

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)

Malone Estates, Lots 1 & 2, Block A

THIS AGREEMENT, entered into effective the ___ day of _____, 2018, by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and **WILLIAM MICHAEL MALONE**, whose mailing address is 6909 Lakepointe Drive, Oklahoma City, Oklahoma 73116, ("LANDOWNER") 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 142-4(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 **Malone Estates, Lots 1 & 2, 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”) must be designed and constructed before the recording of the Record Plat of the subdivision in the ETJ, to be known as **Malone Estates, Lots 1 & 2, Block A**, (the “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 the “Property,” defined below, as required by Texas Local Government Code § 212.904; and

WHEREAS, CITY concurs that the construction of a single-family detached home and contractor’s yard / open storage on the Property that is being platted as **Malone Estates, Lots 1 & 2, 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 a single-family detached home and contractor’s yard / open storage; 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 Plat, the LANDOWNER and CITY agree as follows:

A. PROPERTY

This Agreement is for Property located in the ETJ of the City of McKinney, in an area that is south of U.S. Highway 380 (West University Drive) and east of Red Bud Drive containing approximately 9.9231 acres of land, more or less, more

fully described in Exhibit A attached hereto and fully incorporated herein by reference (the "Property").

B. USES ALLOWED ON PROPERTY

The use of the Property shall be limited to contractor's yard / open storage on Lot 1, Block A of the Malone Estates containing approximately 1.9328 acres of land, more or less, and one single-family detached home on Lot 2, Block A of the Malone Estates containing approximately 7.9903 acres of land, more or less. Subject to the foregoing restrictions and the specific limitations set forth herein, the use of Lot 2, Block A, only, shall conform to the requirements of the RED-1 Residential Estates District as set out in Section 146-68 of the Code of Ordinances, City of McKinney, Texas, as codified through Ordinance No. 2016-04-034, enacted on April 19, 2016. However, 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 only uses permitted on Lot 1, Block A, are a contractor's yard / open storage. In addition, the following permitted or accessory uses or uses requiring a special use permit under the RED-1 Residential Estates District as identified in the Schedule of Uses are prohibited on Lot 2, Block A:

1. Bed and breakfast;
2. Church, rectory, or other places of worship including church-operated day-care facilities and pre-schools;
3. College or university;
4. Museum, library, art gallery (public);
5. School, public, private or parochial;
6. Country club;
7. Golf course (public);
8. Park or playground (public);
9. Playfield or stadium (public);
10. Recreation center (public);
11. Swimming pool (public);
12. Garage or lot, parking (private); and
13. Private street development.

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 plat heretofore approved by the CITY) 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. a fifty-foot (50') wide access, utility and drainage easement running along the entire length of the common property line between Lots 1 and 2 of Block A of Malone Estates; and
- b. a twenty-five-foot (25') wide access, utility and drainage easement extending in a southerly direction from the southern border of Lot 2, Block A of Malone Estates along the western boundary of Lot 1 of Block A of Malone Estates to the southern boundary of said Lot 1, Block A of Malone Estates; and
- c. a twenty-five-foot (25') wide access, utility and drainage easement running along the entire southern boundary of Lot 1, Block A of Malone Estates.

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

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 fifty-foot (50') wide access, utility and drainage easement running along the entire length of the common property line between Lots 1 and 2 of Block A of Malone Estates; and
- b. a twenty-five-foot (25') wide access, utility and drainage easement extending in a southerly direction from the southern border of Lot 2, Block A of Malone Estates along the western boundary of Lot 1 of

Block A of Malone Estates to the southern boundary of said Lot 1, Block A of Malone Estates; and

- c. a twenty-five-foot (25') wide access, utility and drainage easement running along the entire southern boundary of Lot 1, Block A of Malone Estates.

The location of the foregoing described drainage and utility easements is more particularly depicted in the proposed 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 required exactions exceed the impacts of a single-family detached home 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 dedicate right-of-way for and front the lot on a public street given that the Lots 1 and 2, Block A of the Malone Estates front on to Private Road 5312; and
 - b. The requirement to dedicate that portion of the one hundred twenty foot (120') wide right-of-way for future Independence Parkway that extends approximately five hundred eighty-seven (587) linear feet between the northern and southern boundaries of the Property (1.617 acres of land) and which does not provide any current connectivity; and
 - c. The requirement to construct a twenty-four foot (24') wide concrete curb and gutter pavement section of Independence Parkway including the associated street lighting, 4-foot sidewalks, and underground drainage systems; and

- d. The requirement to improve offsite roadways as necessary to provide adequate access to and from the Property.
 - e. The requirement to construct a minimum 8-inch diameter water line and approximately one thousand four hundred (1,400) linear feet of offsite water lines capable of supplying adequate fire flow to the Property from the nearest City of McKinney water line; and
 - f. The requirement to construct a minimum 8-inch diameter sewer line through the property together with approximately six hundred (600) linear feet of offsite sewer lines capable of serving the property.
3. 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.
 4. 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.
 - 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 install a water system that is capable of furnishing the fire flow and pressures required by the City of McKinney Fire Department (1000 gallons per minute and 20 pounds per square inch residual pressure) intended to provide sufficient fire protection for the safe, efficient and orderly development of the City to all or any part of the Property.
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 zoning, 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, 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 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.

[Signatures begin on following page.]

CITY OF MCKINNEY

By: _____
PAUL G. GRIMES
City Manager

Date Signed: _____

ATTEST:

EMPRESS DRANE
City Secretary
MELISSA LEE
Deputy City Secretary

WILLIAM MICHAEL MALONE

By: _____
WILLIAM MICHAEL MALONE

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 _____, 2018.

Notary Public _____ County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 2018, by WILLIAM MICHAEL MALONE in his capacity as the Landowner of the Property situated in an area that is south of U.S. Highway 380 (West University Drive) and east of Red Bud Drive in the extra-territorial jurisdiction of the City of McKinney, Texas containing approximately 9.9231 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 he executed the same for the purposes set forth therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____, 2018.

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

DESCRIPTION OF PROPERTY