

**AFTER RECORDING, RETURN TO:**

City Secretary  
City of McKinney  
P.O. Box 517  
McKinney, TX 75069

**MAINTENANCE AGREEMENT FOR REQUIRED PUBLIC IMPROVEMENTS  
LAKE FOREST DRIVE & BLOOMDALE ROAD**

The City of McKinney, Texas, a home-rule municipal corporation ("City") and JFB McKinney/2003, Ltd., a Texas limited partnership ("Subdivider") enter into this Maintenance Agreement for the roadway improvements made to Lake Forest Drive & Bloomdale Road together with all appurtenances related thereto constructed to serve the Heatherwood Addition on the terms and conditions set forth herein (the "Agreement").

WHEREAS, Subdivider dedicated approximately 2.555 acres of land as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property") for the construction of portions of Lake Forest Drive and Bloomdale Road in accordance with that certain Facilities Agreement by and between the City and J. Baker Corporation dated May 3, 2004 and recorded as Clerk's Document Number 20040520000744960 in the Collin County Deed Records; and

WHEREAS, the paving contractor, ClayCon Construction LLC ("Paving Contractor"), that constructed the roadway improvements made to Lake Forest Drive and Bloomdale Road together with all appurtenances related thereto in, on, along, over, across, adjacent to and/or abutting the Property necessary to serve the development of the Property (the "Required Improvements") refused to timely pay for a maintenance bond; and

WHEREAS, the Required Improvements have been constructed and are ready for the City's inspection and possible acceptance; and

WHEREAS, the Subdivision Regulations adopted by the City require in Section 142-132 of the Code of Ordinances, City of McKinney, Texas, ("City Code") that the subdivider furnish the City a good and sufficient maintenance bond in the amount of 15 percent of the contract price of all public improvements to indemnify the City against any repairs that may be required for a period of two full years from the date of final acceptance of such improvements by the City; and

WHEREAS, Section 142-132 of the City Code further prohibits the acceptance of the improvements unless and until said maintenance bond is furnished to the City; and

WHEREAS, a contractor that posts a 15% maintenance bond assuring the maintenance of such public improvements is more likely than not to address defects in craftsmanship that exceed the amount of the maintenance bond so posted in order to protect its bonding capacity; and

WHEREAS, the Paving Contractor is unwilling to issue a maintenance bond on the Required Improvements; and

WHEREAS, the Subdivider is unable to identify, find or locate a surety company willing to issue a maintenance bond on the Required Improvements constructed by the Paving Contractor and/or its subcontractors (hereinafter referred to collectively as the "Contractor"); and

WHEREAS, Subdivider is willing to escrow funds with the City in the amount of 20 percent of the value of the Required Improvements constructed by the Contractor to indemnify the City from and against any repairs that may be required for a period of two full years from the date of final acceptance of the Required Improvements by the City; and

WHEREAS, Subdivider is willing to accept the responsibility as subdivider of the Property to make repairs to the Required Improvements constructed by the Contractor or, in the alternative, to reimburse the City its actual costs and expenses including compensation for City Staff's time and administration costs to make any repairs to the Required Improvements in the full amount of such repairs whether covered by the escrowed fund amount or otherwise for a period of two full years following the City's final acceptance of the Required Improvements.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

**Section 1. 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.

## **Section 2. Required Improvements**

This Agreement is for the Required Improvements located in the City of McKinney, Texas comprised of roadway improvements made to Lake Forest Drive and Bloomdale Road together with all appurtenances related thereto within and about the Property.

## **Section 3. Compliance with Applicable Laws, Statutes, Regulations and Ordinances**

Nothing contained in this Agreement shall be construed to relieve Subdivider of its obligation to develop the Property and construct the facilities, amenities, and roadway improvements in accordance with all applicable City, State and Federal Laws, Statutes, Regulations, Rules and Ordinances specifically including, but not limited to all permitting requirements, rules and guidelines issued by the City, the Texas Commission on Environmental Quality ("TCEQ"), the Environmental Protection Agency ("EPA"), the Federal Emergency Management Agency ("FEMA"), the U.S. Army Corps of Engineers ("Corps"), and any other governmental entity, agency or regulatory body ordinances.

## **Section 4. Subdivider's Maintenance Responsibilities**

Subdivider shall properly repair and/or maintain (hereinafter referred to collectively as either "repair" or "maintain"), at Subdivider's sole cost and expense, the Required Improvements constructed and installed by the Contractor for a period of two full years from the date of City's final acceptance of said Required Improvements ("Maintenance Period"). City will promptly notify Subdivider regarding any repairs about which the City becomes aware that is required to properly maintain the Required Improvements constructed and installed by the Contractor and as required by the City Code.

Subdivider shall immediately respond, no later than the close of the second business day following receipt of such notice, to any notice it receives from the City regarding any necessary repair that must be performed on the Required Improvements; and inform City whether and when it will perform such necessary repair on the Required Improvements and the anticipated date of completion. Subdivider shall as soon as is reasonably practicable perform any necessary repair on the Required Improvements arising from defective workmanship or materials used therein.

## **Section 5. Escrow**

- A. Subdivider shall escrow a cash deposit with the CITY at the time of execution of this Agreement in the amount of Eighty-Three Thousand Seven Hundred Thirty and No One Hundredths Dollars (\$83,730.00) assuring maintenance of the Required Improvements in accordance with Section 142-132 of the City Code. In the alternative to a cash deposit, Subdivider may provide a standby Letter of Credit (“LOC”) issued by a state or national banking association acceptable to City in such amount, which shall be in the form attached hereto as Exhibit B, assuring maintenance of the Required Improvements in accordance with Section 142-132 of the City Code. The amount of the cash deposit or LOC pursuant to this Agreement shall be computed as follows: Twenty percent (20%) of the of the total cost of constructing the Required Improvements as reflected in the Affidavit of Value provided by the Paving Contractor, a copy of which affidavit is attached hereto as Exhibit C and fully incorporated herein by reference, (the “Affidavit”). City shall require a local banking association to be named as a confirming bank for purposes of presentment and collection.
- B. The only requirements for presentment of any LOC accepted hereunder by City shall be the presentation of the original thereof, together with an affidavit executed by the City Manager stating that Subdivider has failed or refused to pay for the repair of the Required Improvements or has otherwise failed to timely renew an expiring LOC under the terms of this Agreement. **If Subdivider timely repairs and maintains the Required Improvements under the terms of this Agreement and as required by the Subdivision Ordinance the City shall return the full amount of the cash deposit held by City to Subdivider or shall return the LOC to Subdivider upon completion of the Maintenance Period for the Property.**
- C. In the event the Subdivider shall fail or refuse to repair the Required Improvements during the Maintenance Period under this Agreement and as required by the Subdivision Ordinance, the Subdivider shall be solely liable to pay for the cost of repairing and maintaining the Required Improvements, including but not limited to, engineering, legal, administrative and contingent costs, which the City may sustain as a result of the failure of the Subdivider to repair and maintain the Required Improvements. The Subdivider further agrees that the City, at its option, shall have the right to enter upon Subdivider’s property and repair and maintain, or pursuant to public advertisement and receipt of bids, cause to be repaired and maintained the Required Improvements in the event the Subdivider fails or refuses to do so in accordance with the terms of the Agreement. The Subdivider shall be liable hereunder to reimburse the City the total cost to repair the Required Improvements plus such other and further costs and expenses enumerated

in this Paragraph. Subdivider specifically authorizes the City to utilize the LOC or the cash deposit escrowed pursuant to this Agreement to pay for the repair and maintenance of the Required Improvements by City or any third party with whom City contracts during the Maintenance Period. Upon completion of the Maintenance Period and the payment of any and all costs and expenses associated with the repair and maintenance of the Required Improvements from the LOC or the cash deposit, any unused amount of the escrowed funds held by City shall be returned to Subdivider.

- D. If the Subdivider provides a LOC rather than a cash deposit, the Subdivider agrees to renew the LOC prior to its expiration so the LOC shall remain in full force and effect during the entire term of this Agreement. Upon renewal, the amount of the LOC shall be in its original amount.
- E. If the LOC expires prior to the end of the Maintenance Period, Subdivider shall provide the City evidence that the LOC has been renewed at least thirty (30) days prior to its scheduled expiration date. If Subdivider fails to timely provide City with such verification of renewal City shall be authorized to immediately, and at any time prior to the expiration date of the LOC, make presentment of the LOC accepted hereunder by City by presenting the original thereof, together with an affidavit executed by the City Manager stating that Subdivider is in default under the terms of this Agreement

#### **Section 6. City Notice of Repair and Payment by Subdivider**

- A. Should Subdivider fail to promptly repair the Required Improvements under this Agreement, City shall have the right but not a corresponding obligation to enter upon the Property and perform such repairs to the Required Improvements as may be necessary. Prior to undertaking or performing such repairs, City shall, except in the event of necessary emergency repairs, give Subdivider notice regarding the necessary repairs to the Required Improvements and afford Subdivider the opportunity to address and undertake such repairs.
- B. Subdivider shall immediately respond, no later than the close of the second business day thereafter, to any notice it receives from the City regarding any necessary repair that must be performed on the Required Improvements; and inform City whether and when Subdivider will perform such necessary repair on the Required Improvements and the anticipated date of completion. Subdivider shall as soon as is reasonably practicable perform any necessary repair on the Required Improvements arising from defective workmanship or materials used therein.

- C. If Subdivider shall fail or refuse to timely perform the necessary repair and the City determines to enter upon the Property and perform any necessary repair on the Required Improvements, City shall notify Subdivider of this decision prior to entering upon the Property except in the event of an emergency. Upon receipt of such notice Subdivider shall be deemed to have consented to City undertaking such repair to the Required Improvements and Subdivider shall be responsible for all costs and expenses incurred by City related thereto specifically including, but not limited to: engineering and design costs; construction, equipment and materials costs required to perform the repair; and, all labor costs, overhead and profits of the contractor performing such work as well as the administrative costs of the City incurred in the performance of said repair. The City's administrative cost shall be the lesser of its actual cost to administer such work or an amount equal to 20 percent of the total cost of the repair of the Required Improvements.
- D. City shall forward invoices to Subdivider for the necessary repair of the Required Improvements as City incurs said costs and expenses. Subdivider shall pay City for such costs and expenses within fourteen (14) days after receipt thereof from City. If Subdivider fails to timely pay and reimburse City for such costs and expenses as described herein-above then City shall be entitled to draw down against the cash deposit or present the LOC for payment.
- E. Subdivider shall within thirty (30) days after drawing down on the cash deposit or presentment of the LOC by City restore the amount of the cash deposit to its original amount or provide the City with a replacement LOC in the amount of the original LOC if the Maintenance Period has not yet expired unless otherwise agreed in writing by the City Engineer. City will reimburse to Subdivider any monies remaining from the cash deposit or the LOC after the payment of all costs and expenses incurred by City in the repair of the Required Improvements.
- F. In the event Subdivider's cash deposit or LOC is less than the actual cost and expense to City to repair the Required Improvements during the Maintenance Period including, but not limited to, all necessary related costs such as acquiring payment bonds, performance bonds, maintenance bonds and insurance coverage for the repair and maintenance of the Required Improvements, Subdivider shall reimburse the City for any and all additional costs and expenses ("Underpayment"). Subdivider shall reimburse the City the total amount of any Underpayment within thirty (30) days after the City provides Subdivider notice of Underpayment. If Subdivider fails or refuses to timely reimburse the City for any Underpayment, City shall be authorized to revoke certificates of occupancy previously issued for the Property and shall

further be entitled to issue stop work orders and withhold the issuance of any further permits and certificates of occupancy until Subdivider or Subdivider's successor-in-interest reimburses City for the Underpayment.

## **Section 7. Notice**

Notice to Subdivider required under this Agreement shall be delivered as follows:

JFB McKinney/2003, Ltd.  
c/o: Michael D. Hesse  
Hesse & Hesse, PC  
1518 Legacy Drive, Suite 250  
Frisco, Texas 75034

Notice to City required under this Agreement shall be delivered as follows:

City of McKinney  
P.O. Box 517  
McKinney, TX 75069

## **Section 8. Indemnity**

**Subdivider, its successors, assigns, vendors, grantees, and/or trustees shall indemnify, protect and hold harmless the City and its officials, officers and employees from all suits, actions, losses, judgments, damages, claims or liability of any character, type or description, including, but not limited to, all expenses of litigation, attorneys' fees, court costs, and penalties of any kind or nature arising directly or indirectly from the existence, operation and/or enforcement of this Agreement or arising from any actions or inactions of Subdivider and/or its agents, servants, employees, contractors, and suppliers in connection herewith including, but not limited to, any damages to the Property, or to any residence, property or person resulting from or arising out of Subdivider's repair of, or failure to repair, the Required Improvements. This indemnity includes claims or fines made by any state or federal agency including the Texas Commission on Environmental Quality, Environmental Protection Agency, Federal Emergency Management Association and the Texas State Department of Health arising out of, related to or regarding the repair of the Required Improvements.**

## **Section 9. Rough Proportionality and Waiver of Claims.**

Subdivider 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 Subdivider, regarding Subdivider's rights under Texas and federal law. Subdivider 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.) Subdivider 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, Subdivider 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 repair of the Required Improvements made herein constitutes a proportional allocation of Subdivider's responsibility for utility improvements for the Property. Subdivider 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. Subdivider further releases City from any and all claims based on excessive or illegal exactions; it being agreed that Subdivider's maintenance obligations is roughly proportional or roughly proportionate to the demand that is placed on the utility systems by Subdivider's Property. Subdivider 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 Subdivider acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. **Subdivider shall indemnify and hold harmless City from any claims and suits of third parties, including but not limited to Subdivider's successors, assigns, grantees, vendors, trustees or representatives, brought pursuant to this Agreement or the claims or types of claims described in this paragraph.**

## **Section 10. Miscellaneous Provisions**

- A. By signing this Agreement, Subdivider grants the City permission to enter on the Property and perform Subdivider's obligations under Sections 4 and 6.
- B. Subdivider agrees to reimburse the City within 14 days of receipt of invoice from the City, for any expenses the City incurs to perform Subdivider's maintenance obligations under this Agreement for a period of two full years following the City's final acceptance of the Required Improvements.



- C. The City may recover from Subdivider any expenses it incurs to enforce this Agreement. This right of recovery includes but is not limited to attorneys' fees, costs of court and expenses.
- D. This Agreement shall be construed and enforced in accordance with Texas law. Venue in any litigation concerning this Agreement shall be proper in Collin County, Texas.
- E. This Agreement shall be a covenant running with the Property and shall be binding on the Subdivider and its successors, assigns or any other person or party claiming any right to possession, occupation or operation of the Property or any uses in, on or about the Property by or through the Subdivider.
- F. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

**AGREED TO BY:**

***CITY OF McKINNEY***

By: \_\_\_\_\_  
TOM MUEHLENBECK  
Interim City Manager

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

ATTEST:

\_\_\_\_\_  
SANDY HART, TRMC, MMC  
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 **JOSE MADRIGAL**, Deputy City Manager of the **CITY OF MCKINNEY**, a Texas municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

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

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

*[Signatures continued on following page.]*

JFB McKINNEY/2003, LTD.,  
a Texas limited partnership

By: J. Baker Corporation,  
a Texas corporation  
Its: General Partner

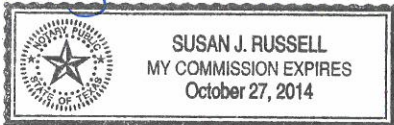
By: Michael D. Hesse  
Michael D. Hesse,  
Authorized Representative

Date Signed: May 14, 2014

THE STATE OF TEXAS  
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared Michael D. Hesse, in his capacity as Authorized Representative of J. Baker Corporation, a Texas corporation, the General Partner of JFB McKinney/2003, Ltd., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the partnership's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 14<sup>th</sup> DAY OF May, 2014.



Susan J. Russell  
Notary Public, Collin County, Texas  
My commission expires 10-27-14

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

### Metes and Bounds Description RIGHT-OF-WAY DEDICATION BLOOMDALE ROAD and LAKE FOREST DRIVE

BEING a 2.554 acre tract of land situated in the Andrew Stapp Survey, Abstract No. 833, City of McKinney, Collin County, Texas, and being part of a 130.3106 acre tract of land described in deed to JFB McKinney/2003, Ltd., as recorded in Volume 5728, Page 922, said 2.554 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod found for the southeast corner of a 20.22 acre tract of land described in deed to YSIS Partners, LP, as recorded in Volume 5863, Page 1150 of said Deed Records and the northeast corner of a 19.137 acre tract of land described in deed to McKinney Heatherwood III, LTD, as recorded in Instrument 20100303000202250 of said Deed Records;

THENCE North 00 degrees 05 minutes 04 seconds East, with the east boundary line of said 20.22 acre tract, a distance of 1210.12 feet to a point for corner;

THENCE North 45 degrees 18 minutes 59 seconds West, with the northeast boundary line of said 20.22 acre tract, a distance of 28.09 feet to a point for corner;

THENCE South 89 degrees 16 minutes 58 seconds West, with the north boundary line of said 20.22 acre tract, a distance of 706.97 feet to the northwest corner of said 20.22 acre tract, said corner being in the east boundary line of a 62.949 acre tract of land described in Instrument 20101026001165470 of said Deed Records;

THENCE North 00 degrees 43 minutes 02 seconds West, with the east boundary line of said 62.949 acre tract, a distance of 123.33 feet to a 1/2-inch iron rod found for the northeast corner of said 62.949 acre tract, said corner being in the north boundary line of said 130.3106 acre tract and the center of Bloomdale Road, an undedicated Public Road;

THENCE North 89 degrees 04 minutes 31 seconds East, with the north boundary line of said 130.3106 acre tract and the center of said Bloomdale Road, a distance of 743.74 feet to a 1/2-inch iron rod found for the northeast corner of said 130.3106 acre tract, said corner being in the west right-of-way line of Lake Forest Drive (Farm to Market Road 1461) a 90 ft. right-of-way at this point;

THENCE South 00 degrees 05 minutes 04 seconds West, with the east boundary line of said 130.3106 acre tract and the west right-of-way line of said Lake Forest Drive, a distance of 1356.15 feet to a point for corner;

THENCE South 89 degrees 16 minutes 58 seconds West, a distance of 15.00 feet to the POINT OF BEGINNING AND CONTAINING 111,265 square feet or 2.554 acres of land.

**EXHIBIT B**

**LETTER OF CREDIT FORM**

IRREVOCABLE STANDBY LETTER OF CREDIT NO. \_\_\_\_\_ [##] \_\_\_\_\_

APPLICANT:  
JFB McKinney/2003, Ltd.  
c/o: Michael D. Hesse  
Hesse & Hesse, PC  
1518 Legacy Drive, Suite 250  
Frisco, Texas 75034

INITIAL EXPIRATION DATE:  
\_\_\_\_\_, 2014

BENEFICIARY:  
The City of McKinney  
222 N. Tennessee Street  
McKinney, Texas 75069  
Attn: Jason Gray  
City Manager

AMOUNT: \$ 83,730.00  
Eighty-Three Thousand Seven Hundred  
Thirty Dollars and Zero Cents

[Month] [day], 20\_\_\_\_  
Gentlemen:

We hereby establish our irrevocable Letter of Credit No. \_\_\_\_\_ [##] \_\_\_\_\_ in favor of the City of McKinney, Texas ("Beneficiary") at the request and for the account of JFB McKinney/2003, Ltd. ("Applicant"), for the amount of Eighty-Three Thousand Seven Hundred Thirty and No One Hundredths Dollars (\$83,730.00). This Letter of Credit is available by your draft drawn at sight on [Financial Institution Name] accompanied by the following documents:

Beneficiary's manually signed statement on its letterhead reading exactly as follows:

"We hereby certify that a default has occurred under the Maintenance Agreement for certain improvements made to Lake Forest Drive & Bloomdale Road installed in accordance with that certain Facilities Agreement by and between the City and J. Baker Corporation dated May 3, 2004 and recorded as Clerk's Document Number 20040520000744960 in the Collin County Deed Records, and we have notified JFB McKinney/2003, Ltd., the Applicant, by certified letter of such default."

The undersigned shall have no obligation or duty to investigate whether or not an event of default has occurred and shall have no liability to the Applicant, in such regard.

All drafts under this Letter of Credit shall be marked "Drawn under Irrevocable Letter of Credit No. \_\_\_\_\_ [##] \_\_\_\_\_ dated [Month] [day], 20\_\_\_\_ issued by \_\_\_\_\_, \_\_\_\_\_, Texas."

This Letter of Credit sets forth in full the terms of our undertaking to you. Such undertaking shall not in any way be modified, amended, or amplified by reference to any document or instrument referred or related to herein and any such reference shall not be deemed to incorporate herein by reference any such document or instrument.

Except as expressly provided herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500.

We hereby engage with you that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented at our offices situated in the McKinney-Plano-Dallas, Texas area at \_\_\_\_\_, \_\_\_\_\_, Texas \_\_\_\_\_. The Letter of Credit will be paid in immediately available funds before 5:00 p.m. Dallas, Texas, time on the next Banking Day (as hereinafter defined) occurring after the Banking Day on which the Letter of Credit is presented. "Banking Day" means a day on which commercial banks are open for business in Dallas, Texas.

Sincerely,

\_\_\_\_\_  
[Name of Employee Authorized to Bind the Institution]  
[Financial Institution Officer or  
Employee's Title]



**LEGACYTEXAS**  
BANK

**LETTER OF CREDIT**

IRREVOCABLE STANDBY LETTER OF CREDIT NO. 934

May 8, 2014

**APPLICANT:**

JFB McKinney/2003, Ltd.  
c/o: Michael D. Hesse  
Hesse & Hesse, PC  
1518 Legacy Drive, Suite 250  
Frisco, Texas 75034

**EXPIRATION DATE:**

May 8, 2016

**BENEFICIARY:**

The City of McKinney  
222 N. Tennessee Street  
McKinney, Texas 75069  
Attn: Jason Gray  
City Manager

**AMOUNT: \$ 83,730.00**

Eighty-Three Thousand Seven Hundred  
Thirty Dollars and Zero Cents

Gentlemen:

We hereby establish our irrevocable Letter of Credit No. 934 in favor of the City of McKinney, Texas ("Beneficiary") at the request and for the account of JFB McKinney/2003, Ltd. ("Applicant"), for the amount of Eighty-Three Thousand Seven Hundred Thirty and No One Hundredths Dollars (\$83,730.00). This Letter of Credit is available by your draft drawn at sight on LegacyTexas Bank accompanied by the following documents:

Beneficiary's manually signed statement on its letterhead reading exactly as follows:

"We hereby certify that a default has occurred under the Maintenance Agreement for certain improvements made to Lake Forest Drive & Bloomdale Road installed in accordance with that certain Facilities Agreement by and between the City and J. Baker Corporation dated May 3, 2004 and recorded as Clerk's Document Number 20040520000744960 in the Collin County Deed Records, and we have notified JFB McKinney/2003, Ltd., the Applicant, by certified letter of such default."

The undersigned shall have no obligation or duty to investigate whether or not an event of default has occurred and shall have no liability to the Applicant, in such regard.

*A wide open range of possibilities*

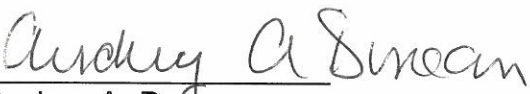
All drafts under this Letter of Credit shall be marked "Drawn under Irrevocable Letter of Credit No. 934 dated April 14, 2014 issued by LegacyTexas Bank, Plano, Texas."

This Letter of Credit sets forth in full the terms of our undertaking to you. Such undertaking shall not in any way be modified, amended, or amplified by reference to any document or instrument referred or related to herein and any such reference shall not be deemed to incorporate herein by reference any such document or instrument.

Except as expressly provided herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500.

We hereby engage with you that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented at our offices situated in the McKinney-Plano-Dallas, Texas area at 707 E. Arapaho Road, Richardson, Texas 75081. The Letter of Credit will be paid in immediately available funds before 5:00 p.m. Dallas, Texas, time on the next Banking Day (as hereinafter defined) occurring after the Banking Day on which the Letter of Credit is presented. "Banking Day" means a day on which commercial banks are open for business in Dallas, Texas.

Sincerely,

  
\_\_\_\_\_  
Audrey A. Dufcan  
Executive Vice President

*A wide open range of possibilities*



**EXHIBIT C**

Affidavit of Value



**AFFIDAVIT OF VALUE**

STATE OF TEXAS §  
COUNTY OF COLLIN §

TO: CITY OF MCKINNEY (ENGINEERING DEPT )  
P.O. BOX 517 (221 N. TENNESSEE STREET, 75069)  
MCKINNEY, TEXAS 75070

NAME OF PROJECT: Lake Forest + Bloomdale Road

DEVELOPER OF PROJECT: JFB McKinney 2003 Ltd

DATE OF CONSTRUCTION: \_\_\_\_\_

PAVING  
CONTRACTOR: Clay Co Construction  
ADDRESS: P.O. Box 145  
CITY: Collinsville, TX 76233  
EMAIL: \_\_\_\_\_

DRAINAGE/Water/Sewer  
Precision Management + Construction  
11401 CR 212  
Forney, TX 75126

WATER Street Lights  
CONTRACTOR: Vaquero Underground Services  
ADDRESS: 3515 Bennett Road  
CITY: Howe, TX 75459  
EMAIL: \_\_\_\_\_

SEWER Drainage/Erosion  
Schneider Siltation  
900 Circle in the Woods  
Fairview, TX 75069

VALUE OF CONSTRUCTION:

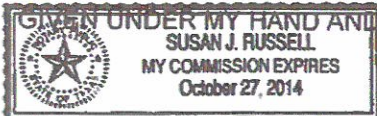
PAVING: \$ 418,633.28  
DRAINAGE: \$ 270,386.00  
WATER: \$ 156,195.00  
SEWER: \$ \_\_\_\_\_  
TOTAL \$ 845,214.28

ATTACH CHECK IN THE AMOUNT  
OF \$ 29,582.50  
(3.5% OF CONTRACT) FOR  
INSPECTION FEES.  
(Section 2-1(b) Code of Ordinances)

I hereby certify that the above value of the construction is accurate.

DEVELOPER'S SIGNATURE: Michael D. Hesse, Authorized Representative of J. Baker Corporation, General Partner of JFB McKinney 2003, Ltd.

Before me, the undersigned authority, on this day personally appeared Michael D. Hesse known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledge to me that he/she has executed the same for purposes and consideration therein expressed.



SEAL OF OFFICE THIS 24th DAY OF January, A.D., 2014  
Susan J. Russell  
NOTARY PUBLIC, in and for the State of Texas  
My Commission Expires \_\_\_\_\_