

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**

Creekside at Craig Ranch Phase One

THIS AGREEMENT, entered into effective the ___ day of February, 2015, by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and **BEAZER HOMES TEXAS, L.P.**, a Delaware limited partnership, whose address is 1750 Valley View Lane, Suite 200, Dallas, Texas 75234, ("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 Property (as hereinafter defined) which is a subdivision to be known as ***Creekside at Craig Ranch Phase One*** 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 required to serve the property being developed that must be dedicated to the City ("Public Improvements") or has

entered into a Facilities Agreement that provides a guarantee to the satisfaction of the CITY that such improvements will be installed; and

WHEREAS, the roadway identified as Silverado Trail is located adjacent to, but off-site from, the Property and is required to serve the Property; and

WHEREAS, the right-of-way for Silverado Trail is the subject of a plat that is separate and distinct from the plat for the Property; and

WHEREAS, the dedication of the right-of-way and the construction of the roadway and bridge improvements for Silverado Trail, and all appurtenances thereto, is the subject of a 380 Development Agreement with the City as well as a separate Facilities Agreement; and

WHEREAS, DEVELOPER requests the recording of the Record Plat of the Property (the "Plat") prior to the completion and acceptance by the City of Silverado Trail and the Silverado Trail Improvements (as hereinafter defined) adjacent to the Property.

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 the Property located in the City of McKinney, on the south side of Silverado Trail in an area east of Custer Road and west of Alma Road containing approximately 13.646 acres of land, more fully described in Exhibit A attached hereto and fully incorporated herein by reference (the "Property").

B. PUBLIC IMPROVEMENTS

All Public Improvements, including utilities, drainage easements, sidewalks, street lighting, street signage, park land dedication and all other required improvements and dedications, other than the Silverado Trail Improvements and those improvements and dedications related to Silverado Trail, shall be provided by DEVELOPER at no cost to CITY, in accordance with the CITY's Subdivision Ordinance and as approved by CITY Engineer, prior to issuance of any Certificate of Occupancy. Engineering studies, plan/profile sheets, and other construction documents shall be provided by DEVELOPER at the time of platting as required by the Subdivision Ordinance. Such plans shall be approved by CITY Engineer or his agent prior to the issuance of a Development Permit.

C. SILVERADO TRAIL – Custer Road to the Eastern Edge of the Silverado Trail Bridge

McKinney Seven Stacy, LP has heretofore entered into a Chapter 380 Development Agreement with the CITY (the "Development Agreement") for the dedication of the Silverado Trail right-of-way immediately adjacent to the Property (the "Silverado Trail ROW") and for the construction of the Silverado Trail roadway improvements within such right-of-way (the "Silverado Trail Improvements"). Construction of the Silverado Trail Improvements is underway and upon the completion of same and acceptance by the CITY, the Silverado Trail ROW will be dedicated to the CITY. Notwithstanding the fact that McKinney Seven Stacy, LP and the City have entered into the Development Agreement, McKinney Seven Stacy, LP has heretofore executed and delivered to the CITY a facilities agreement containing a bond acceptable to the CITY in an amount equal to 120% of the costs of completing the remaining Silverado Trail Improvements in order to provide the assurance to the CITY that the Silverado Trail Improvements will be fully completed and the Silverado Trail ROW will be dedicated to the City. Given the foregoing, the CITY recognizes that the obligation to construct the Silverado Trail Improvements lies with McKinney Seven Stacy, LP and not with DEVELOPER. Therefore, DEVELOPER is relieved of such obligations and the same shall not be a requirement or prerequisite for the filing of the plat for the Property which is a subdivision to be known as **Creekside at Craig Ranch Phase One** with Collin County, Texas, or the issuance of building permits for construction of improvements, including, but not limited to, homes, within the Property.

D. 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.

E. 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.

F. 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."

G. 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.

H. REVOCAION

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.

I. 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 roadway and utility improvements made herein constitutes a proportional allocation of DEVELOPER's responsibility for roadway and utility 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 OWNERS' 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 roadway and utility systems 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.**

J. 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.

K. 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.

L. 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.

M. MAINTENANCE BOND

Prior to final acceptance of improvements to Property, DEVELOPER has furnished to CITY a good and sufficient maintenance bond in the amount of fifteen percent (15%) of the contract price of such improvements, or in such amount as approved by the City Engineer, with a reputable and solvent corporate surety, in favor of CITY, to indemnify City against any repairs arising from defective workmanship or materials used in any part of the construction of improvements to Property, for a period of two (2) years from the date of final acceptance of such improvements.

N. GENERAL PROVISIONS

1. DEVELOPER 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 construction shall not begin on any proposed building improvements prior to City Council approval of this Agreement.
3. 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.
4. 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.

[Remainder of page left blank intentionally.]

CITY OF McKINNEY

By: _____
TOM MUEHLENBECK
Interim City Manager

Date Signed: _____

ATTEST:

SANDY HART, TRMC, MMC,
City Secretary
DENISE VICE
Assistant City Secretary

**BEAZER HOMES TEXAS, L.P.,
a Delaware limited partnership**

**By: Beazer Homes Texas Holdings, Inc.,
a Texas corporation,
its General Partner**

By: 

Troy Radelat, Division President

Date Signed: 2/11/2015

[Remainder of page left blank intentionally.]

THE STATE OF TEXAS,
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared TOM MUEHLENBECK, Interim 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 _____, 2015.

Notary Public _____ County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF DALLAS

This instrument was acknowledged before me on the 11 day of February, 2015, by Troy Radelat, in his capacity as Division President of Beazer Homes Texas Holdings, Inc., a Texas corporation, the General Partner of **BEAZER HOMES TEXAS, L.P.**, a Delaware limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me 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 11 DAY OF FEBRUARY, 2015.

Aubrey Dym
Notary Public in and for the State of 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

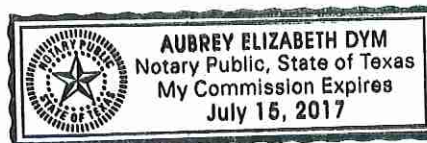


EXHIBIT A

DESCRIPTION OF PROPERTY

COMMENCING at a 5/8 inch iron rod found in the east line of Custer Drive, a variable width right-of-way for the common northwest corner of a tract of land conveyed to DD CR II, according to the document filed of record in Document Number 2013010001408880, Deed Records, Collin County, Texas and southwest corner of that tract of land conveyed to McKinney Seven Stacy, LP, according to the document filed of record in Document Number 20071211001646750, Deed Records, Collin County, Texas;

THENCE Easterly, with the common north line of said DD CR II tract and south line of said McKinney Seven Stacy, LP tract, the following five (5) courses and distances:

North 89 degrees 22 minutes 53 seconds East, a distance of 160.96 feet to a 5/8 inch iron rod found for corner at the beginning of a curve to the right having a central angle of 10 degrees 10 minutes 34 seconds, a radius of 474.99 feet and a chord bearing and distance of South 85 degrees 31 minutes 50 seconds East, 84.25 feet;

Easterly, with said curve to the right, an arc distance of 84.36 feet to a 5/8 inch iron rod found for corner;

South 80 degrees 26 minutes 34 seconds East, a distance of 127.42 feet to a 5/8 inch iron rod found for corner at the beginning of a curve to the left having a central angle of 10 degrees 17 minutes 10 seconds, a radius of 525.01 feet and a chord bearing and distance of South 85 degrees 35 minutes 09 seconds East, 94.13 feet;

Easterly, with said curve to the left, an arc distance of 94.25 feet to a 5/8 inch iron rod found for corner;

North 89 degrees 16 minutes 15 seconds East, a distance of 113.42 feet to a 5/8 inch iron rod found for the POINT OF BEGINNING of the tract of land herein described;

THENCE North 00 degrees 29 minutes 24 seconds west, leaving said common line and with the common east line of the above mentioned McKinney Seven Stacy, LP and west line of the above mentioned Beazer Homes Texas, LP tract, a distance of 695.07 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 82 degrees 06 minutes 17 seconds East, with the common north line of said Beazer Homes Texas, LP tract and south line of said McKinney Seven Stacy, LP tract, a distance of 26.15 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the right having a central angle of 07 degrees 15 minutes 22 seconds, a radius of 800.00 feet and a chord bearing and distance of North 85 degrees 43 minutes 59 seconds, 101.25 feet;

THENCE Easterly, continuing with said common line and with said curve to the right, an arc distance of 101.32 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 89 degrees 21 minutes 40 seconds East, along said common line, a distance of 724.58 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE Southerly and southwesterly, leaving said common line, over and across the above mentioned Beazer Homes Texas, LP tract the following twenty-eight (28) courses and distances:

South 00 degrees 38 minutes 20 seconds East, a distance of 20.00 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 14 degrees 30 Minutes 45 seconds West, a distance of 94.04 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a non-tangent curve to the right having a central angle of 115 degrees 39 minutes 26 seconds, a radius 50.00 feet and a chord bearing and distance of South 24 degrees 19 minutes 15 seconds, 84.65 feet;

Southerly, with said curve to the right, an arc distance of 100.93 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a reverse curve to the left having a central angle of 33 degrees 59 minutes 52 seconds, a radius of 8.50 feet and a chord bearing and distance of South 16 degrees 30 minutes 32 seconds West, 4.97 feet;

Southerly, with said curve to the left, an arc distance of 5.04 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 00 degrees 29 minutes 24 seconds East, a distance of 92.12 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

North 89 degrees 30 minutes 36 seconds East, a distance of 60.00 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 00 degrees 29 minutes 24 seconds East, a distance of 150.00 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 89 degrees 30 minutes 36 seconds West, a distance of 15.00 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 00 degrees 29 minutes 24 seconds East, a distance of 103.64 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 89 degrees 30 minutes 36 seconds West, a distance of 50.00 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 88 degrees 33 minutes 57 seconds West, a distance of 50.01 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 86 degrees 43 minutes 57 seconds West, a distance of 50.06 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 82 degrees 07 minutes 52 seconds West, a distance of 50.42 feet to a 1/2 Inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 80 degrees 00 minutes 19 seconds West, a distance of 50.70 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 80 degrees 15 minutes 33 seconds West, a distance of 50.66 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 82 degrees 01 minutes 33 seconds West, a distance of 50.43 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 85 degrees 45 minutes 32 seconds West, a distance of 50.11 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

North 89 degrees 14 minutes 28 seconds West, a distance of 50.01 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

North 84 degrees 14 minutes 41 seconds West, a distance of 50.30 feet to a 1/2 inch iron rod with a yellow plastic cap stomped DAA set for corner;

South 00 degrees 29 minutes 24 seconds East, a distance of 102.61 feet to a 1/2 Inch Iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 05 degrees 13 minutes 52 seconds West, a distance of 50.16 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 00 degrees 29 minutes 24 seconds East, a distance of 104.57 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

North 85 degrees 19 minutes 00 seconds West, a distance of 50.20 feet to a 1/2 inch iron rad with a yellow plastic cap stamped "DAA" set for corner;

North 85 degrees 52 minutes 26 seconds West, a distance of 50.16 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

North 89 degrees 31 minutes 13 seconds West, a distance of 50.01 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 89 degrees 30 minutes 36 seconds West, a distance of 150.00 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

North 00 degrees 29 minutes 24 seconds West, a distance of 3.98 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

South 89 degrees 30 minutes 36 seconds West, a distance of 100.00 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the common west line of the above mentioned Beazer Homes Texas, LP tract and east line of the above mentioned DD CR II tract;

THENCE North 00 degrees 29 minutes 24 seconds West, with said common line, a distance of 105.00 feet to the POINT OF BEGINNING and containing 13.646 acres of land, more or less.

EXHIBIT B
VARIANCES

1. No variances for this Property are granted and none shall be allowed.