

AFTER RECORDING, RETURN TO:

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

City of McKinney, Texas
FIRST AMENDED FACILITIES AGREEMENT
(Defer Construction of Required Improvements)

Timber Creek Addition

THIS FIRST AMENDED FACILITIES AGREEMENT ("Agreement"), entered into effective the ____ day of _____, 2013, by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and **TIMBER CREEK PROPERTIES, LLC**, a Delaware limited liability company, whose address is 14755 Preston Road, Suite 710, Dallas, Texas 75254, ("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 subdivision to be known as ***Timber Creek Addition*** 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 required to serve the property being developed that must be dedicated to the City ("Public Improvements") or has

entered into a Facilities Agreement and guaranteed to the satisfaction of the CITY such improvements will be installed; and

WHEREAS, DEVELOPER requests the recording of the Record Plat of a subdivision in the CITY to be known as **Timber Creek Addition**, which subdivision may be developed and platted in phases (hereinafter referred to as the "Plat," whether one or more) prior to the completion and acceptance of certain of the Public Improvements required to serve the subdivision as are identified in attached Exhibits B and C (the "Required Improvements"); and

WHEREAS, DEVELOPER agrees that the Required Improvements identified in attached Exhibits B and C will be installed after recordation of said Plat under the guarantees provided to the CITY as set forth herein.

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. AMENDMENT

This Agreement specifically replaces and supersedes that certain Facilities Agreement for Timber Creek Addition entered into by and between the City of McKinney, Texas and Jobe Company, Inc. on or about the 10th day of October, 2002, and filed for record with the Collin County Clerk's Office on October 17, 2002 and recorded as Document No. 2002-0151295.

B. PROPERTY

This Agreement is for Property located in the City of McKinney, on both sides of Hardin Boulevard in an area generally north of Wilmeth Road and generally south of Bloomdale Road containing approximately 211.792 acres of land, more fully described in Exhibit A attached hereto and fully incorporated herein by reference (the "Property").

C. PUBLIC IMPROVEMENTS

DEVELOPER agrees to complete the Required Improvements for the subdivision to be known as **Timber Creek Addition** within ten (10) year(s) from and after the date of this Agreement, unless required sooner as provided herein below in this Agreement and the attached Exhibits, according to the construction plans regarding the construction of Required Improvements for said subdivision, which construction plans are on file with and approved by the City Engineer (the "Plans").

All Public Improvements, including utilities, drainage easements, sidewalks, street lighting, street signage, park land dedication, hike and bike trails and all other required improvements and dedications, for any phase of development within the

Property shall be provided by DEVELOPER at no cost to CITY, in accordance with the CITY's Subdivision Ordinance and as approved by CITY Engineer, prior to issuance of any Certificate of Occupancy for structures within that phase of development. Engineering studies, plan/profile sheets, and other construction documents shall be provided by DEVELOPER at the time of platting as required by the Subdivision Ordinance. Such plans shall be approved by CITY Engineer or his agent prior to the issuance of a Development Permit.

1. THOROUGHFARES

DEVELOPER shall dedicate, as a part of the Public Improvements and at no cost to CITY, that amount of right-of-way along perimeter roadways adjacent to the PROPERTY (as depicted on Exhibit B-1 attached hereto and incorporated herein by reference for all purposes allowed by law) which dedication will yield one-half ($\frac{1}{2}$) of the ultimate right-of-way width that is not already dedicated by plat or legal instrument as road right-of-way at such time as the PROPERTY is platted or developed. If platting or development of the PROPERTY is delayed and the perimeter roadway right-of-way described above has not previously been dedicated, DEVELOPER shall dedicate the right-of-way along perimeter roadways adjacent to the PROPERTY as required herein above upon receipt of the written request of the CITY's Engineer. DEVELOPER shall dedicate all right-of-way for the interior streets serving the PROPERTY at the time of development. Specific uses may require additional right-of-way dedication at the time of site plan approval.

DEVELOPER shall construct, as part of the Public Improvements and at no cost to CITY, roadway improvements ("Roadway Improvements") in accordance with the CITY's Subdivision Ordinance and Street Design Standards then in effect. All roadway construction plans must be approved by CITY's Engineer or his agent prior to approval of a Development Permit for any portion of the PROPERTY being developed. The Roadway Improvements that are being deferred by this Agreement to allow the early recording of the Record Plat are described on the attached Exhibit B, which is fully incorporated herein by reference.

2. UTILITIES

DEVELOPER shall dedicate all easements and construct, at no cost to CITY, all necessary utility lines specifically including, but not limited to, any necessary off-site and oversize utility improvements ("Utility Improvements") to provide service to the PROPERTY in accordance with CITY standards, at such time as demand of the development on the PROPERTY requires or concurrent with the development of the PROPERTY, as determined by CITY. All utility easements dedicated to the CITY shall be free and clear of any and all encumbrances or restrictions on the CITY's use of the surface and

subsurface areas of said utility easements that may in any way limit or restrict the CITY's access to, and use and enjoyment of, such utility easements including, but not limited to, the manner by which utilities may be accessed, installed, maintained, repaired and/or replaced in said utility easements

DEVELOPER shall construct with the Public Improvements required to be constructed for the recording of the next plat that is approved by the Planning and Zoning Commission or City Council, regardless of whether the application for such plat has already been submitted to CITY for review, a sanitary sewer line extending from the location of the current sanitary sewer main within the PROPERTY to the southern edge of the 11-Acre Tract (hereinafter defined) and in accordance with the requirements of the CITY's Master Sewer Plan. The approximate location of said sanitary sewer line extending from the location of the current sanitary sewer main within the PROPERTY to the southern edge of the 11-Acre Tract is reflected on Exhibit C-1, attached hereto and incorporated herein by reference.

DEVELOPER shall construct 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 except that water lines along collector streets shall be a minimum twelve inches (12") in diameter. Notwithstanding the foregoing, all utility lines shall conform to the CITY's Master Water and Sewer Plans. In addition, DEVELOPER shall cooperate with CITY to allow utility lines to be upsized at no additional cost or expense to DEVELOPER in order to allow CITY to better serve adjacent and upstream properties and thereby avoid the need to replace utility lines before their useful life expectancy has been reached or run parallel utility lines. All utility plans and improvements are subject to the approval of CITY's Engineer. The Utility Improvements that are being deferred by this Agreement to allow the early recording of the Record Plat are described on the attached Exhibit C, which is fully incorporated herein by reference.

3. HIKE AND BIKE TRAILS

DEVELOPER 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 and parkland sites. Final location and all hike and bike trail construction plans shall be subject to review and approval by the Director of Parks, Recreation, and Open Space, and as specified in greater detail in the attached Exhibit B, which is fully incorporated herein by reference. All hike

and bike trail construction plans must be approved by CITY's Parks, Recreation, and Open Space Director or his agent prior to approval of a Development Permit for any portion of the PROPERTY being developed.

D. PERFORMANCE BOND; LETTER OF CREDIT

This provision has been intentionally omitted because no Public Improvements are being deferred by this Agreement.

E. PARK DEDICATION

1. DEVELOPER shall dedicate required parkland concurrent with platting and development of the Property to provide for the recreational needs created by such development as set forth herein and as determined by the CITY's Parks Department. The approved parkland site shall be shown on the plat as a fee simple conveyance to the CITY and shall be conveyed to the CITY by Special Warranty Deed free of all encumbrances and at no cost to the CITY. DEVELOPER shall also provide the CITY with an owner's title policy of insurance in an amount equal to the value of the land conveyed, which amount shall be determined by the CITY.
2. The DEVELOPER shall also be responsible for, and pay the costs of, providing convenient access by improved streets, sidewalks and, adequate drainage improvements so that the site is suitable for the purpose intended, and shall provide water, sewer and electrical utilities to the Property 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, Recreation, and Open Space Department all or part of the DEVELOPER'S parkland dedication requirements may be satisfied by the payment of money in lieu of land. The amount of cash to be paid in lieu of parkland dedication shall be determined based upon the Collin Central Appraisal District's most recent appraisal of all or part of the Property at the time the fees are paid for any future phase of development instead of and rather than the appraisal value of the Property at the time of execution of this Agreement.
4. DEVELOPER may pay cash in lieu of dedication in advance of any phase of development for which the CITY's Parks Department has approved fees in lieu of dedication, based on the CITY ordinance requirement of one (1) acre of parkland dedication, outside of any floodplain on the Property, for each fifty (50) single-family residential lots by paying an estimated amount equal to the value of the Property established by the most recent appraisal of all or part of the Property made by the central appraisal district. DEVELOPER acknowledges and understands that the calculations regarding required parkland dedication and fees in lieu of dedication shall change if the number of single-family

residential lots is changed. In the event of an increase in the number of single-family residential lots for any phase(s) of the Property following DEVELOPER's pre-payment of the cash in lieu of 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 single-family residential lots for which DEVELOPER prepaid cash in lieu of dedication 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 lots and Property.

5. In any event, all required parkland shall be dedicated or cash in lieu of dedication shall be paid to CITY prior to the platting of the last phase of the Property. DEVELOPER shall not be allowed to file the plat for the last phase of the Property until the parkland dedication or cash payment is satisfied.

F. 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.

G. NO WAIVER

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

H. 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 G, if any, are granted by CITY for this subdivision and/or development. If no variances are granted, Exhibit G shall state "No variances for this Property are granted and none shall be allowed."

I. 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 Public Improvements.

J. LIEN; ASSESSMENT

In the event DEVELOPER fails to comply with any of the provisions of this Agreement within a particular phase of development of the Property, CITY shall be 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.

K. 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 roadway and utility improvements made herein constitutes a proportional allocation of DEVELOPER's responsibility for roadway and utility 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 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 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.**

L. 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.

M. 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.

N. TERMINATION AND RELEASE

Upon satisfactory completion by DEVELOPER and final acceptance by CITY of all requirements of this Agreement as to any phase of development within the Property, this Agreement shall terminate as to such phase of development and CITY will execute a partial release of this Agreement as to such phase of development and the Property included therein in favor of DEVELOPER, its heirs, successors, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future. Otherwise, this Agreement shall not terminate until the requirements of all parties have been fulfilled.

O. MAINTENANCE BOND

Prior to final acceptance of improvements to Property, DEVELOPER 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.

P. 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 construction shall not begin on any proposed building improvements prior to City Council approval of this Agreement.
3. DEVELOPER agrees that all coordination required with public and/or private utility agencies to eliminate conflicts with proposed street grades or underground improvements shall be the responsibility of DEVELOPER. Likewise, coordination with agencies requiring special conditions (i.e., railroads and the Texas Department of Transportation) shall be the responsibility of DEVELOPER.
4. DEVELOPER agrees that improvements to Property as set forth herein shall be completed within ten (10) year(s) from the date of approval of this Agreement by the McKinney City Council. Unless otherwise specified in this Agreement or an attachment hereto, it is understood that any obligation on the part of CITY to make any refunds shall cease upon the expiration of the ten (10) year(s), except when extended for good cause and agreed to in writing by CITY and DEVELOPER.
5. DEVELOPER shall provide park land to CITY or pay money to CITY in lieu of dedicating park land in accordance with Section 142-158 of the Subdivision Regulations and as provided in Section E, herein-above, as such requirements may be modified by Section 2 of Exhibit G, Variances, attached hereto and incorporated herein by reference for all purposes allowed by law.
6. Save and except as specifically provided to the contrary herein-above, it is specifically understood and agreed that the Property may be developed and platted in phases. Required Improvements for each such phase shall be provided as required herein and in accordance 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. CITY agrees to record the plat for each such phase of development of the Property 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: _____
JASON GRAY
City Manager

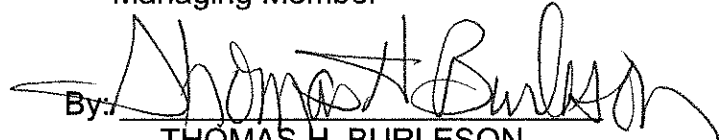
Date Signed: _____

ATTEST:

SANDY HART, TRMC, MMC,
City Secretary
BLANCA I. GARCIA
Assistant City Secretary

TIMBER CREEK PROPERTIES, LLC,
a Delaware limited liability company

By: **FORESTAR (USA) REAL ESTATE
GROUP INC.,** a Delaware
corporation,
Managing Member

By: 
THOMAS H. BURLESON
Executive Vice President

Date Signed: APRIL 19, 2013

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THE STATE OF TEXAS,
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared JASON GRAY, 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 _____, 2013.

Notary Public _____ County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF DALLAS

This instrument was acknowledged before me on the 19th day of April, 2013, by THOMAS H. BURLESON, in his capacity as Executive Vice President of *Forestar (USA) Real Estate Group Inc.*, a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that *Forestar (USA) Real Estate Group Inc.*, is the Managing Member of **TIMBER CREEK PROPERTIES, LLC**, a Delaware limited liability company, and that he executed the same on behalf of and as the act of said company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 19th DAY OF April, 2013.

Siromi C.R. Nadarajah
Notary Public Dallas County, Texas
My commission expires 10/4/16

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

LAND DESCRIPTION

BEING a tract of land situated in the W.M.B. Tucker Survey, Abstract No. 911, the H. Tucker Survey, Abstract No. 907 and the Meredith Hart Survey, Abstract No. 371, City of McKinney, Collin County, Texas and being a portion of a tract of land described in instrument to Priority Development, L.P. as recorded in Volume 5203, Page 6230 and Volume 5203, Page 6224 Deed Records Collin County, Texas and being more particularly described as follows;

BEGINNING at a 5/8 inch iron rod found with cap stamped "Huitt-Zollars" at the southwest corner of Lot 12, Block D of the Record Plat of Timber Creek Phase 1, an addition to the City of McKinney as recorded in Cabinet P, Page 713 Plat Records Collin County, Texas;

THENCE North 89 degrees 19 minutes 59 seconds West a distance of 168.27 feet to a point for corner;

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

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

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

THENCE North 06 degrees 10 minutes 24 seconds East a distance of 479.08 feet to a point for corner;

THENCE North 74 degrees 18 minutes 18 seconds West a distance of 13.74 feet to a point for corner;

THENCE North 10 degrees 35 minutes 40 seconds East a distance of 37.93 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

THENCE South 89 degrees 11 minutes 20 seconds West a distance of 784.35 feet to a 1/2 inch iron rod found;

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

THENCE South 89 degrees 27 minutes 01 seconds West a distance of 195.68 feet to a 1/4 inch iron rod found;

THENCE North 01 degrees 24 minutes 43 seconds West a distance of 1631.52 feet to a 1/4 inch iron rod found;

THENCE South 88 degrees 35 minutes 17 seconds West a distance of 50.00 feet to a 1/4 inch iron rod found;

THENCE North 01 degrees 24 minutes 43 seconds West a distance of 871.62 feet to a point for corner;

THENCE North 89 degrees 32 minutes 28 seconds East a distance of 1243.53 feet to a point for corner;

THENCE North 89 degrees 15 minutes 09 seconds East a distance of 505.12 feet to a point for corner at the beginning of a curve to the right having a central angle of 41 degrees 43 minutes 00 seconds a radius of 1050.00 feet and being subtended by a chord which bears South 69 degrees 53 minutes 21 seconds East a distance of 747.72 feet;

THENCE along said curve to the right an arc distance of 764.50 feet to a point for corner at the end of said curve;

THENCE South 49 degrees 01 minutes 51 seconds East a distance of 294.53 feet a point for corner at the beginning of a curve to the left having a central angle of 10 degrees 00 minutes 00 seconds a radius of 1050.00 feet and being subtended by a chord which bears South 54 degrees 01 minutes 51 seconds East a distance of 183.03 feet;

THENCE along said curve to the right an arc distance of 183.26 feet to a point for corner at the end of said curve;

THENCE South 59 degrees 01 minutes 51 seconds East, passing at a distance of 231.21 feet a 5/8 inch iron rod found with cap stamped "Huitt-Zollars" at the southwest corner of a tract of land described in instrument to Unicorn Land and Cattle Company as recorded in Volume 5527, Page 1233 (D.R.C.C.T.) and continuing in all a distance of 508.72 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars" at the southeast corner of said Unicorn Land and Cattle Company tract;

THENCE South 01 degrees 17 minutes 30 seconds West a distance of 1357.40 feet to a point for corner;

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

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

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

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

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

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

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

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

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

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

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

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

THENCE South 00 degrees 44 minutes 22 seconds East a distance of 23.47 feet to a point for corner;

THENCE South 01 degrees 40 minutes 43 seconds East a distance of 47.54 feet to a point for corner;

THENCE South 18 degrees 37 minutes 04 seconds West a distance of 40.27 feet to a point for corner;

THENCE North 84 degrees 57 minutes 45 seconds West a distance of 64.95 feet to a point for corner;

THENCE South 73 degrees 33 minutes 45 seconds West a distance of 35.17 feet to a point for corner;

THENCE North 82 degrees 56 minutes 19 seconds West a distance of 43.22 feet to a point for corner;

THENCE North 67 degrees 38 minutes 58 seconds West a distance of 41.54 feet to a point for corner;

THENCE South 74 degrees 49 minutes 51 seconds West a distance of 32.71 feet to a point for corner;

THENCE South 34 degrees 50 minutes 50 seconds East a distance of 35.10 feet to a point for corner;

THENCE South 28 degrees 36 minutes 39 seconds East a distance of 24.67 feet to a point for corner;

THENCE South 47 degrees 46 minutes 03 seconds West a distance of 45.89 feet to a point for corner;

THENCE South 20 degrees 34 minutes 40 seconds West a distance of 30.16 feet to a point for corner on the northerly line of the aforementioned Timber Creek Phase 1;

THENCE along the northerly and westerly lines of said Timber Creek Phase 1 the following;

North 89 degrees 55 minutes 30 seconds West a distance of 349.79 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 46 degrees 04 minutes 14 seconds West a distance of 86.68 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 58 degrees 34 minutes 11 seconds West a distance of 243.70 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 70 degrees 02 minutes 58 seconds West a distance of 91.26 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 39 degrees 11 minutes 00 seconds West a distance of 86.17 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 08 degrees 37 minutes 56 seconds West a distance of 88.90 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 21 degrees 17 minutes 39 seconds West a distance of 60.36 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 36 degrees 57 minutes 30 seconds West a distance of 50.13 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 55 degrees 38 minutes 01 seconds West a distance of 59.20 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 47 degrees 11 minutes 53 seconds West a distance of 681.21 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 47 degrees 04 minutes 57 seconds East a distance of 121.10 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars" at the beginning of a non-tangent curve to the left having a central angle of 36 degrees 44 minutes 39 seconds a radius of 275.00 feet and being subtended by a chord which bears South 24 degrees 32 minutes 44 seconds West a distance of 173.35 feet;

Along said curve to the left an arc distance of 176.36 feet to a point for corner at the end of said curve;

South 06 degrees 10 minutes 24 seconds West a distance of 60.49 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 50 degrees 42 minutes 02 seconds West a distance of 14.26 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

North 84 degrees 46 minutes 20 seconds West a distance of 5.28 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 05 degrees 38 minutes 58 seconds West a distance of 80.00 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 84 degrees 46 minutes 20 seconds East a distance of 5.50 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 39 degrees 46 minutes 20 seconds East a distance of 14.14 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 05 degrees 13 minutes 40 seconds West a distance of 152.28 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars" at the beginning of a curve to the left having a central angle of 04 degrees 33 minutes 39 seconds a radius of 2000.00 feet and being subtended by a chord which bears South 02 degrees 56 minutes 50 seconds West a distance of 159.16 feet;

Along said curve to the left an arc distance of 159.21 feet to a point for corner at the end of said curve;

South 00 degrees 40 minutes 01 seconds West a distance of 127.46 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars" at the beginning of a non-tangent curve to the left having a central angle of 115 degrees 31 minutes 59 seconds a radius of 50.00 feet and being subtended by a chord which bears South 05 degrees 08 minutes 28 seconds East a distance of 84.59 feet;

Along said curve to the left an arc distance of 100.82 feet to a point for corner at the end of said curve;

South 27 degrees 05 minutes 33 seconds West a distance of 129.39 feet to the **POINT OF BEGINNING** and containing 219.41 acres of land, more or less.

SAVE AND EXCEPT THE FOLLOWING TRACT OF LAND:

LAND DESCRIPTION

Being a 11.26 acre tract of land situated in the Wm. B. Tucker Survey, Abstract No. 911, City of McKinney, Collin County, Texas and being a portion of a tract of land described in Warranty Deed to the McKinney Independent School District as recorded in Volume 5714, Page 3765 of the Land Records Collin County, Texas and being more particularly described as follows;

COMMENCING at a 5/8 inch iron rod found with a yellow plastic cap stamped "Huitt-Zollars" at a southerly corner of said Priority Development, L.P. tract, said point also being the northeast corner of a tract of land described in instrument to the Littrell Revocable Living Trust as recorded in Volume 5024, Page 1403 and Volume 4791, Page 2752 of the Land Records Collin County Texas;

THENCE, North 02 degrees 28 minutes 10 seconds West, a distance of 239.57 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars" at the **POINT OF BEGINNING**;

THENCE, North 76 degrees 08 minutes 47 seconds West, a distance of 201.34 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 58 degrees 05 minutes 16 seconds West, a distance of 153.47 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 19 degrees 02 minutes 10 seconds West, a distance of 59.08 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 43 degrees 19 minutes 07 seconds West, a distance of 65.69 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 23 degrees 58 minutes 31 seconds West, a distance of 113.81 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 47 degrees 26 minutes 01 seconds West, a distance of 106.51 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars", from which a 1/4 inch iron rod found at a southwesterly corner of said Priority Development, L.P. tract bears North 89 degrees 27 minutes 41 seconds West a distance of 252.96 feet and South 00 degrees 32 minutes 19 seconds West a distance of 661.87 feet;

THENCE, North 42 degrees 33 minutes 59 seconds East, a distance of 45.15 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 26 degrees 32 minutes 27 seconds East, a distance of 90.94 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 18 degrees 11 minutes 29 seconds East, a distance of 56.01 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 10 degrees 56 minutes 33 seconds East, a distance of 59.82 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 01 degrees 26 minutes 29 seconds West, a distance of 199.41 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars", from which a 1/2 inch iron rod found at a northwesterly corner of said Priority Development, L.P. tract bears South 88 degrees 54 minutes 30 seconds West a distance of 344.09 feet;

THENCE, North 88 degrees 33 minutes 31 seconds East, a distance of 637.32 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars" at the beginning of a curve to the right having a central angle of 41 degrees 37 minutes 46 seconds, a radius of 195.40 feet and being subtended by a chord which bears South 70 degrees 37 minutes 36 seconds East a distance of 138.87 feet;

THENCE, along said curve to the right an arc distance of 141.97 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars" at the end of said curve;

THENCE, South 49 degrees 48 minutes 43 seconds East, a distance of 83.64 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, South 04 degrees 48 minutes 43 seconds East, a distance of 21.21 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huit-Zollars";

THENCE, South 40 degrees 11 minutes 17 seconds West, a distance of 163.68 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huit-Zollars" at the beginning of a curve to the left having a central angle of 26 degrees 20 minutes 04 seconds, a radius of 1490.00 feet and being subtended by a chord which bears South 27 degrees 01 minutes 15 seconds West a distance of 678.82 feet;

THENCE, along said curve to the left an arc distance of 684.83 feet to the **POINT OF BEGINNING** and containing 11.26 acres of land, more or less.

LAND DESCRIPTION PHASE 2B

BEING a tract of land situated in the W.M.B. Tucker Survey, Abstract No. 911, City of McKinney, Collin County, Texas and being a portion of a tract of land described in instrument to Priority Development L.P. as recorded in Volume 5203, Page 6224 Deed Records Collin County, Texas and being more particularly described as follows;

BEGINNING at a 5/8 inch iron rod found with cap stamped AHuit-Zollars® at the southeast corner of Lot 28, Block D of the Record Plat of Timber Creek Phase 1, an addition to the City of McKinney as recorded in Cabinet P, Page 713 Plat Records Collin County, Texas and being on the westerly right-of-way line of Timber Ridge Trail (a 50' ROW) as shown on said Timber Creek Phase 1 Plat and being the beginning of a non-tangent curve to the right having a central angle of 13 degrees 14 minutes 40 seconds a radius of 575.00 feet and being subtended by a chord which bears South 02 degrees 13 minutes 29 seconds West a distance of 132.62 feet;

THENCE along the westerly right-of-way line of said Timber Ridge Trail the following;

Along said curve to the right an arc distance of 132.92 feet to a 5/8 inch iron rod found with cap stamped AHuit-Zollars® at the beginning of a reverse curve to the left having a central angle of 27 degrees 50 minutes 49 seconds a radius of 325.00 feet and being subtended by a chord which bears South 05 degrees 04 minutes 36 seconds East a distance of 156.41 feet;

Along said curve to the left an arc distance of 157.96 feet to a 5/8 inch iron rod found with cap stamped AHuit-Zollars® at the end of said curve;

South 19 degrees 00 minutes 00 seconds East a distance of 105.39 feet to a 5/8 inch iron rod found with cap stamped AHuit-Zollars® at the beginning of a curve to the right having a central angle of 17 degrees 44 minutes 36 seconds a radius of 225.00 feet and

being subtended by a chord which bears South 10 degrees 07 minutes 42 seconds East a distance of 69.40 feet;

Along said curve to the right an arc distance of 69.68 feet to a 5/8 inch iron rod found with cap stamped AHuitt-Zollars® at the end of said curve;

South 45 degrees 15 minutes 14 seconds West a distance of 21.36 feet to a 5/8 inch iron rod found with cap stamped AHuitt-Zollars® on the northerly line of a 60 foot right-of-way dedication for Wilmeth Road as shown on said Timber Creek Phase 1 Plat;

THENCE South 89 degrees 51 minutes 15 seconds West, along the northerly right-of-way line of Wilmeth Road, a distance of 434.73 feet to a 5/8 inch iron rod found with cap stamped AHuitt-Zollars®;

THENCE North 16 degrees 57 minutes 29 seconds East, departing the northerly right-of-way line of Wilmeth Road, a distance of 496.94 feet to a point for corner on the southerly line of the aforementioned Block D of said Timber Creek Phase 1 Plat;

THENCE South 89 degrees 19 minutes 59 seconds East, along the southerly line of said Block D, a distance of 249.76 feet to the **POINT OF BEGINNING** and containing 3.642 acres of land, more or less.

EXHIBIT B

PUBLIC THOROUGHFARE IMPROVEMENTS

DEVELOPER is responsible for the construction of the facilities detailed below. Those facilities must be complete and accepted by CITY for each phase of development of the Property as it is platted prior to the issuance of a Final Acceptance letter for the Required Improvements for each such phase platted. In the event any public facilities required to serve the development of Property are installed by a party other than DEVELOPER, those facilities must be complete and accepted by CITY prior to the issuance of a Final Acceptance letter for the Public Improvements required herein for such phase of development. No Certificate of Occupancy for any structure within a phase of development shall be issued for any building within that phase of development on the Property until Final Acceptance of the Public Improvements for the phase then being platted and developed.

THOROUGHFARES. Construction of thoroughfares includes paving, drainage, striping, street lighting, sidewalks and erosion control.

- a. DEVELOPER shall construct all necessary Public Improvements required to meet City of McKinney standards as stipulated in Section C of this Agreement and as shown on the attached Exhibit B-1. Thoroughfare Improvements shall include left-turn lanes, drainage, striping, street lighting, sidewalks and erosion control. CITY shall provide right-turn lanes and signalization of intersections of two or more "major thoroughfares," as such term is defined in CITY's Subdivision Ordinance, at such time as CITY deems necessary.
- b. DEVELOPER has constructed the two (2) northbound lanes of Hardin Boulevard beginning at Wilmeth Road and continuing adjacent to Phase I of Timber Creek and the two (2) southbound lanes to Holley Ridge, as shown in Exhibit B-1. Subsequent portions of Hardin Boulevard and Bloomdale Road shall be constructed as adjacent property is developed during subsequent phases of construction. In this regard, DEVELOPER is obligated to construct two full lanes of Bloomdale Road adjacent to the northern boundary of the Property and that portion of the full width four-lane divided thoroughfare for Hardin Boulevard which lies wholly within the Property together with any necessary transitions from two-lane to four-lane roadway segments and turn lanes.
- c. DEVELOPER shall be entitled to receive impact fee credits for those portions of roadways actually constructed by DEVELOPER that are identified on CITY's Impact Fee Capital Improvement Program. DEVELOPER shall be responsible for paying to CITY any impact fees exceeding the impact fee credits arising out of DEVELOPER's construction of impact fee eligible roadways. Any CITY participation in the construction of any roadway eligible for impact fee credits shall be excluded from the calculation of

DEVELOPER's impact fee credits. Further, DEVELOPER shall not be entitled to receive impact fee credits for any impact fee eligible roadway that is constructed by any person or party except DEVELOPER, unless DEVELOPER can provide satisfactory evidence to CITY that DEVELOPER or DEVELOPER's predecessor in title constructed portions of an eligible roadway for which such predecessor in title received no impact fee credits or money in lieu thereof. If DEVELOPER'S impact fee credits are equal to, or greater than, the value of the impact fees associated with development of the Property as calculated by the CITY Engineering Department, no roadway impact fees shall be due from DEVELOPER to CITY for this Property, and no extra impact fee credits shall be issued by the CITY to DEVELOPER for use on any other property.

- d. County Road 1007 within the limits of the Property shall be abandoned to DEVELOPER or its assigns in phases as alternate access is provided as development occurs, or it shall occur at such time as CITY requests, but no sooner than with the development of any phase subsequent to the first phase of the Timber Creek Addition or the completion of thoroughfare improvements which are currently underway.
- e. DEVELOPER shall pay cash in lieu of constructing the median landscaping in Hardin Boulevard and Bloomdale Road for each phase adjacent to said thoroughfares at the time of platting for the phase. The amount of escrow shall be based on the amount per linear foot of frontage established by the then-current CITY ordinance adopting the fee for such purpose.
- f. DEVELOPER shall dedicate and construct all other required thoroughfares and necessary internal roadways and appurtenances thereto as reflected on the Plat for each phase of development.
- g. Notwithstanding the foregoing provisions of this Exhibit B, no thoroughfares are being deferred by this Agreement. All Public Improvements must be complete and accepted by CITY for each phase of development of the Property as it is platted prior to the issuance of a Final Acceptance letter for the Public Improvements for each such phase platted.

HIKE AND BIKE TRAILS. The hike and bike trail improvements shown on Exhibit J shall be complete and accepted by the CITY for each phase of development prior to recording of the Record Plat for such phase of development.

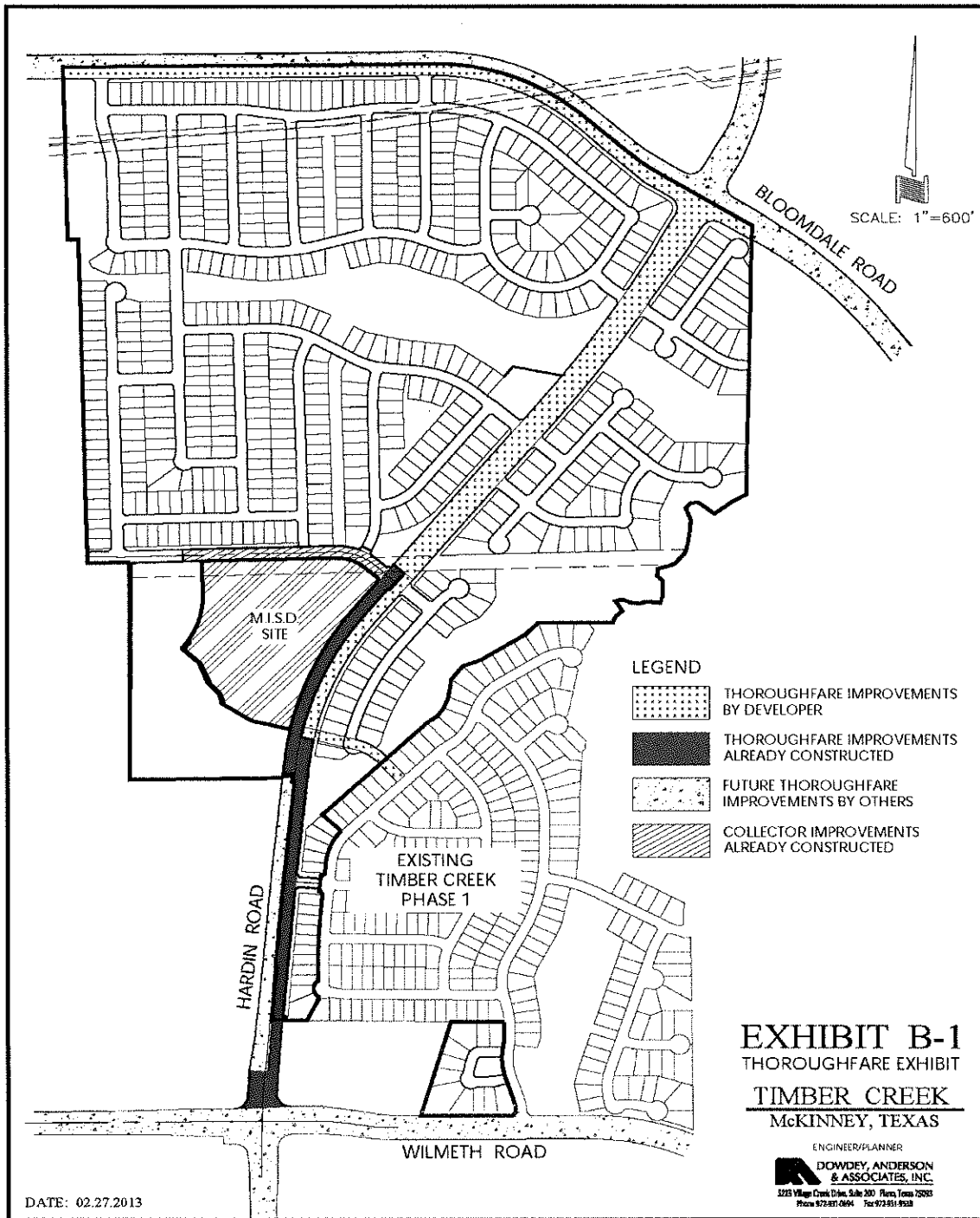


EXHIBIT C

PUBLIC UTILITY IMPROVEMENTS

DEVELOPER is responsible for the construction of the facilities detailed below. Those facilities must be complete and accepted by CITY for each phase of development of the Property as it is platted prior to a Certificate of Occupancy being issued for any building on the Property for each such phase platted. In the event any public utilities required to serve the development of Property are installed by a party other than DEVELOPER, those facilities must be complete and accepted by CITY prior to a Certificate of Occupancy being issued for any building on the Property for the phase then being platted and developed.

Water

- a. DEVELOPER has constructed portions of the thirty-six inch (36") diameter water line along Hardin Boulevard as shown on Exhibit C-1 (the "Existing Hardin Waterline Construction") and is responsible for the construction of the remaining portions of the thirty-six inch (36") diameter waterline along the portions of Hardin Boulevard that run through or run adjacent to the Property concurrent with the construction of Hardin Boulevard (the "Future Hardin Waterline Construction"). DEVELOPER shall construct a waterline along the portions of Bloomdale Road that run through or adjacent to the Property concurrent with the construction of Bloomdale Road, which shall be thirty-six inches (36") in diameter west of Hardin Road and forty-eight inches (48") in diameter east of Hardin Road (collectively, the "Bloomdale Waterline Construction" which together with the Existing Hardin Waterline Construction and the Future Hardin Waterline Construction are called the "Major Waterline Constructions"). Notwithstanding the construction of the Major Waterline Constructions, all portions of the development on the Property shall meet CITY standards with respect to supplying two points of water service to ensure a "looped" water system throughout the Property. Offsite improvements may be required in order to provide facilities adequate to serve the phase under construction prior to CITY's final acceptance of that phase, including but not limited to an offsite water line connection to existing water mains.

Within twelve (12) months following CITY's acceptance of each portion of such waterline improvement, CITY will reimburse DEVELOPER for the actual cost of the oversizing as funds become available, which amount shall be the difference between the cost of installing a twelve inch (12") diameter waterline and the oversized waterline, including but not limited to additional costs for excavation (both width and depth), bedding material, backfill, testing, valves, pipe material and accessories (the "Oversize Costs"). The reimbursement to DEVELOPER by the CITY of the Oversize Costs shall not prohibit DEVELOPER from requesting that CITY collect pro rata fees from adjacent developers, pursuant to CITY's ordinances and in accordance with

Texas law, for such adjacent developers' use of such water line. It is specifically understood and agreed that the amount of pro rata payments to DEVELOPER shall be limited to the lawful amount actually collected by CITY from adjacent developers pursuant to CITY's ordinances and that CITY shall have no liability or responsibility for making pro rata payments to DEVELOPER for any non-collected amounts. It is further specifically understood and agreed that DEVELOPER's ability to receive pro rata payments from adjacent developers is limited to a ten year time period from the date the water line is finally accepted by CITY.

- b. DEVELOPER shall also construct all other necessary water lines to serve the interior of the Property consistent with City of McKinney standards; said lines shall be at least eight inches (8") in diameter or as otherwise necessary to serve the Property for both domestic and fire flow for the Property. The CITY Engineering Department shall approve the size of the line.
- c. Notwithstanding the foregoing provisions of this Exhibit C, no water line improvements are being deferred by this Agreement. All Public Improvements must be complete and accepted by CITY for each phase of development of the Property as it is platted prior to the issuance of a Final Acceptance letter for the Public Improvements for each such phase platted.

Sanitary Sewer System:

- a. No sanitary sewer improvements are being deferred by this Agreement. DEVELOPER shall construct all necessary sanitary sewer lines to serve the interior of the Property consistent with City of McKinney standards; said lines shall be at least eight inches (8") in diameter or as necessary to serve the Property and/or as required by the CITY's Master Plan. Offsite improvements outside of the phase then being developed may be required to provide facilities adequate to serve the phase then under construction prior to CITY's final acceptance of that phase, including but not limited to sanitary sewer connection(s) to existing mains. The size of the line shall be based upon the design slope and drainage basin size and require approval of the CITY Engineer.
- b. All Public Improvements must be complete and accepted by CITY for each phase of development of the Property as it is platted prior to the issuance of a Final Acceptance letter for the Public Improvements for each such phase platted.

Impact Fee Credits:

- a. To the extent CITY is unable to reimburse DEVELOPER the Oversize Costs for the utilities upon acceptance of same, or portions thereof, or should

DEVELOPER elect by giving written notice to the CITY within ninety (90) days after the determination of the Oversize Costs, CITY shall grant DEVELOPER water and waste water impact fee credits equal to the value of the unreimbursed Oversize Costs. If DEVELOPER'S impact fee credits are equal to, or greater than, the value of the impact fees associated with development of the Property as calculated by the CITY Engineering Department, no utility impact fees shall be due from DEVELOPER to CITY for this Property, and no extra impact fee credits shall be issued by the CITY to DEVELOPER for use on any other property.

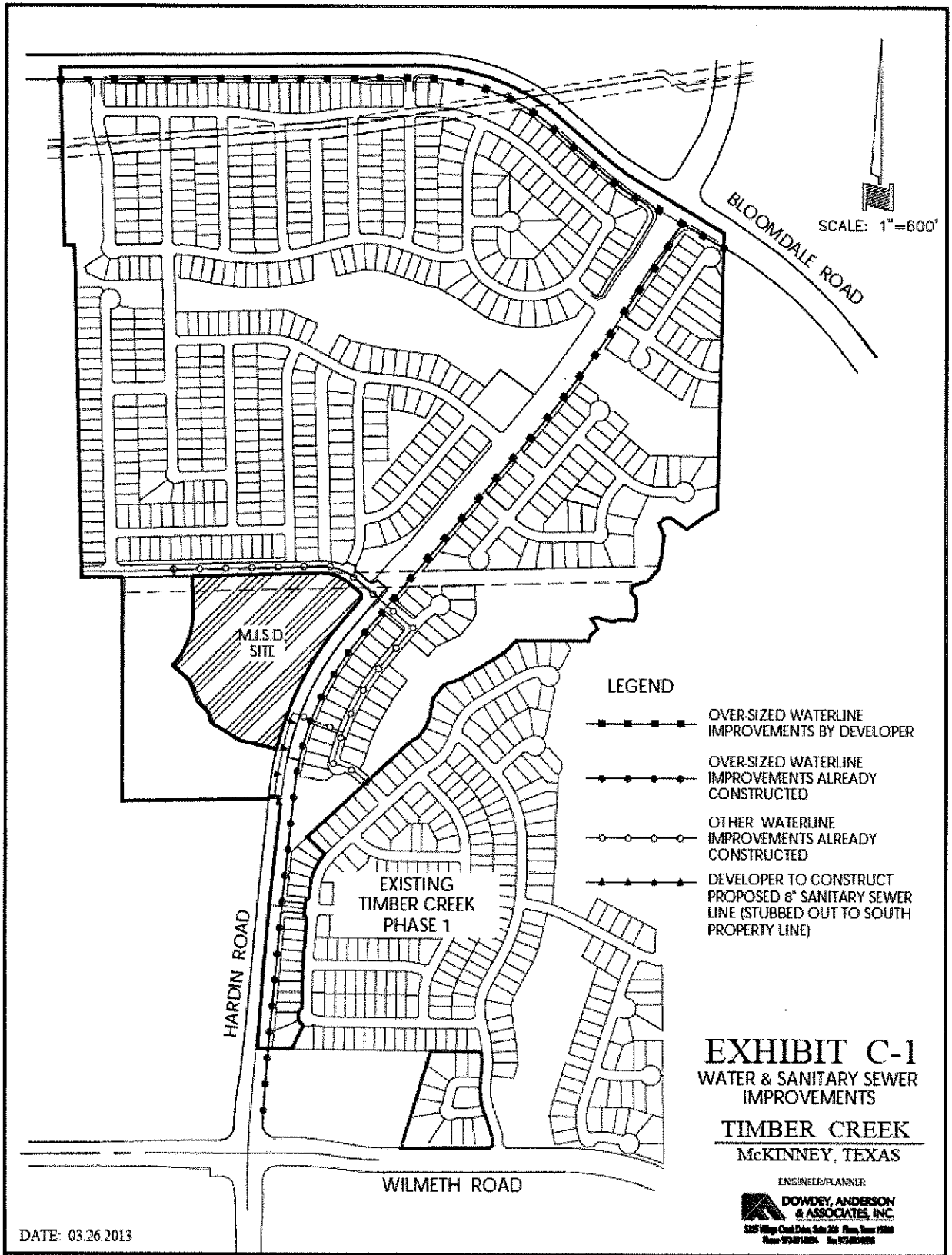


EXHIBIT D

PERFORMANCE BOND

*This Exhibit has been intentionally omitted because
no Public Improvements are being deferred by this Agreement.*

EXHIBIT D

LETTER OF CREDIT FORM

*This Exhibit has been intentionally omitted because
no Public Improvements are being deferred by this Agreement.*

EXHIBIT E

CONSTRUCTION CONTRACT

*This Exhibit has been intentionally omitted because
no Public Improvements are being deferred by this Agreement.*

EXHIBIT F

ASSIGNMENT OF CONSTRUCTION CONTRACT

This Exhibit has been intentionally omitted because no Public Improvements are being deferred by this Agreement.

EXHIBIT G

VARIANCES

1. NRCS Lake

DEVELOPER shall pay to CITY the amount of Six Hundred Seventy-Seven and Fifty/One Hundredths Dollars (\$ 677.50) per platted acre of land contained within any phase of development of the Property prior to filing the Record Plat with Collin County, in satisfaction of the requirements of the storm water drainage ordinance regarding fees in lieu of upgrading the downstream NRCS lake located adjacent to the northeast corner of the Property.

2. Park Land

A. DEVELOPER'S park land dedication obligation is planned to be satisfied through the dedication of two separate tracts of land containing a total of approximately 16 acres of land as shown on the attached Exhibit H. Approximately 11 acres of DEVELOPER's proposed park land dedication is adjacent to the public school site within the Property (the "11-Acre Tract"). However, DEVELOPER has chosen to utilize eight (8) acres out of the 11-Acre Tract (the "Mitigation Area") for wetland mitigation required by the US Army Corp. of Engineers ("USACE") under Individual Permit Nos. 200300064 and 200300031 (collectively, the "USACE Permit") secured by a Declaration of Restrictive Covenants that dedicates and restricts the Mitigation Area in perpetuity as an aquatic, riparian and upland ecosystem preserve (the "Deed Restrictions"). The Deed Restrictions in favor of the USACE eliminate most uses which may be made of the Mitigation Area and impose continuing maintenance obligations on the owner of the Mitigation Area to keep the designated Mitigation Area as a mitigation area. The Deed Restrictions on the Mitigation Area restrict its use in perpetuity to be an aquatic, riparian and upland ecosystem preserve to satisfy the requirements of the USACE Permit, which prohibits it from being used for active park purposes or as an outdoor learning center, which latter use the Parks, Recreation and Open Space Director has agreed would be an acceptable alternative to an active park in this unique location.

B. DEVELOPER has submitted to the USACE amendments to the USACE Permit and Deed Restrictions to allow the construction of a number of trails with gathering areas at the intersections of such trails all of which trails and areas are to be constructed of decomposed granite and in compliance with the requirements of the Americans with Disabilities Act for public spaces in the configuration reflected on Exhibit I (the "Outdoor Learning Center Improvements") so that the use of the Mitigation Area as an outdoor learning center should not violate the USACE Permit and Deed Restrictions. Until such time as CITY agrees to accept the 11-Acre Tract in satisfaction of part of

DEVELOPER's parkland dedication obligation, DEVELOPER shall pay into escrow with CITY cash in lieu of park land dedication for lots platted by DEVELOPER in accordance with Section 142-158 of the Subdivision Regulations ("Escrow"). CITY shall hold such Escrow until the earlier of (a) the date on which the CITY refuses to accept the 11-Acre Tract in satisfaction of part of DEVELOPER's parkland dedication obligation, or (b) the date on which the CITY accepts the park land and Outdoor Learning Center Improvements together with all other improvements necessary to the use of the park land for an outdoor learning center.

- C. DEVELOPER shall, upon receipt of any amendments approved by the USACE to the USACE Permit and, if required, amendments to the Deed Restrictions on the Mitigation Area, promptly submit to CITY such copies of the amended USACE Permit and Deed Restrictions on the Mitigation Area to allow CITY an opportunity to determine whether the amendments are acceptable to allow the 11-Acre Tract to be used for the installation and operation of an outdoor learning center. CITY shall review the amended USACE Permit and Deed Restrictions on the Mitigation Area to determine whether the 11-Acre Tract is acceptable to CITY to be used for the installation and operation of an outdoor learning center and inform DEVELOPER within 30 days of receipt of such information from DEVELOPER whether CITY has determined the amendments are acceptable, or not, and whether the CITY will accept, or decline acceptance of, the 11-Acre Tract in satisfaction of part of DEVELOPER's parkland dedication obligation.
- D. If CITY determines the amendments made or approved by the USACE to the USACE Permit and the Deed Restrictions imposed upon the Mitigation Area are acceptable to CITY to allow the 11-Acre Tract to be used for the installation and operation of an outdoor learning center; and, agrees to accept the 11-Acre Tract in satisfaction of part of DEVELOPER's parkland dedication obligation, then, DEVELOPER shall upon the earlier of the following events to occur complete all Public Improvements adjacent to the 11-Acre Tract, construct and install the Outdoor Learning Center Improvements and plat and convey the 11-Acre Tract to CITY by plat dedication and Special Warranty Deed free of all encumbrances and at no cost to the CITY and provide the CITY with an owner's title policy of insurance in an amount equal to the value of the land conveyed, which amount shall be determined by the CITY:
- (1) prior to the re-commencement of construction of the adjacent public elementary school; or
 - (2) prior to or contemporaneously with the submission of the application for a record plat or a final plat, and prior to the recording of said record plat or final plat, for the next phase of development of the PROPERTY immediately following CITY's agreement to accept the 11-Acre Tract in satisfaction of part of DEVELOPER's parkland dedication obligation.

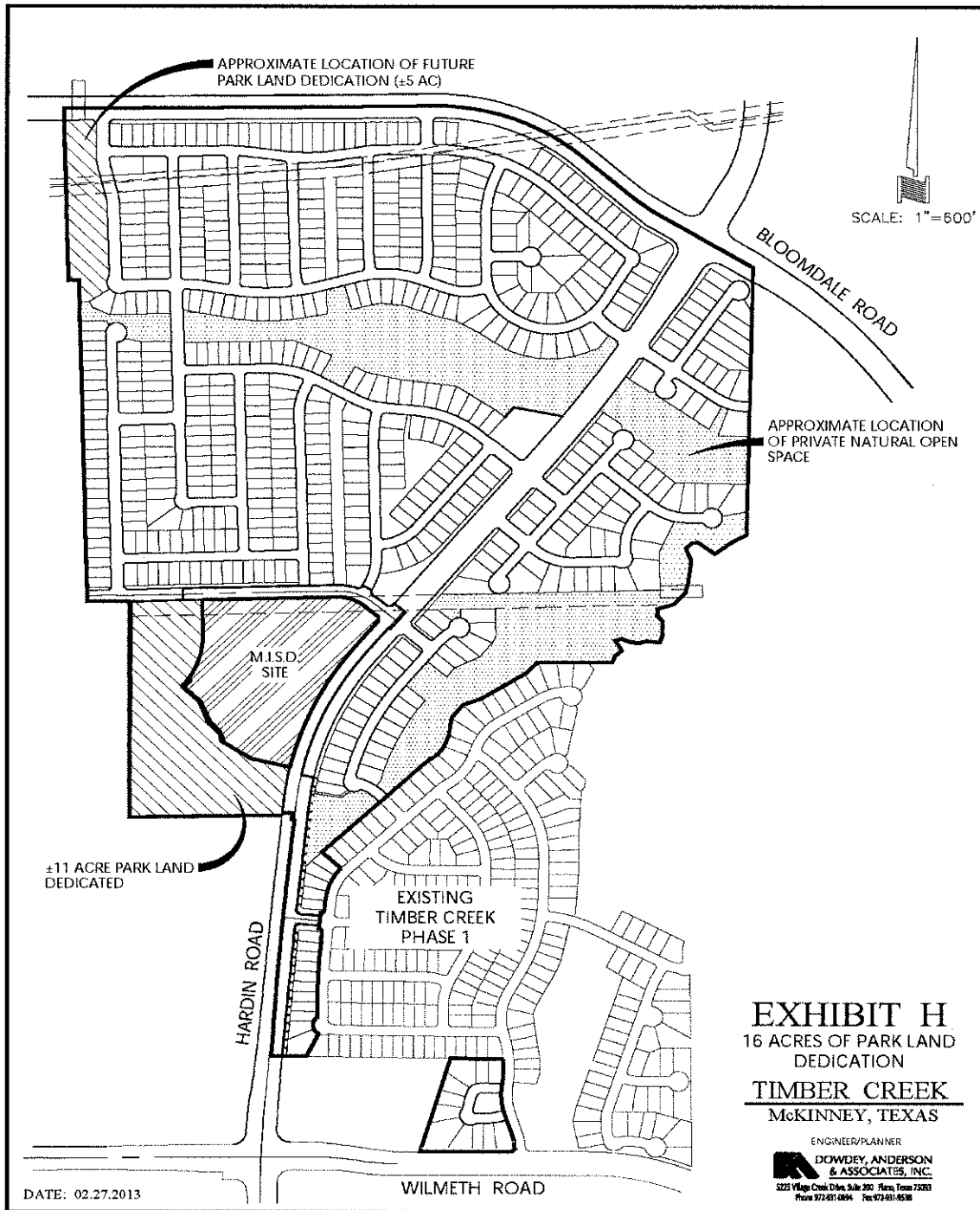
- E. Within 30 days following the CITY's final acceptance of the 11-Acre Tract and the Outdoor Learning Center Improvements and all other Public Improvements required to serve the 11-Acre Tract as a park and outdoor learning center, CITY shall refund the Escrow to DEVELOPER. If, however, the 11-Acre Tract is not dedicated and conveyed to and final accepted by CITY within the time set forth in Paragraph D above, CITY may terminate the Escrow and apply the park fees contained therein to DEVELOPER's park fees obligation. Such latter action shall relieve DEVELOPER of the obligation to dedicate the 11-Acre Tract to CITY and shall instead be obligated to pay money in lieu of dedicating park land in accordance with Section 142-158 of the Subdivision Regulations until DEVELOPER's park land dedication obligation is satisfied.
- F. If, however, CITY determines the amendments to the USACE Permit and Deed Restrictions are not acceptable and declines to accept the 11-Acre Tract in satisfaction of part of DEVELOPER's parkland dedication obligation then CITY shall be entitled to retain and utilize the Escrow as money paid in lieu of dedicating park land in accordance with Section 142-158 of the Subdivision Regulations. DEVELOPER shall be relieved of the obligation to dedicate the 11-Acre Tract to CITY and shall instead be obligated to pay money in lieu of dedicating park land in accordance with Section 142-158 of the Subdivision Regulations until DEVELOPER's park land dedication obligation is satisfied.
- G. Acceptance of the Escrow by CITY shall not relieve DEVELOPER of its obligation to fully comply with the CITY's Subdivision Regulations and any other applicable development regulations. The portion of Holly Ridge Road adjacent to the 11-Acre Tract must be constructed by DEVELOPER and accepted by CITY prior to CITY's acceptance of the 11-Acre Tract to ensure adequate public access is provided. If the CITY determines the amendments to the USACE Permit and Deed Restrictions are not acceptable and declines to accept the 11-Acre Tract in satisfaction of part of DEVELOPER's parkland dedication obligation then DEVELOPER shall be obligated to build Holly Ridge Road to the western boundary of the Property contemporaneously with that phase of development bounding either side of Holly Ridge Road.
- H. The remaining park land (approximately 5 acres) shall be dedicated with the platting of a latter phase of development, or at the discretion of the Parks, Recreation, and Open Space Director, in the approximate location depicted in Exhibit H. Such park land shall also be conveyed to CITY by Special Warranty Deed together with a owner's title policy of insurance, at no cost to CITY, in an amount equal to the value of the land conveyed, which amount shall be determined by the CITY.

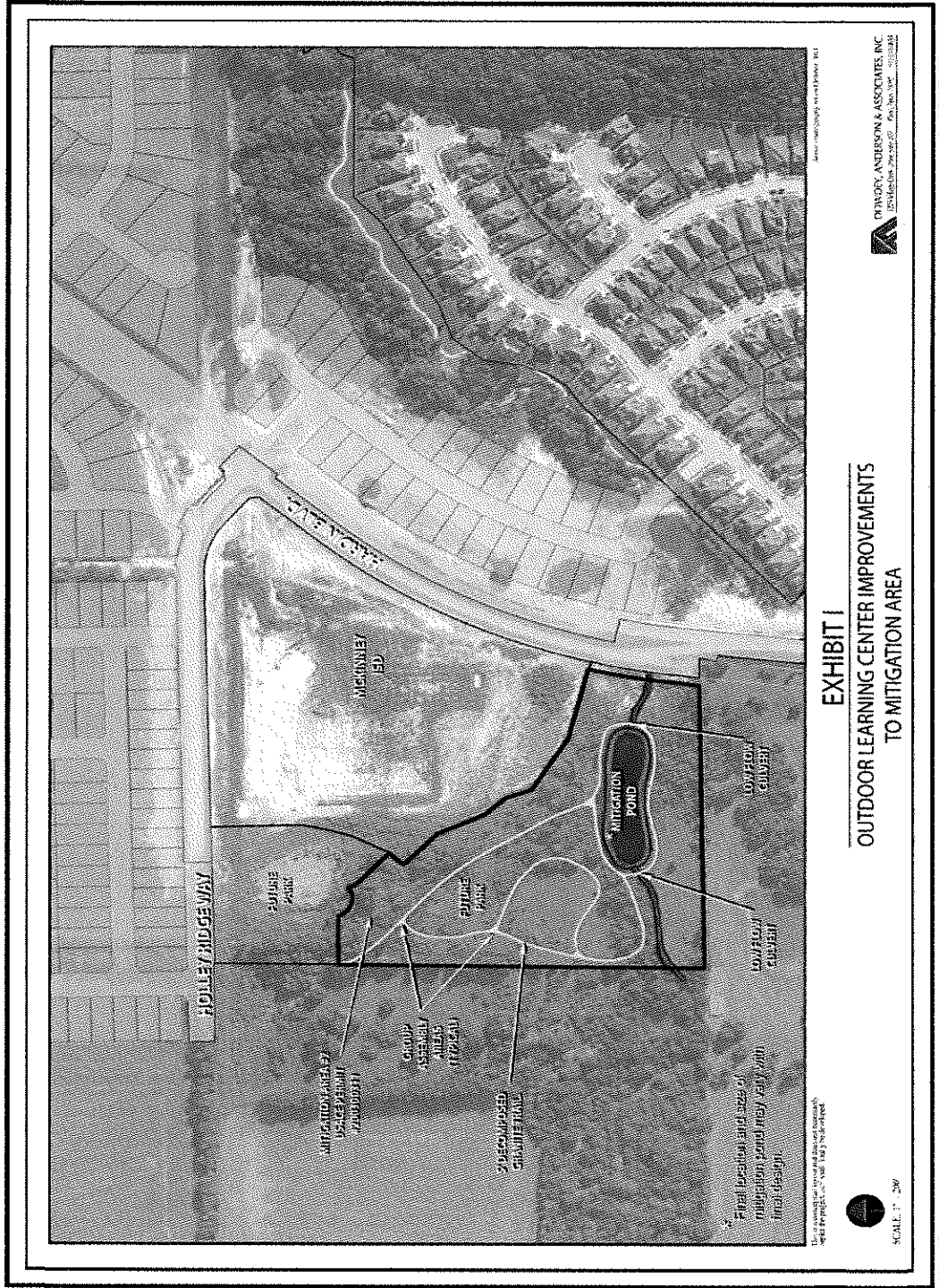
3. Hike and Bike Trail.

- A. DEVELOPER shall construct approximately five thousand one hundred eighty (5,180) linear feet of a ten foot (10') wide hike and bike trail together with all

necessary appurtenances thereto in the approximate locations depicted on Exhibit J. The actual location of the hike and bike trail shall be more specifically defined during the platting of each phase in conformity to the Hike and Bike Trail Master Plan and as approved by the Parks, Recreation, and Open Space Director. Within the City of Irving Waterline Easement that crosses the Property, the hike and bike trail plans shall also be approved by the City of Irving Engineering Department.

- B. DEVELOPER shall construct a minimum ten-foot wide grade separated crossing for the Hike and Bike Trail under Bloomdale Road ("Grade Separated Crossing") at or about the general location shown on Exhibit J contemporaneously with Developer's construction of the required two full lanes of Bloomdale Road adjacent to the northern boundary of the Property, as set forth in Exhibit B attached to this Agreement. The actual location, plans and design for such grade-separated crossing shall be subject to the approval of the Parks, Recreation and Open Space Director and the City Engineer. Developer shall only be responsible for the cost of constructing a standard box-culvert crossing for the Grade Separated Crossing. However, if at the time of construction the Parks, Recreation and Open Space Director directs Developer that the Grade Separated Crossing should be constructed with an arched crossing rather than a standard box culvert type crossing, Developer and City shall enter into an agreement whereby the increased cost, if any, associated with constructing an arched Grade Separated Crossing instead of a standard box culvert type crossing will be the responsibility of the City, following which Developer will construct an arched crossing for the Grade Separated Crossing.
 - C. DEVELOPER agrees to pay CITY the lesser of (a) one-half (1/2) of the actual cost incurred by CITY for the construction of a pedestrian bridge to be located on the eastern boundary line of the Property as shown on Exhibit J, or (b) the amount of \$62,500.00, at such time as the City constructs the pedestrian bridge or the CITY approves the Plat of the Property adjacent to, abutting, or in the vicinity of said bridge.
4. No other variances for this Property are granted and no other variances shall be allowed.





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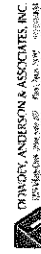


EXHIBIT I
OUTDOOR LEARNING CENTER IMPROVEMENTS
TO MITIGATION AREA

SCALE: 1" = 200'

EXHIBIT PREPARED 2015-01-24

JOB # 10017

