

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**
(Escrow for Required Improvements)

SMARTSTOP SELF STORAGE ADDITION

**SSGT 2280 N CUSTER RD LLC
WATERLINE AND SECONDARY ACCESS POINT**

THIS AGREEMENT, entered into effective the 12th day of August, 2019, by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and **SSGT 2280 N CUSTER RD, LLC**, a Delaware limited liability company, whose address is 2280 N. Custer Road, McKinney, Texas 75071, ("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 142-4(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 **SmartStop Self Storage Addition**, 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 DEVELOPER in accordance with Section 142-37 of the Subdivision Regulations, as amended; and

WHEREAS, DEVELOPER requests the recording of the Record Plat of the **SmartStop Self Storage Addition** prior to the completion and acceptance of certain of the public facilities required to serve the subdivision as are identified in attached Exhibits B and C (the "Required Improvements").

WHEREAS, the Subdivision Regulations prohibit recording the Final Plat of a subdivision within the ETJ or 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.

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 ETJ of the City of McKinney, on the east side of Custer Road in an area approximately 800 feet north of University Drive (U.S. Highway 380) containing approximately 3.976 acres of land, more fully described in Exhibit A attached hereto and fully incorporated herein by reference (the "Property").

B. PUBLIC IMPROVEMENTS

DEVELOPER agrees to escrow funds with the CITY for the construction of the Required Improvements for the subdivision to be known as **SmartStop Self Storage Addition** as provided herein below in this Agreement and the attached Exhibits B and C.

CITY agrees to complete, or cause to be completed, those Required Improvements identified herein below in this Agreement and the attached Exhibits, for which the funds for the design and construction of such public infrastructure is being escrowed contemporaneously with the execution of this Agreement as per Paragraph C(1) below.

1. THOROUGHFARES

DEVELOPER shall dedicate as a part of the Required Improvements and at no cost to CITY, those easements appurtenant thereto as may be necessary for the construction of the twenty-four foot (24') wide fire lane and access easement identified in Exhibit B, which is attached hereto and fully incorporated herein by reference.

2. UTILITIES

DEVELOPER shall dedicate as a part of the Plat approval and at no cost to CITY, all easements as may be necessary for the construction of the required public utility improvements identified in Exhibit C, which is attached hereto and fully incorporated herein by reference.

C. ESCROW

1. DEVELOPER shall escrow a cash deposit with the CITY in the amount of Thirty-Six Thousand Dollars (\$36,000) (the "Escrow Amount") for payment of costs associated with the design and construction of a twenty-four foot (24') wide fire lane and access easement to complete a secondary emergency access in and out of the Property ("Second Access Drive") contemporaneously with the execution of this Agreement. The Escrow Amount is an amount equal to one hundred twenty percent (120%) of the total projected cost design and construct the Second Access Drive. (The Required Improvements which are the subject of this Escrow Agreement are more fully described in Exhibit B and Exhibit C attached hereto and incorporated herein by reference.) The CITY shall hold these funds in an interest-bearing escrow account in accordance with this Agreement. The escrow account interest rate shall be established in the CITY's discretion, and may vary. The Escrow Amount, together with any interest on the escrow account, shall be used by the CITY to cover unexpected or incidental costs of completion, including the CITY's administrative expenses.
2. DEVELOPER agrees and understands that the CITY makes no assurances or representations that the Required Improvements will be constructed and accepted prior to any date certain. The CITY shall be allowed to undertake the design, construction and acceptance of the Required Improvements at such time as the CITY deems it desirable or necessary, and in the sole discretion of the CITY.
3. The DEVELOPER agrees that the CITY shall have the right to enter upon DEVELOPER'S property to survey, stake, bore, construct and install the Required Improvements in addition to connecting or tying the Second Access Drive to the current terminus of the existing drive at such time as the CITY deems necessary. The CITY may at its sole option and discretion enter into one or more agreements with third parties who shall be authorized to design and/or construct the Required Improvements and enter upon DEVELOPER'S property to survey, stake, bore, construct and install the Required Improvements at the CITY's direction.

4. DEVELOPER specifically authorizes the CITY to utilize the funds escrowed pursuant to this Agreement to pay for the design and construction of the Required Improvements and all necessary appurtenances to said improvements. Upon acceptance of the Required Improvements and the payment of any and all costs and expenses associated with the Required Improvements, any unused amount of the Escrow Deposit held by CITY shall be returned to DEVELOPER.

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 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 Subdivision Ordinance or other applicable CITY ordinances stipulated in attached Exhibit D, if any, are granted by CITY for this subdivision and/or development. If no variances are granted, Exhibit D shall state "No variances for this Property are granted and none shall be allowed."

F. REVOCATION

In the event DEVELOPER fails to comply with any of the provisions of this Agreement, 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.

G. 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.

DEVELOPER 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 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.**

H. 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.

I. 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.

J. 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.

K. GENERAL PROVISIONS

1. DEVELOPER hereby relieves CITY of any responsibilities for any inadequacies in the preliminary plans, exhibits and cost estimate supplied for the purpose of this Agreement, and further agrees that DEVELOPER will comply with CITY'S Subdivision Regulations, regarding development of the Property.

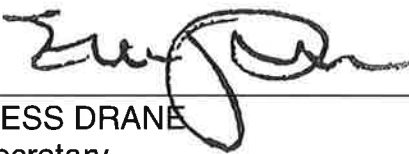
2. CITY agrees to record said Plat at such time as the Plat complies with the requirements set forth by the Subdivision Regulations of CITY, and has been approved in the manner described therein.

CITY OF MCKINNEY

By: 
PAUL G. GRIMES
City Manager


Date Signed: 8/29/19

ATTEST:


EMPRESS DRANE
City Secretary

SSGT 2280 N CUSTER RD, LLC, a
Delaware limited liability company,

By: SmartStop Self Storage REIT, Inc.
Its: Manager

By: 
Name: Michael S. McClure
Title: CEO

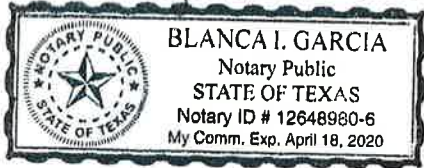
Date Signed: 08/26/2018

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 29th DAY OF August, 2019.



Blanca I. Garcia
Notary Public, Collin County, Texas
My commission expires 4/18/19

THE STATE OF TEXAS,
COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 2019, by _____, in his capacity as _____ of **SSGT 2280 N CUSTER RD, LLC**, a Delaware limited liability company, 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 corporation.

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

See Attached Certificate

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

Z:\RES\SmartStop\Custer - Eminent Domain\SmartStop Escrow Agreement (2280 N Custer)v4.doc

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

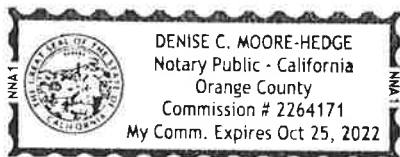
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Orange }

On August 26, 2019 before me, Denise C. Moore-Hedge
Date Here Insert Name and Title of the Officer

personally appeared Michael S. McClure
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: City of McKinney, TX - Facilities Agreement

Document Date: August 01, 2019 Number of Pages: 12

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: Michael S. McClure

Corporate Officer – Title(s): CEO

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian of Conservator

Other: _____

Signer is Representing: SSGT 2280 N Custer Rd, LLC
SmartStop Self Storage REIT, Inc.

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian of Conservator

Other: _____

Signer is Representing: _____

EXHIBIT A

DESCRIPTION (AND DEPICTION) OF PROPERTY

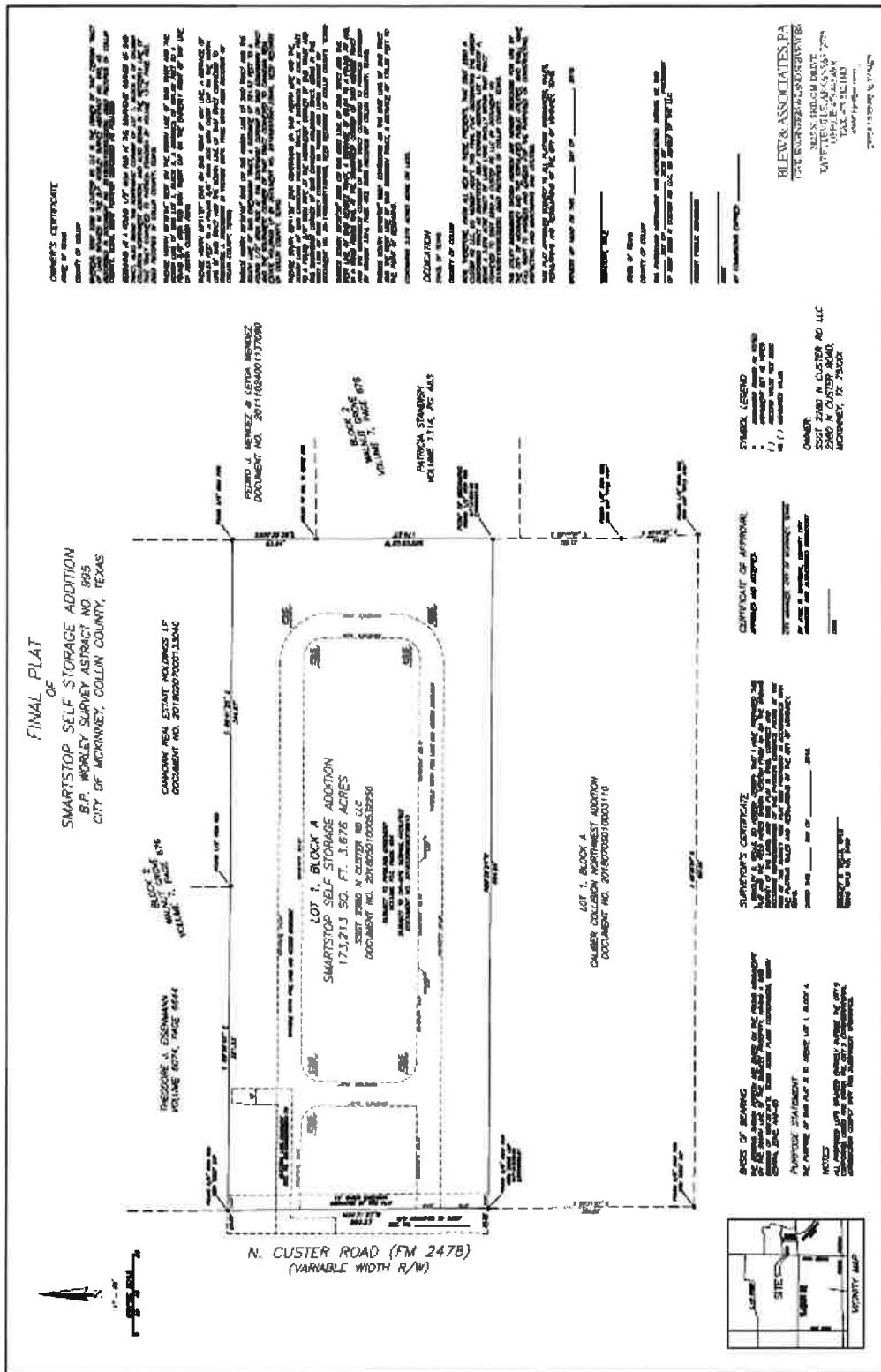


EXHIBIT B

PUBLIC THOROUGHFARE IMPROVEMENTS

DEVELOPER is responsible for the construction of the required improvements detailed below. However, the CITY has requested and the DEVELOPER has concurred to deferring construction of the required public thoroughfare improvements detailed below. The CITY has also agreed to design and/or construct the facilities detailed below, or cause the same to be designed and/or constructed. DEVELOPER has agreed to escrow with the CITY an amount equal to at least one hundred twenty percent (120%) of the costs and expenses associated with such construction in satisfaction of DEVELOPER's obligation under the CITY's Subdivision Regulations as specified in Paragraph C(1) of the Agreement. In light of this Escrow Agreement, DEVELOPER is relieved from constructing the facilities described below if DEVELOPER otherwise fully complies with the provisions of this Agreement.

The list of required public thoroughfare improvements detailed below is exhaustive of DEVELOPER's obligation under the CITY's ordinances.

THOROUGHFARES. The following Required Improvements are being deferred by, the funds escrowed for, and designed and/or constructed through this Agreement:

A twenty-four foot (24') wide fire lane and access easement designed and constructed per City standards necessary to provide access to and from the currently constructed section of the southern portion of the Variable Width Fire Lane and Access Easement reflected on the plat of the Property and extending in a westerly direction from its current terminus to and including an area adjacent to and contiguous with the closest edge of North Custer Road at a location that is approximately forty-eight feet (48') north of the southern Property line to provide a secondary emergency access in and out of the Property ("Second Access Drive").

EXHIBIT C

PUBLIC UTILITY IMPROVEMENTS

The CITY has agreed to design and/or construct a twenty-four inch (24") diameter water line extending approximately 260.23 linear feet along the western boundary of the Property with such twenty-four inch (24") diameter water line being constructed by and paid for by CITY as a part of an impact fee capital improvement project.

EXHIBIT D

VARIANCES

1. CITY is responsible for the design and/or construction of the Required Improvements identified in Exhibit B, above, the costs of which improvements shall be reimbursed from the funds that the DEVELOPER has escrowed with the CITY for such purpose pursuant to this Escrow Agreement. The Second Access Drive is subject to approval by TxDOT since it connects to a roadway managed by TxDOT. CITY plans to coordinate the design and construction of the Second Access Drive with TxDOT's Custer Road project. Notwithstanding the foregoing, DEVELOPER may design and construct the Second Access Drive described in Exhibit C prior to TxDOT's Custer Road project. If DEVELOPER designs and constructs the Second Access Drive prior to TxDOT's Custer Road project, the DEVELOPER will be entitled to a refund of the Access Drive Amount. If TxDOT refuses to allow the Second Access Drive to tie into Custer Road and CITY is unable to construct the Second Access Drive, CITY will refund the Escrow Amount to DEVELOPER.
2. CITY is responsible for the design and/or construction of the Required Improvement identified in Exhibit C, above, as a part of an impact fee capital improvement project the City will be constructing.