

**THIRD AMENDMENT TO
CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AND AGREEMENT FOR
CRAIG RANCH
("VCIM II")**

August 21, 2012 (the "Effective Date")

WHEREAS, *VCIM PARTNERS, L.P.*, a Texas limited partnership, (hereinafter "Owner"), and ***NORTH TEXAS ATHLETIC CENTER, INC.***, a Texas non-profit corporation, (hereinafter "NTAC"), previously entered into that certain Chapter 380 Economic Development Program and Agreement referred to as "VCIM II" (the "Agreement") pursuant to a program initiated by ***CITY OF MCKINNEY, TEXAS*** (hereinafter "City") pursuant to Chapter 380 of the Texas Local Government Code; and

WHEREAS, *CR ALMA, LP*, a Texas limited partnership, ***MID-ALMA, LP***, a Texas limited partnership, and ***CR BALLFIELDS, LP***, a Texas limited partnership (herein collectively referred to as the "***NTAC SUCCESSOR***"), are the successors in interest to NTAC and have assumed the obligations thereof; and

WHEREAS, the parties have previously amended the Agreement by amendments dated effective June 15, 2005 (the "First Amendment") and August 15, 2008 (the "Second Amendment") to amend certain provisions related to the Cooper Addition, the Fire Station Tract and the Grape Myrtle Tract; and

WHEREAS, pursuant to the terms of the Agreement, the City agreed to grant certain impact fee and park land dedication credits and waivers for the property contained in Craig Ranch; and

WHEREAS, certain Future Tracts were identified in the Agreement for subsequent annexation into the Agreement to become eligible for the aforementioned credits and waivers if annexed into the Agreement prior to June 1, 2008; and

WHEREAS, Owner has acquired certain Future Tracts, more particularly identified on the attached Exhibit "C", as well as other tracts described hereinafter, and now desires their annexation into the Agreement irrespective of the date of acquisition; and

WHEREAS, Owner and City desire to revise the required park tracts, more particularly identified on Exhibit "A", which will be dedicated to the City and revise the standards by which such parks will be constructed and maintained by Owner; and

WHEREAS, Owner and City desire to clarify the Owner’s obligation for roadway lanes, water lines, and sanitary sewer lines to be constructed by Owner as well as revise the completion dates for such infrastructure construction; and

WHEREAS, Owner has acquired land as more particularly identified on the attached Exhibit “C” (the “Green Tract”), and desires to annex the Green Tract into the Agreement; and

WHEREAS, in exchange for the City’s agreement to annex the Green Tract into the Agreement, Owner has agreed to modify the terms and application of the impact fee credits that will be available to the remainder of the undeveloped parcels in Craig Ranch; and

WHEREAS, amending the Agreement to annex the Green Tract is consistent with and meets the requisites of Chapter 380 of the Texas Local Government Code to promote local economic development and stimulate business and commercial activity within the City; and

WHEREAS, the amendments to the Agreement, the First Amendment and the Second Amendment shall be called the “Third Amendment”.

NOW, THEREFORE, for and in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City, Owner and NTAC Successor agree as follows:

1. The Future Tracts and the Green Tract as shown on Exhibit C attached hereto and made a part hereof are hereby annexed and incorporated into the Property, subject to the terms and provisions of the Agreement, as amended.

2. Section 7 of the Agreement is amended as follows:

“7. Roadway, Thoroughfare, Bridge and Utility Construction by Owner. Unless otherwise specifically set forth herein below, Owner shall construct, at its sole cost, the Public Infrastructure on the Property on or before the completion dates set forth on Exhibits C-1 and C-2. Final inspection and acceptance by City shall be completed within thirty (30) days after completion of each respective segment of Public Infrastructure. Owner and City agree that the sequence of the construction shall generally be in Segments and follow that shown on Exhibits C-1 and C-2. Owner shall design and construct the Public Infrastructure in accordance with City ordinances and codes then in effect. Owner shall execute a Construction Facilities Agreement or similar agreement for each construction contract and bond (with the City as the sole obligee) the performance of each construction contract using contract forms in substantial conformity to those attached as Exhibit D. Owner shall deliver the required performance bond(s) to City for the Segments of the Public Infrastructure at the time of the execution of each construction contract or in accordance with the following schedule, whichever is sooner:

Completion date

Delivery of Performance Bond

June 1, 2006
June 1, 2007
June 1, 2008

December 31, 2003
December 31, 2004
December 31, 2005

Failure to complete each Segment of the Public Infrastructure by the completion date shown on Exhibits C-1 and C-2 shall constitute default. Notwithstanding the foregoing, the full right-of-way for Craig Ranch Parkway shall be dedicated concurrently with the approval of the first preliminary plat for any development within the "Development Zone" (as such is depicted on Exhibit B attached to the Third Amendment). In addition to such dedication, the Owner shall construct a 2-lane segment of Craig Ranch Parkway from Collin McKinney Parkway to the Sam Rayburn Tollway ("SRT"), including the adjacent 12" waterline, in conjunction with the referenced first preliminary plat with the completion and acceptance of such construction being a condition to the filing of any Record Plat in the Development Zone. Concurrently with the construction of Craig Ranch Parkway, Owner shall construct full street sections of those portions of the roadway lying within 600 feet of the intersections of SRT and Collin McKinney Parkway. The additional lanes of Craig Ranch Parkway will be constructed at such time as a traffic impact analysis, requested by City and funded by Owner, indicates that additional lanes are required to serve the traffic volumes utilizing Craig Ranch Parkway.

In addition to the foregoing, Henneman Way from the OBGYN clinic to the western boundary of the Green Tract, including the roadway sections and any water and wastewater lines required incident thereto, shall be completed and accepted by Owner upon the earlier to occur of a) the platting of tracts immediately adjacent thereto or b) June 1, 2016.

In addition to the foregoing, any incomplete segments of waterlines or sanitary sewer lines shown on Exhibits C-2 and lying within the area shown on Exhibit C of the Third Amendment, shall be constructed by the earlier of June 1, 2016 or at the time of adjacent development."

3. Section 9.a. of the Agreement is amended as follows:

"9. **Events of Default by Owner in Construction of Public Infrastructure and City Remedies.** Each of the following shall constitute an Event of Default by Owner under this Agreement:

a. Construction of Public Infrastructure. Unless otherwise agreed in the Third Amendment, Owner's failure to complete the construction of each Segment of the Public Infrastructure in accordance with the completion dates set forth on

Exhibits C-1 and C-2, except to the extent such failure is caused by any act or failure to act on the part of City, or “force majeure,” as hereinafter defined.”

4. Section 10 of the Agreement is amended as follows:

“10. Waiver of Roadway Impact Fees, Limited Waiver of Utility Impact Fees, Limited Waiver of Park Fees, Option to Purchase Additional Utility Fee Credits and Park Maintenance.”

a. Roadway Impact Fees. As long as Owner is not in default under Paragraphs 4, 6, 7, 8 or 9, and as long as this Agreement has not been otherwise terminated by City, City agrees to waive the imposition and charge of roadway impact fees for all development on the Property depicted on Exhibit C of the Third Amendment, whether such development is by Owner or others.

b. Utility Impact Fees. So long as i) the Owner is not in default under Paragraphs 7, 8 or 9, ii) multi-family construction commences within thirty (30) months of the Effective Date of this Agreement on Phase I (as depicted on Exhibit D of the Third Amendment) of the Green Tract and iii) this Agreement, and any amendment thereto, has not been otherwise terminated by City, City agrees to a \$500,000 utility impact fee credit to be applied to multi-family units constructed upon the Green Tract, whether the same are constructed by Owner or others, until December 31, 2019 after which all utility impact fees shall be payable according to the ordinances then in effect. All non-residential and vertical multi-family units, save and except those multi-family units constructed on the Green Tract, shall pay utility impact fees from the Effective Date and continuing thereafter, subject to the following: In the event that multi-family construction does not commence on Phase I of the Green Tract within thirty (30) months of the Effective Date, Owner only shall receive a credit for utility impact fees equal to the amount of utility impact fees on non-residential and vertical multi-family units received by City from the Effective Date until June 1, 2013, such credit to be used on a “first come, first served” basis until June 1, 2019, after which all utility impact fees shall be payable according to ordinances then in effect. In addition, City and Owner agree that Owner has an existing utility impact fee credit of 359 single family units for lots whereupon building improvements are constructed prior to June 1, 2013 and upon single family lots which are under contract as of the Effective Date and whereupon building improvements are commenced prior to June 1, 2019 (if up to 1" meter service per unit), whether constructed by Owner or others. In consideration of the impact fee waivers and credits, Owner hereby waives any right to reimbursement for the construction of oversized utility facilities required by city ordinances. Owner agrees to construct utility facilities identified on Exhibit C-2, save and except those identified in the City's Water and Sewer Master Plan or Utility Impact Fee CIP as "to be installed by City", in accordance with the Third Amendment.

c. Park Fees. As long as Owner is not in default under Paragraphs 4, 6, 7, 8 or 9 and as long as this Agreement has not been terminated by City, City agrees to grant park fee credits through the dedication of Parks as shown on Exhibit A of the Third Amendment.

Parks shall be dedicated after platting, completion and acceptance by the City. The three (3) undeveloped parks identified in Exhibit A of the Third Amendment and any future urban parks located outside of the Development Zone would be developed according to the following urban park development standards, which standards shall control over any park standards to the contrary:

1. minimum area with required ground cover for parks of 1.5 acres or less - 35% and for parks greater than 1.5 acres – 25%;
2. park acreage to be computed net of rights-of-way;
3. seating for parks shall be computed on the basis of one (1) linear foot of seating for every 250 sq. ft. of open space;
4. the Dog Park would be exempt from the urban park development standards.

(a) The triangular parcel at entry point of Alma Road will not count as park dedication and will not be subject to development regulations concerning parks.

(b) The Dog Park will be constructed by Owner and dedicated to City before June 1, 2016. The standards for the construction of the Dog Park are:

1. 6' tall fence surrounding the park;
2. one (1) double entry gate;
3. separate gated sections for small and large dogs;
4. ten (10) picnic tables;
5. one (1) dog watering station in each area (small and large dog);
6. four (4) garbage receptacles with plastic pick-up bag dispensers;
7. three (3) interior light poles;
8. turf grass or wood chip groundcover; and
9. posted rules to be provided by the City.

5. The parks shown on Exhibit A to the Third Amendment will be dedicated. Except for the Crape Myrtle Park and the Veterans' Memorial hardscape improvements, flags and fountain equipment, the parks within Craig Ranch will be maintained by the either the Master Homeowners' Association or the Commercial Owners'

Association at Craig Ranch (hereinafter referred to as the "COA/HOA"), and the governing documents of such associations shall be amended to reflect this obligation. Within ninety (90) days after the Effective Date, the City shall remit to VCIM the sum of \$194,312.50 for accrued and unpaid park maintenance reimbursement relating to Cooper Park, the OBGYN park and Van Tuyl Plaza. Throckmorton Park shall not be subject to City park maintenance reimbursement, either retrospectively or prospectively. After the Effective Date, the City shall reimburse the COA/HOA for park maintenance (the existing parks, less Throckmorton Park, and future parks built to the urban standards above lying outside of the Development Zone) at the rate of \$2,500 per acre per year, payable quarterly, with a five-year CPI/DFW adjustment to be calculated and applied prospectively, using 2012 as the base year. When, after the application of the CPI/DFW adjustments, the annual rate per acre reaches \$5,000 per acre, the rate shall continue at \$5,000 per acre until set otherwise by mutual agreement. With City consent, parks shown on Exhibit F-1 of the Second Amendment that are not presently constructed may be relocated.

6. Park fees/park land dedication for residential developments in the Development Zone will be computed based upon the City standards in effect at the time of such developments, and such park fees/park land dedications are not waived and no park fee credits shall attach to the property in the Development Zone.
7. A tract of not less than seven (7) acres containing a tree mass within the commercial/retail parcel in southern portion of Green Tract will be placed into a perpetual common area owned and maintained by the COA/HOA concurrently with the development of Phase II of the Green Tract, as depicted on Exhibit D to the Third Amendment. The tree mass shall be preserved. The tract may be improved with walking paths, bridges, drainage features and a lake area (2-3 acres), subject to review and approval by the City. This area will not be dedicated as a City park. The tract shall be developed to provide recreational use by the residential and commercial users in close proximity thereto.
8. Land between the Ballfields and the City's soccer property, save and except a portion immediately adjacent to Collin McKinney Parkway that will be reclaimed by Owner, and the property encompassing the drainage channel located immediately south thereof between Henneman Way and SRT will be dedicated at no cost to the City, subject to easements for utilities and drainage from the adjacent parcels on the west, upon the earlier of the redevelopment of the Ballfields or June 1, 2016.

9. Those parks already designated as Cooper Park, Millie Cooper Park, Throckmorton Park and Van Tuyl Plaza shall retain those names when dedicated to the City; all other parks will be subject to the rules and ordinances of the City for naming parks.
10. Notwithstanding the payment of fees hereunder, Owner shall dedicate all public Parks shown on Exhibit A of the Third Amendment as consideration for the park waiver and credit provisions contained herein.

d. Park Maintenance by Owner. All designated Parks shall be maintained by the COA/HOA and shall be funded by all properties located in the Property, save and except city-owned parcels. The COA/HOA shall also maintain all streetscape improvements and landscaping located outside the roadway rights-of-way.”

5. Paragraph 1 of the Second Amendment shall read as follows:

“1. When demand dictates, as determined by the City, Owner shall convey to City by Special Warranty Deed and at no cost to the City, up to a 2.37 acre parcel of land for public purposes, including use as a public safety facility (the “Fire Station Tract”). The City shall determine the location based on development patterns and public safety needs, including currently-developed sites, subject to Owner’s consent which consent shall not be unreasonably withheld. Owner shall construct the roadways/thoroughfares on the entire perimeter of the parcel depicted on Exhibit A in accordance with City ordinances and related development agreements; however Owner shall not be required to construct perimeter roadways on any undeveloped site chosen by City. The parcel shall be conveyed free and clear of any restrictive covenants, save and except a restriction that the parcel be used for a public safety facility. The parcel shall further be excluded from any COA/HOA and any associated dues or assessments for common area maintenance. The parcel shall be conveyed free of any encumbrances, and it shall be reviewed and approved by the City Attorney prior to acceptance of the conveyance, and City shall bear the cost of any closing costs and title insurance.”

6. Unless otherwise defined herein, all capitalized terms shall have the same meaning as set forth in the Agreement, the First Amendment or the Second Amendment.

7. Except as amended hereby, all of the terms and provisions of the Agreement, the First Amendment, the Second Amendment and any other amendments thereto shall remain in full force and effect and are hereby reaffirmed and ratified.

8. The Owner and City agree that the Owner’s obligations under Paragraph 2 of the Second Amendment are satisfied.

9. The Owner and City agree that the Owner's obligations under Paragraph 1 of the First Amendment are satisfied.

10. The Owner and City agree that the Owner's obligations under Paragraphs 3, 6, 11, 12, 13, 16, 18 of the Agreement are satisfied.

11. The Effective Date of the Third Amendment shall be August 21, 2012.

In witness whereof, this Third Amendment to Chapter 380 Development Program and Agreement for Craig Ranch has been executed to be effective as of the Effective Date.

THE CITY OF MCKINNEY, TEXAS,
a Texas municipal corporation

By: _____
Name: Jason Gray
Title: City Manager
Date Signed: _____

VCIM PARTNERS, L.P.,
a Texas limited partnership
By: VCIM, L.L.C.
a Texas limited liability company,
its General Partner

By: _____
Name: David Craig
Title: General Manager
Date Signed: _____

CR ALMA, LP, a Texas limited partnership
By: McKinney CR GP, LC, its General Partner

By: _____
Name: Robert J. Holcomb
Title: Manager

By: _____
Name: David Craig
Title: General Manager
Date Signed: _____

MID-ALMA, LP, a Texas limited partnership
By: McKinney CR GP, LC, its General Partner

By: _____
Name: Robert J. Holcomb
Title: Manager

By: _____
Name: David H. Craig
Title: Manager
Date Signed: _____

CR BALLFIELDS, LP,
a Texas limited partnership
By: McKinney CR GP, LC,
its General Partner

By: _____
Name: Robert J. Holcomb
Title: Manager

By: _____
Name: David H. Craig
Title: Manager
Date Signed: _____

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, TEXAS**, 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 _____, 2012.

Notary Public _____ County, Texas
My commission expires _____

STATE OF TEXAS §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared DAVID CRAIG, in his capacity as General Manager of VCIM, L.L.C., a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that VCIM, L.L.C. is the General Partner of **VCIM PARTNERS, LP**, a Texas 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 _____ DAY OF _____, 2012.

Notary Public _____ County, Texas
My commission expires _____

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared ROBERT J. HOLCOMB, in his capacity as Manager of McKinney CR GP, LC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that McKinney CR GP, LC, is the General Partner of **CR ALMA, LP**, a Texas 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 _____ DAY
OF _____, 2012.

Notary Public _____ County, Texas
My commission expires _____

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared DAVID H. CRAIG, in his capacity as Manager of McKinney CR GP, LC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that McKinney CR GP, LC, is the General Partner of **CR ALMA, LP**, a Texas 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 _____ DAY
OF _____, 2012.

Notary Public _____ County, Texas
My commission expires _____

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared ROBERT J. HOLCOMB, in his capacity as Manager of McKinney CR GP, LC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that McKinney CR GP, LC, is the General Partner of **MID-ALMA, LP**, a Texas 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 _____ DAY OF _____, 2012.

Notary Public _____ County, Texas
My commission expires _____

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared DAVID H. CRAIG, in his capacity as Manager of McKinney CR GP, LC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that McKinney CR GP, LC, is the General Partner of **MID-ALMA, LP**, a Texas 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 _____ DAY OF _____, 2012.

Notary Public _____ County, Texas
My commission expires _____

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared ROBERT J. HOLCOMB, in his capacity as Manager of McKinney CR GP, LC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that McKinney CR GP, LC, is the General Partner of **CR BALLFIELDS, LP**, a Texas 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 _____ DAY OF _____, 2012.

Notary Public _____ County, Texas
My commission expires _____

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared DAVID H. CRAIG, in his capacity as Manager of McKinney CR GP, LC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that McKinney CR GP, LC, is the General Partner of **CR BALLFIELDS, LP**, a Texas 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 _____ DAY OF _____, 2012.

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
214/747-6100
214/747-6111 Fax

**THIRD AMENDMENT TO CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM
AND AGREEMENT FOR CRAIG RANCH
("VCIM II")**

August 21, 2012 (the "Effective Date")

**EXHIBIT A
The Park Parcels**

**THIRD AMENDMENT TO CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM
AND AGREEMENT FOR CRAIG RANCH
("VCIM II")**

August 21, 2012 (the "Effective Date")

**EXHIBIT "B"
The Development Zone**

**THIRD AMENDMENT TO CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM
AND AGREEMENT FOR CRAIG RANCH
("VCIM II")**

August 21, 2012 (the "Effective Date")

EXHIBIT "C"
Craig Ranch Property Subject to Third Amendment

**THIRD AMENDMENT TO CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM
AND AGREEMENT FOR CRAIG RANCH**

(“VCIM II”)

August 21, 2012 (the “Effective Date”)

EXHIBIT “D”

Phases of Columbus Realty Project