

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**

*(Reduction of Collin CAD Values for Payment of Money in Lieu of Land Dedication)*

***McKinney Millennium Development***

THIS AGREEMENT, entered into effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and **McKinney Millennium** whose address is 3109 Knox Street, Suite 305, Dallas, TX 75205, ("DEVELOPER") witnesseth that:

WHEREAS, the Subdivision Regulations of the City of McKinney, Texas contained in Chapter 142 of the Code of the City of McKinney, Texas (the "Subdivision Regulations") establish procedures and standards for the development and subdivision of real estate and for the surveying and platting thereof, requiring the installation of adequate public facilities to serve the subject property and providing penalties for violations, among other things; and

WHEREAS, Section 142-76(b)(10) of the Subdivision Regulations requires the execution of a Facilities Agreement prior to the issuance of a Development Permit for the clearing, grading, filling, dredging, or construction of public streets, utilities, or drainage, or other improvements which may affect adjacent or surrounding properties in certain circumstances described in Section 142-37 of the Subdivision Regulations, as amended; and

WHEREAS, the development of the subdivision to be known as **McKinney Millennium** involves certain pro rata payments, city participation in cost, escrow deposits or other future considerations, and/or other nonstandard development regulations, that trigger the requirement for a Facilities Agreement by and between the CITY and the DEVELOPER in accordance with Section 142-37 of the Subdivision Regulations, as amended; and

WHEREAS, the Subdivision Regulations also prohibit recording the Final Plat of a subdivision within the incorporated area of the City until the DEVELOPER has completed all of the public facilities that must be dedicated to the City or has entered into a Facilities

Agreement and guaranteed to the satisfaction of the CITY such improvements will be installed; and

WHEREAS, Section 142-156(a) of the Subdivision Regulations requires DEVELOPER to convey land for park purposes or make a payment of money in lieu of land, or a combination of both, to the CITY at the time of subdivision for single family and duplex residential development or at time of issuance of a building permit for multi-family development, to provide for the recreational needs created by such development; and

WHEREAS, Section 142-157(a)(2) of the Subdivision Regulations provides that for single family, duplex residential and multi-family developments the amount of land needed for park purposes, to provide for the recreational needs created by such residential development, shall be based on one acre per 50 residential dwelling units or a portion thereof; and

WHEREAS, Section 142-158(1) of the Subdivision Regulations provides that in situations where the director of parks and recreation determines that a payment of money in lieu of land shall be made, any payment of money required to be paid by this article shall be in an amount equal to the value of the property established by the most recent appraisal of all or part of the property made by the central appraisal district; and

WHEREAS, DEVELOPER appealed the cost per acre required to be paid in lieu of dedicating land to the CITY Council requesting an adjustment of the amount per acre assessed for park purposes and the CITY Council determined that the cost per acre should be reduced; and

WHEREAS, DEVELOPER and CITY desire to memorialize the cost per acre required to be paid by DEVELOPER as a condition to the approval of any final plat or replat; and

WHEREAS, payment of the money in lieu of dedication of parkland shall be made prior to the filing of the plat for single family and duplex residential developments and prior to the issuance of a building permit for multi-family developments; and

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

A. PROPERTY

This Agreement is for Property located in the City of McKinney, on the east side of McKinney Ranch Parkway and at the terminus of Silverado Trail containing approximately 9.68 acres of land, more fully described in Exhibit A attached hereto and fully incorporated herein by reference (the "Property").

## B. PARK DEDICATION

1. DEVELOPER's parkland dedication requirements shall be satisfied by the payment of money in lieu of land dedication based on the CITY ordinance requirement of one (1) acre of parkland dedication for each fifty (50) single-family residential lots.
2. The most recent appraisal of all or part of the Property made by the central appraisal district valued the Property at One Hundred Fifty Two Thousand Four Hundred Sixty Dollars (\$152,460.00) per acre. DEVELOPER has appealed the requirement that it pay money in lieu of dedication of parkland at the most recent appraised value of the property by the central appraisal district of \$152,460.00 per acre. CITY agrees to allow DEVELOPER to pay money in lieu of dedication of parkland at a rate of One Hundred Thousand Dollars (\$100,000.00) per acre rather than paying an amount based on the value of the Property established by the most recent appraisal of all or part of the Property made by the central appraisal district.
3. Based on the number of proposed multi-family units proposed for the McKinney Millennium Tract (164) the DEVELOPER is required to dedicate 3.28 acres of land to the CITY for park purposes. In the alternative, DEVELOPER shall pay money in lieu of dedication at a value of \$100,000.00 per acre for 3.28 acres of land which brings the total payment of money in lieu of dedication of parkland to Three Hundred Twenty-Eight Thousand Dollars (\$328,000).
4. DEVELOPER acknowledges and understands that the calculations regarding required parkland dedication and fees in lieu of dedication shall change if the number of multi-family residential units is changed. In the event of an increase in the number of multi-family residential units for any phase(s) of the Property following DEVELOPER's prepayment of the cash in lieu of dedication, the DEVELOPER shall dedicate additional parkland or pay additional fees in lieu of dedication as recalculated by the CITY. In the event of a decrease in the number of multi-family residential units for which DEVELOPER prepaid cash in lieu of dedication under this provision, the DEVELOPER shall be entitled to a pro-rata refund or reimbursement of any "overpayment" upon completion of all phases of the Property and final build out of said units and Property.
5. In any event, all required parkland shall be dedicated or cash in lieu of dedication shall be paid to CITY prior to the issuance of a building permit for any phase of the Property. DEVELOPER shall not be issued a building permit until the parkland dedication or cash payment is satisfied.

## C. CITY DEVELOPMENT ORDINANCES

DEVELOPER shall develop the PROPERTY in accordance with the standards as set forth in City of McKinney zoning, subdivision and land development ordinances, including but not limited to provisions as to drainage, erosion control, pro rata payments, storm water, tree

preservation, park land dedication, hike and bike trails, impact fees, Street Design Standards, Public Improvements Policy and construction standards.

D. NO WAIVER

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

E. VARIANCES

It is expressly acknowledged that only those variances to the Zoning Ordinance and Subdivision Ordinance or other applicable CITY ordinances stipulated in attached Exhibit B, if any, are granted by CITY for this subdivision and/or development. If no variances are granted, Exhibit B shall state “No variances for this Property are granted and none shall be allowed.”

F. INDEMNITY AND HOLD HARMLESS AGREEMENT

**DEVELOPER, its successors, assigns, vendors, grantees, and/or trustees do hereby agree to fully indemnify, protect and hold CITY harmless from all third-party claims, suits, judgments, and demands, including its reasonable attorney’s fees, arising out of the sole or concurrent negligence of DEVELOPER, and only to the extent or percentage attributable to DEVELOPER, in the subdividing, development, or construction of public improvements, including the negligent maintenance thereof. DEVELOPER shall not be responsible for or be required to indemnify CITY from CITY’S own negligence. The indemnity contained in this Paragraph shall expire five (5) years from the date of final acceptance of each phase of the improvements.**

G. REVOCATION

In the event DEVELOPER fails to comply with any of the provisions of this Agreement, CITY shall be authorized to revoke any and all Certificates of Occupancy that may have been previously issued in relation to the subdivision and/or development of Property; and CITY shall be further authorized to file this instrument in the records of Collin County as a Mechanic's Lien against DEVELOPER'S property; and in the alternative, CITY shall be authorized to levy an assessment against DEVELOPER'S property for public improvements to be held as a tax lien against the Property by CITY.

## H. ROUGH PROPORTIONALITY AND WAIVER OF CLAIMS.

DEVELOPER has been represented by legal counsel in the negotiation of this Agreement and been advised, or has had the opportunity to have legal counsel review this Agreement and advise DEVELOPER, regarding DEVELOPER's rights under Texas and federal law. DEVELOPER hereby waives any requirement that the CITY retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the CITY as a condition of approval for the development of this Property are roughly proportional or roughly proportionate to the proposed development's anticipated impact. (These exactions may include but are not limited to the making of dedications or reservations of land, the payment of fees, the construction of facilities, and the payment of construction costs for public facilities.) DEVELOPER specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with Tex. Loc. Gov't Code § 212.904. However, notwithstanding the foregoing, Developer hereby releases the City from any and all liability under Tex. Loc. Gov't Code § 212.904 regarding or related to the cost of those municipal infrastructure improvements required for the development of the Property.

It is the intent of this Agreement that the provision for parkland dedication and the payment of cash in lieu of dedication made herein constitutes a proportional allocation of DEVELOPER's responsibility for park improvements for the Property. DEVELOPER hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't Code. DEVELOPER further releases CITY from any and all claims based on excessive or illegal exactions; it being agreed that DEVELOPER's infrastructure contribution(s) (after receiving all contractual offsets, credits and reimbursements) is roughly proportional or roughly proportionate to the demand that is placed on the park system by DEVELOPER's Property. DEVELOPER further acknowledges that the benefits of zoning and platting have been accepted with full knowledge of potential claims and causes of action which may be raised now and in the future, and DEVELOPER acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. **DEVELOPER shall indemnify and hold harmless CITY from any claims and suits of third parties, including but not limited to DEVELOPER's successors, assigns, grantees, vendors, trustees or representatives, brought pursuant to this Agreement or the claims or types of claims described in this paragraph.**

## I. CONTINUITY

This Agreement shall be a covenant running with the land, and be binding upon DEVELOPER, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

J. ASSIGNABILITY

This Agreement shall not be assignable by DEVELOPER without the prior written consent of the CITY, and such consent shall not be unreasonably withheld, conditioned or delayed.

K. TERMINATION AND RELEASE

Upon satisfactory completion by DEVELOPER and final acceptance by CITY of all requirements of this Agreement, this Agreement shall terminate and CITY will execute a release of covenant to DEVELOPER, its heirs, successors, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future. This Agreement shall not terminate until the requirements of all parties have been fulfilled.

L. GENERAL PROVISIONS

1. DEVELOPER hereby relieves CITY of any responsibilities for any inadequacies in the preliminary plans, exhibits and cost estimate(s) supplied for the purpose of this Agreement, and further agrees that DEVELOPER will comply with CITY'S Subdivision Ordinance, Street Design Standards, Public Improvements Policy and any other applicable policies, rules, regulations and ordinances of CITY regarding development of Property.
2. DEVELOPER agrees that all coordination required with public and/or private utility agencies to eliminate conflicts with proposed street grades or underground improvements shall be the responsibility of DEVELOPER. Likewise, coordination with agencies requiring special conditions (i.e., railroads and the Texas Department of Transportation) shall be the responsibility of DEVELOPER.
3. CITY agrees to record said Plat at such time as the Plat complies with the requirements set forth by the Subdivision Ordinance of CITY, and has been approved in the manner described therein.

***CITY OF McKINNEY***

By: \_\_\_\_\_

JOSE MADRIGAL  
Deputy City Manager

ATTEST:

\_\_\_\_\_  
SANDY HART, TRMC, MMC  
City Secretary  
Denise Vice  
Assistant City Secretary

APPROVED AS TO FORM:

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

***MCKINNEY MILLENNIUM, LP,***  
a Texas limited partnership company

By: \_\_\_\_\_

BRANDON BOLIN  
Managing Member

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 \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by Brandon Bolin, in his capacity as Managing Member of **MCKINNEY MILLENNIUM, LP**, a Texas limited partnership company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that Brandon Bolin, is the Managing Member of McKinney Millennium, LP, a Texas limited partnership company, 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 \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
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



**EXHIBIT "A"**

LEGAL DESCRIPTION OF PROPERTY

**EXHIBIT "B"**

VARIANCES

1. DEVELOPER is hereby granted a variance from the mandate of Section 142-158(1) requiring that DEVELOPER pay, in lieu of dedicating parkland, an amount equal to the per acre value of the Property established by the most recent appraisal of all or part of the Property made by the central appraisal district. Instead, DEVELOPER is hereby granted a variance thereto allowing DEVELOPER to pay an amount equal to \$100,000.00 per acre rather than the most recent appraised value of \$152,460.00 per acre for the 3.28 acres of parkland required to be dedicated for the development of the Property.
2. No other variances for this Property are granted and none shall be allowed.