

AFTER RECORDING, RETURN TO:

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

**City of McKinney, Texas**  
**FACILITIES AGREEMENT**  
*(Rough Proportionality of Required Improvements)*

***Lake Forest Business Park, Lots 1-3, Block A***

THIS AGREEMENT, entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and **THE RYAN FAMILY LIVING TRUST**, whose mailing address is 3355 Ryan Trail, McKinney, Texas 75071, ("LANDOWNER") witnesseth that:

WHEREAS, the LANDOWNER has submitted a Preliminary-Final Plat for the development of a subdivision to be known as Lake Forest Business Park, Lots 1 - 3, Block A, which subdivision is situated in the ETJ of the City of McKinney; and

WHEREAS, the Preliminary-Final Plat for Lake Forest Business Park, Lots 1 - 3, Block A, subdivides an approximately 17.38-acre tract of land into three (3) lots as follows:

- (a) Lot 1, the Lake Forest Business Park containing approximately 4.02 Acres;
- (b) Lot 2, the Ryan Family Farm containing approximately 12.38 Acres; and,
- (c) Lot 3, the Ryan Family Residence containing approximately 0.98 Acres; and

WHEREAS, the LANDOWNER's stated purpose for the submitting the Preliminary-Final Plat for Lake Forest Business Park, Lots 1 - 3, Block A, is to create three lots from one tract of land that separates the residential use on Lots 2 and 3 from the commercial use on Lot 1; and

WHEREAS, the LANDOWNER currently proposes only the one single phase for development being Lot 1, Block A, of the Lake Forest Business Park; and

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 142-4(b) of the Subdivision Regulations extends the application of the Subdivision Regulations to all of the area outside of the corporate limits of the CITY, but within the extra-territorial jurisdiction of the CITY (“ETJ”); 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 *Lake Forest Business Park, Lots 1 - 3, Block A*, which subdivision is situated in the ETJ of the City of McKinney, 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 LANDOWNER in accordance with Section 142-37 of the Subdivision Regulations, as amended; and

WHEREAS, the Subdivision Regulations also prohibit recording the Record Plat of a subdivision within the incorporated area of the City until the LANDOWNER 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, LANDOWNER has appealed, or requested a waiver or variance, from the requirements that the Public Improvements identified in Paragraph D, below, (the “Appealed Improvements”) related to and arising out of the development of Lot 1, Block A, of the Lake Forest Business Park, in particular, which Appealed Improvements the Subdivision Regulations require must be included in the design of the required public improvements before the Preliminary-Final Plat for *Lake Forest Business Park, Lots 1 - 3, Block A*, may be approved; and

WHEREAS, LANDOWNER has appealed, or requested a waiver or variance, from including the Appealed Improvements in the Preliminary-Final Plat because the required design and construction of those Appealed Improvements is not roughly proportionate to the impact generated by the development proposed to be constructed on Lot 1, Block A, of the Lake Forest Business Park, as required by Texas Local Government Code § 212.904; and

WHEREAS, CITY concurs that the construction of seven (7) warehouse buildings containing no more than a total combined amount of thirty-five thousand (35,000) square feet of warehouse space on the 4.02 acres identified as Lot 1, the continuing use of approximately 12.38 acres identified as Lot 2 for farm uses, and the continuing use of an existing single-family home on the 0.98 acres identified as Lot 3, on the Property that is being preliminary-final platted as *Lake Forest Business Park, Lots 1 - 3, Block A*, does not generate impacts roughly proportionate to require the design and construction of the Appealed Improvements but cannot unilaterally enforce the City's zoning ordinance in the ETJ to restrict the use of the Property to the uses specified as not generating impacts proportionate to the public infrastructure otherwise required; and

WHEREAS, CITY and LANDOWNER desire to enter into a Facilities Agreement through a Development Agreement authorized by Section 212.172 of the Texas Local Government Code that will allow for the conditional deferral of the design and construction of the Appealed Improvements, specify the uses that can be made of the Property, and require that the Appealed Improvements be designed and constructed prior to any change or modification in the use presently proposed for the Property all as provided hereinafter below.

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

A. PROPERTY

This Agreement is for property located in the ETJ of the City of McKinney, that is situated on the west side of Lake Forest Drive (Farm to Market Road 1461) and the north side of Bloomdale Road, more commonly known as being Tract 28 in the Joel F. Stewart Survey, Abstract No. A0838 containing approximately 17.38 acres of land, more or less, more fully described and depicted in the Preliminary-Final Plat of the Property attached hereto as Exhibit A and fully incorporated herein by reference for all purposes allowed by law (the "Property").

B. USES ALLOWED ON PROPERTY

Due to the fact that the Public Improvements required to serve the full development potential of the Property are not being designed and constructed by LANDOWNER, the use of the Property shall be limited to the following uses and square footage (if designated):

1. The use of Lot 1, Block A, of the Lake Forest Business Park is hereby restricted to use for seven (7) office/warehouse buildings on 4.02 acres of land containing a total combined square footage not to exceed thirty-five thousand (35,000) square feet;

2. The use of Lot 2, Block A, of the Lake Forest Business Park, containing approximately 12.38 acres of land is hereby limited to use for farming purposes (growing crops and/or raising livestock) only; and
3. The use of Lot 3, Block A of the Lake Forest Business Park, containing approximately 0.98 acres of land is hereby limited to the existing single-family home.

LANDOWNER hereby agrees that LANDOWNER shall, prior to any change in use of any part or portion of the Property in conflict with the limitations established on such uses pursuant to this Agreement, submit an Amended Plat or Replat together with an updated rough proportionality study to CITY for CITY's consideration and approval so as to ensure adequate public facilities are provided to serve the uses proposed for the Property as any further and additional development of such Property occurs.

### C. DEDICATIONS FOR PUBLIC IMPROVEMENTS

LANDOWNER hereby agrees to dedicate the following easements and rights-of-way at no cost to CITY, in accordance with the CITY's Subdivision Ordinance and as approved by CITY Engineer.

#### 1. THOROUGHFARES

LANDOWNER shall dedicate, at no cost to CITY, that amount of right-of-way along perimeter roadways adjacent to the Property (as reflected on the Preliminary-Final Plat of the Lake Forest Business Park, Lots 1 – 3, Block A, attached hereto as Exhibit A which dedication will yield one-half (½) 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. If platting of the Property is delayed and the perimeter roadway right-of-way described above has not previously been dedicated, LANDOWNER 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. Such right-of-way dedication shall include:

- a. The current dedication, at no cost to CITY, of a twenty-four-foot (24') wide Access and Utility Easement upon and across Lot 1, Block A, of the Lake Forest Business Park extending to the northern boundary line of said Lot 1 at an area approximately 102.43 feet west of the eastern boundary line of Lot 1, Block A, of the Lake Forest Business Park, as more particularly depicted in the proposed Preliminary-Final Plat attached hereto as Exhibit A and incorporated herein by reference for all purposes allowed by law through which a second point of access may be provided between Lot 1 of the Property and Lake Forest Drive.

## 2. UTILITIES

LANDOWNER shall dedicate all easements, at no cost to CITY, specifically including, but not limited to, easements for water, sanitary sewer and storm water drainage to provide service to the Property in accordance with CITY standards, at such time as at such time as the Property is platted. If platting of the Property is delayed and the easements described herein have not previously been dedicated, LANDOWNER shall dedicate the easements as required herein upon receipt of the written request of the CITY's Engineer. Such easement dedication shall include:

- a. A twenty foot (20') wide sanitary sewer easement running along and adjacent to the western boundary of Lot 1, Block A, of the Lake Forest Business Park; and
- b. A variable width drainage easement upon, over and across the western side of Lot 1, the eastern portion of Lot 2, and the eastern and southern portions of Lot 3 of Block A of the Lake Forest Business Park.

The location of the foregoing described easements is more particularly depicted in the proposed Preliminary-Final Plat attached hereto as Exhibit "A" and is incorporated herein by reference for all purposes allowed by law.

## D. CONDITIONAL DEFERRAL OF CONSTRUCTION OF CERTAIN PUBLIC IMPROVEMENTS UNTIL FURTHER DEVELOPMENT OCCURS

1. LANDOWNER has appealed, or requested a waiver or variance, from the requirements of Section 142-105 of the Subdivision Ordinance that the LANDOWNER shall design and construct certain Public Improvements because the LANDOWNER's portion of the costs required for such Public Improvements exceed the amount that is roughly proportionate to the proposed development to be constructed on the Property as set forth in Paragraph B, above, and that such exactions exceed the limits allowed by Texas Local Government Code § 212.904.
2. CITY agrees that the following required exactions exceed the impacts of seven (7) warehouse buildings containing no more than a total combined amount of thirty-five thousand (35,000) square feet of warehouse space on the 4.02 acres identified as Lot 1, the continuing use of approximately 12.38 acres identified as Lot 2 for farm uses, and the continuing use of an existing single-family home on the 0.98 acres identified as Lot 3, on the Property that is being preliminary-final platted as Lake Forest Business Park, Lots 1 - 3, Block A, and hereby determines that LANDOWNER is hereby conditionally relieved of the obligation to design and construct the following Public Improvements, at no cost to CITY, as required by Section 142-105 of the Subdivision Ordinance:

- a. The requirement to construct approximately 1.55 miles of twelve-inch (12") diameter offsite sanitary sewer lines between the Property's border and the nearest CITY sanitary sewer line capable of serving the Property, in light of the fact the Property and each Lot therein appear to be adequately sized to be served by on-site septic facilities.
3. Notwithstanding the foregoing, LANDOWNER shall at no cost to CITY construct the onsite portion of the twelve-inch (12") diameter sanitary sewer line necessary to serve the Property and carry the sanitary sewer through the Property in accordance with the Subdivision Regulations. Such onsite sanitary sewer lines shall also include the service lines connecting each structure to the twelve-inch (12") diameter onsite sanitary sewer line in anticipation of the extension of the twelve-inch (12") diameter offsite sanitary sewer line to the Property and the tie in to and connection of the onsite portion of the twelve-inch (12") diameter sanitary sewer line constructed by LANDOWNER with the offsite portion thereof so extended to the Property.
4. Also notwithstanding the foregoing, at such time as the Property is further subdivided or replatted or the use of the Property is altered, changed, increased, expanded or enlarged from the uses identified in Paragraph B above, ("Change in Conditions") the conditional relief or deferral afforded to the LANDOWNER from the requirements of Section 142-105 of the Subdivision Ordinance as enunciated in Paragraph No. 2 of this Paragraph D shall terminate and the LANDOWNER shall be required to promptly, and no later than sixty (60) days after such Change in Conditions occurs to, conform to all CITY development ordinances then applicable to the Property. However, the Property could be replatted to incorporate additional adjacent raw undeveloped land into the Property without terminating the conditional relief or deferral afforded to the LANDOWNER by and through Paragraph No. 2 of this Paragraph D provided that there is no other Change in Condition associated with the Property or the additional adjacent raw undeveloped land incorporated into the Property by such replat. In addition, LANDOWNER reserves the right to seek a modification of, or an amendment to, this Agreement in advance of any Change in Conditions proposed by LANDOWNER to avoid the termination of the conditional relief or deferral afforded to the LANDOWNER by and through this Agreement.
5. At such time as the Property or any part or portion of the Property is connected to the City's potable water system and/or sanitary sewer system, LANDOWNER shall pay all then applicable tap fees, connection fees, meter fees, impact fees, pro rata fees and/or service fees as may be required by CITY regardless of the name by which such fees and charges may be called subject to the requirements of state law.

E. CONDITIONAL VARIANCES ALLOWED UNTIL FURTHER DEVELOPMENT OCCURS

1. For so long a period of time as the conditional deferral of designing and constructing the Public Improvements identified in Paragraph D is in effect and allowed, the following conditional variances to the then currently adopted editions of the *International Building Code*, *International Residential Code* and/or *International Fire Code*, and the Subdivision Ordinance are permitted **provided that the LANDOWNER indemnifies and holds the CITY harmless from and against any and all claims arising out of or in any way related to the following conditional variances requested by LANDOWNER:**
  - a. The LANDOWNER will not be required to escrow the funds necessary to design and construct the Public Improvements identified in Paragraph D that are being conditionally deferred.
  - b. The LANDOWNER will be permitted to use a properly permitted on-site septic system that conforms to all requirements of the Texas Commission on Environmental Quality and the CITY until such time as the twelve-inch (12") diameter offsite sanitary sewer line is extended to the Property and the onsite portion of the twelve-inch (12") diameter sanitary sewer line constructed by LANDOWNER is tied in to and connected to the twelve-inch (12") diameter offsite portion thereof so extended to the Property. LANDOWNER shall within no more than ninety (90) days after the connection of the twelve-inch (12") diameter offsite portion of the sanitary sewer line with the onsite portion of the twelve-inch (12") diameter sanitary sewer line extending through the Property close, abandon and remove the on-site septic system in accordance with the requirements of the Texas Commission on Environmental Quality and thereafter utilize the twelve-inch (12") diameter sanitary sewer line for all of the Property's sewer needs.
  - c. The LANDOWNER will not be required to collect drainage in an underground storm water system.
  - d. The LANDOWNER will not be required to prohibit lot to lot drainage.
  - e. The LANDOWNER will not be required to obtain an offsite twenty-four-foot wide access easement across the adjacent property to the north and construct an offsite mutual access drive that connects the Property to Lake Forest Drive.
2. Notwithstanding the foregoing, at such time as the Property is further subdivided or replatted or the use of the Property is altered, changed, increased, expanded or enlarged from the uses identified in Paragraph B above, or the zoning on that portion of the Property which is situated within the City's corporate limits is changed to a more intense use, the conditional

variances afforded to the LANDOWNER as enunciated in Paragraph No. 1 of this Paragraph E shall terminate and the LANDOWNER shall be required to promptly, and no later than sixty (60) days after such Change in Conditions occurs to, conform to all CITY development ordinances then applicable to the Property. However, the Property could be replatted to incorporate additional adjacent raw undeveloped land into the Property without terminating the conditional relief or deferral afforded to the LANDOWNER by and through Paragraph No. 2 of Paragraph D of this Agreement provided that there is no other Change in Condition associated with the Property or the additional adjacent raw undeveloped land incorporated into the Property by such replat. In addition, LANDOWNER reserves the right to seek a modification of, or an amendment to, this Agreement in advance of any Change in Conditions proposed by LANDOWNER to avoid the termination of the conditional relief or deferral afforded to the LANDOWNER by and through this Agreement.

F. CITY DEVELOPMENT ORDINANCES

If LANDOWNER decides to develop the Property, LANDOWNER shall develop the Property in accordance with the standards as set forth in the City of McKinney subdivision and land development ordinances that are applicable in the ETJ or pursuant to this Agreement, including but not limited to provisions as to drainage, erosion control, pro rata payments, storm water, tree preservation, impact fees, Street Design Standards, Public Improvements Policy and construction standards except as herein specifically agreed to the contrary.

G. NO WAIVER

LANDOWNER expressly acknowledges that by entering into this Agreement, LANDOWNER, 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 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 Subdivision Ordinance or other applicable CITY ordinances specifically stipulated in this Agreement are granted by CITY for this subdivision and/or development.

I. INDEMNITY AND HOLD HARMLESS AGREEMENT

**LANDOWNER, 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 LANDOWNER, and only to the extent or percentage attributable to**



**LANDOWNER, in the subdividing, development, or construction of public improvements, including the negligent maintenance thereof. LANDOWNER shall not be responsible for or be required to indemnify CITY from CITY'S own negligence. LANDOWNER, its successors, assigns, vendors, grantees, and/or trustees do hereby further agree to fully indemnify, protect and hold CITY harmless from and against any and all claims arising out of or in any way related to the CITY's approval and granting and/or termination of the conditional deferrals and conditional variances requested by LANDOWNER and set out in Paragraphs D and E, above. The indemnity contained in this Paragraph shall expire five (5) years from the date of termination of this Agreement.**

J. WITHHOLDING APPROVALS AND PERMITS

In the event LANDOWNER fails to comply with any of the provisions of this Agreement, CITY shall be authorized to withhold any plat approvals and/or requests for permits associated with any development on the Property that conflicts with the provisions of Paragraph B of this Agreement or which requires compliance to Paragraphs D.3, D.4, D.5., or E.2 of this Agreement.

K. ROUGH PROPORTIONALITY AND WAIVER OF CLAIMS.

LANDOWNER 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 LANDOWNER, regarding LANDOWNER's rights under Texas and federal law. LANDOWNER 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.) LANDOWNER 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, LANDOWNER 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 LANDOWNER's responsibility for roadway and utility improvements for the Property. LANDOWNER 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. LANDOWNER 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 as well as the conditional deferrals and conditional variances granted herein) is roughly proportional or roughly proportionate to the demand that is placed on the roadway and utility systems by LANDOWNER's Property. LANDOWNER further acknowledges that the benefits of platting have been accepted with full knowledge of potential claims and causes of action which may be raised now and in the future, and LANDOWNER acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. **LANDOWNER shall indemnify and hold harmless CITY from any claims and suits of third parties, including but not limited to LANDOWNER'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 LANDOWNER, 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 LANDOWNER without the prior written consent of the CITY, and such consent shall not be unreasonably withheld, conditioned or delayed by CITY.

N. TERM

Pursuant to Section 212.172 of the Texas Local Government Code this Agreement may be valid for a term of up to forty-five (45) years unless earlier terminated by breach or pursuant to the specific provisions of Paragraphs D or E of this Agreement.

O. GENERAL PROVISIONS

1. LANDOWNER agrees that construction shall not begin on any proposed building improvements prior to City Council approval of this Agreement.
2. LANDOWNER 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 LANDOWNER. Likewise, coordination with agencies requiring special conditions (i.e., railroads and the Texas Department of Transportation) shall be the responsibility of LANDOWNER.

3. CITY agrees to record said Preliminary-Final Plat at such time as the Preliminary-Final Plat complies with the requirements set forth by the Subdivision Ordinance of CITY, and has been approved in the manner described therein.

IN WITNESS WHEREOF, LANDOWNER and CITY have executed this Agreement to be effective as of the latter of the date on which this Agreement is (a) approved by the City Council of the City of McKinney, Texas, or (b) signed by the City Manager of the City of McKinney, Texas.

**CITY OF MCKINNEY**

By: \_\_\_\_\_  
PAUL G. GRIMES  
City Manager

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

ATTEST:

\_\_\_\_\_  
EMPRESS DRANE  
City Secretary

**THE RYAN FAMILY LIVING TRUST**

By: \_\_\_\_\_  
YOLANDA RYAN  
Trustee

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

THE STATE OF TEXAS,  
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared PAUL G. GRIMES, City Manager of the **CITY OF MCKINNEY**, a

Texas Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 2019.

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

THE STATE OF TEXAS,  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_ day of June, 2019, by YOLANDA RYAN in her capacity as Trustee of **THE RYAN FAMILY TRUST**, the Landowner of the Property situated on the west side of Lake Forest Road (Farm to Market Road 1461) and on the north side of Farm to Market 123 (Bloomdale Road), more commonly known as 3355 Ryan Trail, McKinney, TX 75071, containing approximately 17.38 acres of land, more or less, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes set forth therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 2019.

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

PREPARED IN THE OFFICES OF:

*BROWN & HOFMEISTER, L.L.P.*  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081  
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