until the parkland dedication or cash payment is satisfied.

**E. CITY DEVELOPMENT ORDINANCES**

DEVELOPER shall develop the PROPERTY in accordance with the standards as set forth in City of McKinney zoning, subdivision and land development ordinances, including but not limited to provisions as to drainage, erosion control, pro rata payments, storm water, tree preservation, park land dedication, hike and bike trails, impact fees, Street Design Standards, Public Improvements Policy and construction standards.

**F. NO WAIVER**

DEVELOPER expressly acknowledges that by entering into this Agreement, DEVELOPER, its successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any Exhibits as waiving any of the

requirements of the Zoning Ordinance or Subdivision Ordinance or any other ordinance of the CITY except as herein specifically agreed.

G. VARIANCES

It is expressly acknowledged that only those variances to the Zoning Ordinance and Subdivision Ordinance or other applicable CITY ordinances stipulated in attached Exhibit G, if any, are granted by CITY for this subdivision and/or development. If no variances are granted, Exhibit G shall state "No variances for this Property are granted and none shall be allowed."

H. INDEMNITY AND HOLD HARMLESS AGREEMENT

**DEVELOPER, its successors, assigns, vendors, grantees, and/or trustees do hereby agree to fully indemnify, protect and hold CITY harmless from all third-party claims, suits, judgments, and demands, including its reasonable attorney's fees, arising out of the sole or concurrent negligence of DEVELOPER, and only to the extent or percentage attributable to DEVELOPER, in the subdividing, development, or construction of public improvements, including the negligent maintenance thereof. DEVELOPER shall not be responsible for or be required to indemnify CITY from CITY'S own negligence. The Indemnity contained in this Paragraph shall expire five (5) years from the date of final acceptance of each phase of the improvements.**

I. REVOCACTION

In the event DEVELOPER fails to comply with any of the provisions of this Agreement, CITY shall be authorized to revoke any and all Certificates of Occupancy that may have been previously issued in relation to the subdivision and/or development of Property; and CITY shall be further authorized to file this instrument in the records of Collin County as a Mechanic's Lien against DEVELOPER'S property; and in the alternative, CITY shall be authorized to levy an assessment against DEVELOPER'S property for public improvements to be held as a tax lien against the Property by CITY.

J. ROUGH PROPORTIONALITY AND WAIVER OF CLAIMS.

DEVELOPER has been represented by legal counsel in the negotiation of this Agreement and been advised, or has had the opportunity to have legal counsel review this Agreement and advise DEVELOPER, regarding DEVELOPER'S rights under Texas and federal law. DEVELOPER hereby waives any requirement that the CITY retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by

the CITY as a condition of approval for the development of this Property are roughly proportional or roughly proportionate to the proposed development's anticipated impact. (These exactions may include but are not limited to the making of dedications or reservations of land, the payment of fees, the construction of facilities, and the payment of construction costs for public facilities.) DEVELOPER specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with Tex. Loc. Gov't Code § 212.904. However, notwithstanding the foregoing, Developer hereby releases the City from any and all liability under Tex. Loc. Gov't Code § 212.904 regarding or related to the cost of those municipal infrastructure improvements required for the development of the Property.

It is the intent of this Agreement that the provision for roadway and utility improvements made herein constitutes a proportional allocation of DEVELOPER's responsibility for roadway and utility improvements for the Property. DEVELOPER hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code. DEVELOPER further releases CITY from any and all claims based on excessive or illegal exactions; it being agreed that OWNERS' infrastructure contribution(s) (after receiving all contractual offsets, credits and reimbursements) is roughly proportional or roughly proportionate to the demand that is placed on the roadway and utility systems by DEVELOPER's Property. DEVELOPER further acknowledges that the benefits of zoning and platting have been accepted with full knowledge of potential claims and causes of action which may be raised now and in the future, and DEVELOPER acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. **DEVELOPER shall indemnify and hold harmless CITY from any claims and suits of third parties, including but not limited to DEVELOPER's successors, assigns, grantees, vendors, trustees or representatives, brought pursuant to this Agreement or the claims or types of claims described in this paragraph.**

K. CONTINUITY

This Agreement shall be a covenant running with the land, and be binding upon DEVELOPER, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

L. ASSIGNABILITY

This Agreement shall not be assignable by DEVELOPER without the prior written consent of the CITY, and such consent shall not be unreasonably withheld, conditioned or delayed.

**M. TERMINATION AND RELEASE**

Upon satisfactory completion by DEVELOPER and final acceptance by CITY of all requirements of this Agreement, this Agreement shall terminate and CITY will execute a release of covenant to DEVELOPER, its heirs, successors, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future. This Agreement shall not terminate until the requirements of all parties have been fulfilled.

**N. MAINTENANCE BOND**

Prior to final acceptance of improvements to Property, DEVELOPER has furnished to CITY a good and sufficient maintenance bond in the amount of fifteen percent (15%) of the contract price of such improvements, or in such amount as approved by the City Engineer, with a reputable and solvent corporate surety, in favor of CITY, to indemnify City against any repairs arising from defective workmanship or materials used in any part of the construction of improvements to Property, for a period of two (2) years from the date of final acceptance of such improvements.

**O. GENERAL PROVISIONS**

1. DEVELOPER hereby relieves CITY of any responsibilities for any inadequacies in the preliminary plans, exhibits and cost estimate(s) supplied for the purpose of this Agreement, and further agrees that DEVELOPER will comply with CITY'S Subdivision Ordinance, Street Design Standards, Public Improvements Policy and any other applicable policies, rules, regulations and ordinances of CITY regarding development of Property.
2. DEVELOPER agrees that construction shall not begin on any proposed building improvements prior to City Council approval of this Agreement.
3. DEVELOPER agrees that all coordination required with public and/or private utility agencies to eliminate conflicts with proposed street grades or underground improvements shall be the responsibility of DEVELOPER. Likewise, coordination with agencies requiring special conditions (i.e., railroads and the Texas Department of Transportation) shall be the responsibility of DEVELOPER.
4. DEVELOPER agrees that improvements to Property as set forth herein shall be completed within \_\_\_\_\_ (\_\_\_\_) year(s) from the date of approval of this Agreement by the McKinney City Council. Unless otherwise specified in this Agreement or an attachment hereto, it is understood that any

obligation on the part of CITY to make any refunds shall cease upon the expiration of the \_\_\_\_\_ (\_\_\_\_) year(s), except when extended for good cause and agreed to in writing by CITY and DEVELOPER.

5. CITY agrees to record said Plat at such time as the Plat complies with the requirements set forth by the Subdivision Ordinance of CITY, and has been approved in the manner described therein.

**CITY OF MCKINNEY**

By: \_\_\_\_\_  
**FRANK RAGAN**  
City Manager

Date Signed: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
**SANDY HART, TRMC, MMC**  
City Secretary  
**LINCOLN THOMPSON**  
Deputy City Secretary

\_\_\_\_\_  
**By and through its General Partner**

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

THE STATE OF TEXAS,  
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared FRANK RAGAN, City Manager of the **CITY OF MCKINNEY**, a Texas Municipal Corporation, known to me to be the person who's name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_  
DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public \_\_\_\_\_ County, Texas  
My commission expires \_\_\_\_\_

THE STATE OF TEXAS,  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_, by \_\_\_\_\_, in his capacity as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that \_\_\_\_\_ is the General Partner of \_\_\_\_\_, a \_\_\_\_\_, and that he executed the same on behalf of and as the act of the Limited Partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_  
DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public \_\_\_\_\_ County, Texas  
My commission expires \_\_\_\_\_

PREPARED IN THE OFFICES OF:

**BROWN & HOFMEISTER, L.L.P.**  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081  
214/747-6100  
214/747-6111 Fax

**SAMPLE**

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

**SAMPLE**

**EXHIBIT B**

**PUBLIC THOROUGHFARE IMPROVEMENTS**

DEVELOPER is responsible for the construction of the facilities detailed below. Those facilities must be complete and accepted by CITY prior to the issuance of a Final Acceptance letter for the Required Improvements. In the event any public facilities required to serve the development of Property are installed by a party other than DEVELOPER, those facilities must be complete and accepted by CITY prior to the issuance of a Final Acceptance letter for the Public Improvements required herein. No Certificate of Occupancy shall be issued for any building on the Property until Final Acceptance of the Public Improvements.

**THOROUGHFARES.** Construction of thoroughfares includes paving, drainage, striping, street lighting, sidewalks and erosion control.

- a.
- b. No other thoroughfares are being deferred by this Agreement. DEVELOPER shall dedicate and construct all other required thoroughfares and necessary internal roadways and appurtenances thereto as reflected on the Plat.

**HIKE AND BIKE TRAILS.** The following improvements shall be complete and accepted by the CITY prior to recording of the Record Plat.

- a. DEVELOPER shall construct \_\_\_\_\_ (\_\_\_\_) linear feet of a \_\_\_\_\_ foot (\_\_\_\_) wide hike and bike trail together with all necessary appurtenances thereto as shown on the Hike and Bike Trail Master Plan and as approved by the Parks Director.

## EXHIBIT C

### PUBLIC UTILITY IMPROVEMENTS

DEVELOPER is responsible for the construction of the facilities detailed below. Those facilities must be complete and accepted by CITY prior to a Certificate of Occupancy being issued for any building on the Property. In the event any public utilities required to serve the development of Property are installed by a party other than DEVELOPER, those facilities must be complete and accepted by CITY prior to a Certificate of Occupancy being issued for any building on the Property.

#### Water

- a.
- b. DEVELOPER shall also construct all necessary water lines to serve the interior of the Property consistent with City of McKinney standards; said lines shall be at least eight inches (8") in diameter or as otherwise necessary to serve the Property for both domestic and fire flow for the Property. The CITY Engineering Department shall approve the size of the line.

#### Sanitary Sewer System:

- a.
- b. DEVELOPER shall also construct all necessary sanitary sewer lines to serve the interior of the Property consistent with City of McKinney standards; said lines shall be at least eight inches (8") in diameter or as otherwise necessary to serve the Property. The CITY Engineering Department shall approve the size of the line, based upon the design slope and drainage basin size.

*[NOTE -- If no improvements are being deferred please insert the following statement as appropriate: "No water / sanitary sewer improvements are being deferred by this Agreement. DEVELOPER shall construct all necessary water / sanitary sewer lines to serve the interior of the Property consistent with City of McKinney standards, as necessary to serve the Property. The CITY Engineering Department shall approve the size of the line, based upon the design slope and drainage basin size."]*

**EXHIBIT D**

**PERFORMANCE BOND**

Bond No. \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS:**

That \_\_\_\_\_, a \_\_\_\_\_, (hereinafter referred to as "Principal"), as Principal, and \_\_\_\_\_, a surety company organized and existing under the laws of the State of \_\_\_\_\_ with its principal office in the City of \_\_\_\_\_, and authorized to do business in the State of Texas (hereinafter referred to as "Surety"), as Surety, are held and firmly bound unto the **City of McKinney, Texas**, a Texas municipal corporation (hereinafter referred to as "Obligee"), in the full and just sum of \_\_\_\_\_ and **One Hundredths Dollars (\$ \_\_\_\_\_)**, lawful money of the United States of America, to the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents:

WHEREAS, THE ABOVE BOUNDED PRINCIPAL as a condition precedent to the approval by Obligee of the plat for that certain subdivision known as \_\_\_\_\_, has entered into that certain Construction Facilities Agreement for Required Improvements with Obligee dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (attached hereto and hereinafter referred to as the "Agreement"), pursuant to which Principal is required to be responsible for arranging and contracting for the construction of certain required improvements in accordance with the plans, specifications and contract documents set forth or referred to in the Agreement (hereinafter referred to as the "Improvements");

WHEREAS, it was one of the conditions of said Agreement that this bond be executed:

NOW, THEREFORE, the conditions of this obligation are such that if the above bounded Principal shall in all respects comply with the terms and conditions of said Agreement, within the time therein specified, and shall in every respect fulfill its obligations thereunder, and under the plans, specifications and contract documents referred to and made a part thereof, **and shall indemnify, and hold harmless Obligee from and against all claims, costs, expenses, demands, damages, injuries and losses, including, but not limited to, engineering, legal, administrative and other contingent cost to carry out and execute**

**all the provisions of said Agreement, within the time therein specified, then this obligation shall be void; otherwise to remain in full force and effect.**

SAMPLE

**THE SURETY UNCONDITIONALLY COVENANTS AND AGREES** that if the Principal fails to fulfill all of any portion of its obligations under the Agreement, within the time specified in the Agreement, the Surety, upon fifteen (15) days written notice from Obligee, or its authorized agent or officer, of Principal's default, shall forthwith perform and complete the obligations imposed by the aforesaid Agreement and pay the cost thereof, including, but not limited to, engineering, legal, administrative and other contingent costs. Should the Surety fail or refuse to perform and complete Principal's obligations under the Agreement, Obligee, in view of the public interest, safety, health and welfare factors involved and the inducement in approving and filing the said subdivision plat, shall have the right to resort to any and all legal remedies against the Principal and Surety, or either, both at law and in equity, specifically including specific performance, to which the Principal and Surety unconditionally agree.

**PROVIDED, FURTHER**, that in any such legal action if filed on this Bond, venue shall lie in Collin County, Texas.

**THE PRINCIPAL AND SURETY FURTHER JOINTLY AND SEVERALLY AGREE**, that, as set forth in the Agreement, Obligee, at its option, shall have the right to construct and install, or pursuant to public advertisement and receipt of bids, cause to be constructed and installed, the aforesaid Improvements in case the Principal should fail or refuse to do so in accordance with the terms of said Agreement, and in the event Obligee should exercise and give effect to such right, Principal shall be liable to reimburse the Obligee for the total cost thereof and Surety shall be liable for the amount set forth above, both including, but not limited to, engineering, legal, administrative and other contingent costs, together with any damages, either direct or consequential, which may be sustained on account of failure of the Principal to carry out and execute all of the provisions of said Agreement.

**PROVIDED, HOWEVER**, that both Principal and Surety agree and acknowledge that this bond is not executed pursuant to the provisions of VERNON'S TEXAS GOVERNMENT CODE ANN. Art. 2253.021, since said agreement is not between the Obligee and the prime contractor responsible for the construction of said Improvements and since the amount of this bond is in excess of the total costs of construction as set forth in the construction contract(s) for said Improvements.

**FURTHERMORE**, no extension of time or other waiver or amendment of the terms of said Agreement or any change in the method or amount of payment stipulated to be made by Obligee under the Agreement shall relieve Surety of its obligations hereunder and the Surety waives notice of any such extension, waiver, amendment, or change. The bond shall be automatically extended in time without formal and separate amendment to cover full and faithful performance of the Agreement modifications, regardless of the amount of time involved.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and the undersigned Surety solemnly warrants and represents that it is duly authorized to do business in the State of Texas.

**PRINCIPAL:**

\_\_\_\_\_  
*By and through its General Partner*

a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

**ATTEST:**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SEAL

**SURETY:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SEAL

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
**MARK S. HOUSER**  
City Attorney, City of McKinney

The Resident Agent of the Surety in Texas, for delivery of notice and service of process

