

AFTER RECORDING, RETURN TO:

City Secretary
City of McKinney
P.O. Box 517
222 N. Tennessee Street
McKinney, Texas 75069

**City of McKinney, Texas
AGREEMENT DEFERRING
CERTAIN ROADWAY IMPACT FEES**

Baylor Medical Center at McKinney

THIS AGREEMENT, entered into effective the ____ day of _____, 2010, by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and **BAYLOR MEDICAL CENTER AT MCKINNEY**, a Texas non-profit corporation, whose address is 2001 Bryan Tower, Suite 2200, Dallas, Texas 75201, ("DEVELOPER") witnesseth that:

WHEREAS, the City of McKinney Roadway Impact Fee Ordinance (the "Ordinance") codified in Section 130-103, et seq. of the Code of the City of McKinney, Texas (the "City Code") requires the payment of roadway impact fees ("Roadway Impact Fees") for new development within the City, which Roadway Impact Fees must be paid at the time of application for and in conjunction with the issuance of a building permit for construction related to such new development; and

WHEREAS, the Ordinance establishes the method of computing Roadway Impact Fees based upon service units ("Service Units") allocated to different uses as set forth in tables within the Ordinance, which Service Units, in the case of a hospital development, are calculated based upon the number of beds within the hospital development; and

WHEREAS, the DEVELOPER is in the process of constructing a new hospital within the CITY that initially was planned to contain ninety-six (96) beds (the "Initial Beds") and has paid, or received credit for, all Roadway Impact Fees associated with the Initial Beds; and

WHEREAS, DEVELOPER has determined that the future demand for hospital beds in the development will exceed the Initial Beds in its current plan and that it will benefit from the economies of scale to expand the current construction to add two (2) additional unfinished floors (the "Unfinished Floors") to the hospital, which Unfinished Floors could accommodate up to an additional ninety-five (95) beds; and

WHEREAS, DEVELOPER has asked CITY to defer the collection of Roadway Impact Fees relating to the Unfinished Floors until such time as DEVELOPER determines the exact number of beds to be placed thereon and commences construction to finish out the Unfinished Floors to accommodate such hospital beds; and

WHEREAS, CITY has agreed to defer the collection of Roadway Impact Fees relating to the Unfinished Floors until DEVELOPER determines the exact number of beds to be contained within the Unfinished Floors and commences construction to finish out such floors in order to accommodate hospital beds.

NOW THEREFORE, in consideration of the intent and desire of the DEVELOPER and CITY, as set forth herein, the DEVELOPER and CITY agree as follows:

ARTICLE I

IDENTIFICATION OF PROPERTY

A. PROPERTY.

This Agreement is for Property located in the City of McKinney, on the northwest quadrant of the intersection of University Drive (US Highway 380) and Lake Forest Drive (FM 1461) containing approximately 57.7454 acres of land, more fully described in Exhibit A attached hereto and fully incorporated herein by reference for all purposes allowed by law (the "Property").

ARTICLE II

DEFERRAL OF ROADWAY IMPACT FEES FOR UNFINISHED FLOORS

A. DEFINITIONS.

For the purposes of this Agreement the following words and phrases shall have the following assigned definitions:

1. *CITY* means the City of McKinney, a Texas home-rule city and municipal corporation situated in Collin County, and includes its representatives, agents, assigns, inspectors, contractors, employees and consultants.
2. *DEVELOPER* means Baylor Medical Center at McKinney, a Texas non-profit corporation, its representatives, agents, contractors, employees, and consultants.

3. *Effective Date* means the date the City Council approved this document or the last date on which this document is signed and attested, whichever date is later.
4. *Notice* means any formal notice or communication required or permitted to be given by one Party to another by this Agreement.
5. *Ordinance* means the City of McKinney Roadway Impact Fee Ordinance codified in Section 130-103, et seq. of the City Code, as it may further be amended, including any schedules or exhibits attached thereto.
6. *Party* or *Parties* means and refers to the City and/or Developer.
7. *Service Unit* means a vehicle mile in the p.m. hour, as set forth in the equivalency tables attached to the Ordinance as adopted by Ordinance No. 2008-11-102, which serves as the standardized measure of consumption or use of roadway facilities attributable to new development.
8. *Unfinished Floors* means the two (2) additional floors added by DEVELOPER to the hospital building (Levels 4 and 5) that will be constructed contemporaneously with the original hospital project and finished only with the elements generally set forth in Exhibit B attached hereto and incorporated by reference herein. Without first obtaining a future building permit and paying the roadway impact fees deferred hereby, the Unfinished Floors shall not be used for any purpose other than storage.

B. CONSTRUCTION OF UNFINISHED FLOORS.

DEVELOPER may construct the Unfinished Floors in accordance with the plans and specifications therefor approved by the CITY, which shall include the elements set forth in Exhibit B. Any further construction or finish out of the Unfinished Floors shall require the issuance of an additional building permit(s) by CITY and the payment of roadway impact fees deferred hereby. Any such roadway impact fees shall be due and payable at the time of the issuance of a building permit for such finish out and shall be computed based upon the provisions of the Ordinance as the same exists on the date such building permit is issued.

C. NOTICE OF DEFAULT; OPPORTUNITY TO CURE; REMEDIES.

1. Should any Party allege that the other has defaulted in the performance of any obligation under this Article II, it will provide at least thirty (30) days written notice to the other Party specifying the nature of the alleged default and opportunity to cure the default before exercising any remedy related to the alleged default.

2. Upon the failure of either Party to comply with the provisions of this Article II, which failure continues beyond the thirty (30) day notice and cure period provided above, the other Party shall have the right to enforce the terms and provisions of this Article II by specific performance, or by such other legal or equitable relief to which the non-defaulting Party may be entitled.
3. Any remedy or relief described in this Article II shall be cumulative of and in addition to any other remedies and relief available at law or in equity.

ARTICLE III

GENERAL PROVISIONS

A. CITY DEVELOPMENT ORDINANCES.

Nothing contained in this Agreement herein shall relieve the DEVELOPER from its responsibilities for construction of public improvements under applicable development ordinances upon development of the Property, except as expressly set forth herein. 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.

B. ENTIRE AGREEMENT; INTERPRETATION OF AGREEMENT.

1. This Agreement including any attached exhibits is the entire agreement between the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein. If there is a conflict between this Agreement and prior written or verbal representations, this Agreement shall control.
2. This Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strictly for or against either Party.
3. Except where the context otherwise clearly requires, in this Agreement: words imparting the singular will include the plural and vice versa.
4. All exhibits attached to this Agreement are incorporated by reference for all pertinent purposes as though fully copied and set forth at length and references to any document means that document as amended or as supplemented from time to time; and references to any Party means that Party, its successors, and assigns.

C. 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, Subdivision Ordinance, Sewer and Water Impact Fee Ordinance, Roadway Impact Fee Ordinance or any other ordinance of the CITY except as herein specifically agreed.

In addition, no waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision or any other agreement between the Parties. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided for by written amendment to this Agreement; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent defaults of the same type.

D. AMENDMENT.

No amendment of this Agreement will be effective unless it is in writing and signed by the duly authorized representatives of the Parties hereto, which amendment will incorporate this Agreement in every particular not otherwise changed by the amendment.

E. NO AMENDMENT OF OTHER AGREEMENTS.

Unless otherwise expressly stipulated herein, this Agreement is separate from and will not constitute an amendment or modification of any other agreement between the Parties.

F. OTHER INSTRUMENTS, ACTIONS.

The Parties hereto agree that they will take such further actions and execute and deliver such other and further consents, authorizations, instruments, or documents as are necessary or incidental to effectuate the purposes of this Agreement.

G. NO THIRD PARTY BENEFICIARIES.

Except as expressly provided herein, nothing contained in this Agreement shall be construed to confer upon any person other than the Parties hereto any rights, benefits or remedies under or because of this Agreement.

H. APPLICABLE LAW; VENUE.

This Agreement shall be construed under and according to the laws of the State of Texas. Personal jurisdiction and venue for any suit arising hereunder shall be in Collin County, Texas.

I. SEVERABILITY.

The provisions of this Agreement are severable, and if any court shall ever hold any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application of it to any person or circumstance of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances will not be affected by that and this Agreement will be construed as if it had never contained such invalid or unconstitutional portion therein.

J. COUNTERPARTS

The Parties may execute this Agreement in one or more duplicate originals each of equal dignity.

K. NOTICES.

For the purposes of Notice, the addresses of the Parties will, until changed as provided below, be as follows:

DEVELOPER:
BAYLOR MEDICAL CENTER
AT MCKINNEY
c/o Baylor Health Care System
Law Department
4005 Crutcher Street, Suite 300
Dallas, TX 75246
Attn: Lawyer Responsible for
Real Estate
Fax: 214-820-1535

CITY OF MCKINNEY:
Office of the City Manager
222 N. Tennessee Street
McKinney, Texas 75069

The Parties will have the right from time to time to change their respective addresses upon written notice to the other Party. If any date or notice period described in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the Notice will be extended to the first business day following such Saturday, Sunday or legal holiday.

L. ATTORNEY'S FEES.

Should either Party be required to resort to litigation to enforce the terms of this Agreement, the prevailing Party, plaintiff or defendant, shall be entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other Party. If the court awards relief to both Parties, each will bear its own costs in their entirety except as otherwise specified by the court.

M. GOVERNMENTAL AUTHORITY.

Nothing in this Agreement shall be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the facilities and roadway improvements contemplated by the terms of this Agreement except as specifically waived or modified herein or by specific action of the City Council, nor the City's duty to provide for the public health, safety, and welfare in the construction or maintenance of the same.

N. BINDING OBLIGATION.

This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, successors, and assigns.

O. 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.

P. 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.

Q. 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.

R. 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.

S. INADEQUACIES OF PLANS AND COMPLIANCE WITH ORDINANCES.

DEVELOPER hereby relieves CITY of any responsibilities for any inadequacies in the preliminary plans, exhibits and cost estimates supplied for the purpose of this Agreement, and DEVELOPER 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.

T. CONSTRUCTION OF BUILDING IMPROVEMENTS.

DEVELOPER agrees that construction shall not begin on the proposed Unfinished Floors prior to City Council approval of this Agreement.

CITY OF McKINNEY

By:

RICK CHAFFIN
Interim City Manager

Date Signed: _____

ATTEST:

SANDY HART, TRMC, MMC
City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

**BAYLOR MEDICAL CENTER AT
MCKINNEY,**
a Texas Non-Profit Corporation,

By: *Gary D Brock*
Name: GARY D. BROCK
Title: CHIEF OPERATING OFFICER
Date Signed: 10/12/2010

THE STATE OF TEXAS,
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared RICK CHAFFIN, 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.

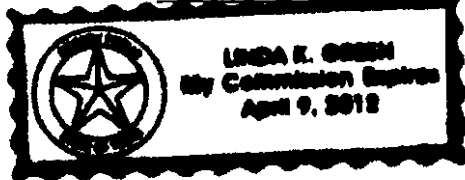
GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF _____, 2010.

Notary Public _____ County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF DALLAS

This instrument was acknowledged before me on the 12th day of OCTOBER, 2010, by GARY D. BROCK, in his capacity as C.O.O. of **BAYLOR MEDICAL CENTER AT MCKINNEY**, a Texas non-profit corporation, 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 12th
DAY OF OCTOBER, 2010.



Linda K Green
Notary Public DALLAS County, Texas
My commission expires 4/9/2012

EXHIBIT A

DESCRIPTION OF PROPERTY

Lot 1, Block A of the Baylor Medical Center at McKinney Addition, an addition to the City of McKinney, Collin County, Texas, according to the plat thereof recorded at Volume _____, Page _____ of the Map and Plat Records of Collin County, Texas.

EXHIBIT B

ELEMENTS TO BE CONSTRUCTED WITH UNFINISHED FLOORS

DEVELOPER shall be entitled to construct the following elements in connection with its construction of the Unfinished Floors, together with such other elements as the City staff shall approve:

Architectural Elements:

- Mechanical shaft enclosures
- Stair enclosures
- Stair vestibules
- Elevator enclosures
- FON Rooms (IT)
- Biomed Rooms
- Electrical Rooms
- Area Separation Walls

Mechanical:

Eight (8) VAV Terminal Units per floor for temporary ventilation and to maintain TDH requirements for storage space with primary supply air ducts and hot water piping to the terminal units.

One VAV Terminal Unit per floor with heat to serve the Elevator Lobby, including associated ductwork and hot water piping.

Two VAV Terminal Units per floor with cooling only to serve the Electrical Rooms, including associated ductwork.

One VAV Terminal Unit per floor with heat to serve the Biomed Room, including associated ductwork and hot water piping.

Electrical:

Fluorescent strips (type F2) for general lighting and emergency lighting for the unfinished open areas on each floor.

Fluorescent fixtures (type H) for general lighting and emergency lighting in the stairwells on each floor.

Fluorescent lighting (type F1) for general lighting and emergency lighting in the electrical rooms on each floor.

Exit lights on each floor.

Lighting control panels on each floor.

277/480 and 120/208 Volt panels for normal power, critical and life safety on each floor.

Electrical bus duct to penthouse.

Minimal quantity of 120 volt receptacles for general use on each floor.

Ceiling smoke detectors throughout general space on each floor.

Plumbing:

Sanitary sewer piping stubbed up and capped on each floor.

Waste and vent piping stubbed up and capped on each floor.

Domestic water to hose bibs at columns on each floor.

Horizontal waste and vent piping on fifth floor.