

AFTER RECORDING, RETURN TO:

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

**ANNEXATION AGREEMENT
BETWEEN
THE CITY OF MCKINNEY, TEXAS
AND
MM JOPLIN 60, LLC
FOR
ERWIN FARMS PHASE 4**

(Amending, Superseding and Replacing in its Entirety
That Certain Development Agreement Recorded in
The Official Public Records of Collin County, Texas at
Clerk's Document No. 20201221002293250)

THIS ANNEXATION AGREEMENT ("Agreement"), is entered into pursuant to Chapter 43 and Section 212.172 of the Texas Local Government Code and Chapter 142 of the Code of Ordinances, City of McKinney, Texas ("McKinney Code"), effective the 2 day of March, 2021,¹ by and between the **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and **MM JOPLIN 60, LLC**, a Texas limited liability company, whose address is 1800 Valley View Lane, Suite 300, Farmers Branch, Texas 75234-8945, (hereinafter referred to collectively as "DEVELOPER" whether one or more) (the CITY and the DEVELOPER may be referred to collectively as the "PARTIES"), concerning the annexation and development of the "Property" described herein-below and by metes and bounds in Exhibit "A" hereto, witnesseth that:

WHEREAS, CITY and DEVELOPER entered into that certain Development Agreement between the City of McKinney, Texas and MM Joplin 60, LLC, for Erwin Farms Phase 4 on the 17th day of December 2020, and recorded in the Official Public Records of Collin County, Texas at Clerk's Document No. 20201221002293250 (the "Original Agreement"); and

WHEREAS, the Original Agreement provided the DEVELOPER the option to annex the Property in the DEVELOPER's sole discretion and set out the conditions that would apply upon such annexation; and

WHEREAS, the DEVELOPER has decided to now annex the Property into the CITY's corporate limits, and the Parties have agreed to amend, supersede, and replace the Original Agreement in its entirety with this Annexation Agreement to reflect the DEVELOPER's decision to immediately annex the Property into the CITY's corporate limits; and

¹ If this date is omitted, the effective date shall be the date the Agreement is executed by the City.

- WHEREAS, DEVELOPER has purchased, or is purchasing, the approximately 60.123 acres of land in the Henry H. Tucker Survey, Abstract Number 907 and the W.W. Butler Survey, Abstract Number 87, that is located in the extraterritorial jurisdiction of the City of McKinney, Collin County, Texas (“ETJ”) from its current owner (the “Property”); and
- WHEREAS, the CITY holds the water and wastewater certificates of convenience and necessity for the Property, and the Parties intend that the CITY will be the retail provider of water and wastewater service to the Property; and
- WHEREAS, the City Council finds that the DEVELOPER’s “Development Standards” (hereinafter defined) conform to the CITY’s Comprehensive Plan; and
- WHEREAS, this Agreement is entered into pursuant to Chapter 43 and Section 212.172 of the Texas Local Government Code, in order to address the desires of the DEVELOPER and the CITY and the procedures of the CITY; and
- WHEREAS, the Parties have the authority to enter into this Agreement pursuant to Section 212.171, *et seq.*, of the Texas Local Government Code; and
- WHEREAS, the DEVELOPER and the CITY acknowledge that this Agreement is binding upon the CITY and the DEVELOPER and their respective successors and assigns for the term of this Agreement, as defined herein below; and
- WHEREAS, the physical location of the Property and the lack of adequate roadway and utility facilities to serve the Property demonstrate that infrastructure improvements will be required as a condition to development in the future; and
- WHEREAS, the DEVELOPER understands that the CITY’S development requirements and ordinances will require the DEVELOPER to fund and construct certain roadway and utility improvements, as set forth in the CITY’S subdivision and other development ordinances, that are necessitated by the development of the Property and a general statement of such required public improvements (based on existing conditions) is outlined herein; and
- WHEREAS, the Property is adjacent to the property that CADG Erwin Farms, LLC, an affiliate of DEVELOPER is currently developing for which a record plat has been submitted that is known as Erwin Farms Phase 3; and
- WHEREAS, CADG Erwin Farms, LLC has entered into a Development Agreement with the CITY for the development of Erwin Farms Phase 3 to address certain issues arising out of the possible location of the US 380 Bypass; and

WHEREAS, DEVELOPER desires to resolve the same issues that appear to apply to the development of the Property; and

WHEREAS, DEVELOPER hereby confirms that DEVELOPER shall promptly petition the City of McKinney to annex the Property into the City's corporate limits and zone the Property consistent with the development standards attached hereto as Exhibit "F" (the "Development Standards") following DEVELOPER's acquisition of the Property and before DEVELOPER submits a preliminary-final plat for the Property to the CITY; and

WHEREAS, the Subdivision Regulations of the City of McKinney, Texas contained in Chapter 142 of the McKinney Code (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, DEVELOPER understands that prior to record platting the Property, the CITY's Subdivision Regulations require the DEVELOPER to fund and construct the roadway and utility improvements that are necessitated by the development of the Property; 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 required to serve the property being developed that must be dedicated to the City ("Public Improvements") or has entered into a Facilities Agreement and guaranteed to the satisfaction of the CITY such improvements will be installed; and

WHEREAS, the Texas Department of Transportation ("TxDOT") is currently studying a route for a multi-lane limited access highway ("US 380 Bypass") that is anticipated to run along the current path of County Road 164 ("Bloomdale Road"); and

WHEREAS, TxDOT has not definitively committed to the specific location of the US 380 Bypass or started to acquire the anticipated three hundred fifty foot (350') wide right-of-way to facilitate the construction of the US 380 Bypass ("Potential Right-of-Way"); and

WHEREAS, DEVELOPER plans to subdivide the Property into single-family residential lots; and

WHEREAS, the northern boundary of the Property abuts County Road 164 ("Bloomdale Road"); and

- WHEREAS, the Property is bisected by two parallel gas line easements, which easements are a combined eighty feet (80') in width, more or less, that run between east and west boundaries of the Property (the "Gas Lines"); and
- WHEREAS, it appears the Gas Lines provide a distinct separation or barrier between any neighborhood located north of the Gas Lines and the remainder of the Property located to the south of the Gas Lines; and
- WHEREAS, it also appears that the Gas Lines are located approximately four hundred fifty feet (450') to four hundred eighty feet (480') south of Bloomdale Road; and
- WHEREAS, the Gas Lines divide the neighborhood located between Bloomdale Road and the Gas Lines (the "Northern Area") from the remainder of the Property; and
- WHEREAS, it appears that the Northern Area is located within the Potential Right-of-Way for the US 380 Bypass; and
- WHEREAS, DEVELOPER is required to design and construct certain internal roads as well as potable drinking water lines, sanitary sewer lines, other utilities, and perimeter screening (collectively "Required Improvements") to serve the Northern Area within the Potential Right-of-Way; and
- WHEREAS, TxDOT will purchase and/or condemn the land necessary for the Potential Right-of-Way once the final alignment of the US 380 Bypass is determined; and
- WHEREAS, if the final alignment of the US 380 Bypass is placed upon and across the Northern Area, as currently being studied by TxDOT, the Required Improvements installed and constructed by DEVELOPER for within the Northern Area of the Property when platted will be rendered unnecessary and removed by TxDOT; and
- WHEREAS, DEVELOPER and CITY have agreed to enter into this Annexation Agreement to provide DEVELOPER with greater certainty to begin platting and developing the Property as **Erwin Farms Phase 4** while delaying the development of the single-family lots located within the Northern Area and either deferring or modifying certain of the standards for the Required Improvements necessary to serve those lots in an effort to avoid unnecessary costs on the part of DEVELOPER and waste; and
- WHEREAS, DEVELOPER and CITY have agreed that this Annexation Agreement shall, from and after its execution by all of the Parties, immediately amend, supersede, replace, and control over the Original Agreement in its entirety; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the CITY and the DEVELOPER do mutually contract and agree as follows, to-wit:

A. INCORPORATION OF RECITALS

The Recitals set forth above, are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

B. PROPERTY

This Agreement is for Property located in the extraterritorial jurisdiction of the City of McKinney, in an area located generally southwest of Erwin Park on the south side of County Road 164 ("Bloomdale Road") and north of Holley Ridge Way in the ETJ of the City of McKinney, Collin County, Texas, containing approximately 60.123 acres of land, more fully described in Exhibit "A" attached hereto and fully incorporated herein by reference (the "Property") that DEVELOPER has purchased, or is purchasing from its current owner. The Property is adjacent to and abuts other property owned by CADG Erwin Farms, LLC, an affiliate of DEVELOPER that such affiliate of DEVELOPER is currently developing for which a record plat has been submitted that is known as Erwin Farms Phase 3. The Erwin Farms Phase 3 development project is subject to Planned Development Zoning for Single-Family, Office and Commercial Uses according to the requirements outlined in City of McKinney, Texas, Ordinance No. 2005-11-120, dated the 15th day of November, 2005 (the "Erwin Farms PD Ordinance").

C. ANNEXATION

It is specifically understood and agreed that the Property is outside the CITY's corporate limits and that the CITY has not identified the Property in its Annexation Plan. It is also specifically understood and agreed that but for the DEVELOPER's petition requesting the Property be annexed into the CITY's corporate limits the Property would remain outside the CITY's corporate limits and within the CITY's extra-territorial jurisdiction. It is further understood and agreed that the CITY does not currently have public improvements in place to serve the Property. It is also understood and agreed that the CITY does not have any plans to improve or construct the roadways, extend the water, sanitary sewer and storm sewer lines, and construct the parks necessary to serve the Property. Neither does the CITY have the funds budgeted or otherwise available or projects and bonds approved by the voters to provide the public improvements necessary to serve the Property. **The DEVELOPER acknowledges that the Property is within the CITY's extra-territorial jurisdiction and represents to the CITY that the DEVELOPER has not engaged in any discussions or negotiations with any other city or town seeking to have the Property annexed into the extra-territorial jurisdiction or corporate limits of any municipality or town save and except the CITY. The**

DEVELOPER specifically understands and agrees that the CITY shall have no obligation to design, extend, construct and provide the public improvements necessary to serve the Property and that should DEVELOPER desire to develop the Property prior to the time that adequate public improvements are on or adjacent to the Property, it shall be the DEVELOPER'S responsibility and obligation to design, extend and construct such public improvements. The DEVELOPER does hereby, in exchange for the annexation of the Property, waive and hold harmless and agree to indemnify the CITY from and against any and all claims or demands that the CITY design, extend, construct and provide the public improvements necessary to serve the Property. In addition, DEVELOPER hereby waives any vested rights they may otherwise have under Section 43.002(a) (2), Section 212.172(g), and Chapter 245 of the Texas Local Government Code to develop the Property in whole or in part in any manner that conflicts with the "Governing Regulations," defined hereinbelow.

D. ZONING & PLATTING

The Property shall be zoned and platted, if required by applicable ordinance or state law, in accordance with the CITY's Zoning Ordinance and Subdivision Ordinance.

The CITY shall process the zoning on the Property contemporaneously with the annexation of the Property. Pursuant to Tex. Loc. Gov't Code 212.172, the uses allowed and development standards to be applied within the Property shall be substantially similar to and governed by the following regulations (collectively, the "Governing Regulations"):

- (1) the land uses and development standards contained in Section 146-106 ("SF-5" – Single Family Residential District) of the McKinney Code, and as amended, subject to the Development Standards set out in Exhibit "F"; and
- (2) all other applicable provisions of the McKinney Code as hereby amended or hereafter amended.

It is specifically understood and agreed by and between the Parties that the submission of a preliminary plat, a preliminary-final plat, or conveyance plat (collectively "Plat") for the Property prior to the annexation and zoning of the Property in accordance with this Agreement shall make the Plat deemed "Administratively Incomplete" under the CITY's Subdivision Regulations, and as they may hereafter be amended. It is further specifically understood and agreed by and between the Parties that the submission of a Plat that does not conform to the Governing Regulations shall make the Plat deemed "Administratively Incomplete" under the CITY's Subdivision Regulations, and as they may hereafter be amended.

Following the annexation of the Property into the corporate limits of the City of McKinney and the approval of zoning on the Property substantially similar to the Erwin Farms PD Ordinance, DEVELOPER will submit the preliminary plat or preliminary-final plat for approximately 229 residential lots, more or less, and 13 common areas to be known as **Erwin Farms Phase 4** (the "Development") in strict accordance with the Governing Regulations and the City's Engineering Design Manual, and Standard Details for Construction. DEVELOPER hereby agrees and confirms that DEVELOPER will develop the Property consistent with the approved final plat or record plat for **Erwin Farms Phase 4** (the "Record Plat").

DEVELOPER agrees that DEVELOPER will final plat or record plat the Property in two distinct phases. DEVELOPER may submit the final plat or record plat for the development of that area of the Development which is situated south of the Gas Lines at DEVELOPER's convenience as the first phase of the development, which phase is hereinafter referred to as "Phase 4A," regardless of the name by which the phase is ultimately known. The second phase of the development will involve the Northern Area, and which phase of development is hereinafter referred to as "Phase 4B," regardless of the name by which such phase is ultimately known.

E. TERM OF AGREEMENT

The term of this Agreement (the "Term") is Ten (10) years from the Effective Date of this Agreement.

F. PUBLIC IMPROVEMENTS

All public improvements, including utilities, drainage structures and easements, roadways, sidewalks, hike and bike trails, street lighting, street signage, rights-of-ways, parkland dedication and all other required improvements and dedications shall be constructed and provided to the CITY by the DEVELOPER, at no cost to the CITY, in accordance with the CITY's Ordinances which are then in effect. The following provides a general description of the minimum construction requirements for roadways and utilities which, under current conditions, would be required by DEVELOPER as a condition to development of the Property (subject to the City's approval of phases or partial development):

1. Intentionally Omitted.
2. Intentionally Omitted.
3. 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 draft proposed preliminary-final plat heretofore reviewed 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 beyond the Delay Period and the perimeter roadway right-of-way that is identified on the draft proposed preliminary-final plat for dedication to the CITY for Bloomdale Road has not previously been dedicated in its entirety and if the CITY intends to construct Bloomdale Road, the DEVELOPER will dedicate the entirety of the perimeter roadway right-of-way so identified on the draft proposed preliminary-final Plat to the CITY as right-of-way for the CITY's construction of Bloomdale Road and all appurtenances related thereto upon receipt of the written request of the CITY's Engineer. TxDOT or the County shall acquire any other or additional right-of-way along perimeter roadways adjacent to the Property that is not identified for dedication to the City on the draft proposed preliminary-final Plat. 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. No Thoroughfare Improvements are being deferred by this Agreement.

Notwithstanding the foregoing, given the potential impacts of the US 380 Bypass being routed upon and along Bloomdale Road (CR 164), CITY agrees to accept the following modifications to the standards applicable to the dedication and construction of Bloomdale Road (CR 164):

a. Right-of Way Dedication.

- (1) Bloomdale Road. The DEVELOPER shall dedicate to the CITY, at no cost to the CITY, that portion of the right-of-way for Bloomdale Road that is located under the existing paving for Bloomdale Road together with any necessary utility and drainage easements with the record plat for the Property (**Erwin Farms Phase 4**). DEVELOPER shall dedicate the balance of the required right-of-way for DEVELOPER's one-half (1/2) of the ultimate right-of-way width for Bloomdale Road at such time as DEVELOPER seeks a building permit for any one or more of the Delayed Lots.
- (2) Unnamed North-South Collector. Developer will dedicate the right of way for the north-south collector road situated near or

along and about the western boundary of the Property from the northern boundary of the Gas Lines and extending in a southerly direction to its terminus within the Property to the City, at no cost to the City, as required by the Subdivision Regulations DEVELOPER will dedicate a 35 feet wide public roadway easement for the north-south collector road situated near or along and about the western boundary of the Property extending north from the northern edge of the Gas Lines across the Northern Area to Bloomdale Road (the "Northern Portion of the Collector") to the CITY, at no cost to the CITY, as required by the Subdivision Regulations. Developer shall not be required to dedicate the Northern Portion of the Collector to the CITY as public roadway right-of-way until and unless the Delayed Lots are developed.

- b. Roadway Plan Approval. All roadway construction plans shall be approved by the CITY's Engineer or his agent prior to approval of a Development Permit for any portion of the Property.
- c. Roadway Construction. The DEVELOPER shall construct, at no cost to the CITY, all required roadway improvements in accordance with the CITY's Subdivision Ordinance and Street Design Standards, then in effect. In addition to complying with the CITY's ordinance and standards, the DEVELOPER shall also comply with TxDOT's standards and specifications when the roadway improvements are being made on along, about or to TxDOT roadways.
 - (1) Gravel and seal coat roadways are not acceptable.
 - (2) Roadways along the anticipated traffic routes must be reinforced concrete pavement with appropriate subgrade treatment all of which items must be approved by the CITY Engineer. The pavement on all such roadways must be designed for a minimum service life of thirty (30) years without the need for any major maintenance overhauls.
 - (3) A pavement analysis shall be performed by the DEVELOPER, at no cost to the CITY, to determine the adequacy of the current pavement structure to handle the DEVELOPER's projected traffic along with existing traffic volumes and recommendations by the DEVELOPER must be made based upon the analysis for roadway improvements as needed. The DEVELOPER shall create a pavement design to handle the expected traffic volumes and other criteria as determined by the circumstances surrounding the development of the Property and as approved by the CITY Engineer.

- (4) Additional roadway improvements may be required to maintain safe roadway conditions. The determination regarding what additional improvements may be necessary shall be based upon the engineering judgment of the CITY Engineer and good engineering practices criteria.
- (5) If the CITY has a project to construct any of the roadways for which the DEVELOPER is responsible, in whole or in part, the CITY and the DEVELOPER may enter into a separate agreement whereby the DEVELOPER is allowed, in the sole discretion of the CITY, to provide the CITY a cash escrow in an amount that will cover the DEVELOPER's roughly proportionate obligation for construction of such roadway(s) in lieu of constructing said roadway improvements.
- (6) Agreed Specific Roadway Construction Standard Exceptions.
 - (a) Bloomdale Road. Notwithstanding the foregoing requirements, CITY specifically agrees that DEVELOPER can record the record plat for the Property (**Erwin Farms Phase 4**) to the south side of the Gas Lines before Bloomdale Road has been constructed and final accepted by CITY. However, no final green tags or certificates of occupancy will be issued for any building or structure within the Property (**Erwin Farms Phase 4**) until such time as Bloomdale Road has been constructed and final accepted by CITY.

CITY also agrees that DEVELOPER may build Bloomdale Road (CR 164) to a reduced roadway standard, which reduced standards will need a Staff-approved variance from the requirements of the Design Manual, in light of the potential that Bloomdale Road is either removed entirely or turned into an access road for the US 380 Bypass as follows:

- (i) A twenty-six-foot (26') wide pavement area with two twelve-foot (12') wide lanes;
- (ii) The pavement may be constructed with six inches (6") of concrete pavement with #3 rebar on twenty-four-inch (24") centers over the existing road base and/or new base and/or lime stabilized subgrade;

- (iii) The subgrade shall be modified as necessary to maintain a level driving surface;
 - (iv) No curb and gutter will be required;
 - (v) A modified drainage design will be required including a bar ditch with culverts crossing under Bloomdale and any intersecting roads and driveways that meet the City's drainage design criteria; and
 - (vi) Meet roadway clear zone requirements.
- (b) Unnamed North-South Collector. Notwithstanding the foregoing requirements, CITY specifically agrees that DEVELOPER may construct that portion of the unnamed north-south collector road situated near or along and about the western boundary of the Property which extends north from the northern boundary of the Gas Lines to Bloomdale Road to a reduced roadway standard, which reduced standards will need a Staff-approved variance from the requirements of the Design Manual as follows:
- (i) A twenty-six-foot (26') wide pavement area with two twelve-foot (12') wide lanes;
 - (ii) The pavement may be constructed with six inches (6") of concrete pavement with #3 rebar on twenty-four-inch (24") centers over the existing road base and/or new base and/or lime stabilized subgrade;
 - (iii) No curb and gutter will be required;
 - (iv) A modified drainage design will be required including a bar ditch with culverts crossing any intersecting roads and driveways that meet the City's drainage design criteria or utilize the part of Bloomdale storm sewer that has already been constructed; and
 - (v) Meet roadway clear zone requirements.

4. Utilities

- a. Utility Easement Dedication. The DEVELOPER shall dedicate to the CITY, at no cost to CITY, that amount of easement across the Property as deemed necessary by the CITY Engineer to facilitate the construction of water and wastewater utilities as shown on the CITY's

Master Plans for Water and Wastewater (hereafter referred to collectively as the "Master Plans") and as approved by the CITY Engineer. The final alignment of easement dedications shall be consistent with the City's Master Plans and as approved by the City Engineer.

- b. Utility Plan Approval. All utility plans and improvements are subject to the approval of the CITY Engineer, and all utility lines shall be constructed of materials of a quality and grade meeting at least the minimum standards specified by the CITY's Engineering Department. Upon approval of all utility construction plans for the Property by the CITY Engineer, or his designee, the DEVELOPER may develop in accordance with such approved plans.
- c. Utility Construction. The DEVELOPER shall construct, at his sole cost, all necessary utility lines up to twelve inches (12") in diameter to provide service to the Property in accordance with the CITY's standards or as required by the Master Plans, at such time as demand on the Property requires or concurrent with the development of the Property, as determined by the CITY. The DEVELOPER shall also construct, at no cost to the CITY, 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. In addition to the requirements stated herein, the DEVELOPER shall construct any necessary off-site and/or oversize utility improvements up to the sizes shown on Master Plans and as per City of McKinney standards. In the event the proposed development of the Property requires utility improvements in excess of the CITY's minimum standards and Master Plans the DEVELOPER shall construct any off-site and oversize utility improvements as may be required to serve the Property. No septic systems shall be permitted.
- d. Deferred Utility Improvements. 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 B, which is fully incorporated herein by reference.
- e. Sanitary Sewer Basins. **If, and only if, the Property is annexed into the City and zoned and platted consistent with this Agreement and the requirements of the Erwin Farms Planned Development Ordinance, the McKinney Code, and the City's Engineering Design Manual, and Standard Details for Construction, City Staff will approve variances consistent with the preliminary plans submitted by DEVELOPER that were reviewed and approved in theory by City Staff regarding sanitary sewer to serve ONLY this**

Property that will allow the sanitary sewer from the Property to “buck grade” and drain across drainage basin divides from the drainage basin in which the Property is situated to the drainage basin in which Erwin Farms Phases 1, 2, and 3 are situated with an allowed minimum sanitary sewer pipe slope of 0.00335 ft/ft. If DEVELOPER declines, fails or refuses to (a) annex the Property into the CITY’s corporate limits and/or (b) plat and develop the Property in accordance with the terms and provisions of this Agreement the sanitary sewer from the Property will not be allowed to “buck grade” and drain across drainage basin divides from the drainage basin in which the Property is situated to the drainage basin in which Erwin Farms Phases 1, 2, and 3 are situated. Rather, the sanitary sewer from the Property will be required to remain within and be processed through the drainage basin in which the Property is situated.

G. INTENTIONALLY OMITTED

H. DELAY TO DEVELOPMENT OF THE NORTHERN AREA

DEVELOPER hereby agrees that DEVELOPER will not develop the Northern Area (and specifically the lots identified - in a draft proposed preliminary-final plat, attached hereto as Exhibit “G,” submitted by the current Owner of the Property that is identified as **Erwin Farms Phase 4** - as Block U, Lots 17 through 42 (“Lots 17-U through 42-U”), and Common Areas U-1, U-2, CC-1, and DD-1 (“CA-U-1,” “CA-U-2,” “CA-CC-1,” and “CA-DD-1”) together with any and all other tracts of land situated in the Northern Area all of which lots are hereinafter referred to collectively as the “Delayed Lots” until the earlier of:

- (1) a period of five (5) years from and after the execution of this Agreement by the last party to sign; or
- (2) TxDOT announces that the final approved alignment for the US 380 Bypass does not include the area covered by the Delayed Lots (collectively the “Delay Period”).

More particularly, DEVELOPER will not seek any building permits or green tags for any development activities on and about the Delayed Lots during the Delay Period.

I. PERIMETER SCREENING WALL AND GAS LINE SCREENING WALL

1. Required for Recording Record Plat – Perimeter Screening Wall South of Gas Lines. DEVELOPER will be required prior to the recording of the Record Plat with Collin County to construct a Screening Device along the northern boundary of the lots that are located immediately adjacent to and abutting the southern boundary of the Gas Lines (identified - in a draft

proposed preliminary-final plat submitted by the current Owner of the Property that is identified as Erwin Farms Phase 4 - as Common Area U-1 and Block U, Lots 1 through 16) or within a wall access easement that extends between the western property line and the eastern property line of the Property save and except the area situated within the road right-of-way for the north-south collector road situated near or along and about the western boundary of the Property. This Screening Device will consist of a continuous masonry screening wall in accordance with Section 142-106 of the Subdivision Regulations, as amended.

2. Temporary Exception for Perimeter Screening Wall Along Northern Perimeter. Developer will not, however, be required to construct perimeter screening and buffering (the "Screening Device") along the northern perimeter of the Property as a condition of recording the Record Plat with Collin County until such time as DEVELOPER undertakes the development of the Northern Area (and the Delayed Lots) following the conclusion of the Delay Period.

If at any time in the future DEVELOPER, or DEVELOPER's successor-in-interest, or any other person or party seeks to obtain a building permit to build on any part or portion of the Northern Area (and one or more of the Delayed Lots), the Screening Device required along the northern perimeter of the Property consisting of a continuous masonry screening wall or a wrought iron fence with masonry columns and evergreen shrubs shall first (and before the issuance of any building permits for part or portion of the Northern Area [and any one or more of the Delayed Lots]) be constructed and installed in accordance with Section 142-106 of the City's Subdivision Regulations, and as amended.

J. INTENTIONALLY OMITTED

K. ESCROW

1. DEVELOPER shall escrow a cash deposit with the CITY in an amount equal to one hundred percent (100%) of the total estimated cost to design and construct the Required Improvements (the "Escrow Amount") as determined from an "Engineers Opinion of Probable Cost" signed and sealed by a Texas licensed Professional Engineer that is attached hereto as Exhibit C. The Escrow Amount shall be paid to CITY before the recordation of a final plat for the **Erwin Farms Phase 4** subdivision.
2. The Required Improvements which are the subject of this Escrow Agreement are more fully described in Exhibit B and depicted generally in Exhibit D 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 Escrow Amount together with any interest on the escrow account shall be used by the CITY to pay for the design and installation of the Required Improvements and to cover unexpected or incidental costs of completion, including the CITY's administrative expenses.

3. The cost estimate must 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 must 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.
4. 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 work on the **Erwin Farms Phase 4** 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.
5. 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.
6. 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.
7. In the event that DEVELOPER's Escrow Amount is 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.

8. If (a) the approximately nine hundred twenty-eight linear feet (928') of twelve-inch (12") diameter C900 PVC DR-18 waterline together with all related appurtenances along the frontage of the Property parallel to the planned improvements along Bloomdale Road (the "Water Line") for which Water Line DEVELOPER has escrowed funds has not yet been constructed and (b) TxDOT acquires the Northern Area for the final alignment of the US 380 Bypass and (c) the CITY decides to construct the Water Line together along the northern side of the US 380 Bypass rather than along the frontage of the Property parallel to the planned improvements along Bloomdale Road, the CITY will promptly following such determinations return the Escrow to DEVELOPER. If the CITY installs the Water Line in accordance with the Master Plan along the southern side of Bloomdale Road or in an area between the south side of the US 380 Bypass and the south side of the Gas Lines should TxDOT acquire the Northern Area for the final alignment of the US 380 Bypass, the CITY will refund to DEVELOPER upon final acceptance of and payment for the Required Improvements any funds then remaining in the Escrow, if any.

L. PARKLAND

The DEVELOPER is required to dedicate parkland concurrent with platting and development of the Property to provide for the recreational needs created by the development of the Property in accordance with the Subdivision Ordinance then in effect, or such other ordinance as may hereafter be adopted by the CITY regarding parkland dedication, and as determined by the CITY's Parks Department.

The following provides a general description of the minimum requirements for parkland dedication which, under current conditions, would be required by DEVELOPER as a condition to development of the Property (subject to the City's approval of phases or partial development):

1. Any parkland that the DEVELOPER of the Property is required to dedicate to the CITY shall be shown on the plat of the Property as a fee simple conveyance to the CITY and shall be conveyed to the CITY by General Warranty Deed free of all liens and encumbrances, save and except the encumbrances affecting the Property at the time of the DEVELOPER's acquisition thereof, and at no cost to the CITY. The 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. Subject to any waivers the CITY Council may grant for the conveyance of an amount of land in excess of the minimum park land dedication requirements, the DEVELOPER shall also be responsible for, and pay the costs of, providing convenient access by improved streets and sidewalks, and providing adequate drainage improvements so that the parkland site is suitable for the purpose intended, and shall provide water, sewer and electrical utilities to the parkland site 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 and shall be computed under the current ordinance requirement of one (1) acre of parkland dedication, outside of any floodplain on the Property, for each fifty (50) single-family residential lots.
4. If the CITY allows the Property to be developed in phases and approves the dedication of the parkland or cash in lieu of dedication in conjunction with the phasing of the Property's development, the DEVELOPER shall dedicate parkland as the residential lots or school sites, if any, adjacent to the particular parkland areas are platted, unless requested by the Director of Parks and Recreation prior to such time in order to serve the development of the Property. The DEVELOPER's payment of cash in lieu of dedication, if approved, shall be made in proportion to the number of residential lots being platted at the time each such phase is platted. In any event, all required parkland shall be dedicated or cash in lieu of dedication shall be paid to the CITY by the DEVELOPER prior to the platting of the last phase of development of the Property. The 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.

- a. Exception for "Southern Area." As the CITY's park dedication requirements apply specifically to that portion of **Erwin Farms Phase 4** situated south of the Gas Lines (the "Southern Area"), DEVELOPER shall be responsible for dedicating parkland and/or paying money in lieu of land concurrent with platting and development of the Southern Area.
 - b. Exception for Northern Area. As the CITY's park dedication requirements apply specifically to the Northern Area of **Erwin Farms Phase 4** CITY agrees that DEVELOPER is not required to dedicate parkland to the CITY or pay the City fees in lieu of dedication in satisfaction of Developer's park dedication requirements under the Subdivision Ordinance unless and until such time as DEVELOPER develops the Northern Area.
5. Any parkland the DEVELOPER designates for dedication or dedicates to the CITY shall be left in its natural state unless previously agreed otherwise in writing by the CITY's Director of Parks and Recreation. In addition, such parkland shall not be used to provide topsoil for the development of the Property. Further, said parkland shall not be used for construction staging and/or storage or the operation and parking of vehicles. The parkland so designated for dedication or dedicated to the CITY shall not be used for the relocation of dirt from the Property or for fill unless the site must be altered for health and safety concerns and the placement of fill on the parkland is previously agreed to in writing by the CITY's Director of Parks and Recreation.

M. 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 as provided herein, Street Design Standards, Public Improvements Policy and construction standards.

N. TREE ORDINANCE

DEVELOPER expressly acknowledges the McKinney Tree Preservation Ordinance and the duty to develop the Property in accordance with the standards contained therein and any amendments to those standards.

O. STORMWATER

DEVELOPER agrees to abide by all terms of the McKinney Storm Water Ordinance set out in Article IV, "Stormwater Management," of Chapter 130, "Land

Development Regulations,” of the Code of Ordinances, City of McKinney, Texas, as amended.

P. PRO-RATA FEES

Off-site water and sewer facilities may be subject to either pro rata payments paid to third parties or reimbursements collected from third parties in accordance with City Ordinances. For any applicable off-site facilities in place as of the date of DEVELOPER’s development of the Property, the DEVELOPER shall be responsible to pay applicable pro-rata fees in the amount of one-half (½) of the actual construction and engineering costs of up to a twelve-inch (12”) diameter pipe if off-site facilities have been constructed adjacent to the Property by the CITY or any other party prior to the date hereof and the DEVELOPER utilizes such facilities for the Property. If, however, the water or sewer facilities are bounded on both sides by the Property then the DEVELOPER shall be responsible to pay applicable pro-rata fees in the full amount of the actual construction and engineering costs of up to a twelve-inch (12”) diameter pipe if the DEVELOPER utilizes such facilities. Should the DEVELOPER construct off-site water and sewer facilities such that pro-rata fees are due to the DEVELOPER, the CITY agrees to collect any fees due to the DEVELOPER related to the construction of the line(s) as those properties utilizing such facilities are developed during the period of ten (10) years after DEVELOPER’s installation of such off-site water and sewer facilities. The DEVELOPER shall submit final construction costs to the CITY for approval prior to final acceptance of the improvements for use in determining pro-rata fees to be collected on behalf of the DEVELOPER.

The DEVELOPER shall not be required to pay pro-rata fees for any major transmission line(s) that may be constructed upon, through, under, across or adjacent to the Property that merely transport(s) water or wastewater to or from a treatment facility and to which line(s) DEVELOPER is not permitted any right to tap or tie in to.

Q. PROPORTIONALITY FEE

The DEVELOPER, or the DEVELOPER’s successor(s)-in-interest (including a builder-owner), shall pay to the CITY a Proportionality Fee (“Fee”) for development of the approximately 60.123 acres of the Property that is currently situated in the CITY’s extraterritorial jurisdiction, which Fee represents a roughly proportional amount necessary to offset the roadway infrastructure capacity needs of the Property. The Fee shall be the equivalent of the roadway impact fee assessed in the adjacent (abutting) roadway impact fee service area (or that service area nearest to the Property if not adjacent) in effect at the time of building permit and shall be paid at the time of issuance of any building permits for any improvements on the Property. The DEVELOPER, or the DEVELOPER’s successor(s)-in-interest (including a builder-owner), shall also pay (at the time of building permit issuance) to the CITY a water and wastewater proportionality fee in an amount

equivalent to the then existing fee charged for a particular use in accordance with the CITY's utility impact fee ordinance.

In accordance with the methodology and provisions of the CITY's roadway impact fee ordinance, the DEVELOPER shall receive credits for excess vehicle miles contributed by the DEVELOPER (as such compare to the amount of vehicle miles of demand the entire Property creates) for right-of-way dedication and construction of on-site and adjacent roadways required by this Agreement. Such credits shall be issued to the DEVELOPER only for construction of impact fee eligible system roadways, or roadways which become impact fee eligible system roadways, completed to CITY standards and accepted by the CITY. Upon completion by the DEVELOPER and acceptance by the CITY of such on-site and adjacent roadways, the CITY shall issue credits to a credit pool in the DEVELOPER's name that may be drawn down to pay Fees and roadway impact fees. Said credits shall not include the DEVELOPER's individual costs for eminent domain, if any.

R. IMPACT FEES

If the CITY's Impact Fee Capital Improvement Plan is updated and the Property is designated as falling within a specific roadway service area and/or a specific utility service area before the Property is developed, the DEVELOPER shall pay roadway impact fees and/or utility impact fees on the proposed development of the Property rather than paying the roadway proportionality fee and/or the water and wastewater proportionality fee discussed in Paragraph Q, herein above. In such event, Impact fees for the Property shall be charged in accordance with Ordinance No. 2020-12-091 (Roadway) and Ordinance No. 2020-12-092 (Utility), and as these ordinances may be amended in the future. These fees shall be due upon the time established by these Ordinances save and except only to the extent any waiver of or variance from said Ordinances is granted by the CITY and is contained in a separate agreement between DEVELOPER and CITY which agreement shall supersede and control.

S. 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.

T. 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 E, if any, are granted by CITY for this subdivision and/or

development. If no variances are granted, Exhibit E shall state "No variances for this Property are granted and none shall be allowed."

U. RELATIONSHIP TO ROADWAY AND SEWER/WATER IMPACT FEES AND WAIVER OF CLAIMS.

The 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 the DEVELOPER, regarding the DEVELOPER's rights under Texas and federal law. The 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.) The 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, the 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 financial allocation of the DEVELOPER's responsibility for roadway and utility improvements for its Property and that the financial contribution, including the proportionality fee and in-kind construction of improvements made by the DEVELOPER pursuant to this Agreement, are necessary and attributable to development of the Property. The financial obligation of the DEVELOPER herein set forth shall relieve the DEVELOPER of any obligation for roadway and water/sewer impact fees for the Property unless impact fees are applicable to this Property, or as otherwise provided herein above. The DEVELOPER further waives any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code, any federal constitutional claims, and any claims for reimbursement under any existing or future impact fee ordinances of the City of McKinney to the extent such claims are based on the DEVELOPER's dedication, construction, or payment obligations under this Agreement. The DEVELOPER further releases the CITY from any and all claims based on excessive or illegal exactions; it being agreed that the amount of the DEVELOPER's infrastructure contribution proportionality fee (after receiving all contractual offsets, credits and reimbursements) is roughly proportional to the demand that is placed on the CITY's roadway and utility systems by DEVELOPER's development. The DEVELOPER further acknowledges that the benefits of annexation, 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 the DEVELOPER acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. The DEVELOPER shall indemnify and hold harmless the CITY from and against any claims and suits of any third parties, including but not limited to DEVELOPER's successors, assigns, grantees, vendors, trustees or representatives, brought solely pursuant to this Agreement and/or asserting the claims or types of claims described in this paragraph.

V. REVOCATION

In the event DEVELOPER fails to comply with any of the provisions of this Agreement following thirty (30) days' written notice and opportunity to cure, 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.

W. 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.

X. NOTICES

All Notices shall be in writing, shall be signed by or on behalf of the PARTY giving the Notice, and shall be effective as follows: (a) on or after the 3rd business day after being deposited with the United States mail service, Certified Mail, Return Receipt Requested with a confirming copy sent by FAX; (b) on the day delivered by a private delivery or private messenger service (such as FedEx or UPS) as evidenced by a receipt signed by any person at the delivery address (whether or not such person is the person to whom the Notice is addressed); or (c) otherwise on the day actually received by the person to whom the Notice is addressed, including, but not limited to, delivery in person and delivery by regular mail or by E-mail (with a confirming copy sent by FAX). All Notices given pursuant to this section shall be addressed as follows:

To the DEVELOPER: MM Joplin 60, LLC,
Attn: Mehrdad Moayedi
1800 Valley View Lane
Suite 300
Farmers Branch, Texas 75234-8945

To the CITY: City of McKinney
Attn: City Manager
P.O. Box 517
222 N. Tennessee Street
McKinney, Texas 75069

The PARTIES will have the right from time to time to change their respective addresses upon written notice to the other PARTY given as provided above. If any date or notice period described in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the Notice will be extended to the first business day following such Saturday, Sunday or legal holiday.

Y. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the PARTIES relative to the subject matter hereof. There have not been and are no agreements, covenants, representations or warranties among the PARTIES, either oral or written, relative to such subject matter other than those expressly stated or provided for herein.

Z. PARTIES BOUND/PROPERTY BENEFITED

This Agreement shall be binding upon and inure to the benefit of the authorized successors and/or assigns of the PARTIES. The PARTIES hereto acknowledge that each has entered into this Agreement willingly and that each PARTY has equal bargaining powers. Neither PARTY has been coerced or has acted under duress.

AA. ASSIGNABILITY

This Agreement is specific to the Developer identified on Page 1, above, and 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.

BB. 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.

CC. APPLICABLE LAW; VENUE

This Agreement is entered into pursuant to, and is to be construed and enforced in accordance with, the laws of the State of Texas, and all obligations of the PARTIES are performable in Collin County. Exclusive venue for any action to enforce or construe this Agreement shall be in the Collin County District Court.

DD. COUNTERPART ORIGINALS

This Agreement may be executed in multiple counterpart originals, each of which shall have equal dignity and effect.

EE. NO THIRD-PARTY BENEFICIARIES

This Agreement only inures to the benefit of, and may only be enforced by, the PARTIES. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

FF. CONFLICT OF INTEREST

DEVELOPER covenants and agrees that DEVELOPER and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Agreement. All activities, investigations and other efforts made by DEVELOPER pursuant to this Agreement will be conducted by employees, associates or subcontractors of DEVELOPER.

DEVELOPER shall comply with the requirements of Texas Government Code § 2252.908 by completing and submitting Form 1295 to the Texas Ethics Commission ("Commission") at the time DEVELOPER submits this signed Agreement to CITY, and as follows:

Form 1295 Filing Process: The Commission has made available on its website a new filing application that must be used to file Form 1295. The DEVELOPER must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the DEVELOPER must sign the printed copy of the form and complete the "unsworn declaration" which includes, among other things, the date of birth and address of the authorized representative signing the form. The completed Form 1295 with the certification of filing must be filed with the CITY.

The CITY must notify the Commission, using the Commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the Agreement binds all parties to the Agreement. The

Commission will post the completed Form 1295 to its website within seven business days after receiving notice from the CITY.

Form 1295 Availability: Certificate of Interested Parties Form is available from the Texas Ethics Commission website at the following address:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

For questions regarding and assistance in filling out Form 1295, please contact the Texas Ethics Commission at 512-463-5800.

GG. 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) shall be the responsibility of DEVELOPER.
4. It is understood that any obligation on the part of the CITY to make any refunds with respect to infrastructure improvements constructed within the Property shall cease, with respect to such improvements, on the tenth (10th) anniversary after the improvements are completed, inspected, and accepted by the CITY. Such 10-year period may be extended for good cause and agreed to in writing by the CITY and the DEVELOPER.
5. This Agreement does not constitute a "permit" under Chapter 245 of the Texas Local Government Code and no "rights" are vested by this Agreement; however, nothing in this Agreement shall constitute a waiver by DEVELOPER of any rights of DEVELOPER under said Chapter 245 to the extent only that such rights may vest through some other application not related to the annexation of the Property.

6. 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: _____
PAUL G. GRIMES
City Manager

Date Signed: _____

ATTEST:

EMPRESS DRANE
City Secretary
JOSHUA STEVENSON
Deputy City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

THE STATE OF TEXAS §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared PAUL G. GRIMES, 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 CITY's behalf.


GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF _____, 2021.

Notary Public _____ County, Texas
My commission expires _____

DEVELOPER
MM JOPLIN 60, LLC,
a Texas limited liability company

By: MMM Ventures, LLC
a Texas limited liability company
Its Manager,

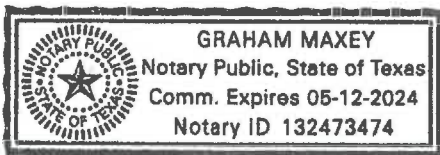
By: 2M Ventures, LLC
a Delaware limited liability company
Its Manager

By: 
MEHRDAD MOAYEDI
Manager

Date Signed: March 2, 2021

THE STATE OF TEXAS,
COUNTY OF DALLAS

This instrument was acknowledged before me on the 2 day of March, 2021, by MEHRDAD MOAYEDI, in his capacity as Manager of 2M Ventures, LLC, a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that 2M Ventures, LLC is the Manager of MMM Ventures, LLC, a Texas limited liability company, and that MMM Ventures, LLC is the Manager of **MM JOPLIN 60, LLC**, a Texas limited liability company, and that he executed the same on behalf of and as the act of **MM JOPLIN 60, LLC**.
GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 2ND DAY OF MARCH, 2021.





Notary Public Dallas County, Texas
My commission expires 5-12-2024

Exhibit "A"
Description of Property
(Containing Approximately 60.123 Acres of Land)

LEGAL DESCRIPTION:

WHEREAS, JOPLIN PARTNERS, LTD., a Texas company, is owner of an 28.263 acre tract or parcel of land situated in the HENRY H. TUCKER SURVEY, ABSTRACT NUMBER 907, and the W. W. BUTLER SURVEY, ABSTRACT NUMBER 87, in the City of McKinney, Collin County, Texas, same being a portion of the called 105.86 acre tract as described in an Assumption Deed With Vendor's Lien from James C. Stewart, Jr. to JOPLIN PARTNERS, LTD., as recorded in Clerk's File Number 19970109000021980, of the Land Records of Collin County, Texas, being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron rebar found for corner at the northwest corner of said JOPLIN tract, said corner also being the northwest corner of an 87.923 acre tract of land as described as PHASE 3 of the Special Warranty Deed With Vendor's to CADG ERWIN FARMS, LLC, as recorded in Clerk's File Number 20170223000236820 of the Land Record of Collin County, Texas, said corner also being on the centerline of County Road 164, said line also being on the south boundary of a called 70.100 acre tract of land described in Deed to C. E. OTTAWAY, as recorded in Volume 603, Page 393 of the Land Records of Collin County, Texas;

THENCE in a southerly direction, along the east boundary of said JOPLIN Tract also being the west boundary of said PHASE 3 of the CADG ERWIN FARMS tract the following three (3) courses:

- 1.) S 05°16'37" W, a distance of 1622.58 feet to a 1/2" iron rebar found for corner;
- 2.) S 83°03'40" E, a distance of 473.32 feet to a 1/2" iron rebar found for corner;
- 3.) S 00°50'18" E, a distance of 828.61 feet to a 3/8" iron rebar found for corner;

at the southeast corner of said JOPLIN Tract also being the southwest corner of said PHASE 3 of the CADG ERWIN FARMS tract, said corner also being on a north boundary of ERWIN FARMS PHASE 1, according to the Record Plat thereof, as recorded in Volume 2015, Page 694 of the Plat Records of Collin County, Texas;

THENCE S 88°59'47" W, along the south boundary of said JOPLIN tract, also being the north boundary of said ERWIN FARMS PHASE 1, and the north boundary of ERWIN FARMS PHASE 2, according to the Record Plat thereof, as recorded in Volume 2018, Page 376 of the Plat Records of Collin County, Texas, at 393.99 feet pass a 1/2" capped iron rebar (PETSCH & ASSOC., INC.) found for corner at the northwest corner of said ERWIN FARMS PHASE 1, also being the northeast corner of said ERWIN FARMS PHASE 2, a total distance of 780.96 feet to a 1/2" capped iron rebar (PETSCH & ASSOC., INC.) found for corner at the northwest corner of said ERWIN FARMS PHASE 2, also being the northeast corner of the land described in General Warranty Deed to THE EAGLE INSTITUTE, a Texas non-profit corporation, as recorded Clerk's File Number 20160218000187960 of the Land Records of Collin County, Texas

THENCE S 88°57'49" W, along the south boundary of said JoplIn tract and the north boundary of said THE EAGLE INSTITUTE tract, a distance of 638.07 feet to a 1/2" capped iron rebar (PETSCH & ASSOC., INC.) set for corner at the southeast corner of the land described in Right-of-Way Warranty Deed to the CITY OF MCKINNEY, as recorded in Volume 5840, Page 3157 of the Land Records of Collin County, Texas;

THENCE N 08°36'08" E, departing the south boundary of said JOPLIN tract, along the east boundary of said CITY OF MCKINNEY tract, a distance of 20.29 feet to a 1/2" capped iron rebar (PETSCH & ASSOC., INC.) set for corner at the northeast corner of said CITY OF MCKINNEY tract;

THENCE S 88°57'49" W, along the north boundary of said CITY OF MCKINNEY tract a distance of 40.57 feet to a 1/2" capped iron rebar (PETSCH & ASSOC., INC.) set for corner at the northwest corner of said CITY OF MCKINNEY tract, said corner also being the southerly most west boundary of said JOPLIN tract, and the easterly boundary of the land described in General Warranty Deed to BRINKMANN RANCHES OF COLLIN COUNTY, L.P., as recorded in Clerk's File Number 2005-0176478 of the Land Records of Collin County, Texas;

THENCE N 08°36'08" E, along the southerly most west boundary of said JOPLIN tract and the east boundary of said BRINKMANN RANCHES OF COLLIN COUNTY tract, a distance of 979.35 feet to a 1/2" iron rod found for corner at the northeast corner of said BRINKMANN RANCHES OF COLLIN COUNTY tract and an ell corner of the JOplIn tract;

THENCE S 89°17'03" E, crossing said JOPLIN tract, a distance of 29.69 feet to a 1/2" capped iron rebar (PETSCH & ASSOC., INC.) set for corner;

THENCE N 00°42'57" E, continuing across said JOPLIN tract, a distance of 1423.24 feet to a 1/2" capped iron rebar (PETSCH & ASSOC., INC.) set for corner on the north boundary of said JOPLIN tract, also being on the centerline of said Country Road 164, also being the south boundary of said C. E. OTTAWAY tract;

THENCE N 88°59'35" E, along the north line of said JOPLIN tract, the centerline of said County Road 164 and the south boundary of said C. E. OTTAWAY tract, a distance of 928.52 feet back to the POINT OF BEGINNING and containing 60.123 Acres, (2,618,962 Square Feet) of land MORE OR LESS.

Exhibit "B"
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 percent (100%) 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. Approximately nine hundred twenty-eight linear feet (928') of twelve-inch (12") diameter C900 PVC DR-18 waterline together with all related appurtenances along the frontage of the Property parallel to the planned improvements along Bloomdale Road (CR 164).
- b. No other water lines are being deferred 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 lines are being deferred by this Agreement.

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

- a. No drainage improvements are being deferred or escrowed by this Agreement.

Exhibit "C"
Engineer's Opinion of Probable Cost
(Consisting of following three (3) sheets.)

PETSCHÉ & ASSOCIATES, INC.
PROFESSIONAL ENGINEERS-LAND SURVEYORS-DEVELOPMENT CONSULTANTS
TEXAS REGISTERED ENGINEERING FIRM P-3252

PRELIMINARY ENGINEER'S QUANTITIES

ERWIN FARMS PHASE 4 BLOOMDALE 12" WATER ESCROW (CTMGT ERWIN FARMS, LLC)

NOTES PERTAINING TO THE PREPARATION OF THIS PRELIMINARY LAND DEVELOPMENT COST ANALYSIS

1) CIVIL ENGINEERING PLAN

- Preliminary Layout. Not yet approved.

2) THIS OPC ASSUMES:

- Offsite Easements have not been obtained.

- There is no approved development agreement which was used to create this cost analysis.

3) FRANCHISE UTILITY COSTS NOT INCLUDED (Gas, Electric & Street Lights)

4) WITHOUT THE BENEFIT OF FINAL ENGINEERING PLANS

- This analysis is based upon the attached preliminary layout that is currently not yet approved.

- City of McKinney aerial photographs were analyzed to determine development progress.

5) UNIT COSTS REFLECT CURRENT UNIT PRICES

- Unit prices are based upon bid tabs from other recently bid projects. These unit prices have been verified and approved by Lenart Development

PRELIMINARY

PETSCHÉ & ASSOCIATES, INC.
 PROFESSIONAL ENGINEERS-LAND SURVEYORS-DEVELOPMENT CONSULTANTS
 TEXAS REGISTERED ENGINEERING FIRM F-3252

PRELIMINARY ENGINEER'S QUANTITIES	
ERWIN FARMS PHASE 4 BLOOMDALE 12" WATER ESCROW (CTMGT ERWIN FARMS, LLC)	
SEE SHEET 1 FOR NOTES	
ITEM	TOTAL
SUMMARY	
WATER DISTRIBUTION SYSTEM	\$ 43,675.00
SANITARY SEWER COLLECTION	
DRAINAGE/DETENTION	
PAVING	
EARTHWORK / EROSION CONTROL	
RETAINING WALLS	
SUBTOTAL	\$ 43,675.00
HARDSCAPE, LANDSCAPE, IRRIGATION, SCREENING & BUFFERING	NOT INCLUDED
FRANCHISE UTILITIES (GAS, ELECTRIC & STREET LIGHTS)	NOT INCLUDED
GEOTECHNICAL REPORT & TESTING	NOT INCLUDED
MOISTURE CONDITIONING	NOT INCLUDED
SUBTOTAL	\$ 43,675.00
LANDSCAPE ARCHITECT SERVICES	NOT INCLUDED
OFF-SITE EASEMENT ACQUISITION	NOT INCLUDED
FEE DEVELOPMENT	NOT INCLUDED
ENGINEERING, EASEMENTS, TREE SURVEY, TREE PRESERVATION/MITIGATION PLAN, TREE FLAGGING FOR MITIGATION & CONSTRUCTION LAYOUT SERVICES (12% OF BLOOMDALE WL CONST COSTS)	\$ 5,241.00
PERMIT APPLICATION FEES	NOT INCLUDED
INSPECTION FEE (3.5% of Water, Sewer, Paving & Drainage)	NOT INCLUDED
EROSION CONTROL DEPOSIT (\$500/ACRE)	N/A
MAINTENANCE BONDING (2% of 15% of Water) x 2 Years	\$ 262.05
SUBTOTAL	\$ 5,503.05
TOTAL	\$ 49,178.05

PRELIMINARY

PETSCHÉ & ASSOCIATES, INC.
 PROFESSIONAL ENGINEERS-LAND SURVEYORS-DEVELOPMENT CONSULTANTS
 TEXAS REGISTERED ENGINEERING FIRM F-3252

PRELIMINARY ENGINEER'S QUANTITIES				
ERWIN FARMS PHASE 4 BLOOMDALE 12" WATER ESCROW (CTMGT ERWIN FARMS, LLC)				
ITEM	QUANTITY	UNIT	UNIT COST	TOTAL
12" WATER MAIN (BLOOMDALE ROAD)				
12" PVC WATERLINE EMBD/BLKG	923	L.F.	\$ 35.00	\$ 32,305.00
12" GATE VALVE	1	EA.	\$ 2,150.00	\$ 2,150.00
REMOVE PLUG & CONNECT TO EX 12" WATER	1	EA.	\$ 1,100.00	\$ 1,100.00
FIRE HYDRANT ASSEMBLY (INCLUDES VALVE)	1	EA.	\$ 3,800.00	\$ 3,800.00
CAST IRON FITTINGS	0.25	TON	\$ 4,680.00	\$ 1,170.00
2" BLOW OFF VALVE	1		\$ 3,150.00	\$ 3,150.00
WATER TESTING	1	L.S.	INCLUDED W/ UNIT BID PRICE	
TRENCH SAFETY	1	L.S.	INCLUDED W/ UNIT BID PRICE	
REQUIRED MAINTENANCE BOND	INCLUDED ON SUMMARY SHEET			
TOTAL WATER DISTRIBUTION SYSTEM				\$ 43,675.00

PRELIMINARY

Exhibit "D"
 General Depiction of Improvements

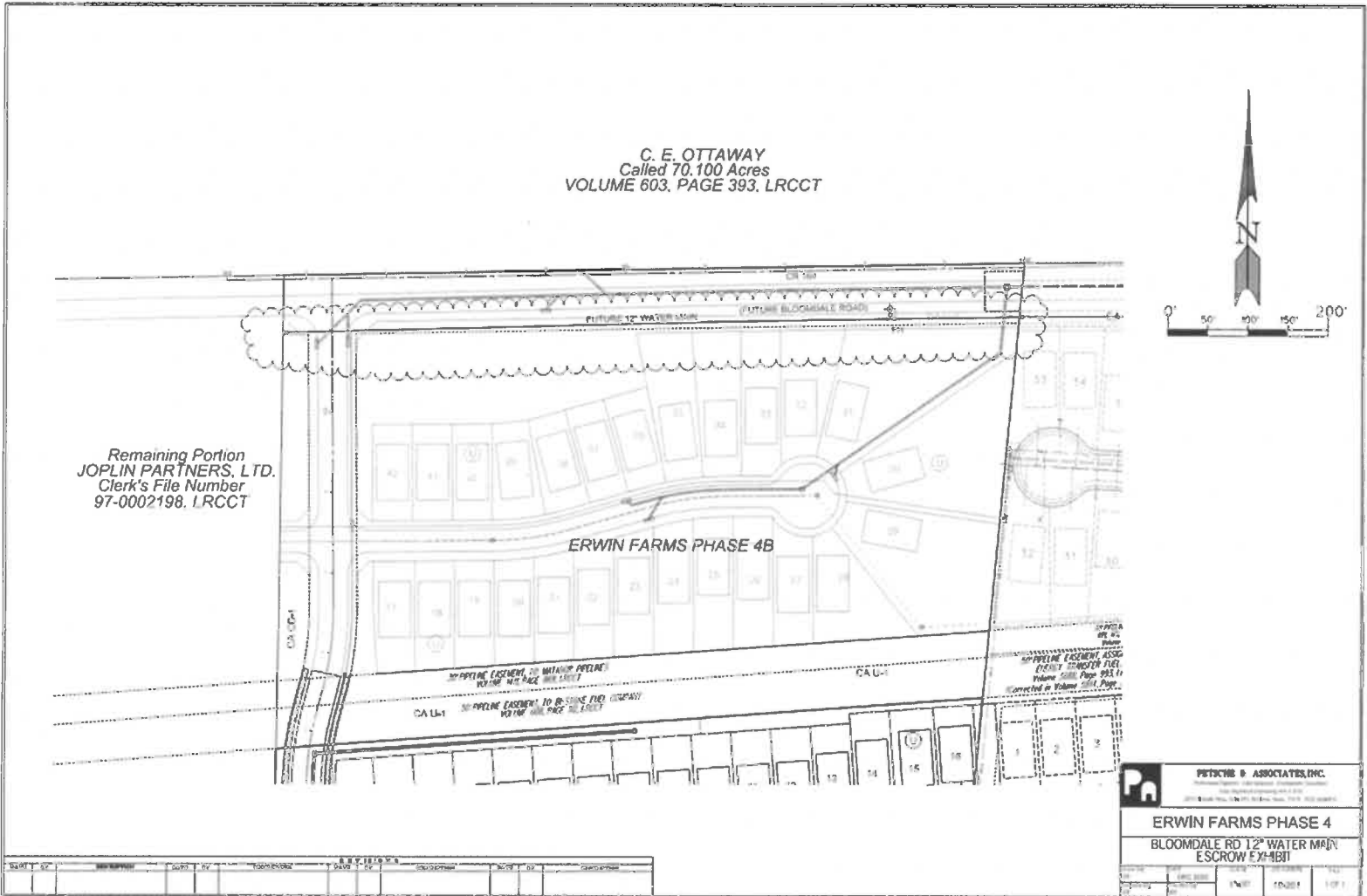


Exhibit "E"
Variances

1. Please see Paragraphs F, I, and L hereinabove for certain variances granted to DEVELOPER by and through this Agreement.
2. The design and construction of the Required Improvements identified in Exhibit B, above, is being deferred indefinitely at the request of the CITY and the concurrence of the DEVELOPER.
3. 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.
4. No other variances for this Property are granted hereby and none shall be allowed by this Agreement.

Exhibit "F"
Development Standards

The subject property shall develop in accordance with the requirements of Section 146-106 ("SF-5" – Single Family Residential District) of the Zoning Ordinance, and as amended including the pending adoption of a Unified Development Code, except as noted below:

1. Minimum Lot Area: 6,000 sq. ft.
2. Minimum Lot Width: 50 ft. at the front yard setback
3. Minimum Lot Depth: 117 ft.
4. Minimum Front Yard Setback: 25 ft.
5. Minimum Rear Yard Setback: 25 ft.
6. Minimum Side Yard Setback (interior lots): 5 ft.
7. Minimum Side Yard Setback (corner lots): 15 ft.
8. Maximum Density (dwelling units per gross acre): 7
9. A mean and median lot size of 7,200 sq. ft. is not required

Exhibit "G"

*Draft Proposed Preliminary-Final Plat
(Consisting of following three (3) sheets.)*

