

REAL ESTATE DONATION CONTRACT

STATE OF TEXAS
COUNTY OF COLLIN

THIS REAL ESTATE DONATION CONTRACT (this “Contract”) is made by and between **MCKINNEY FAIRWAYS, LLC**, a Texas limited liability company, of 8000 IH 10 West, Suite 1200, San Antonio, Texas 78230 (“Donor”) and the **CITY OF MCKINNEY, TEXAS**, a Texas home rule municipality, of 222 N. Tennessee Street, McKinney, Texas 75069 (“City”), upon the terms and conditions set forth herein.

ARTICLE I

1.01. Subject to the terms and conditions hereinafter set forth, Donor hereby agrees to donate and convey to City by Special Warranty Deed (the “Deed”), and City hereby agrees to accept as a donation from Donor, all of Donor’s right, title, and interest in and to that certain real estate, and any improvements located thereon, being approximately 73.676 acres of land located in Collin County, Texas out of the Samuel McFarland Survey, Abstract No. 558, and the William Ryan Survey, Abstract No. 746, and being all of Lot 1, Block A of the Greens of McKinney, Section 2 as recorded in Cabinet 2006, Slide 171 of the Plat Records of Collin County, Texas, less and except a 50’ wide parcel which is parallel to and extending along the entire eastern boundary of the Greens of McKinney Phase 2 subdivision which shall be conveyed as a perpetual common area to the HOA as a condition of City’s obligation to accept the donation and close under Section 4.02.

Donor also agrees to convey to City, and City hereby agrees to accept, all of Donor’s right, title, and interest, all and singular, in and to the rights and appurtenances pertaining to the property, including any right, title and interest of Donor in and to adjacent streets, alleys or rights-of-way, and including all of Donor’s rights to all oil, gas and other minerals, together with any improvements,

fixtures, and personal property situated on and attached to the property, (all of such real property described above and the rights, privileges, and appurtenances described herein being herein collectively referred to as the "Property"), upon the terms and conditions hereinafter set forth.

All of the Property will be conveyed to City at the closing free and clear of all liens, claims, easements, rights-of-way, restrictions, encroachments, and those encumbrances appearing of record and that are not expressly waived pursuant to the Contract (the "Permitted Exceptions"). Notwithstanding anything contained in this Contract to the contrary, that certain easement dated _____ in favor of _____ POA shall be a Permitted Exception.

Donor further agrees to assign to City all of its interest in and to that certain Easement for Golf Course dated February 29, 2008, recorded on April 3, 2008 as County Clerk's Number 20080403000397220 (the "Access Easement").

ARTICLE II

DONATIVE INTENT

Donation for Public Purposes

2.01. Donor intends to donate the Property to City for public purposes for the use and benefit of the public; and City agrees, subject to the terms and conditions of this Contract, to accept such donation for such purposes.

ARTICLE III

CITY'S OBLIGATIONS

Conditions to City's Obligations

3.01. The obligation of City hereunder to consummate the transaction contemplated hereby is subject to the satisfaction of City in its sole and absolute discretion, of each of the conditions herein contained (any of which may be waived in whole or in part by City at or prior to the closing).

Preliminary Title Commitment

3.02. Within twenty (20) days after the effective date of this Contract, City, at Donor's sole cost and expense, shall have caused Reunion Title Company, 1700 Redbud Blvd., Suite 300, McKinney, Texas 75069 (the "Title Company"), Attention: Deanna Dean, Escrow Agent, to issue a preliminary title commitment (the "Title Commitment"), accompanied by true, correct and legible copies of all recorded documents relating to easements, rights-of-way, and any instruments referred to in the Title Commitment as constituting exceptions or restrictions upon the title of Donor, as well as any and all other information requested by City (the "Title Documents").

Survey

3.03. Within ten (10) days after the effective date of this Contract, Donor shall cause to be delivered to City an existing survey ("Survey") of the Property in Donor's possession. Should City decide to obtain a new survey of the Property, City may do so at City's sole cost and expense.

Review Period

3.04. City shall have thirty (30) days (the "Review Period") after City's receipt of the later of the Survey, Title Commitment and Title Documents to review the same and deliver in writing to Donor such objections as City may have to anything contained in them (the "Objection Notice"). In the event City states that any of the Survey, Title Commitment, Title Documents or any item therein contained, is not satisfactory, Donor shall promptly undertake to eliminate or modify all such unacceptable matters to the reasonable satisfaction of City, but shall be under no obligation to incur any cost in so doing. City hereby agrees that the lien for current taxes shall hereinafter be deemed to be permitted exceptions (the "Permitted Exceptions"). In the event Donor is unable or unwilling to cure any objections contained in the Objection Notice within thirty (30) days after receipt of same,

Donor shall notify City in writing of such fact, following the receipt of which City may, by written notice delivered within thirty (30) days thereafter, terminate this Contract.

Due Diligence Materials

3.05. Donor shall deliver to City all of the following which Donor might have in its possession (the “Due Diligence Materials”):

- a. copies of any land and/or operating leases;
- b. copies of any environmental assessments;
- c. copies of engineering reports, soils reports, or studies relating to the Property;
- d. copies of documents relating to any litigation or condemnation pending against the Property; and
- e. any of documents applicable to the Property that are reasonably requested by the City.

In addition, Donor shall provide reasonable access by City to the Property for the purpose of allowing City to conduct such investigations, inspections and due diligence examinations of the Property as City deems necessary under the terms of an existing, executed Right of Entry by and between the City and Donor.

Feasibility Period

3.06. City shall have until 5:00 p.m., Central Time, on the thirtieth (30th) day from the date of the last to be received by City of the Survey, Title Commitment and Title Documents within which to inspect the Property and determine if the same is suitable for City to accept as a donation (the “Feasibility Period”). In the event City notifies Donor in writing on or before 5:00 p.m. on the last day of the Feasibility Period that City disapproves or is dissatisfied in any way with the Property,

such determination to be made in City's sole and absolute discretion, then this Contract shall terminate and the parties hereto shall have no further obligations one to the other.

ARTICLE IV

CLOSING

4.01. The Closing (so called herein) shall be at the offices of Title Company thirty (30) days following the expiration of the Feasibility Period, or on such other date as the Donor and City shall mutually agree (the "Closing Date").

4.02. At the closing, Donor shall:

(a) Deliver to City the duly executed and acknowledged Special Warranty Deed conveying good and indefeasible title in fee simple to all of the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for the following:

(1) General real estate taxes for the year of closing and subsequent years not yet due and payable;

(2) The Permitted Exceptions;

(3) Any exceptions expressly approved by City, in writing;

(b) Deliver to City, at City's sole cost and expense, a Texas Owner's Title Policy issued by the Title Company, in City's favor in the agreed value of the Property which agreed value shall be the value assessed by the Collin Central Appraisal District for Tax Year 2017, insuring City's fee simple title to the Property, subject only to the Permitted Exceptions and those title exceptions approved in writing by City, and the standard printed exceptions contained in the usual form of Texas Owner's Title Policy containing a survey exception deletion (at the City's expense), except as to shortages in area;

- (c) Deliver to City an assignment of the Access Easement; and
- (d) Deliver to City possession of the Property.

4.03. At the closing, City shall:

- (a) Deliver to Donor an executed IRS Form 8283 acknowledging receipt of the Property from Donor as a donation to the City; and

- (b) Deliver to Donor such other documents as may be reasonably requested by Donor to evidence the donation of the Property.

4.04. All state, county, and municipal taxes for the then current year relating to the Property (the “Current Taxes”) shall be prorated as of the Closing Date and Title Company shall obtain from Donor its prorated portion of such Current Taxes at the Closing to be remitted to the appropriate taxing jurisdictions. Rollback taxes, if any, to which the Property may be subject shall be the sole responsibility of the City.

NOTICE REGARDING POSSIBLE LIABILITY FOR ADDITIONAL TAXES

If for the current ad valorem tax year the taxable value of the land that is the subject of this contract is determined by a special appraisal method that allows for appraisal of the land at less than its market value, the person to whom the land is transferred may not be allowed to qualify the land for that special appraisal in a subsequent tax year and the land may then be appraised at its full market value. In addition, the transfer of the land or a subsequent change in the use of the land may result in the imposition of an additional tax plus interest as a penalty for the transfer or the change in the use of the land. The taxable value of the land and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the county in which the land is located.

4.05. Each party shall pay any attorney's fees incurred by such party. All other costs and expenses of closing the sale and purchase shall be borne and paid as provided in this Contract, or if this Contract is silent, as is usual and customary for real estate transactions in Collin County, Texas.

ARTICLE V

REAL ESTATE COMMISSIONS

5.01. Each party hereto represents to the other party that there are no brokers or real estate agents representing such party in this transaction.

ARTICLE VI

CONTINGENCIES

6.01. Donor's obligation to consummate the transaction contemplated in this Contract is expressly contingent upon the sale by Donor of Lot 3, Block A of the Greens of McKinney, Section 2 as recorded in Cabinet 2006, Slide 171 of the Plat Records of Collin County, Texas, to Wilbow Corporation before, or contemporaneously on, the Closing Date.

ARTICLE VII

REPRESENTATIONS

7.01. As a material inducement to the City to execute and perform its obligations under this Contract, the Donor hereby represents and warrants to the City as of the date of execution of this Contract and through the date of the Closing as follows:

- (a) Donor is the owner in fee simple of the Property;
- (b) To Donor's current actual knowledge, there are no actions, suits, or proceedings (including condemnation) pending or threatened against the Property, at law or in equity or before any federal, state, municipal, or other government agency or instrumentality, domestic or foreign;

(c) There are no existing or pending litigation, claims, condemnations, or sales in lieu thereof, contracts of sale, options to Purchase or rights of first refusal with respect to any aspect of the Property, nor have any such actions, suits, proceedings, claims or other such other matters been threatened or asserted;

(d) Donor has no knowledge of any violation of any ordinance, regulation, law or statute of any government agency or instrumentality pertaining to the Property or any portion thereof which has not been complied with;

(e) Donor shall not transfer, convey, mortgage, encumber, lease or otherwise assign or dispose of the Property, nor any interest therein, without the express written consent of City, nor shall Donor cause, create or allow any lien, claim or encumbrance, of any kind or character, voluntarily or involuntarily, to be placed upon the Property, or any interest therein;

(f) All requisite resolutions, and any other consents necessary for the consummation by Donor of the transaction contemplated hereby have been duly adopted and obtained, and Donor has full right, power and authority to execute, deliver and carry out the terms and conditions of this Contract and all other documents to be executed and delivered by Donor pursuant to or in connection with this Contract. The execution and delivery of this Contract, the consummation of the transaction herein contemplated in compliance with the terms of this Contract will not conflict with, or with the passage of time result in a breach of any other agreement of Donor or any judgment, order or decree of any court having jurisdiction over Donor or the Property;

(g) Donor is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code, as Amended, and any applicable regulations promulgated thereunder;

(h) To the best of Donor's knowledge, the Property is free from and/or has not been used for the storage, holding, existence, manufacture, release, treatment, abatement, removal, disposition, handling, transportation, or disposal of any Hazardous Materials, from, under, into or on the Property. "Hazardous Materials" shall mean (1) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (2) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERLA"), as amended from time to time, and the regulations promulgated thereunder; (3) any petroleum-based products; (4) any substance which by any Governmental Requirements requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment, or disposal; and (5) any other substances which are now classified or considered to be hazardous or toxic under Governmental Requirements.

7.02 All representations of Donor under this Article VII shall survive the Closing for a period of one (1) year from Closing.

7.03 IT IS UNDERSTOOD AND AGREED THAT, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, AND EXCEPT FOR THE WARRANTY OF TITLE CONTAINED IN THE DEED AND EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT, (A) THE PROPERTY IS TRANSFERRED AND CONVEYED BY DONOR AND ACCEPTED BY CITY ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" BASIS, SUBJECT TO ANY CONDITION WHICH MAY EXIST, AND WITHOUT THE EXISTENCE OF AND WITHOUT RELIANCE UPON ANY REPRESENTATION, WARRANTY, AGREEMENT, OR STATEMENT BY DONOR, OR ANYONE ACTING

ON BEHALF OF DONOR, INCLUDING, WITHOUT LIMITATION, ANY BROKER, ENGINEER, ARCHITECT, ATTORNEY, SURVEYOR, APPRAISER, OR ENVIRONMENTAL CONSULTANT; (B) CITY HAS OR WILL HAVE, PRIOR TO THE CLOSING, THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY CITY IN ORDER TO ENABLE CITY TO EVALUATE THE ACCEPTANCE OF TITLE TO, AND POSSESSION OF, THE PROPERTY ON THE FOREGOING BASIS; (C) CITY IS RELYING SOLELY UPON SUCH INSPECTIONS, EXAMINATION, AND EVALUATION OF THE PROPERTY BY CITY IN ACQUIRING THE PROPERTY ON AN "AS IS", "WHERE IS" AND "WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATION, WARRANTY, AGREEMENT OR STATEMENT BY DONOR OR ANYONE ACTING ON BEHALF OF DONOR, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE, OTHER THAN THE WARRANTY OF TITLE CONTAINED IN THE DEED; AND (D) CITY HEREBY ASSUMES THE RISK THAT ENVIRONMENTAL CONDITIONS (AS DEFINED HEREIN) MAY EXIST ON THE PROPERTY AND HEREBY RELEASES DONOR OF AND FROM ANY AND ALL CLAIMS, ACTIONS, DEMANDS, RIGHTS, DAMAGES, COSTS OR EXPENSES (COLLECTIVELY THE "CLAIMS") WHICH MIGHT ARISE OUT OF OR IN CONNECTION WITH THE ENVIRONMENTAL CONDITION OF THE PROPERTY. AS USED HEREIN, THE TERM "ENVIRONMENTAL CONDITION" SHALL MEAN ANY CONDITION WITH RESPECT TO THE PROPERTY WHICH COULD OR DOES RESULT IN ANY CLAIM AGAINST THE OWNER OF THE PROPERTY BY ANY THIRD PARTY (INCLUDING ANY GOVERNMENTAL ENTITY) UNDER (1) THE COMPREHENSIVE ENVIRONMENTAL RESPONSE,

COMPENSATION AND LIABILITY ACT, 42 U.S.C. §9601 ET SEQ., (2) THE RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. §6901 ET SEQ., (3) THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. §2601 ET SEQ., (4) THE OIL POLLUTION ACT, 33 U.S.C. §2701 ET SEQ., (5) THE TOXIC SUBSTANCES CONTROL ACT, 15 U.S.C. §2601 ET SEQ., (6) THE CLEAN WATER ACT, 33 U.S.C. §1251 ET SEQ., (7) THE CLEAN AIR ACT, 42 U.S.C. §7401 ET SEQ., (8) THE HAZARDOUS MATERIALS TRANSPORTATION ACT, 49 U.S.C. §1801 ET SEQ., (9) THE OCCUPATIONAL SAFETY AND HEALTH ACT, 29 U.S.C. §651 ET SEQ., (10) THE TEXAS SOLID WASTE DISPOSAL ACT, TEX. HEALTH & SAFETY CODE ANN. §361, ET SEQ., AND/OR (11) SIMILAR STATE AND LOCAL LAWS, NOW OR HEREAFTER EXISTING, ALL AS AMENDED FROM TIME TO TIME, AND ALL REGULATIONS, RULES AND GUIDANCE ISSUED PURSUANT THERETO, INCLUDING, WITHOUT LIMITATION, ANY CONDITION RESULTING FROM OPERATIONS CONDUCTED ON THE PROPERTY OR ON PROPERTY ADJACENT THERETO. DONOR SHALL NOT HAVE (AND CITY WAIVES) ANY OBLIGATION TO DISCLOSE FACTS REGARDING THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL CONDITION AFFECTING THE PROPERTY), REGARDLESS OF WHETHER SUCH FACTS ARE DISCOVERABLE BY THE CITY. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING OR ANY TERMINATION HEREOF AND SHALL BE CONTAINED IN THE DEED.

7.04 The sole and exclusive remedy of City to any claim arising from the representations set forth in this Article VII is to terminate this Contract; or, in the alternative, if the City has

taken title to, and possession of, the Property, the City's sole and exclusive remedy for an action under this Contract is to recover damages.

MISCELLANEOUS

Survival of Covenants

All of the representations, warranties, covenants and agreements of the parties, as well as any rights and benefits of the parties, shall survive the Closing and shall not be merged therein.

Notice

Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to the Donor or the City, as the case may be, at the address set forth herein above.

Texas Law to Apply

This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas.

Parties Bound

This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Contract.

Nondisclosure

Neither of the parties hereto shall issue any press or other informational releases without the express written consent of the other party.

Legal Construction

In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or

unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Integration

This Contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties respecting the within subject matter. This Contract cannot be modified or changed except by the written consent of all of the parties.

Time of Essence

Time is of the essence of this Contract.

Attorney's Fees

Any party to this Contract which is the prevailing party in any legal proceeding against any other party to this Contract brought under or with relation to this Contract or transaction shall be additionally entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

Gender and Number

Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

Compliance

In accordance with the requirements of Section 28 of the Texas Real Estate License Act, City is hereby advised that it should be furnished with or obtain a policy of title insurance.

Effective Date of Contract

The term “effective date of this Contract” as used herein shall mean the later of the two (2) dates on which this Contract is fully signed by Donor or City, as indicated by their signatures below, which later date shall be the date of final execution and agreement by the parties.

Counterparts/Facsimile

This Contract may be executed by original or facsimile signatures in multiple counterparts, each of which shall constitute an original and together constitute one and the same instrument.

Expiration of Contract

City shall have ten (10) business days to accept this Contract, otherwise it becomes null and void.

SIGNATURE PAGE TO FOLLOW

Executed on the dates set forth at the signatures of the parties hereto.

DONOR:

MCKINNEY FAIRWAYS, LLC,
a Texas limited liability company

By: _____
Its: _____

Date of Execution: _____

CITY:

McKINNEY, TEXAS,
a Texas home rule municipality

By: _____
Paul G. Grimes, City Manager

Date of Execution: _____

PREPARED IN THE LAW OFFICE OF:

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