



*ARTICLE I*  
*DEFINITIONS*

*A. Definitions.*

1. *City* means the City of McKinney, a Texas home-rule city and municipal corporation situated in Collin County, and includes its representatives, agents, assigns, inspectors, contractors, employees and consultants.
2. *Developer* means **RH OF TEXAS LIMITED PARTNERSHIP**, its representatives, agents, contractors, employees, and consultants.
3. *Effective Date* means the date on which City accepts the construction of Roadway Improvements.
4. *Notice* means any formal notice or communication required or permitted to be given by one Party to another by this Agreement.
5. *Ordinance* means the City of McKinney Roadway Impact Fee Ordinance No. 97-10-54, as amended by Ordinance Nos. 2000-03-20, 2001-08-091, 2003-05-055, 2003-07-062, 2005-11-116, 2008-11-102, and Ordinance No. 2013-10-108, and as it may further be amended, including any schedules or exhibits attached thereto.
6. *Parties* means the City and Developer.
7. *Property* means Developer's property known as **Villas at Stacy**, a depiction of which property is attached hereto as Exhibit A.
8. *Roadway Improvements* means right-of-way preparation, paving excavation, construction of concrete paving, curbs, signage, roadway transitions, turn lanes, pavement markings, sidewalks, irrigation, landscaping and any other improvements necessary for a complete roadway system, and all engineering, surveying, inspection and permit fees for the two northern lanes of Collin McKinney Parkway between Stacy Road and Village Park Drive plus the ultimate four-lane divided roadway section of Collin McKinney Parkway extending in an easterly direction from Stacy Road a distance of approximately two hundred (200) linear feet together with a transition from such four-lane divided roadway section extending east of Stacy Road as well as a second transition area from the northern two lanes of Collin McKinney Parkway to the four-lane divided roadway section of Collin McKinney Parkway at its intersection with Village Park Drive along and about the southern boundary of the **Villas at Stacy** subdivision, that is the subject of this Agreement.

9. *Roadway Project* means the Roadway Improvements for Collin McKinney Parkway from Stacy Road to Village Park Drive, as such roadway improvements are depicted generally on the Roadway Project Plan attached hereto as Exhibit B;
10. *Service Unit* means a vehicle mile in the p.m. hour, as set forth in the equivalency tables attached to Ordinance No. 2013-10-108, which serves as the standardized measure of consumption or use of roadway facilities attributable to new development.

***B. Interpretation of Terms, and Incorporation of Exhibits.***

Except where the context otherwise clearly requires, in this Agreement: words imparting the singular will include the plural and vice versa;

1. all exhibits attached to this Agreement are incorporated by reference for all pertinent purposes as though fully copied and set forth at length; and
2. references to any document means that document as amended or as supplemented from time to time; and references to any party means that party, its successors, and assigns.

***ARTICLE II***

***DEVELOPER CONTRIBUTION  
OF ROADWAY IMPROVEMENTS***

***A. Roadway Improvements***

1. Developer shall construct the Roadway Project depicted on the attached Exhibit B. Developer shall construct all Roadway Improvements appurtenant to the Roadway Project.
2. At this time, the Roadway Project is included in the City's Roadway Improvement Plan ("RIP"). The Roadway Project is therefore eligible for impact fee credits as calculated under the Ordinance.

***B. City Consideration***

1. City agrees to waive all roadway impact fees for the 94-lot residential subdivision known as Villas at Stacy in conjunction with the City's final acceptance of the Roadway Project. The impact fee waiver shall vest and attach to the Property as of the Effective Date.
2. City agrees to waive all inspection fees associated with the construction of the Roadway Project and the public infrastructure improvements required for the 94-lot residential subdivision known as Villas at Stacy in conjunction with the City's

final acceptance of the Roadway Project. These inspection fees are estimated to be in the amount of One Hundred Eight Thousand Dollars (\$108,000.00).

3. City agrees to reimburse to Developer One Hundred Fifty Thousand Dollars (\$150,000.00) for roadway construction upon City's final acceptance of the Roadway Project.
4. City will expend up to an amount not to exceed One Hundred Twenty Thousand Dollars (\$120,000.00) for the acquisition of the right-of-way and easements from the third-party owners of property that is necessary to construct roadway and drainage improvements related to the construction of Collin McKinney Parkway.
5. City will, to the extent allowed by law, assist Developer if Developer is unsuccessful after using commercially reasonable efforts to acquire the easements and rights-of-way for Collin McKinney Parkway and the drainage channel identified as Drainage Channel A that is depicted generally on Exhibit B.
6. City will allow Developer to construct a sanitary sewer line serving the Villas at Stacy subdivision within the median of Collin McKinney Parkway connecting the Villas at Stacy subdivision to the existing sewer line east of Village Park Drive.

**C. *Developer's Additional Obligation***

Developer shall be responsible for the payment of all costs and expenses incurred by the City in connection with the acquisition of the easements and right-of-way for Collin McKinney Parkway and Drainage Channel A including but not limited to attorney's fees, court costs, appraisals, expert witness fees and any awards made to the property owners. City agrees to the extent allowed by law to use its eminent domain authority, upon written request by the Developer, for right-of-way and easement acquisition for the off-site portion of Collin McKinney Parkway and Drainage Channel A, as noted above, in the event the Developer is unable to acquire such right-of-way and easement through commercially reasonable efforts within a three (3) month period beginning upon written notice to City. All costs and expenses incurred by the City in connection with such eminent domain actions and acquisition of such rights-of-way and easements including, but not limited to, settlements, court awards, damages, interest, expert witness fees, mediation fees, attorney's fees, deposition costs, copy charges, courier fees, postage and taxable costs of court shall be reimbursed to the City by Developer as such costs are billed to City by the City's designated legal counsel and within 20 calendar days after Developer has been informed of such costs and expenses.

*[Remainder of page left blank intentionally.]*

**ARTICLE III**

**IMPACT FEE CREDITS**

**A. *Assignment and Expiration of Roadway Impact Fee Credits***

The Impact Fee Credits granted under this agreement shall only be assigned with the City's consent pursuant to Section 130-111 of the Ordinance. The impact fee credits shall have no expiration; but in any event, the impact fee credits shall only be applied to the Property. Application of the impact fee credits to future developed lots and any reimbursement for unused impact fee credits shall be governed by the Ordinance.

**B. *Value of Roadway Improvements***

Developer and City agree that the value of the Roadway Improvements shall be expressed in Service Units.

**C. *Use of Impact Fee Credits***

Impact fee credits shall be used as development occurs on the Property. Service Unit calculations for proposed uses on the Property shall be in accordance with then existing tables of the Ordinance. Unused impact fee credits shall not be transferable and cannot be applied to other fees, converted to cash, or used on other tracts; however, impact fee credits shall be subject to any reimbursements allowed by then existing ordinances. Upon the exhaustion of the impact fee credits by Developer on the Property, any additional development on the Property (such as the creation of additional lots) shall pay then existing Roadway impact fees or receive credits for construction of additional roadway improvements under then existing ordinances.

**D. *Developer Responsibilities under Development Ordinances***

Nothing herein shall relieve the Developer from its responsibilities for construction of public improvements under applicable development ordinances upon development of the Property.

**ARTICLE IV**

**AGREEMENT MAY NOT BE PLEDGED AS COLLATERAL**

Developer may not pledge this Agreement, or any credits granted hereunder, as collateral for purposes of securing financing for development of the Property.

## *ARTICLE V*

### *GENERAL PROVISIONS*

#### *A. Notice of Default; Opportunity to Cure; Remedies*

1. Should any Party allege that the other has defaulted in the performance of any obligation hereunder, it will provide at least thirty (30) days written notice to the other Party specifying the nature of the alleged default and opportunity to cure the default before exercising any remedy related to the alleged default. There shall be no default if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged default has been cured.
2. Upon the failure of either Party to comply with the provisions of this Agreement, which failure continues beyond the thirty (30) day notice and cure period provided above, the other Party shall have the right to enforce the terms and provisions of this Agreement by specific performance, or by such other legal or equitable relief to which the non-defaulting Party may be entitled.
3. Any remedy or relief described in this Agreement shall be cumulative of and in addition to any other remedies and relief available at law or in equity.
4. The foregoing notwithstanding, it is understood and agreed that in addition to any other remedy which the City may have upon default by Developer under this Agreement, should Developer fail to comply with the Subdivision Ordinance or any City development regulation, the City may terminate this Agreement. Upon termination pursuant to this subsection, all impact fee credits shall terminate.

#### *B. Entire Agreement; Interpretation of this Agreement*

1. This Agreement including any attached exhibits is the entire agreement between the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein. If there is a conflict between this Agreement and prior written or verbal representations, this Agreement shall control.
2. This Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strictly for or against either Party.

#### *C. Amendment*

No amendment of this Agreement will be effective unless it is in writing and signed by the duly authorized representatives of the Parties hereto, which amendment will incorporate this Agreement in every particular not otherwise changed by the amendment.

***D. No Amendment of Other Agreements***

Unless otherwise expressly stipulated herein, this Agreement is separate from and will not constitute an amendment or modification of any other agreement between the Parties.

***E. Other Instruments, Actions***

The Parties hereto agree that they will take such further actions and execute and deliver such other and further consents, authorizations, instruments, or documents as are necessary or incidental to effectuate the purposes of this Agreement.

***F. No Third Party Beneficiaries***

Except as expressly provided herein, nothing herein shall be construed to confer upon any person other than the Parties hereto any rights, benefits or remedies under or because of this Agreement.

***G. Applicable Law; Venue***

This Agreement shall be construed under and according to the laws of the State of Texas. Personal jurisdiction and venue for any suit arising hereunder shall be in Collin County, Texas.

***H. Severability***

The provisions of this Agreement are severable, and if any court shall ever hold any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application of it to any person or circumstance of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances will not be affected by that and this Agreement will be construed as if it had never contained such invalid or unconstitutional portion therein.

***I. Counterparts***

The Parties may execute this Agreement in one or more duplicate originals each of equal dignity.

***J. Notices***

For the purposes of Notice, the addresses of the Parties will, until changed as provided below, be as follows:

**DEVELOPER:**

RH of Texas Limited Partnership  
Attn: Larry Craven  
Dallas Division President  
5000 Legacy Drive  
Plano, TX 75024

**CITY OF MCKINNEY:**

Office of the City Manager  
222 N. Tennessee Street  
McKinney, Texas 75069

The Parties will have the right from time to time to change their respective addresses upon written notice to the other Party. If any date or notice period described in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the Notice will be extended to the first business day following such Saturday, Sunday or legal holiday.

***K. No Waiver of Development Ordinances***

No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision or any other agreement between the Parties. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided for by written amendment to this Agreement; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent defaults of the same type. Nothing herein shall waive any obligations of Developer under applicable ordinances, including but not limited to the subdivision ordinance, the sewer and water impact fee ordinance, or the roadway impact fee ordinance.

***L. Attorney's Fees***

Should either Party be required to resort to litigation to enforce the terms of this Agreement, the prevailing Party, plaintiff or defendant, shall be entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other Party. If the court awards relief to both Parties, each will bear its own costs in their entirety except as otherwise specified by the court.

***M. Governmental Authority***

Nothing in this Agreement shall be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the facilities and roadway improvements contemplated by the terms of this Agreement except as specifically waived or modified herein or by specific action of the City Council, nor the City's duty to provide for the public health, safety, and welfare in the construction or maintenance of the same.

***N. Assignability***

This Agreement shall not be assignable by Developer without the prior written consent of the City.



**O. Binding Obligation**

This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, successors, and assigns.

**P. Waiver of Claims.**

Developer has voluntarily agreed to undertake the construction of the Roadway Improvements for the Roadway Project in exchange for impact fee credits to be applied to the Property. The construction of the Roadway Project is not a condition of approval or acceptance the development of the Property. Developer waives any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code and any federal constitutional claims. Developer further releases City from any and all claims based on excessive or illegal exactions. 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.

**CITY OF MCKINNEY**

By: \_\_\_\_\_  
JOSE MADRIGAL  
Deputy City Manager

Attest:

\_\_\_\_\_  
SANDY HART, TRMC, MMC  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
City Attorney

**RH OF TEXAS LIMITED PARTNERSHIP**

By: Ryland Homes of Texas Inc., General Partner

By: [Signature]  
Name: Larry Craven  
Title: Vice President  
Date Signed: 4/14/2014

THE STATE OF TEXAS,  
COUNTY OF COLLIN

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

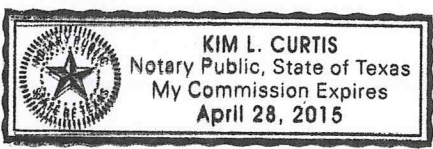
GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

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

THE STATE OF TEXAS,  
COUNTY OF Dallas

This instrument was acknowledged before me on the 4th day of April, 2014, by LARRY CRAVEN, in his capacity as Vice President of Ryland Homes of Texas Inc., a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that Ryland Homes of Texas Inc., is the General Partner of **RH OF TEXAS LIMITED PARTNERSHIP**, a Maryland Limited Partnership, and that he executed the same on behalf of and as the act of the Limited Partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 4th DAY OF April, 2014.



\_\_\_\_\_  
Notary Public Dallas County, Texas  
My commission expires 4-28-15

**Exhibit A**  
**PROPERTY**

# Exhibit B

## ROADWAY PROJECT PLAN

