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2002- 0151295

City of McKinney, Texas
FACILITIES AGREEMENT
for
TIMBER CREEK ADDITION

THIS AGREEMENT, entered into effective the 10th day of ^{October} ~~June~~, 2002, by and between the CITY OF MCKINNEY, a Texas municipal corporation and home-rule city ("CITY"), and JOBE COMPANY, INC., a Texas corporation, its successors or assigns, whose address is 6142 Campbell Road, Suite 201, Dallas Texas 75248 ("DEVELOPER") witnesseth that:

A. PROPERTY

This Agreement is for Property located in the City of McKinney, between Wilmeth Road and CR 164 west of North McKinney High School in McKinney, Texas, more fully described in the land description attached hereto as "Exhibit A" ("Property"), and fully incorporated herein by reference.

B. ZONING & PLATTING

All Property owned by DEVELOPER shall be zoned and platted in accordance with the CITY Zoning Ordinance and Subdivision Ordinance in force by CITY before any Development Permit or Building Permit will be issued for the phase being platted.

C. PUBLIC IMPROVEMENTS

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, except as specifically noted herein, in accordance with the Subdivision Ordinance in force by CITY, and as approved by CITY Engineer or his agent, 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.

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D. THOROUGHFARES

DEVELOPER shall dedicate, as a part of the Public Improvements and at no cost to CITY, that amount of right-of-way adjacent to the Property along the north portion of Wilmeth Road, the eastern portion of Hardin Boulevard, and the southern portion of Bloomdale Road which will yield one-half (1/2) of the ultimate right-of-way width, and shall dedicate the full ultimate right of way width of the portion of Hardin Boulevard adjacent to the Property on both sides of Hardin Boulevard, up to the intersection with Bloomdale Road. DEVELOPER shall construct all interior streets serving the Property. Such construction shall be in accordance with the Subdivision Ordinance and Street Design Standards of CITY, and plans shall be approved by CITY Engineer or his agent prior to issuance of a Development Permit for any portion of the development.

E. UTILITIES

DEVELOPER shall construct all necessary water lines along Wilmeth Road, Hardin Boulevard and Bloomdale Road at least twelve inches (12") in diameter to meet City of McKinney standards, at such time as demand requires or concurrent with the development of the Property, as determined by CITY. DEVELOPER shall construct all necessary water lines to serve the interior of the Property; said lines shall be at least eight inches (8") or as demand requires. Said water lines shall be constructed of materials of a quality and grade at least meeting the minimum standards specified by CITY Engineering Department. All utility improvements are subject to the approval of CITY Engineer. Upon approval of all utility and road construction plans for the Property by CITY Engineer, or his designee, DEVELOPER may develop in accordance with such approved plans. No septic systems shall be permitted. DEVELOPER shall construct offsite or oversize water and/or sewer facility improvements as described in attached "Exhibit B" which is fully incorporated herein by reference

F. TREE ORDINANCE

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

G. PRO RATA FEES

In the event offsite water and/or sewer facilities are constructed adjacent to this property by CITY or any other party, DEVELOPER shall be responsible to pay applicable pro-rata fees in the amount of one-half (1/2) of the actual construction and engineering costs of up to a twelve-inch (12) diameter line. In the event pro-rata fees are due back to DEVELOPER for construction of offsite water and sewer facilities, CITY agrees to collect any costs due to

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DEVELOPER related to the construction of the line(s) as those properties utilizing such facilities are developed. DEVELOPER shall submit final construction costs to the CITY prior to final acceptance of the improvements for use in determining pro-rata fees due.

H. IMPACT FEES

Impact fees for the Property will be charged or credited in accordance with Ordinance Nos. 2001-08-091, and 2001-08-092, and as they may be amended in the future. All credits issued to DEVELOPER for construction of major thoroughfares may be applied to any portion of the property contained within the boundaries of the Property as depicted in the attached "Exhibit B." In the event CIP funds are not available or adequate for oversize reimbursement, DEVELOPER shall be entitled to utility impact fee credits for any oversize water or sewer lines constructed within the City in accordance with "Exhibit B." DEVELOPER shall be entitled to utility impact fee credits for any oversize water or sewer lines constructed within the City's extraterritorial jurisdiction in accordance with "Exhibit B."

I. 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 in force by CITY, except as herein agreed.

J. VARIANCES

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

K. INDEMNITY AND HOLD HARMLESS AGREEMENT

DEVELOPER, its successors, assigns, vendors, grantees, and/or trustees do hereby agree to fully defend, indemnify, and hold harmless CITY 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 its own negligence. The indemnity contained in this

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Paragraph shall expire five (5) years from the date of final acceptance of each phase of the improvements.

L. 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.

M. 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.

N. 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.

O. MAINTENANCE BOND

Prior to final acceptance of Public Improvements to Property, DEVELOPER shall furnish 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 one (1) year from the date of final acceptance of such improvements.

P. STORMWATER


DEVELOPER agrees to abide by all terms of the McKinney Stormwater Ordinance No. 99-04-39, as amended.

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Q. 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 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 improvements to 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. DEVELOPER agrees that improvements to Property as set forth herein shall be completed within ten (10) years from the date of approval of this Agreement by the McKinney City Council except when extended for good cause and agreed to in writing by CITY and DEVELOPER.

CITY OF MCKINNEY

By: 
LAWRENCE W. ROBINSON
City Manager
Date Signed: 10-1-02

ATTEST:


JENNIFER G. SPROULL
City Secretary
BEVERLY COVINGTON
Deputy City Secretary

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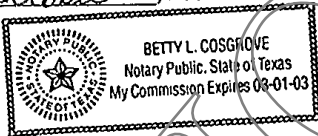
JOBE COMPANY, INC.

By: [Signature]
Name: PHIL JOBE
Title: President
Date Signed: 9/27/02

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 1st DAY OF October, 2002.

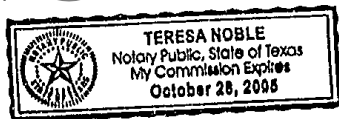


Betty Cosgrove
Notary Public, Collin County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared PHIL JOBE, in his capacity as _____ of JOBE COMPANY, INC., a Texas corporation, on behalf of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 27 DAY OF Sept., 2002.



Teresa Noble
Notary Public, Collin County, Texas
My commission expires 10-28-05

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PREPARED IN THE OFFICES OF:

BROWN & HOFMEISTER, L.L.P.
1717 Main Street, Suite 4300
Dallas, Texas 75201
214/747-6100
214/747-6111 Fax

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Exhibit A

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LAND DESCRIPTION

Being a tract of land situated in the Wm. B. Tucker Survey, Abstract No. 911, the Henry H. Tucker Survey, Abstract No. 907 and the Meredith Hart Survey, Abstract No. 371, Collin County, Texas and being all of a 1.00 acre tract of land as described in Warranty Deed to RENE' BATES as recorded in County Clerk's File No. 95-0063315 of the Land Records of Collin County, Texas, and also being all of a 89.538 acre tract of land as described in Special Warranty Deed to STAR P7JHIS as recorded in County Clerk's File No. 95-0058120 of the Land Records of Collin County, Texas, and also being all of a 101.666 acre tract of land as described in Warranty Deed with Vendor's Lien to RENE' BATES as recorded Volume 4568, Page 2745 of the Land Records of Collin County, Texas and also being all of a 51.70 acre tract of land as described in Special Warranty Deed to BORNEO 6SJ as recorded in County Clerk's File No. 95-0058122 of the Land Records of Collin County, Texas and also being all of a 29.814 acre tract of land as described in Special Warranty Deed with Vendor's Lien to TYF PARTNERSHIP, LTD. as recorded Volume 4683, Page 3575 of the Land Records of Collin County, Texas and also being a portion of a 47.878 acre tract of land as described in Special Warranty Deed with Vendor's Lien to TYF PARTNERSHIP, LTD. as recorded Volume 4675, Page 1935 of the Land Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at the southeasterly corner of the easterly TYF Partnership tract and being on the northerly line of High Pointe Phase 2A, an addition to the City of McKinney as recorded in Cabinet K, Page 580 of the Plat Records of Collin County, Texas, and being the beginning of a non-tangent curve to the left having a central angle of 23 degrees 55 minutes 42 seconds, a radius of 1197.63 feet and being subtended by a 496.54 foot chord which bears North 78 degrees 10 minutes 54 seconds West;

THENCE, along the southerly line of said TYF Partnership tract and along said curve to the left in a northwesterly direction, an arc distance of 500.16 feet to point for a corner;

THENCE, continuing along the southerly and westerly lines of said TYF Partnership tract the following courses:

South 89 degrees 51 minutes 15 seconds West, a distance of 911.44 feet to a point for a corner from which a 1/2 inch iron rod with "Wier & Associates" cap bears South 13 degrees 00 minutes 34 seconds East, 0.58 feet;

North 00 degrees 54 minutes 16 seconds West, a distance of 50.00 feet to a point for a corner from which a 1/2 inch iron rod with "Wier & Associates" cap bears South 07 degrees 33 minutes 40 seconds West, 0.46 feet;

North 89 degrees 53 minutes 55 seconds East, a distance of 111.59 feet to a point for a corner on the easterly line of the westerly TYF Partnership tract;

THENCE, along the southerly and westerly lines of said TYF Partnership tract the following courses:

North 16 degrees 57 minutes 29 seconds East, a distance of 507.50 feet to a point for a corner;

North 89 degrees 19 minutes 59 seconds West, a distance of 850.97 feet to a point for a corner;

North 09 degrees 06 minutes 04 seconds East, a distance of 22.02 feet to a point for a corner;

North 04 degrees 07 minutes 01 seconds East, a distance of 374.35 feet to a point for a corner;

North 05 degrees 13 minutes 40 seconds East, a distance of 328.07 feet to a point for a corner;

Exhibit A

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North 06 degrees 10 minutes 24 seconds East, a distance of 479.08 feet to the northwest corner of said TYF Partnership tract and also being on the southerly line of the aforementioned 101.666 acre Rene' Bates tract;

THENCE, departing the westerly line of said TYF Partnership tract and along the southerly line of said Rene' Bates tract, North 74 degrees 18 minutes 18 seconds West, a distance of 13.74 feet to a 5/8 inch iron rod set with "Huitt-Zollars" cap at the southwesterly corner of said Rene' Bates tract;

THENCE, North 10 degrees 35 minutes 40 seconds East, along the westerly line of said Rene' Bates tract, a distance of 37.93 feet to a 5/8 inch iron rod set with "Huitt-Zollars" cap at the southeasterly corner of the aforementioned Star P7JHIS tract;

THENCE, along the southerly line of said Star P7JHIS tract, South 89 degrees 11 minutes 20 seconds West, a distance of 784.35 feet to a 1/2 inch iron rod found for a corner at the southwesterly corner of said Star P7JHIS tract;

THENCE, along the westerly line of said Star P7JHIS tract the following courses:

North 00 degrees 32 minutes 19 seconds East, a distance of 1078.85 feet to a 1/2 inch iron rod found for a corner;

South 89 degrees 27 minutes 01 seconds West, a distance of 195.68 feet to a 1/2 inch iron rod found for a corner;

North 01 degrees 24 minutes 43 seconds West, a distance of 1631.52 feet to a 1/2 inch iron rod found for a corner at the southeasterly corner of the aforementioned 1.00 acre Rene' Bates tract;

THENCE, along the southerly line of said Rene' Bates tract, South 88 degrees 35 minutes 17 seconds West, a distance of 50.00 feet to a 1/2 inch iron rod found for a corner at the southwesterly corner of said Rene' Bates tract;

THENCE, along the westerly line of said Rene' Bates tract, North 01 degrees 24 minutes 43 seconds West, a distance of 871.62 feet to a 5/8 inch iron rod set with "Huitt-Zollars" cap at the northwesterly corner of said Rene' Bates tract;

THENCE, along the northerly line of said Rene' Bates tract and said Star P7JHIS tract, North 89 degrees 32 minutes 28 seconds East, a distance of 1243.53 feet to a 1/2 inch iron rod found for a corner at the northeasterly corner of said Star P7JHIS tract and being the northwesterly corner of the aforementioned 101.66 acre Rene' Bates tract;

THENCE, along the northerly line of said Rene' Bates tract, North 89 degrees 15 minutes 09 seconds East, a distance of 595.12 to a 5/8 inch iron rod set with "Huitt-Zollars" cap for a corner at the beginning of a curve to the right having a central angle of 41 degrees 43 minutes 00 seconds, a radius of 1050.00 feet and being subtended by a 747.72 foot chord which bears South 69 degrees 53 minutes 21 seconds East;

THENCE, along said curve to the right in a southeasterly direction and departing the northerly line of said Rene' Bates tract, an arc distance of 764.50 feet to a 5/8 inch iron rod set with "Huitt-Zollars" cap for a corner at the end of said curve;

THENCE South 49 degrees 01 minutes 51 seconds East, a distance of 294.53 feet to a 5/8 inch iron rod set with "Huitt-Zollars" cap for a corner at the beginning of a curve to the left having a central angle of 10 degrees 00 minutes 00 seconds, a radius of 1050.00 feet and being subtended by a 183.03 foot chord which bears South 54 degrees 01 minutes 51 seconds East;

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Exhibit A

THENCE, along said curve to the left in a southeasterly direction, an arc distance of 183.26 feet to a 5/8 inch iron rod set with "Huitt-Zollars" cap for a corner at the end of said curve;

THENCE South 59 degrees 01 minutes 51 seconds East, a distance of 231.21 feet to a 5/8 inch iron rod set with "Huitt-Zollars" cap for a corner;

THENCE North 30 degrees 58 minutes 09 seconds East, a distance of 208.79 feet to a 5/8 inch iron rod set with "Huitt-Zollars" cap for a corner at the beginning of a curve to the left having a central angle of 29 degrees 40 minutes 39 seconds, a radius of 1050.00 feet and being subtended by a 537.81 foot chord which bears North 16 degrees 07 minutes 50 seconds East;

THENCE, along said curve to the left in a northeasterly direction, an arc distance of 543.87 feet to a 5/8 inch iron rod set with "Huitt-Zollars" cap for a corner at the end of said curve and being on the easterly line of the aforementioned Borneo 6SJ tract and the westerly line of the RHI Properties, Ltd. tract as recorded in Volume 4823, Page 1454 of the Land Records of Collin County, Texas and from which a 1/2 inch iron rod found in concrete at the northeasterly corner of said Borneo 6SJ tract bears North 01 degrees 17 minutes 30 seconds East, 2.22 feet;

THENCE, along the easterly line of said Borneo 6SJ tract and the westerly line of said RHI Properties tract; South 01 degrees 17 minutes 30 seconds West, a distance of 2196.07 to a point for a corner in the approximate centerline of a creek;

THENCE, along the easterly line of said Borneo 6SJ tract and along the approximate centerline of a creek and its meanders the following courses:

South 62 degrees 07 minutes 08 seconds West, a distance of 73.13 feet to a point for a corner;

South 54 degrees 35 minutes 19 seconds West, a distance of 106.04 feet to a point for a corner;

North 54 degrees 05 minutes 30 seconds West, a distance of 99.37 feet to a point for a corner;

South 80 degrees 22 minutes 44 seconds West, a distance of 31.00 feet to a point for a corner;

South 46 degrees 28 minutes 09 seconds West, a distance of 35.96 feet to a point for a corner;

South 22 degrees 07 minutes 12 seconds East, a distance of 67.00 feet to a point for a corner;

South 06 degrees 57 minutes 22 seconds West, a distance of 107.85 feet to a point for a corner;

South 15 degrees 03 minutes 37 seconds West, a distance of 58.30 feet to a point for a corner;

South 41 degrees 55 minutes 13 seconds West, a distance of 77.97 feet to a point for a corner;

South 72 degrees 56 minutes 13 seconds West, a distance of 81.66 feet to a point for a corner;

South 04 degrees 45 minutes 07 seconds West, a distance of 33.85 feet to a point for a corner;

South 43 degrees 38 minutes 44 seconds East, a distance of 37.00 feet to a point for a corner;

South 00 degrees 44 minutes 22 seconds East, a distance of 23.47 feet to a point for a corner at the southeasterly corner of said Borneo 6SJ tract and also being the most easterly corner of the aforementioned 101.66 acre Rene' Bates tract;

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Exhibit A

THENCE, along the easterly line of said Rene' Bates tract and along the approximate centerline of a creek and its meanders the following courses:

South 01 degrees 40 minutes 43 seconds East, a distance of 47.54 feet to a point for a corner;
South 18 degrees 37 minutes 04 seconds West, a distance of 40.27 feet to a point for a corner;
North 84 degrees 57 minutes 45 seconds West, a distance of 64.95 feet to a point for a corner;
South 73 degrees 35 minutes 45 seconds West, a distance of 35.17 feet to a point for a corner;
North 82 degrees 56 minutes 19 seconds West, a distance of 43.22 feet to a point for a corner;
North 67 degrees 38 minutes 58 seconds West, a distance of 41.54 feet to a point for a corner;
South 74 degrees 49 minutes 51 seconds West, a distance of 32.71 feet to a point for a corner;
South 34 degrees 50 minutes 50 seconds East, a distance of 35.10 feet to a point for a corner;
South 28 degrees 36 minutes 39 seconds East, a distance of 24.67 feet to a point for a corner;
South 47 degrees 46 minutes 03 seconds West, a distance of 45.89 feet to a point for a corner;
South 20 degrees 34 minutes 40 seconds West, a distance of 49.43 feet to a point for a corner;
South 08 degrees 33 minutes 53 seconds East, a distance of 47.97 feet to a point for a corner;
South 07 degrees 52 minutes 36 seconds West, a distance of 53.33 feet to a point for a corner;
South 45 degrees 05 minutes 33 seconds West, a distance of 32.13 feet to a point for a corner;
South 64 degrees 38 minutes 47 seconds West, a distance of 34.05 feet to a point for a corner;
South 00 degrees 20 minutes 40 seconds West, a distance of 27.04 feet to a point for a corner;
South 11 degrees 36 minutes 46 seconds East, a distance of 31.87 feet to a point for a corner;
South 77 degrees 35 minutes 37 seconds West, a distance of 14.32 feet to a point for a corner;
South 46 degrees 34 minutes 41 seconds West, a distance of 23.18 feet to a point for a corner;
South 13 degrees 44 minutes 18 seconds East, a distance of 24.50 feet to a point for a corner;
South 20 degrees 03 minutes 56 seconds East, a distance of 26.64 feet to a point for a corner;
South 47 degrees 10 minutes 09 seconds West, a distance of 35.98 feet to a point for a corner;
South 37 degrees 04 minutes 09 seconds West, a distance of 20.33 feet to a point for a corner;
South 22 degrees 33 minutes 33 seconds East, a distance of 10.41 feet to a point for a corner;

Exhibit A

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THENCE, departing the centerline of said creek and along the easterly line of said Rene' Bates tract, South 03 degrees 36 minutes 54 seconds West, a distance of 708.61 feet to a 5/8 inch iron rod set with "Hutt-Zollars" cap for a corner;

THENCE, along the easterly line of said Rene' Bates tract, South 04 degrees 13 minutes 25 seconds West, a distance of 114.94 feet to a 1/2 inch iron rod found for a corner at the southeasterly corner of said Rene' Bates tract and being on the northerly line of the aforementioned easterly TYF Partnership tract.

THENCE, along the northerly and easterly lines of said TYF Partnership tract the following courses:

South 62 degrees 18 minutes 48 seconds East, a distance of 587.24 feet to a point for a corner;

South 00 degrees 33 minutes 05 seconds East, a distance of 1064.97 feet to a 5/8 inch iron rod found for a corner;

South 00 degrees 01 minutes 27 seconds East, a distance of 153.87 feet to the **POINT OF BEGINNING** and Containing 291.83 acres of land, more or less.

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EXHIBIT B

PUBLIC IMPROVEMENTS

DEVELOPER is responsible for the construction of the facilities detailed below. In the event any public facilities are required to serve the development of Property are installed by a party other than DEVELOPER, these facilities must be complete and accepted by CITY prior to final acceptance of the Public Improvements herein.

A. THOROUGHFARES

1. DEVELOPER shall construct all necessary Public Improvements required to meet City of McKinney standards as stipulated in Section C of the Agreement including, but not limited to, two lanes of Wilmeth Road adjacent to Neighborhood 1 (24 foot wide minimum), two lanes of Hardin Boulevard adjacent to Neighborhood 1 (24 foot wide minimum), two lanes of Bloomdale Road adjacent to Neighborhood 4 (24 foot wide minimum), full width four-lane divided thoroughfare (120 foot right-of-way) for Hardin Boulevard adjacent to Neighborhoods 2, 3, and 4, up to the intersection with Bloomdale Road, including the pedestrian underpass as generally depicted on attached "Exhibit D." Thoroughfare improvements shall include drainage, striping, street lighting, sidewalks and erosion control. CITY shall provide signalization of thoroughfare intersections at such time as CITY deems necessary.
2. The construction of Wilmeth Road shall occur with the first phase of development where adjacent to the first phase of construction. The first phase of development shall use Wilmeth Road and Highpointe Boulevard (in the Creek Hollow subdivision) to meet CITY requirements for two points of access.
3. CITY shall participate in the costs of Thoroughfare improvements in an amount equal to the sum of items No. A and B as described below. Said funds shall be available to the DEVELOPER in exchange for the construction of the Thoroughfares as follows.
 - A. Not more than Four Hundred Fifty Thousand and NO/100 Dollars (\$450,000.00) shall be made available from City Council approved bond funds after DEVELOPER completes construction of the two north lanes of Wilmeth Road between future Hardin Boulevard and Highpointe Boulevard during the first phase of the development of the Property. Should DEVELOPER not construct Wilmeth Road, this sum will not be made available to DEVELOPER. DEVELOPER shall be reimbursed as funds are available in the CIP for the actual costs of constructing the off-site Wilmeth

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Road improvements within 12 months following CITY acceptance of the improvements; however, notwithstanding the foregoing, no sooner than October 15, 2003.

- B. Roadway Impact Fees associated with the platting and development of the commercial corner property located at the Northeast corner of Hardin Boulevard and Wilmeth Road, currently owned by Wilmeth 377 Venture Ltd., shall be used to reimburse the DEVELOPER for the cost of improving the adjacent one-half roadway improvements for Hardin Boulevard. Payment shall be made as those funds become available, provided the improvements are accepted by CITY. City reimbursement for Hardin Blvd shall not exceed the amount collected in Roadway Impact Fees from the developer(s) of said commercial corner property. City reimbursement for Hardin Blvd shall not exceed the actual costs of construction adjacent to said commercial corner property.
4. DEVELOPER shall construct the two (2) northbound lanes of Hardin Boulevard adjacent to Phase I of Timber Creek concurrently with the construction of the Phase II public improvements, or at such time as a contiguous segment of Hardin is initiated by CITY or another developer. Public improvements for lots in Phase I adjacent to Hardin Boulevard may be constructed prior to platting. However, said lots shall not be platted until such time as DEVELOPER constructs the portion of Hardin Boulevard adjacent to Phase I lots as depicted on the General Development Plan. DEVELOPER shall construct the two (2) offsite northbound lanes of Hardin Boulevard north of Wilmeth Road to the southern property line of Phase I (adjacent to the Shula Netzer property at the northeast corner of Hardin and Wilmeth Road) concurrently with the initiation of construction of any phase of development that occurs after Phase I, as required offsite improvements to serve as access for the Property.
5. Subsequent portions of Hardin Boulevard and Bloomdale Road shall be constructed as adjacent property is developed during subsequent phases of construction. The northern half of Bloomdale Road and the extension of Hardin Boulevard north of Bloomdale Road shall be constructed concurrently with the development of the commercial tract as depicted in attached Exhibit D.
6. Impact fees. DEVELOPER shall receive impact fee credits only for the portions of roadway actually constructed by DEVELOPER. DEVELOPER shall be responsible for paying to CITY any impact fees exceeding the impact fee credits for the Property Should CITY construct Wilmeth Road adjacent to Phase I of the Property,

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DEVELOPER shall owe impact fees for Phase I lots. Any other CITY participation in construction of any other roadway eligible for impact fee credits shall be excluded from the calculation of DEVELOPER's impact fee credits. If DEVELOPER'S credits are equal to the value of the impact fees as calculated by the CITY engineering department, no roadway impact fees shall be due from DEVELOPER to CITY for this Property, and no credits shall be issued by the CITY to DEVELOPER.

7. County Road 1007 shall be abandoned in phases as alternate access is provided as development occurs, or it shall occur at such time as CITY requests, but no sooner than with the development of any phase subsequent to the first phase of the Timber Creek Addition.
8. DEVELOPER shall pay cash in lieu of constructing the median landscaping in Wilmeth Road, Hardin Boulevard, and Bloomdale Road for each phase adjacent to said thoroughfares at the time of platting for the phase. The amount of escrow shall be based on an amount equal to Seventeen and No/100 Dollars (\$17.00) per linear foot of frontage or pursuant to the current City Ordinance in effect at the time of execution of this Agreement.

B. UTILITIES

1. DEVELOPER shall construct an offsite sanitary sewer line in order to connect the existing CITY sanitary sewer line on the south side of Honey Creek to the Property, as shown on the attached "Exhibit E." CITY shall reimburse DEVELOPER actual costs from funds available in the CIP up to an amount of \$372,600.00, for the Honey Creek Interceptor sanitary sewer line constructed through the Collin County Justice Center and across the unnamed tributary to Honey Creek at milestones of 50% completion and 100% completion. CITY shall also reimburse DEVELOPER for the actual costs of a sewer line in excess of the cost of a twelve-inch (12) sewer line, for the remaining offsite sewer line constructed through the properties as shown on the attached Exhibit E. Said reimbursement shall be made from funds available in the CIP up to an amount of \$235,290.00. If funding is not available at the time of construction for either portion of the offsite sewer line, Utility Impact Fee credits may be used to offset any or all of the costs. In the event funding becomes available at a later date but within the term of this Agreement for the reimbursements described above and utility impact fee credits have not offset the entire amount owed, CITY will reimburse DEVELOPER the balance of the amount not offset by the impact fee credits.

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2. CITY may, at the option and sole discretion of the City Engineer, construct an offsite thirty-six inch (36) water line along and within the Hardin Boulevard right-of-way from the north line of the proposed President's Pointe Addition to the intersection of Wilmeth Road and a twenty inch (20") water line along and within the south right of way of Wilmeth Road from the Hardin Boulevard intersection to the Highpointe Addition as shown in the attached Exhibit "F," utilizing funds available in the CIP. In the event CITY does not exercise this option, DEVELOPER shall construct both the offsite thirty-six inch (36) water line and the twenty-inch (20) water line, as shown in Exhibit F. CITY shall reimburse DEVELOPER for one hundred percent (100%) of the costs as funding becomes available within the twelve (12) months following City acceptance of the improvements, but in no event before December 31, 2003. CITY reasonably believes that adequate water service will be available to the Property by May 1, 2003, excepting any event of force majeure or failure of funding. For this purpose, "force majeure" shall mean any contingency or cause beyond the reasonable control of CITY including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action, fires, explosions or floods, and strikes. Further, CITY shall have no liability for failing to meet this anticipated service date.
3. DEVELOPER shall construct minimum twelve inch (12) waterlines, or larger if deemed necessary by the CITY Engineer, along the portions of Hardin Boulevard and Bloomdale Road that run through or run adjacent to the Property concurrent with the respective roadway construction. In the event CITY requires a waterline to be oversized beyond a twelve inch (12) pipe, within twelve (12) months following CITY's acceptance of the waterline improvements, CITY will reimburse DEVELOPER for the actual cost of the oversizing as funds become available; however, notwithstanding the foregoing, no sooner than October 15, 2003.
4. Offsite improvements may be required in order to provide facilities adequate to serve the phase under construction prior to CITY's final acceptance of that phase, including but not limited to an offsite sanitary sewer connection to existing mains and an offsite water line connection to existing water mains.
5. DEVELOPER shall work diligently to acquire easements for the offsite sanitary sewer line on behalf of CITY and shall pay all costs associated with its acquisition. If DEVELOPER is unable to obtain easements by July 1, 2002, CITY shall exercise its power of eminent domain to obtain the necessary easements within a reasonable time frame and at the expense of DEVELOPER.

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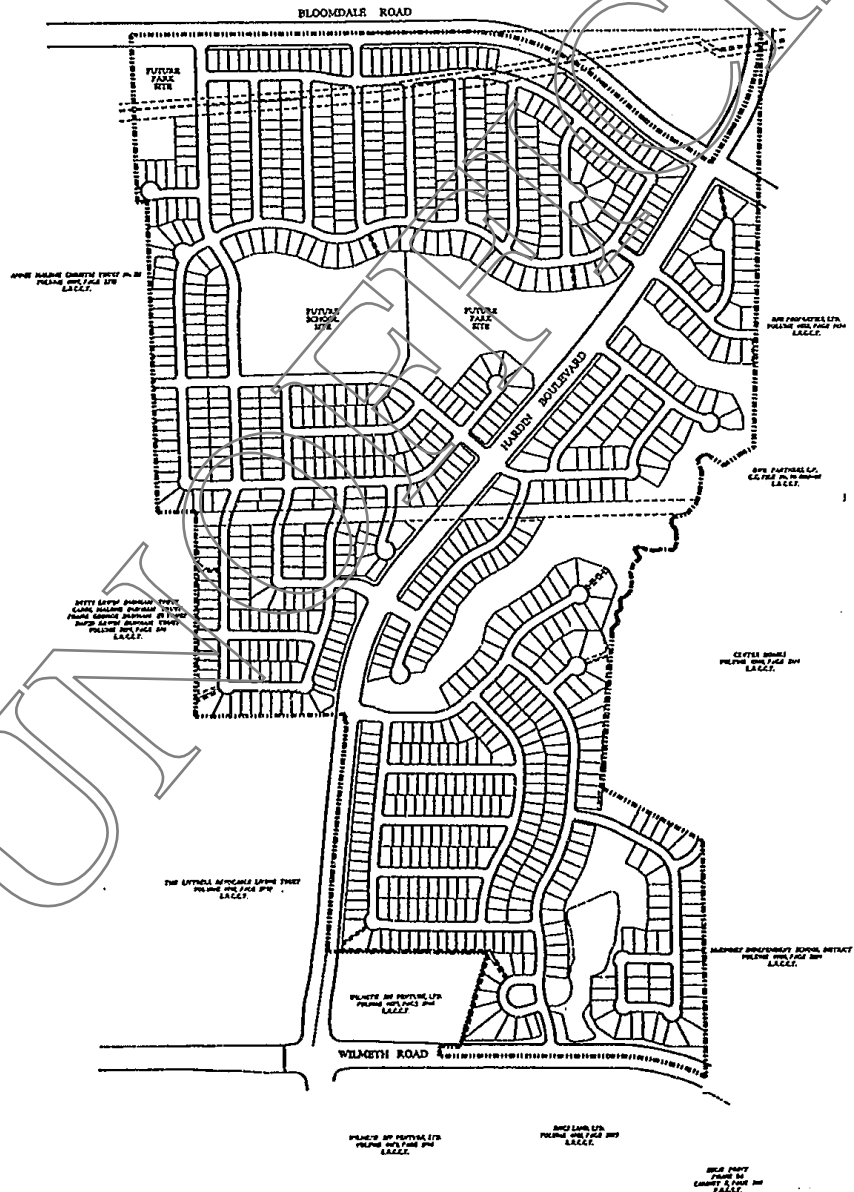
EXHIBIT C

VARIANCES TO SUBDIVISION ORDINANCE

1. CITY shall waive the requirement for minimum distance from an intersection to the first median opening in order for the area of Neighborhood 3 east of Hardin Boulevard to be accessible from southbound Hardin Boulevard via a full median opening and a left turn out of this area onto southbound Hardin Boulevard. Spacing is anticipated to be greater than three hundred feet (300).
2. DEVELOPER shall pay to CITY the amount of Six Hundred Seventy-Five and No/100 Dollars (\$675.00) per platted acre of Property prior to filing the Record Plat with Collin County, in satisfaction of the requirements of the storm water drainage ordinance regarding fees in lieu of upgrading the downstream NRCS lake located adjacent to the northeast corner of the property.
3. Park Land Dedication.
 - A. Park land dedication requirement for the Property will be met upon the dedication of approximately 15 acres of land in the attached Exhibit "D" and construction of the pedestrian underpass on Hardin Boulevard adjacent to the proposed park land dedication and construction of the pedestrian underpass adjacent to the proposed Park Land dedication on Bloomdale Road at Erwin Park. Park land dedication shall occur concurrently with the platting of the second phase of development. Construction of the pedestrian underpass on Bloomdale Road shall occur with the construction of the adjacent portion of Bloomdale Road. CITY shall participate in one-half of the construction costs of the Bloomdale Road pedestrian underpass as funds are available. Payment shall occur within 30 days of CITY acceptance of the pedestrian underpass improvements.
 - B. Within fifteen (15) days of the execution of this Agreement, DEVELOPER shall submit to the CITY a signed Letter of Credit ("LOC") in the amount of fifty percent (50%) of the cash value of park land that would otherwise be due for the development of the lots in Phase I. The CITY Engineer shall calculate the fees due under said LOC. Upon such time as the cash value of dedicated parkland for other phases of the development equals the amount of the LOC, CITY shall release the LOC.
 - C. In the event DEVELOPER has not developed subsequent phases of the Property within five (5) years from the plat recordation date of the Phase 1 area, DEVELOPER shall pay in cash the full parkland dedication that is required for Phase I, i.e., the remaining Fifty Percent (50%) as calculated by the City Engineer.

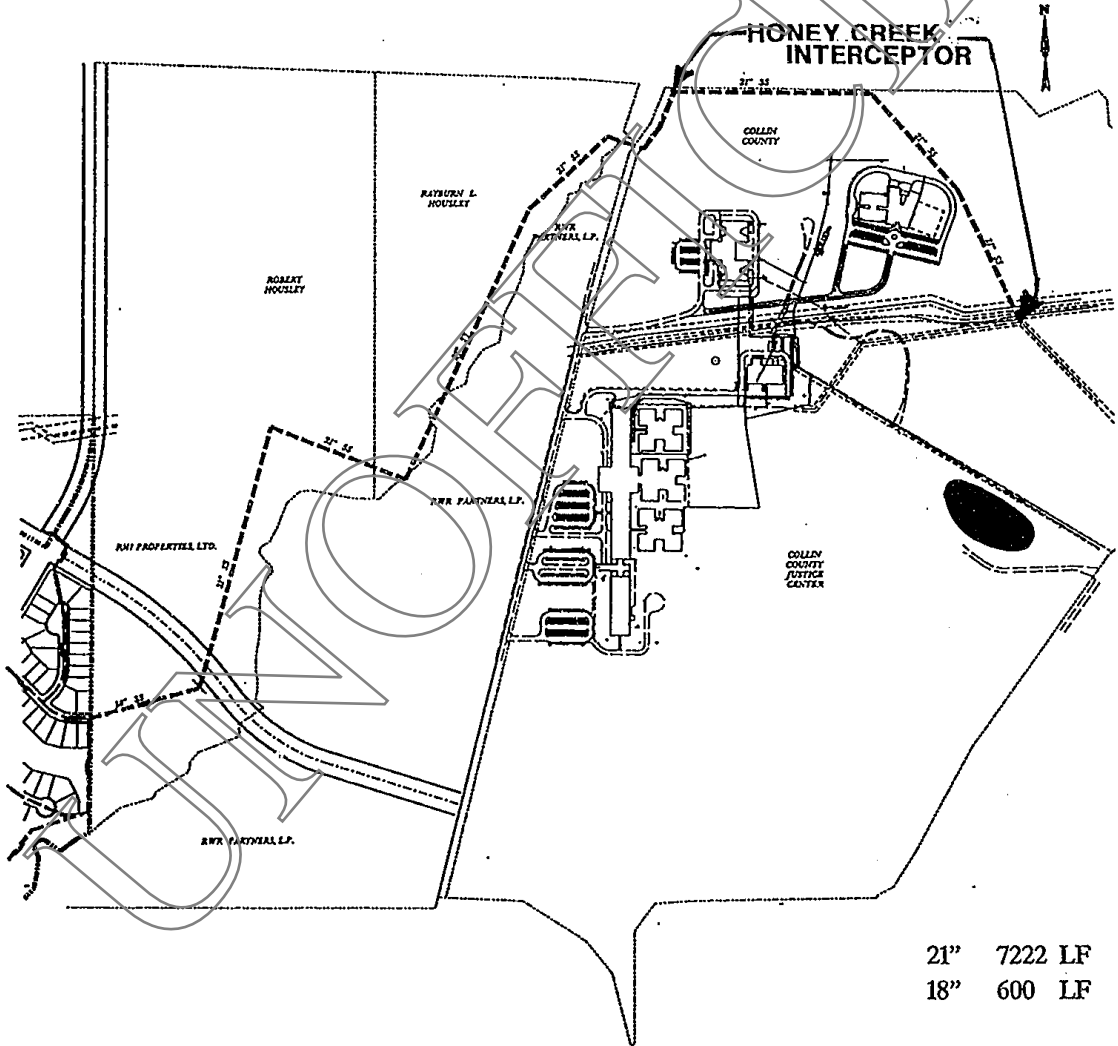
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EXHIBIT D
DRAWING OF PROPERTY



05277 04124

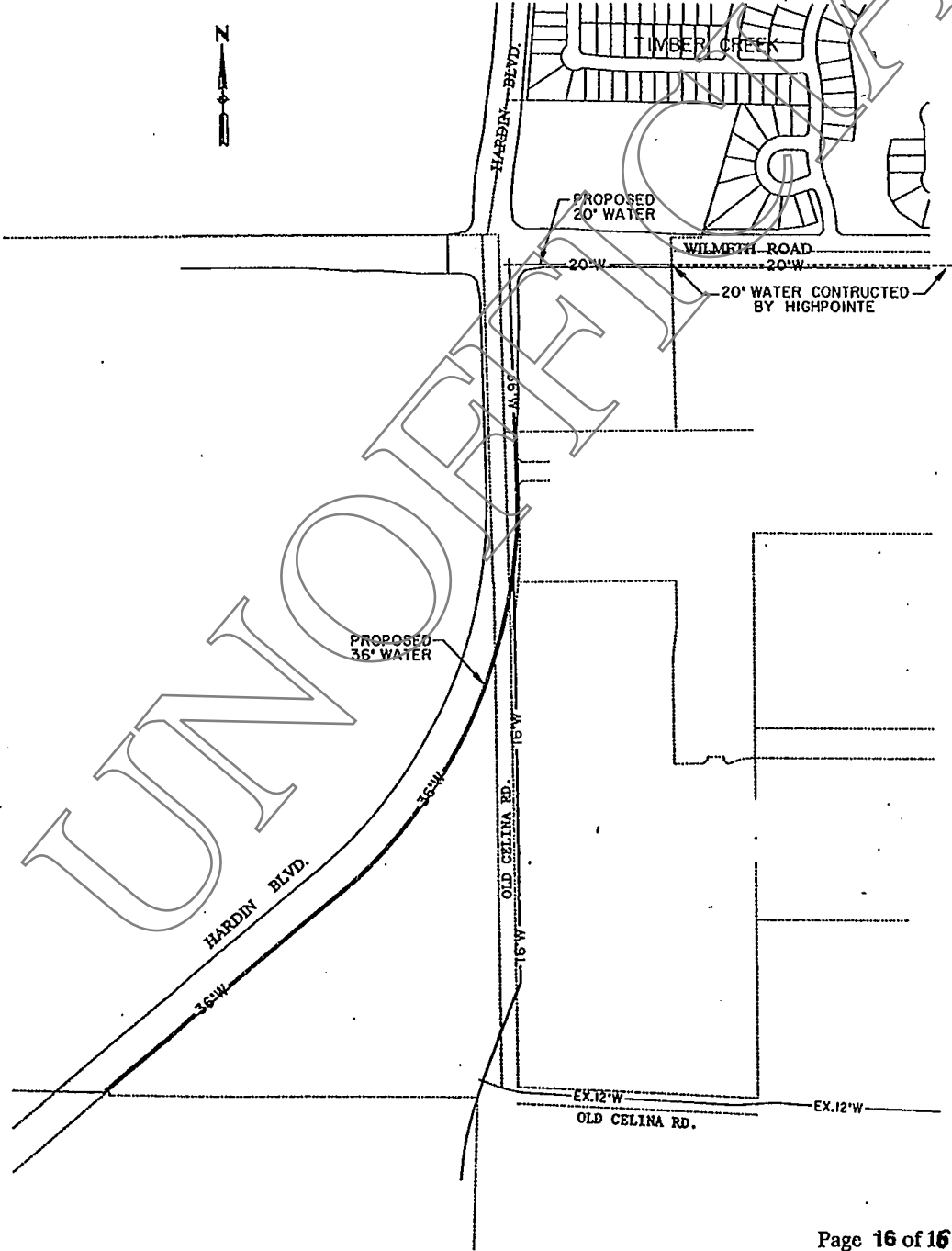
EXHIBIT E
OFFSITE SANITARY SEWER LINES



21" 7222 LF
18" 600 LF

05277 04125

EXHIBIT F
WATER LINE ALONG HARDIN BOULEVARD



05277 04126

PLEASE RETURN TO:

CITY OF MCKINNEY
ENGINEERING DEPT. ~~W.S.M.R.~~
P.O. BOX 517
MCKINNEY, TX 75070-0517

UNOFFICIAL

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
(THE STATE OF TEXAS) (COUNTY OF COLLIN)
I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped hereon by me, and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas on

OCT 17 2002

Helen Starnes



Filed for Record in:
Collin County, McKinney TX
Honorable Helen Starnes
Collin County Clerk

On Oct 17 2002
At 2:25pm

Doc/Num : 2002- 0151295

Recording/Type:AG 49.00
Receipt #: 37072