

AFTER RECORDING, RETURN TO:

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

**City of McKinney, Texas
FACILITIES AGREEMENT**

(Acceptance of Land Dedication for Recreational Uses in Parkland Zone 1 for a Residential Development in Parkland Zone 4 and Reimbursement of Cash in Lieu of Dedication Funds from Parkland Zone 1 into Parkland Zone 4, Therefor)

***McKINNEY MEDICAL CENTER LOT 3, BLOCK A
(Also Known As McKinney Urban Village Tract)***

THIS AGREEMENT, entered into effective the ___ day of _____, 20____, by and between **CITY OF McKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and **McKINNEY MED CENTER, L.P.**, a Texas Limited Partnership, ("DEVELOPER") witnesseth that:

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

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

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

WHEREAS, the Subdivision Regulations also prohibit recording the Final Plat of a subdivision within the incorporated area of the City until the DEVELOPER has completed all

of the public facilities that must be dedicated to the City or has entered into a Facilities Agreement and guaranteed to the satisfaction of the CITY such improvements will be installed; and

WHEREAS, Section 142-156(a) of the Subdivision Regulations requires DEVELOPER to convey land for park purposes or make a payment of money in lieu of land, or a combination of both, to the CITY at the time of subdivision for single family and duplex residential development or at the time of issuance of a building permit for multi-family development, to provide for the recreational needs created by such development; and

WHEREAS, Section 142-157(a)(1) and (2) of the Subdivision Regulations provides that for single family, duplex residential and multi-family developments the amount of land needed for park purposes, to provide for the recreational needs created by such residential development, shall be based on one acre per 50 residential dwelling units or a portion thereof; and

WHEREAS, Section 142-157(6) of the Subdivision Regulations provides that the land required to be conveyed may be located inside or outside the boundaries of the development, as long as the land is so located and in such proximity to the development so as to serve or benefit persons residing in such development; and

WHEREAS, DEVELOPER desires to dedicate land to City in satisfaction of the park dedication obligation for the McKinney Urban Village Tract that is situated in a different Parkland Zone and which proposed land dedication is not situated within or in close proximity to the McKinney Urban Village Tract; and

WHEREAS, DEVELOPER has appealed the requirement that land proposed for park dedication be situated within or in close proximity to the development giving rise to the need for park land dedication and has requested that DEVELOPER be allowed to dedicate land in a differing Parkland Zone, which Parkland Zone is removed from the McKinney Urban Village Tract that generates the need for such land dedication to provide recreational space for the residents of such multi-family development project; and

WHEREAS, CITY desires to acquire parkland for a regional park that will benefit residents of the City of McKinney as a whole; and

WHEREAS, the land dedication that DEVELOPER proposes in satisfaction of the required land dedication for Lot 3, Block A, of the McKinney Medical Center addition -- the "McKinney Urban Village Tract" -- is situated in an area that is suitable for and may be incorporated into such a regional park; and

WHEREAS, the CITY Council has determined that DEVELOPER's appeal and request should be granted as to Lot 3, Block A, of the McKinney Medical Center addition only; and

WHEREAS, City's acceptance of the land dedication proposed by DEVELOPER shall be made prior to the issuance of the first building permit for Lot 3, Block A, of the McKinney Medical Center addition ; and

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

A. RECITALS ADOPTED

All of the foregoing recitals are hereby found to be true and correct and they are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

B. PROPERTY

This Agreement is for property identified as Lot 3, Block A, of the McKinney Medical Center addition containing approximately 9.788 acres of land, more or less, out of the William Hemphill Survey, Abstract No. 449, and the J. Butler Survey, Abstract No. 68, in the City of McKinney, Collin County, Texas and on the west side of State Highway 5 at or about its intersection with Enterprise Drive and extending in a southerly direction, which land is more fully described and depicted in Exhibit A attached hereto and incorporated herein by reference for all purposes allowed by law (the "Property"). A site plan has been submitted for the Property that is entitled "McKinney Urban Village Tract"; and the Property may also be referred to herein as the "McKinney Urban Village Tract."

C. PARK DEDICATION

1. DEVELOPER's parkland dedication requirements for the McKinney Urban Village Tract shall be satisfied by the dedication of land for park purposes based on the CITY ordinance requirement of one (1) acre of land dedication for each fifty (50) single-family or multi-family residential units.
2. The McKinney Urban Village Tract has been approved for the development of 245 residential dwelling units. Therefore, the DEVELOPER is required to dedicate 4.9 acres of land outside of any floodplain areas or pay fees in lieu of dedication or a combination thereof to the CITY for park purposes.
3. In cases where floodplain land is proposed to be conveyed to satisfy the parkland requirements, a credit will be given based upon the following ratio: three acres of floodplain shall equal one acre of nonfloodplain land.
4. DEVELOPER proposes to convey, and shall convey to CITY approximately 3.267 acres of nonfloodplain land, which satisfies the park dedication for 163 multi-family residential units, and approximately 4.899 acres of floodplain land, which satisfies the

park dedication for 82 multi-family residential units, totaling a land dedication of approximately 8.166 acres for park uses to satisfy the requirements for the McKinney Urban Village Tract. The land to be dedicated by DEVELOPER to CITY is more fully described and depicted in Exhibit B attached hereto and incorporated herein by reference for all purposes allowed by law (the “Park Dedication”).

5. DEVELOPER acknowledges and understands that the calculations regarding required land dedication for park purposes and fees in lieu of dedication shall change if the number of multi-family residential units on the Property is changed. In the event of an increase in the number of multi-family residential units for any phase(s) of the Property following DEVELOPER’s land dedication, the DEVELOPER shall dedicate additional parkland or pay additional fees in lieu of dedication as recalculated by the CITY. In the event of a decrease in the number of multi-family residential units for which DEVELOPER dedicated land under this provision, the DEVELOPER shall be entitled to a pro-rata refund or reimbursement of any “overpayment” upon completion of all phases of the Property and final build out of said units and Property.
6. In any event, all required parkland shall be dedicated or cash in lieu of dedication shall be paid to CITY prior to the issuance of a building permit for the Property. DEVELOPER shall not be allowed to pull a building permit for the Property until the parkland dedication or cash payment is satisfied.

D. PAYMENT OF FEES FROM PARKLAND ZONE 1 TO PARKLAND ZONE 4 BY CITY

1. CITY recognizes that the McKinney Urban Village Tract is located within Parkland Zone 4 and the Park Dedication, which has been approved by the CITY Council hereby, is situated within Parkland Zone 1 and that acceptance of the Park Dedication benefits the City of McKinney as a whole as it will in part serve as a regional parkland destination.
2. If the McKinney Urban Village Tract was required to paid cash in lieu of this CITY Council approved Park Dedication, DEVELOPER would have been required to pay CITY \$747,054 using current CCAD values that estimate the land value per acre of land in Parkland Zone 4 at approximately \$152,460 per acre.
3. City will transfer future payments of cash in lieu of parkland dedication that are received from subsequent residential developments in Parkland Zone 1 from Parkland Zone 1 to Parkland Zone 4 as such payments in lieu of dedication are received for Parkland Zone 1 recreational requirements and until such time as a cumulative amount not to exceed \$747,054 has been transferred from Parkland Zone 1 to Parkland Zone 4 to compensate Parkland Zone 4 for the acceptance of the Park Dedication situated in Parkland Zone 1.

E. CITY DEVELOPMENT ORDINANCES

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

F. NO WAIVER

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

G. VARIANCES

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

H. INDEMNITY AND HOLD HARMLESS AGREEMENT

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

I. 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 the Property; and CITY shall be further authorized to file this instrument in the records of Collin County as a Mechanic's Lien against DEVELOPER'S property; and in the alternative, CITY shall be authorized to levy an assessment against DEVELOPER'S property for public improvements to be held as a tax lien against the Property by CITY.

J. ROUGH PROPORTIONALITY AND WAIVER OF CLAIMS.

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

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

K. CONTINUITY

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

L. ASSIGNABILITY

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

M. TERMINATION AND RELEASE

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

N. GENERAL PROVISIONS

1. DEVELOPER hereby relieves CITY of any responsibilities for any inadequacies in the preliminary plans, exhibits and cost estimate(s) supplied for the purpose of this Agreement, and further agrees that DEVELOPER will comply with CITY'S Subdivision Ordinance, Street Design Standards, Public Improvements Policy and any other applicable policies, rules, regulations and ordinances of CITY regarding development of Property.
2. DEVELOPER agrees that 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.
3. CITY agrees to record said Plat at such time as the Plat complies with the requirements set forth by the Subdivision Ordinance of CITY, and has been approved in the manner described therein.

CITY OF MCKINNEY

By:

TOM MUEHLENBECK
Interim City Manager

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

DEVELOPER:

McKINNEY MED CENTER, L.P., a Texas
Limited Partnership

By: Texas Land Management, L.L.C., a
Texas limited liability company, its general
partner

By: _____
JIM WILLIAMS, JR.
President

Executed: _____

THE STATE OF TEXAS
COUNTY OF COLLIN

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE ____ DAY OF _____, 20____.

Notary Public _____ County, Texas
My commission expires _____

THE STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on the ____ day of _____, 20____, by JIM WILLIAMS, JR., in his capacity as President of Texas Land Management, L.L.C., a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that Texas Land Management, L.L.C., is the general partner of; **McKINNEY MED CENTER, L.P.**, a Texas Limited Partnership, and that he executed the same on behalf of and as the act of the Limited Partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE ____ DAY OF _____, 20____.

Notary Public _____ County, ~~Texas~~
My commission expires _____

PREPARED IN THE OFFICES OF:

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

EXHIBIT "A"

*Property Description and Depiction of
McKinney Urban Village Tract*

EXHIBIT "B"

Parkland Dedication Exhibit

EXHIBIT "C"

Variances

1. DEVELOPER is hereby granted a variance from the mandate of Section 142-157(6) requiring that DEVELOPER convey land inside or outside of the boundaries of the development as long as the land is so located and in such proximity to the development so as to serve or benefit persons residing therein. Instead, DEVELOPER is hereby granted a variance thereto allowing DEVELOPER to dedicate parkland outside of the boundaries of the development and which is located within a different Parkland Dedication Zone from the development. This variance is limited solely to Lot 3, Block A, of the McKinney Medical Center addition containing approximately 9.788 acres of land, more or less, out of the William Hemphill Survey, Abstract No. 449, and the J. Butler Survey, Abstract No. 68, in the City of McKinney, Collin County, Texas.

2. No other variances for this Property are granted and none shall be allowed.