

**AFTER RECORDING, RETURN TO:**

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

**DEVELOPMENT AGREEMENT  
BETWEEN  
THE CITY OF MCKINNEY, TEXAS  
AND  
Honey Creek Joint Venture II  
FOR  
THE CROSS "F" PLANNED DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT, is entered into effective the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and Honey Creek Joint Venture II whose address is 9400 N Central Expy Ste #307, Dallas, Texas 75231, (hereinafter referred to collectively as "OWNER" whether one or more) (the CITY and the OWNER may be referred to collectively as the "PARTIES"), concerning the development of the "Property" described herein-below and by metes and bounds in Exhibit "A" hereto, witnesseth that:

WHEREAS, OWNER's predecessors-in-interest obtained zoning on the Property that established Planned Development Zoning for Single-Family, Multi-Family, Office and Retail Uses according to the requirements outlined in City of McKinney, Texas, Ordinance No. 1703, dated the 3<sup>rd</sup> day of March 1987 ("PD Ordinance"); and

WHEREAS, Section III of Ordinance No. 1703 requires the OWNER and CITY to enter into and execute a Development Agreement before any platting or development may occur on any portion of the Property; and

WHEREAS, OWNER has requested and CITY has agreed to enter into this Development Agreement to allow OWNER to begin platting and developing the Property; and

WHEREAS, the Property shall be developed by Honey Creek Joint Venture II who shall be solely responsible for all obligations hereunder; 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 likely be required as a condition to development in the future; and

WHEREAS, OWNER understands that prior to record platting the Property, the CITY's development standards and ordinances will require the OWNER to fund and construct certain roadway and utility improvements, as set forth in the CITY's Subdivision Ordinance, 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 CITY and OWNER agree that all the public improvements, as described in this Development Agreement or the Exhibits hereto, are essential for the proper functioning of the Development and the health, safety and general welfare of the residents and occupants of buildings within the Development; and

WHEREAS, the OWNER, together with the OWNER's grantees, assigns, successors, trustees and all others holding any interest now or in the future, agree and enter into this Agreement which shall operate as a covenant running with the land and be binding upon the OWNER, his representatives, grantees, assigns, successors, trustees and all others holding any interest now or in the future.

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

A. INCORPORATION OF RECITALS

The Recitals, and specifically including the WHEREAS defining "OWNER", 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 City of McKinney, in an area located generally north and east of Erwin Park, and north of Honey Creek in the City of McKinney, Collin County, Texas, containing approximately 313 acres of land, more fully described in Exhibit "A" attached hereto and fully incorporated herein by reference (the "Property"), which area of land when combined with the approximately 1,470 acres of land owned by McKinney Ranch, Ltd., and Honey Creek Investments, LLC, which is the subject of a similar Development Agreement, and an additional approximately 151 acres of land that is not proposed for development, is all of the remaining portion of the approximately 2,113.636 acres of land originally zoned by the PD Ordinance that is still subject to and governed by the PD Ordinance.

C. TITLE TO PROPERTY ESTABLISHED

OWNER hereby represents and warrants that OWNER is the record owner in fee simple of the Property as more fully described on Exhibit "A," and that such Property when combined with the approximately 1,470 acres of land owned by McKinney Ranch, Ltd., and Honey Creek Investments, LLC, which is the subject of a similar Development Agreement, and an additional approximately 151 acres of land that is not proposed for development, is all of the remaining portion of the approximately 2,113.636 acres of land originally zoned by the PD Ordinance that is still subject to and governed by the PD Ordinance. Any substantial (outside of normal surveyor error or boundary dispute) misrepresentation or breach of the above representation and warranty shall entitle City to terminate this Agreement immediately and rescind, repeal and/or revoke any and all actions taken, approvals granted and permits issued by City in reliance on such representation. Within ten (10) business days after the complete execution of this Agreement, OWNER shall provide City with evidence of ownership of the Property by the tender of a current title commitment or title report indicating the fee simple ownership for the entirety of the Property broken down by owner. The legal descriptions of the Property shall be affixed hereto at such time and this Agreement shall be filed in the Land Records of Collin County, Texas and shall become a covenant running with the land.

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, then in force, before any Development Permit or Building Permit will be issued for the development of the Property.

E. 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 OWNER, 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 OWNER as a condition to development of the Property (subject to the City's approval of phases or partial development):

1. Traffic Impact Analysis. At the time of development, and prior to platting the Property and the issuance of any development permits for the Property the OWNER shall cause a Traffic Impact Analysis ("TIA") to be performed by a professional engineer acceptable to the CITY to determine capacity in and on the roadways in the vicinity of the Property and the

ability of such roadways to support the traffic that will be generated by the OWNER's proposed development of the Property. Such TIA shall also identify the offsite roadway improvements that must be constructed at a minimum to serve the OWNER's proposed development of the Property in accordance with the CITY's Street Design Standards, then in effect.

The TIA shall be performed at no cost to the CITY and will be subject to review and approval by the CITY Engineer. The TIA will also be subject to review and approval by the Texas Department of Transportation ("TxDOT") if a TxDOT controlled roadway is involved. The CITY Engineer shall have the right to require the OWNER to perform additional TIA(s), at no cost to the CITY, if a significant amount of time has passed between the date the previous TIA was performed and the date the Property development commences or if the proposed development of the Property changes from the development assumptions contained in the prior TIA or if in the opinion of the CITY Engineer some other change in conditions has occurred which merits re-evaluation of an earlier TIA.

2. Off-site Roadway Level of Service. The OWNER of the Property must maintain the greater of the then current Level of Service ("LOS") on the roadway system serving the Property or Level of Service "D" on the roadways between the Property and the nearest major roadway based on the anticipated traffic routes from/to the Property as approved by the CITY Engineer. A major roadway is defined as an improved 4 lane divided roadway ("Arterial Roadway" classification as defined by CITY), TxDOT maintained roadway, or US Highway (i.e., US 75 and US 380).
  - (a) The OWNER will be required to obtain and dedicate to the CITY, at no cost to the CITY, all rights-of-way and easements as may be necessary to construct any off-site roadway improvements identified on the TIA as being necessary to serve the OWNER's proposed development of the Property.
  - (b) The OWNER will also be required to construct, at no cost to the CITY, any off-site roadway improvements that are identified on the TIA as being necessary to serve the OWNER's proposed development of the Property in accordance with the CITY's Street Design Standards, then in effect, or as may be otherwise agreed by the CITY.
  - (c) The CITY may, in its sole discretion, enter into a separate agreement with the OWNER that will allow the OWNER to fulfill its obligations under this Paragraph No. D(2) and also allow the CITY to make any additional roadway improvements that the CITY determines should be made in coordination with the OWNER's off-site roadway improvements and which additional CITY roadway

improvements are not identified in the TIA as being necessary to or required by the development of the Property.

- (d) The OWNER must provide all appropriate documentation regarding the necessary rights-of-way and off-site roadway construction to the CITY Engineer for approval.
3. Right-of Way Dedication. The OWNER shall dedicate to the CITY, at no cost to the CITY, that amount of right-of-way along perimeter roadways adjacent to the Property which will yield at least one-half (½) 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 development occurs. If a Master Plan roadway is situated on or across the Property the OWNER shall dedicate to the CITY the full right-of-way for such Master Plan roadway at such time as development occurs. The CITY will compensate the OWNER for that portion of the Master Plan roadway right-of-way that is so dedicated and which is not roughly proportionate to the impact the development of the Property will have on the CITY's roadway system. The OWNER shall dedicate all right-of-way for the interior streets serving the Property at the time of development. The OWNER shall also dedicate all easements necessary for construction and safety purposes for roadways on the Property and perimeter roadways adjacent to the Property as required herein-above. The final alignment of right-of-way dedications shall be consistent with the CITY's Thoroughfare Development Plan and as approved by the CITY Engineer.
4. 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.
5. Roadway Construction. The OWNER 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 OWNER shall also comply with TxDOT's standards and specifications when the roadway improvements are being made on along, about or to TxDOT roadways. In the event of a conflict between the CITY's requirements and TxDOT's requirements the OWNER shall comply with the more stringent of those requirements.
  - (a) Gravel and seal coat roadways are not acceptable.
  - (b) 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 the minimum

service life set forth in the then applicable Design Manual, or other ordinance or regulation, of the City of McKinney without the need for any major maintenance overhauls.

- (c) A pavement analysis shall be performed by the OWNER, at no cost to the CITY, to determine the adequacy of the current pavement structure to handle the OWNER's projected traffic along with existing traffic volumes and recommendations by the OWNER must be made based upon the analysis for roadway improvements as needed. The OWNER 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.
  - (d) 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.
  - (e) If the CITY has a project to construct any of the roadways for which the OWNER is responsible, in whole or in part, the CITY and the OWNER may enter into a separate agreement whereby the OWNER is allowed, in the sole discretion of the CITY, to provide the CITY a cash escrow in an amount that will cover the OWNER's roughly proportionate obligation for construction of such roadway(s) in lieu of constructing said roadway improvements.
6. Utility Easement Dedication. The OWNER 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.
7. 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 of the then current and appropriate Design Manual. Upon approval of all utility construction plans for the Property by the CITY Engineer, or his designee, the OWNER may develop in accordance with such approved plans.

8. Utility Construction. The OWNER 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 OWNER 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 OWNER 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 OWNER shall construct any off-site and oversize utility improvements as may be required to serve the Property. No septic systems shall be permitted.
9. Hike and Bike Trail. To the extent that the CITY's Master Trail Plan shows a hike and bike trail along, across or adjacent to the Property, the OWNER shall, at no cost to the CITY, dedicate the easement or right-of-way for and construct all required concrete hike and bike trail improvements in accordance with the CITY's Subdivision Ordinance and Master Trail Plan. The hike and bike trail shall be tied in or connected to the CITY's trail system or to the location(s)/area(s) identified as planned future extensions of the trail system specifically including, but not limited to, school sites, parkland sites and planned connections to creek and river greenways. Final location and all hike and bike trail construction plans shall be subject to review and approval by the Director of Parks and Recreation. All hike and bike trail construction plans must be approved by CITY's Parks Director or his agent prior to approval of a Development Permit for any portion of the Property being developed.

F. PARKLAND

The OWNER shall dedicate required parkland, if any, 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 OWNER as a condition to development of the Property (subject to the City's approval of phases or partial development):

1. Any parkland that the OWNER 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 OWNER's acquisition thereof, and at no cost to the CITY. The OWNER shall also provide the CITY with a 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 OWNER 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 OWNER'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 OWNER 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 OWNER'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 OWNER prior to the platting of the last phase of development of the Property. The OWNER shall not be allowed to file the plat for the last phase of the Property until the parkland dedication or cash payment is satisfied.
5. Any parkland the OWNER 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.

G. AVAILABILITY OF WATER AND WASTEWATER SERVICE IN THE FUTURE

The CITY makes no guarantee that water supply or wastewater treatment capacity will be available at any particular time or place, it being fully understood by both parties hereto that the ability of the CITY to supply water and wastewater services is subject to its contract with the North Texas Municipal Water District, a governmental agency and body politic and corporate, hereinafter referred to as "N.T.M.W.D.", and that this Agreement will only allow utilization of the CITY's water and wastewater system capacity when and if capacity is present and available from the N.T.M.W.D. Notwithstanding the foregoing, the CITY will supply the development on the Property with water supply and wastewater treatment capacity if such capacity is present and available from N.T.M.W.D. The CITY shall be the sole judge of the availability of such capacity of water supply and/or wastewater services, provided, however, that the CITY will attempt to insure that said water supply and wastewater treatment capacity is available.

H. CITY DEVELOPMENT ORDINANCES

The OWNER shall develop the Property in accordance with the standards set forth in the CITY's Zoning, Subdivision and land development ordinances, then in force, including but not limited to provisions regarding drainage, erosion control, pro-rata payments, parkland dedication, storm water management, tree preservation, Street Design Standards, Public Improvements Policy and construction standards. The OWNER expressly acknowledges that by entering into this Agreement, the OWNER, its successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any exhibits attached hereto as waiving any of the requirements of the CITY's Zoning Ordinance or Subdivision Ordinance or any other ordinance of the CITY, as applicable.

I. TREE ORDINANCE

OWNER 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.

J. STORMWATER

OWNER agrees to abide by all terms of the McKinney Storm Water Ordinance No. 2014-09-063, as amended.

K. 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 OWNER's development of the Property, the OWNER 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 OWNER utilizes such facilities for the Property. If, however, the water or sewer facilities are bounded on both sides by the Property then the OWNER 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 OWNER utilizes such facilities. Should the OWNER construct off-site water and sewer facilities such that pro-rata fees are due to the OWNER, the CITY agrees to collect any fees due to the OWNER related to the construction of the line(s) as those properties utilizing such facilities are developed during the period of ten (10) years after OWNER's installation of such off-site water and sewer facilities. The OWNER 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 OWNER.

The OWNER 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) OWNER is not permitted any right to tap or tie in to.

L. IMPACT FEES

OWNER shall pay roadway impact fees and/or utility impact fees on the proposed development of the Property. Impact fees for the Property shall be charged in accordance with Ordinance No. 2013-11-108 (Roadway) and Ordinance Nos. 2013-11-109, 2013-12-118, and 2017-03-021 (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 OWNER and CITY which agreement shall supersede and control.

M. NO WAIVER

The OWNER expressly acknowledges that by entering into this Agreement, the OWNER, 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 the CITY, except as specifically herein agreed.

N. REVOCAION

In the event the OWNER fails to comply with any of the provisions of this Agreement, the 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 the Property; and the CITY shall be further authorized to file this instrument in the records of Collin County as a Mechanic's Lien against the OWNER's property; and in the alternative, the CITY shall be authorized to levy an assessment against the OWNER's property for public improvements actually constructed by the CITY to be held as a tax lien against the Property by CITY.

O. ROUGH PROPORTIONALITY AND WAIVER OF CLAIMS

OWNER 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 OWNER, regarding OWNER's rights under Texas and federal law. OWNER 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.) OWNER 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, OWNER hereby releases the City from any and all liability under Tex. Loc. Gov't Code § 212.904 regarding or related to the cost of those municipal infrastructure improvements required for the development of the Property.

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

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

P. CONTINUITY

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

Q. 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 OWNER: Honey Creek Joint Venture II  
9400 N Central Expy Ste #307  
Dallas, TX 75231  
Attn: John C. Franklin

with a required copy to: Grogan & Brawner P.C.  
2808 Fairmount, Suite 150  
Dallas, Texas 75201  
Attn: R.J. Grogan, Jr.

To the CITY:

City of McKinney  
Attn: City Manager  
P.O. Box 517  
222 N. Tennessee Street  
McKinney, Texas 75069  
Fax: (972) 547-2607

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.

R. 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.

S. 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.

T. ASSIGNABILITY

1. This Agreement may be assigned one (1) time, in its entirety and without the consent of the CITY, by Honey Creek Joint Venture II ("HCJV") to any entity to which HCJV sells all of the Property (the "Purchaser"). The assignment must be in writing, must bind the Purchaser to perform and assume all duties and obligations of the OWNER under this Agreement, and must include a release by HCJV of any claims it may have against the CITY arising from or related to this Agreement or otherwise arising from or related to the Property. A copy of an acceptable form of assignment for this purpose is attached hereto as Exhibit B. Upon delivery to the CITY of a copy of such assignment, HCJV shall be unconditionally and irrevocably released from any and all duties and obligations of the OWNER under this Agreement, and the CITY shall look to the Purchaser for the performance of all duties and obligations of the OWNER under this Agreement. In addition, upon delivery to the CITY of

a copy of such assignment, the CITY shall be deemed to have released HCJV from any claims the CITY may have against HCJV arising from or related to this Agreement or otherwise arising from or related to the ownership or development of the Property or otherwise arising from or related to the performance or non-performance by the Purchaser of its duties and obligations as the OWNER under this Agreement.

2. Except as provided in Subsection (1) above, this Agreement shall not be otherwise assignable by the OWNER without the prior written consent of the CITY, and such consent shall not be unreasonably withheld, conditioned, or delayed.
3. An assignee approved or authorized in accordance with this Agreement shall be considered a "PARTY" for the purposes of this Agreement.

U. TERMINATION AND RELEASE

Upon satisfactory completion by OWNER and final acceptance by CITY of all requirements of this Agreement, this Agreement shall terminate and CITY will execute a release of covenant to OWNER, 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.

V. 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.

W. COUNTERPART ORIGINALS

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

X. 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.

Y. MAINTENANCE BOND

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

Z. GENERAL PROVISIONS

1. OWNER hereby agrees that OWNER shall 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 then in force.
2. OWNER agrees that no platting or development shall occur on any portion of the property prior to City Council approval of this Agreement.
3. OWNER 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 OWNER. Likewise, coordination with agencies requiring special conditions (i.e., railroads and the Texas Department of Transportation) shall be the responsibility of OWNER.
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 (10<sup>th</sup>) 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 OWNER.
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 OWNER of any rights of OWNER 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. Save and except to the extent specifically stated herein to the contrary, the Property shall be developed in accordance with the standards set forth in the City of McKinney Zoning, Subdivision and land development

ordinances, including but not limited to provisions regarding drainage, erosion control, pro rata payments, tree preservation, Street Design Standards, Public Improvements Policy and construction standards in force at the time of any development of the Property.

**CITY OF MCKINNEY**

By: \_\_\_\_\_  
PAUL G. GRIMES  
City Manager

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

ATTEST:

\_\_\_\_\_  
SANDY HART, TRMC, MMC  
City Secretary  
DENISE VICE, TRMC  
Assistant 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 who's 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 \_\_\_\_\_, 20\_\_\_\_.

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

*[Signatures continued on following page.]*

**OWNER**  
Honey Creek Joint Venture II

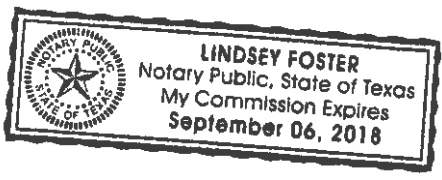
By: [Signature]  
Name: RJ Grogan Jr  
Title: ASO  
Date Signed: June 1<sup>st</sup>, 2017

THE STATE OF TEXAS,  
COUNTY OF Dallas

This instrument was acknowledged before me on the 1 day of June, 2017, by RJ Grogan Jr, in his capacity as ASO of Honey Creek Joint Venture II, a Texas JV, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that RJ Grogan Jr is the ASO of Honey Creek Joint Venture II, a Texas joint venture, and that he executed the same on behalf of and as the act of the said joint venture.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 1<sup>st</sup> DAY OF June, 2017.

Lindsey Foster  
Notary Public Dallas County, Texas  
My commission expires 9/6/2018



**Exhibit "A"**  
*Description of Property*  
*(Containing Approximately 313 Acres of Land)*

LEGAL DESCRIPTION

Being a tract or parcel of land situated in the William Johnson Survey, Abstract No. 493, the John Emberson Survey, Abstract No. 294, the P. Newsom Survey, Abstract No. 666, and the Larkin Adamson Survey, Abstract No. 1088, being a called 313.22 acre tract of land described in deed from One Longhorn Corporation to Honey Creek Joint Venture II dated October 7, 1994, as recorded in County Clerks File Number 94-0092023 of the Deed Records, Collin County, Texas, and more particularly described as follows:

BEGINNING at a 5/8" iron rod found at the Northeast corner of said called 313.22 acre tract of land, being in the general center of county road 204, and being in the South line of called 7.34 acre tract of land described in Instrument Number 20091215001500800 of the Deed Records, Collin County, Texas, (D.R.C.C.T.);

THENCE S 00°14'41" W a distance of 426.47 feet to a 1/2" iron rod found in the East line of said called 313.22 acre tract and being the Northwest corner of called 36.05 acre tract of land described in Instrument Number 20131101001493860 of the D.R.C.C.T.;

THENCE S 00°31'56" W with the common line of said called 313.22 acre tract and said called 36.05 acre tract and generally along the center of county road 227 a distance of 699.62 feet to a 1/2" iron rod found in the East line of said called 313.22 acre tract, being the Southwest corner of said 36.05 acre tract, and being the Eastern Northeast corner of a called 72.00 acre tract of land described in Instrument Number 20140224000164940 of the D.R.C.C.T.;

THENCE S 01°15'48" W a distance of 1006.96 feet to a 5/8" iron rod found at an inner corner of said 313.22 acre tract and being the Southwest corner of a called 43.30 acre tract of land described in Instrument Number 98-0084318 of the D.R.C.C.T.;

THENCE S 89°26'10" E a distance of 445.66 feet to a 1/2" iron rod found at an outer corner of said called 313.22 acre tract, being in the South line of said 43.30 acre tract of land, and being the Northwest corner of a called 208.20 acre tract of land described in Instrument Number 98-0084318 of the D.R.C.C.T.;

THENCE S 01°03'27" E a distance of 2428.17 feet to a 1" iron pipe found at the common corner of said called 313.22 acre tract and a called 30.04 acre tract of land describe in Instrument Number 20091215001497350 of the D.R.C.C.T.;

THENCE N 88°16'27" W a distance of 399.64 feet to a 1/2" iron rod found at the common corner of said called 313.22 acre tract and said called 30.04 acre tracts of land and being in the general centerline of county road 227 and county road 229;

THENCE S 01°03'40" E a distance of 815.79 feet to a 1/2" iron pipe found in the East line of said called 313.22 acre tract, being the Southwest corner of said called 30.04 acre tract of land, and being the Northwest corner of a called 38.94 acre tract of land described in Volume 3578, Page 252 of the D.R.C.C.T.;

THENCE S 01°03'34" E a distance of 1455.48 feet to a 5/8" iron rod set stamped ADAMS SURVEYING COMPANY at the Southeast corner of said called 313.22 acre tract of land, being the Southwest corner of said called 38.94 acre tract, and being in the North line of Fm. 543;

THENCE N 84°58'28" W along the North line of said Fm. 543 a distance of 612.68 feet to a 1/2" iron rod found in the South line of said called 313.22 acre tract of land and being in the North line of said Fm. 543;

THENCE N 84°22'26" W along the North line of said Fm. 543 a distance of 495.79 feet to a 1/2" iron rod found in the South line of said called 313.22 acre tract, being in the North line of said Fm. 543, and being at the beginning of a curve to the left whose chord bears N 86°33'10" W, 230.30 feet;

THENCE along said North line of Fm. 543, said South line of called 313.22 acre tract of land, and said curve to the left having a radius of 3065.36, central angle of 4°18'21", and length of 230.36 feet to a 5/8" iron rod found in the North line of Fm. 543 and in the South line of called 313.22 acre tract;

THENCE N 88° 52'26" W along the North line of said Fm. 543 and South line of said called 313.22 acre tract of land a distance of 848.63 feet to a 1/2" iron rod found at the Southwest corner of said called 313.22 acre tract of land, being the Southeast corner of a called 97.21 acre tract of land described in Instrument Number 20050428000558900 D.R.C.C.T., and being in the North line of said Fm. 543;

THENCE N 00°34'11" E a distance of 2204.40 feet to a 5/8" iron rod found in the West line of said called 313.22 acre tract of land, in the East line of said called 97.21 acre tract of land, and generally in the center of county road 203;

THENCE N 00°30'06" E a distance of 2294.98 feet to a 1/2" iron rod found being in the South line of a called 2.00 acre tract of land described in Volume 5221, Page 89 of the D.R.C.C.T.;

THENCE S 88°14'00" E a distance of 944.61 feet to a 1/2" iron rod found at the common corner of said called 313.22 acre tract of land and a called 10.00 acre tract of land described in Volume 815, Page 477 of the D.R.C.C.T.;

THENCE N 02°37'03" E a distance of 1129.33 feet to a 1/2" iron rod found at the common corner of said called 313.22 acre tract of land and a called 8.84 acre tract of land described in 815, Page 477 of the D.R.C.C.T.;

THENCE N 89°54'00" W a distance of 772.05 feet to a 1/2" iron rod found, being in the East line of a called 22.70 acre tract of land describe in Instrument Number 20081117001339790 of the D.R.C.C.T.;

THENCE N 06°36'57" E a distance of 1096.98 feet to a 5/8" iron rod found at the Northwest corner of said called 313.22 acre tract of land, being in the South line of a called 40.00 acre tract of land described in Instrument Number 20111004001062390 D.R.C.C.T., and being in the general center line of county road 204;

THENCE N 89°41'27" E a distance of 549.33 feet to a 1" iron pipe found in the North line of said called 313.22 acre tract of land, being in the general center line of said county road 204, and being the Southwest corner of said called 7.34 acre tract of land;

THENCE S 89°56'10" E a distance of 1138.18 feet to the POINT OF BEGINNING and containing 313.21 acres or 13,643,439 square feet of land, more or less.

**Exhibit "B"**  
**Form of Assignment**

**AFTER RECORDING, RETURN TO:**

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

ASSIGNMENT AND ASSUMPTION AGREEMENT  
FOR  
THE CROSS "F" PLANNED DEVELOPMENT  
(Honey Creek Joint Venture II)

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is executed by Honey Creek Joint Venture II ("HCJV-Assignor"), and \_\_\_\_\_ a \_\_\_\_\_ ("Purchaser-Assignee") to be effective \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"). HCJV-Assignor and Purchaser-Assignee are referred to as the "Parties." This Assignment may, but is not required to be, accepted by the City of McKinney, Texas (the "City").

1. RECITALS.

1.1 WHEREAS, the City and HCJV-Assignor entered into that certain *City of McKinney, Texas DEVELOPMENT AGREEMENT for The Cross "F" Planned Development* dated June \_\_, 2017 (the "Development Agreement"), covering approximately 313 acres located generally north and east of Erwin Park, and north of Honey Creek in the City of McKinney, Collin County, Texas (the "Property");

1.2 WHEREAS, Paragraph T of the Development Agreement ("Paragraph T"), provides as follows: "This Agreement may be assigned one (1) time, in its entirety and without the consent of the CITY, by Honey Creek Joint Venture II ("HCJV") to any entity to which HCJV sells all of the Property (the "Purchaser"). The assignment must be in writing, must bind the Purchaser to perform and assume all duties and obligations of the OWNER under this Agreement, and must include a release by HCJV of any claims it may have against the CITY arising from or related to this Agreement or otherwise arising from or related to the Property. A copy of an acceptable form of assignment for this purpose is attached hereto as Exhibit B. Upon delivery to the CITY of a copy of such assignment, HCJV shall be unconditionally and irrevocably released from any and all duties and obligations of the OWNER under this Agreement, and the CITY shall look to the Purchaser for the performance of all duties and obligations of the OWNER under this Agreement. In addition, upon delivery to the CITY of a copy of such assignment, the CITY shall be deemed to have released HCJV from any claims the CITY may have against HCJV arising from or related to this Agreement or otherwise arising from or related to the ownership or development of the Property or otherwise arising from or related to the performance or non-performance by the Purchaser of its duties and obligations as the OWNER under this Agreement.";

2.3 HCJV-Assignor hereby releases the City from any and all claims by HCJV-Assignor against the City arising from or directly or indirectly related to the Development Agreement or otherwise arising from or directly or indirectly related to the Property.

2.4 HCJV-Assignor represents and warrants to Purchaser-Assignee: (i) that, to the best knowledge and belief of HCJV-Assignor, there are no events of default under the Development Agreement and no facts or circumstances that, with the giving of notice or passage of time, would constitute an event of default under the Development Agreement; (ii) that the execution of this Assignment by HCJV-Assignor has been duly authorized and is binding on HCJV-Assignor; and (iii) that HCJV-Assignor has not assigned or otherwise conveyed, transferred, or encumbered, in whole or in part, the Development Agreement or any Rights of HCJV-Assignor.

2.5 Purchaser-Assignee represents and warrants to HCJV-Assignor: (i) that, to the best knowledge and belief of Purchaser-Assignee, there are no events of default under the Development Agreement and no facts or circumstances that, with the giving of notice or passage of time, would constitute an event of default under the Development Agreement; and (ii) that the execution of this Assignment by Purchaser-Assignee has been duly authorized and is binding on Purchaser-Assignee. By its acknowledgement of this Assignment and Assumption Agreement below, City makes no representation regarding events of default by Purchaser-Assignee or HCJV-Assignor as of the date of said acknowledgement.

2.6 From and after the delivery to the City of a copy of this Assignment executed by the Parties, the "Notice" provision of the Development Agreement shall reflect Purchaser-Assignee as the OWNER as follows:

To the OWNER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

EXECUTED as of the Effective Date first set forth herein-above by the Parties.

**HCJV-ASSIGNOR**

Honey Creek Joint Venture II

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



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

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, in his capacity as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that \_\_\_\_\_ is the \_\_\_\_\_ of Honey Creek Joint Venture II, a Texas joint venture, and that he executed the same on behalf of and as the act of the said joint venture.

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

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

**PURCHASER-ASSIGNEE**

its \_\_\_\_\_

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

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

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, in his capacity as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that \_\_\_\_\_ is the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_

Assignment and Assumption Agreement  
(Cross "F" Planned Development – Honey Creek Joint Venture II)

Page 4

\_\_\_\_\_, and that he executed the same on behalf of and as the act of \_\_\_\_\_.

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

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

**ACKNOWLEDGED – CITY OF MCKINNEY, TEXAS**

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