

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**

*(Non-Standard Defer Construction of Required Improvements)*

***Whole Life at Craig Ranch Addition, Lot 1 & 2 Block A,  
Lot 1 - 4, Block B, and Lot 1, Block C***

THIS AGREEMENT, entered into effective the \_\_\_\_\_ day of February, 2017, by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and **WHOLELIFE PROPERTIES, LLC**, a Delaware limited liability company, whose address is 6301 Waterford Blvd, Suite 407, Oklahoma City, OK 73118, (referenced herein as "OWNER") and **WELLSTONE LIVING CRAIG RANCH, LLC**, a Texas limited liability company (referenced herein as DEVELOPER, for all post PLATTING requirements provided for in this agreement) witnesseth that:

WHEREAS, **WHOLELIFE PROPERTIES, LLC** currently owns a tract of land located on the westerly side of The Esplanade in an area generally north of Collin McKinney Parkway and generally east of Sherringham Way in McKinney, Texas (the "Craig Ranch Property"); and

WHEREAS, **WHOLELIFE PROPERTIES, LLC** is currently a debtor-in-possession in a chapter 11 bankruptcy proceeding pending in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the "Bankruptcy Court" styled and numbered *In re Wholelife Properties, LLC; Case No. 16-42274-MXM-11*; and

WHEREAS, **WHOLELIFE PROPERTIES, LLC** has received approval from the Bankruptcy Court to sell the entirety of the Craig Ranch Property to **WELLSTONE COMPANIES, LLC** pursuant to that certain *Order Authorizing and Approving Sale of Debtor's Craig Ranch Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances and Granting Related Relief* (Bankr. Dkt. 114); and

WHEREAS, contemporaneously with its acquisition of the Craig Ranch Property from **WHOLELIFE PROPERTIES LLC**, **WELLSTONE COMPANIES, LLC** will sell a portion of the Craig Ranch Property to **WELLSTONE LIVING CRAIG RANCH, LLC**; and

WHEREAS, WELLSTONE LIVING CRAIG RANCH, LLC will be acquiring its portion of the Craig Ranch Property from WELLSTONE COMPANIES, LLC and developing the land using 501(c)(3) bonds issued by a governmental instrumentality and approved by the Texas Attorney General (the "Bonds"); and

WHEREAS, WHOLELIFE PROPERTIES, LLC'S sale of the Craig Ranch Property to WELLSTONE COMPANIES, LLC, and WELLSTONE COMPANIES, LLC'S sale of a portion of the Craig Ranch Property to WELLSTONE LIVING CRAIG RANCH, LLC will all occur contemporaneously at closing because the proceeds of the Bonds are being used to fund the transactions between the parties; and

WHEREAS a portion of the Craig Ranch Property that WELLSTONE COMPANIES, LLC is not selling to WELLSTONE LIVING CRAIG RANCH, LLC will nonetheless be put up as collateral for certain of the Bonds (the "Retained Property"); and

WHEREAS, in order to sever the Retained Property from the property being sold to WELLSTONE LIVING CRAIG RANCH, LLC, the property must be replatted; and

WHEREAS, because the Retained Property is going to serve as collateral for certain of the Bonds, the replatting must be recorded before the various transactions described above can close; and

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 ***Whole Life at Craig Ranch, Lot 1 & 2 Block A, Lot 1 - 4, Block B, and Lot 1, Block C*** (the "**PROPERTY**") 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 OWNER and 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 and guaranteed to the satisfaction of the CITY such improvements will be installed; and

WHEREAS, OWNER requests the recording of the Record Plat of a subdivision in the CITY, to be known as **Whole Life at Craig Ranch, Lot 1 & 2 Block A, Lot 1 - 4, Block B, and Lot 1, Block C** (the "Plat") prior to the completion and acceptance of certain of the Public Improvements required to serve the subdivision as are identified in attached Exhibits "B" and "C" (the "Required Improvements"); and

WHEREAS, DEVELOPER agrees to acquire the Craig Ranch Property and agrees that DEVELOPER shall be solely responsible for installing the Required Improvements identified in attached Exhibits "B" and "C" after recordation of said Plat under the guarantees provided to the CITY as set forth herein.

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

#### A. PROPERTY

This Agreement is for Property located in the City of McKinney, on the westerly side of The Esplanade in an area generally north of Collin McKinney Parkway and generally east of Sherringham Way containing approximately 9.276 acres of land as more fully described in Exhibit A attached hereto and fully incorporated herein by reference (herein after referred to as the "Property").

#### B. PUBLIC IMPROVEMENTS

DEVELOPER agrees to complete the Required Improvements for the subdivision to be known as **Whole Life at Craig Ranch Addition, Lot 1 & 2 Block A, Lot 1 - 4, Block B, and Lot 1, Block C** within one (1) year from and after the date of this Agreement, unless required sooner as provided herein below in this Agreement and the attached Exhibits, according to the construction plans regarding the construction of Required Improvements for said subdivision, which construction plans are on file with and approved by the City Engineer (the "Plans").

All Public Improvements, including utilities, drainage easements, sidewalks, street lighting, street signage, park land dedication and all other required improvements



and dedications, 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.

## 1. THOROUGHFARES

DEVELOPER shall dedicate, as a part of the Public Improvements and 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 (1/2) 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 or developed. If platting or development of the PROPERTY is delayed and the perimeter roadway right-of-way described above has not previously been dedicated, DEVELOPER 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. DEVELOPER shall dedicate all right-of-way for the interior streets serving the PROPERTY at the time of development. Specific uses may require additional right-of-way dedication at the time of site plan approval.

DEVELOPER shall construct, as part of the Public Improvements and at no cost to CITY, roadway improvements in accordance with the CITY's Subdivision Ordinance and Street Design Standards then in effect. All roadway construction plans must be approved by CITY's Engineer or his agent prior to approval of a Development Permit for any portion of the PROPERTY being developed. The Roadway Improvements that are being deferred by this Agreement to allow the early recording of the Record Plat are described on the attached Exhibit B, which is fully incorporated herein by reference.

## 2. UTILITIES

OWNER or DEVELOPER, depending on the timing thereof, shall dedicate all easements and DEVELOPER shall construct, at no cost to CITY, all necessary utility lines specifically including, but not limited to, any necessary off-site and oversize utility improvements to provide service to the PROPERTY in accordance with CITY standards, at such time as demand of the development on the PROPERTY requires or concurrent with the development of the PROPERTY, as determined by CITY. DEVELOPER shall construct all necessary utility lines to serve the interior of the PROPERTY; said lines shall be at least eight inches (8") in diameter or larger



as demand of the development on the PROPERTY requires. All utility plans and improvements are subject to the approval of CITY's Engineer. The Utility Improvements that are being deferred by this Agreement to allow the early recording of the Record Plat are described on the attached Exhibit C, which is fully incorporated herein by reference.

### 3. HIKE AND BIKE TRAILS

DEVELOPER shall, at no cost to the CITY, dedicate the easement or right-of-way for and construct all required concrete hike and bike trail improvements in accordance with the CITY's Subdivision Ordinance and Master Trail Plan. The hike and bike trail shall be tied in or connected to the CITY's trail system or to the location(s)/area(s) identified as planned future extensions of the trail system specifically including, but not limited to, school sites and parkland sites. Final location and all hike and bike trail construction plans shall be subject to review and approval by the Director of Parks and Recreation, and as specified in greater detail in the attached Exhibit "B," which is fully incorporated herein by reference. All hike and bike trail construction plans must be approved by CITY's Parks Director or his agent prior to approval of a Development Permit for any portion of the PROPERTY being developed.

### C. CASH DEPOSIT

1. The DEVELOPER, in accordance with the requirements established by the Subdivision Ordinance of the CITY and this Agreement, tenders to the CITY a Cashier's Check as assurance for the construction of the Required Improvements for the **Whole Life at Craig Ranch Addition, Lot 1 & 2 Block A, Lot 1 - 4, Block B, and Lot 1, Block C**, in the amount of Two Hundred Three Thousand Three Hundred Fifty-Nine and Eighty-Four/One Hundredths Dollars (\$203,359.84) ("Cash Deposit").

It is specifically agreed and understood that no letter of presentment shall be required prior to the City drawing down and utilizing the Cash Deposit to complete the Required Improvements deferred by this Agreement. **The Cash Deposit shall be returned to DEVELOPER provided DEVELOPER causes the Required Improvements to be timely constructed upon CITY's acceptance of the Required Improvements and filing of a record plat for the PROPERTY.** The amount of the Cash Deposit pursuant to this Agreement was computed as follows: The total cost of constructing the Required Improvements as reflected in the construction contract between DEVELOPER and a contractor, a copy of which contract is attached hereto as Exhibit E and fully incorporated herein by reference, (the "Construction Contract") plus at least twenty percent (20%) of the Construction Contract cost, such additional amount to cover unexpected or incidental costs of completion, including administrative expenses. The Construction Contract shall be assigned to City, as security only, by Contractor's execution hereafter



which assignment, attached hereto as Exhibit F, shall grant the City rights, but not obligations thereunder, to require the Contractor's performance under the Construction Contract.

2. In the event the DEVELOPER shall fail or neglect to fulfill its obligations under this Agreement and as required by the Subdivision Ordinance, the DEVELOPER as Principal, and the Guarantor on the Cash Deposit shall be liable to pay for the cost of construction and installation of the Required Improvements, including but not limited to, engineering, legal, administrative and contingent costs together with any damages, either direct or consequential, which the CITY may sustain as a result of the failure of the DEVELOPER to carry out and execute all of the provisions of this Agreement and the provisions of the Subdivision Ordinance.
3. The DEVELOPER further agrees that the CITY, at its option, shall have the right to enter upon DEVELOPER'S property and construct and install, or pursuant to public advertisement and receipt of bids, cause to be constructed and installed the Required Improvements in the event the DEVELOPER fails or refuses to do so in accordance with the terms of the Agreement. The DEVELOPER shall be liable hereunder to reimburse the CITY the total cost to complete the Required Improvements plus such other and further costs and expenses enumerated in Paragraph 2 herein above.
4. Since the DEVELOPER has provided a Cash Deposit, the DEVELOPER shall be solely liable to pay for the cost of construction and installation of the Required Improvements, including but not limited to, engineering, legal, administrative and contingent costs together with any damages, either direct or consequential, which the CITY may sustain as a result of the failure of the DEVELOPER to carry out and execute all of the provisions of this Agreement and the provisions of the Subdivision Ordinance. The DEVELOPER further agrees that the CITY, at its option, shall have the right to enter upon DEVELOPER'S property and construct and install, or pursuant to public advertisement and receipt of bids, cause to be constructed and installed the Required Improvements in the event the DEVELOPER fails or refuses to do so in accordance with the terms of the Agreement. The DEVELOPER shall be liable hereunder to reimburse the CITY the total cost to complete the Required Improvements plus such other and further costs and expenses enumerated in this Paragraph. The DEVELOPER shall be entitled to an offset or credit against the costs and expenses enumerated herein for any amount of money paid to the CITY through the Cash Deposit.

D. PARK DEDICATION

1. DEVELOPER shall dedicate required parkland concurrent with platting and development of the Property to provide for the recreational needs created by such development as set forth herein and as determined by the CITY's Parks



Department. The approved parkland site shall be shown on the plat as a fee simple conveyance to the CITY and shall be conveyed to the CITY by General Warranty Deed free of all encumbrances and at no cost to the CITY. DEVELOPER shall also provide the CITY with an owner's title policy of insurance in an amount equal to the value of the land conveyed, which amount shall be determined by the CITY.

2. The DEVELOPER shall also be responsible for, and pay the costs of, providing convenient access by improved streets, sidewalks and, adequate drainage improvements so that the site is suitable for the purpose intended, and shall provide water, sewer and electrical utilities to the Property in accordance with the procedures applicable to other public improvements as specified in the Subdivision Ordinance of the CITY.
3. In the alternative and subject to the determination of the Director of the CITY's Parks Department all or part of the DEVELOPER'S parkland dedication requirements may be satisfied by the payment of money in lieu of land. The amount of cash to be paid in lieu of parkland dedication shall be determined based upon the Collin Central Appraisal District's most recent appraisal of all or part of the Property at the time the fees are paid for any future phase of development instead of and rather than the appraisal value of the Property at the time of execution of this Agreement.
4. DEVELOPER may pay cash in lieu of dedication in advance of any phase of development for which the CITY's Parks Department has approved fees in lieu of dedication, based on the CITY ordinance requirement of one (1) acre of parkland dedication, outside of any floodplain on the Property, for each fifty (50) single-family residential lots by paying an estimated 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. DEVELOPER acknowledges and understands that the calculations regarding required parkland dedication and fees in lieu of dedication shall change if the number of single-family residential lots is changed. In the event of an increase in the number of single-family residential lots 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 single-family residential lots 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 lots 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 platting of the last phase of the Property. DEVELOPER shall not be allowed to file the plat for the last phase of the Property until the parkland dedication or cash payment is satisfied.



E. 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.

F. 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.

G. 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 G, if any, are granted by CITY for this subdivision and/or development. If no variances are granted, Exhibit G shall state "No variances for this Property are granted and none shall be allowed."

H. 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.**

I. 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.

J. 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.**



K. 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.

L. ASSIGNABILITY

It is hereby specifically understood and agreed that OWNER will be released from liability under this Agreement at such time as DEVELOPER closes on the purchase of the Property from OWNER. 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.

M. 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.

N. 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.

O. 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 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. DEVELOPER agrees that improvements to Property as set forth herein shall be completed within one (1) year from the date of approval of this Agreement by the McKinney City Council. Unless otherwise specified in this Agreement or an attachment hereto, it is understood that any obligation on the part of CITY to make any refunds shall cease upon the expiration of the one (1) year, except when extended for good cause and agreed to in writing by CITY and DEVELOPER.
5. 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: \_\_\_\_\_  
PAUL G. GRIMES  
City Manager

Date Signed: \_\_\_\_\_

ATTEST:

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



**OWNER:**  
**WHOLELIFE PROPERTIES, LLC**, a Delaware  
limited liability company

By:   
\_\_\_\_\_  
JOHN B. LOWERY  
President

Date Signed: 1-30-17

**Developer:**  
**WELLSTONE LIVING CRAIG RANCH, LLC**,  
a Texas limited liability company

By:   
\_\_\_\_\_  
Russell Criminger  
President

Date Signed: 1/26/2017

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 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  
FEBRUARY, 2017.

Notary Public \_\_\_\_\_ County, Texas  
My commission expires \_\_\_\_\_



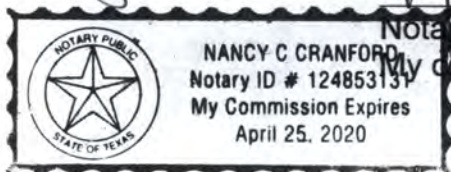
THE STATE OF Texas  
COUNTY OF Tarrant

This instrument was acknowledged before me on the 30<sup>th</sup> day of ~~February~~ January, 2017, by JOHN B. LOWERY, in his capacity as President of **WHOLELIFE PROPERTIES, 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 **WHOLELIFE PROPERTIES, LLC**.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 30<sup>th</sup> DAY OF ~~FEBRUARY~~, 2017.

January

Nancy Cranford



Notary Public Tarrant County, Texas  
My commission expires 4-25-20

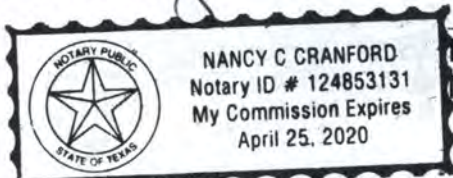
THE STATE OF Texas  
COUNTY OF Tarrant

This instrument was acknowledged before me on the 26<sup>th</sup> day of ~~February~~ January, 2017, by RUSSELL CRIMINGER, in his capacity as President of **WELLSTONE LIVING CRAIG RANCH, LLC**, a Texas 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 **WELLSTONE LIVING CRAIG RANCH, LLC**.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 26<sup>th</sup> DAY OF ~~FEBRUARY~~, 2017.

January

Nancy Cranford



Notary Public Tarrant County, Texas  
My commission expires 4-25-20

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

WHOLELIFE PROPERTIES, LLC is the owner of the following described tracts of land:

#### BLOCK A

BEING a 1.242 acre tract of land situated in the Thomas Phillips Survey, Abstract No 717, the City of McKinney, Collin County, Texas and being all of Lot 1, Block A of Cooper Living Center Addition, Phase 1 an addition to the City of McKinney according to the plat recorded in Cabinet 2009, Page 401 of the Plat Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod set for corner at the south end of a corner cut-off line located at the intersection of the west line of Exeter Avenue (52 feet wide right of way) and the north line of Collin McKinney Parkway (73 feet wide right of way);

THENCE along the north line of said Collin McKinney Parkway, SOUTH 58°11'15" WEST a distance of 214.00 feet to a 5/8 inch iron rod set for corner at the east end of a corner cut-off line located at the intersection of the north line of said Collin McKinney Parkway and the east line of Sherringham Way (48 feet wide right of way);

THENCE along said corner cut-off line, NORTH 76°48'45" WEST a distance of 21.21 feet to a 5/8 inch iron rod set for corner;

THENCE along the east line of said Sherringham Way, NORTH 31°48'45" WEST a distance of 193.66 feet to a 5/8 inch iron rod set for corner in the south line of a corner cut-off line located at the east line of said Sherringham Way and the south line of Hewitt Drive (52 feet wide right of way);

THENCE along said corner cut-off line, NORTH 13°11'15" EAST a distance of 21.21 feet to a 5/8 inch iron rod set for corner;

THENCE along the south line of said Hewitt Drive, NORTH 58°11'15" EAST a distance of 214.00 feet to a 5/8 inch iron rod set for corner at the west end of a corner cut-off line located at the intersection of the south line of said Hewitt Drive and the west line of said Exeter Avenue;

THENCE along said corner cut-off line, SOUTH 76°48'45" EAST a distance of 21.21 feet to a 5/8 inch iron rod set for corner;

THENCE along the west line of said Exeter Avenue, SOUTH 31°48'45" EAST a distance of 193.66 feet to a 5/8 inch iron rod set for corner at the north line of a corner cut-off line located at the intersection of the west line of said Exeter Avenue and the north line of said Collin McKinney Parkway;

THENCE along said corner cutoff line, SOUTH 13°11'15" WEST a distance of 21.21 feet to the POINT OF BEGINNING;

CONTAINING 1.242 acres or 54,123 square feet of land more or less.

#### BLOCK B

BEING a 6.252 acre tract of land situated in the Thomas Phillips Survey, Abstract No. 717 and the George Lucas Survey Abstract No. 540, the City of McKinney, Collin County, Texas, being all of Lot 1, Block B and Lot 1, Block T of Cooper Living Center Addition, Phase 2 an addition to the City of McKinney according to the plat recorded in Cabinet 2009, Page 402 of the Plat Records Collin County, Texas and being that portion of Uplands Drive a 52 feet wide right of way as abandoned by City of McKinney Ordinance No. 2015-02-013 and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod set for corner at the south end of a corner cut-off line located at the intersection of the north line of Collin McKinney Parkway (73 feet wide right of way) and the west line of Meyers Way (66 feet wide right of way);

THENCE along the north line of said Collin McKinney Parkway, SOUTH 89°29'05" WEST a distance of



405.07 feet to a 5/8 inch iron rod set for corner;  
THENCE continuing along said north line, SOUTH 58°11'15" WEST a distance of 343.98 feet to a 5/8 inch iron rod set for corner at the east line of a corner cut-off line located at the intersection of the north line of said Collin McKinney Parkway and the east line of Exeter Avenue (52 feet wide right of way);  
THENCE along said corner cut-off line, NORTH 76°48'45" WEST a distance of 21.21 feet to a 5/8 inch iron rod set for corner;  
THENCE along the east line of said Exeter avenue, NORTH 31°48'45" WEST a distance of 193.66 feet to a 5/8 inch iron rod set for corner at the south end of a corner cut-off line located at the intersection of the east line of said Exeter Avenue and the south line of Hewitt Drive (52 feet wide right of way);  
THENCE along said corner cut-off line, NORTH 13°11'15" EAST a distance of 21.21 feet to a 5/8 inch iron rod set for corner;  
THENCE along the south line of said Hewitt Drive, NORTH 58°11'15" EAST a distance of 480.34 feet to a 5/8 inch iron rod set for the beginning of a curve to the left having a radius of 1776.00 feet and a chord bearing of NORTH 52°18'33" EAST;  
THENCE continuing along the south line of said Hewitt Drive and along said curve to the left through a central angle of 11°45'25" for an arc length of 364.43 feet to a 5/8 inch iron rod set for corner at the west end of a corner cut-off line located at the intersection of the southeast line of said Hewitt Drive and the southwest line of The Esplanade (66 feet wide right of way);  
THENCE along said corner cut-off line, NORTH 89°23'48" EAST a distance of 21.87 feet to a 5/8 inch iron rod set for the beginning of a non-tangent curve to the left having a radius of 783.00 feet and a chord bearing of SOUTH 54°22'28" EAST;  
THENCE along the southwest line of said The Esplanade and along said non-tangent curve to the left through a central angle of 12°51'40" for an arc length of 175.76 feet to a 5/8 inch iron rod set for corner;  
THENCE continuing along said southwest line, SOUTH 60°48'18" EAST a distance of 53.11 feet to a 5/8 inch iron rod set for corner at the north end of a corner cut-off line located at the intersection of the southwest line of said The Esplanade and the northwest line of said Meyers Way;  
THENCE along said corner cut-off line, SOUTH 17°11'54" EAST a distance of 21.72 feet to a 5/8 inch iron rod set for the beginning of a non-tangent curve to the left having a radius of 833.00 feet and a chord bearing of SOUTH 14°33'18" WEST;  
THENCE along the northwest line of said Meyers Way and along said non-tangent curve to the left through a central angle of 22°40'32" for an arc length of 329.67 feet to a 5/8 inch iron rod set for corner at the east end of a corner cut-off line located at the intersection of the northwest line of said Meyers Way and the north line of said Collin McKinney Parkway;  
THENCE along said corner cut-off line, SOUTH 46°05'35" WEST a distance of 21.80 feet to the POINT OF BEGINNING;

CONTAINING 6.252 acres or 272,317 square feet of land more or less.

### **BLOCK C**

BEING a 1.782 acre tract of land situated in the George F. Lucas Survey, Abstract No. 540, the Thomas Phillips Survey, Abstract No. 717, the City of McKinney, Collin County, Texas, being all of Lot 1, Block U of Cooper Living Center Addition, Phase 2 an addition to the City of McKinney according to the plat recorded in Cabinet 2009, Page 402 of the Plat Records of Collin County, Texas and being a portion of Uplands Drive a 52 feet wide right of way as abandoned by City of McKinney Ordinance No. 2015-02-013 and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod set for corner at the west end of a corner cut-off line located at the intersection of the southeast line of said Wessex Court and the southwest line of The Esplanade (52 feet wide right of way);

THENCE along said corner cut-off line, SOUTH 89°05'44" EAST a distance of 21.58 feet to a 5/8 inch iron rod set for corner;

THENCE along the southwest line of said The Esplanade, SOUTH 45°06'23" EAST a distance of 239.35 feet to a 5/8 inch iron rod set for corner at the north end of a corner cut-off line located at the intersection of the southwest line of said The Esplanade and the northwest line of Hewitt Drive (52 feet wide right of way);

THENCE along said corner cut-off line, SOUTH 00°27'01" WEST a distance of 21.01 feet to a 5/8 inch iron rod set for the beginning of a non-tangent curve to the right having a radius of 1724.00 feet and a chord bearing of SOUTH 51°28'17" WEST;

THENCE along the northwest line of said Hewitt Drive and along said non-tangent curve to the right through a central angle of 10°25'48" for an arc length of 313.84 feet to a 5/8 inch iron rod set for corner at the southeast corner of Lot D of Cooper Life at Craig Ranch Phase 2 an addition to the City of McKinney according to the plat recorded in Cabinet 2014, Page 525 (OPRCCT);

THENCE along the northeast line of said Block D, NORTH 12°18'44" EAST a distance of 21.53 feet to a 5/8 inch iron rod set for the beginning of a curve to the left having a radius of 724.05 feet and a chord bearing of NORTH 40°56'09" WEST;

THENCE continuing along said northeast line and along said curve to the left through a central angle of 18°28'30" for an arc length of 233.47 feet to a 5/8 inch iron rod set for corner in the southeast line of said Wessex Court;

THENCE along the southeast line of said Wessex Court, NORTH 46°54'54" EAST a distance of 276.47 feet to the POINT OF BEGINNING;

CONTAINING 1.782 acres or 77,613 square feet of land more or less.

The forgoing described property, identified as Blocks A, B, and C, contains a total of 9.276 acres of land, more or less.



## **EXHIBIT B**

### **PUBLIC THOROUGHFARE IMPROVEMENTS**

DEVELOPER is responsible for the construction of the facilities detailed below. Those facilities must be complete and accepted by CITY prior to the issuance of a Final Acceptance letter for the Required Improvements. In the event any public facilities required to serve the development of Property are installed by a party other than DEVELOPER, those facilities must be complete and accepted by CITY prior to the issuance of a Final Acceptance letter for the Public Improvements required herein. No Certificate of Occupancy shall be issued for any building on the Property until Final Acceptance of the Public Improvements.

**THOROUGHFARES.** Construction of thoroughfares includes paving, drainage, striping, street lighting, sidewalks and erosion control.

- a. No thoroughfares are being deferred by this Agreement. DEVELOPER shall dedicate and construct all other required thoroughfares and necessary internal roadways and appurtenances thereto as reflected on the Plat.

**HIKE AND BIKE TRAILS.** The following improvements shall be complete and accepted by the CITY prior to recording of the Record Plat.

- a. No hike and bike trails are being deferred by this Agreement. DEVELOPER shall dedicate and construct all required hike and bike trails together with all necessary appurtenances as shown on the Hike and Bike Trail Master Plan and as approved by the Parks Director.



## EXHIBIT C

### PUBLIC UTILITY IMPROVEMENTS

DEVELOPER is responsible for the construction of the facilities detailed below together with all related appurtenances as required by the City's Code of Ordinances. Those facilities must be complete and accepted by CITY prior to a Certificate of Occupancy being issued for any building on the Property. In the event any public utilities required to serve the development of Property are installed by a party other than DEVELOPER, those facilities must be complete and accepted by CITY prior to a Certificate of Occupancy being issued for any building on the Property.

#### Water

- a. No water improvements are being deferred by this Agreement.
- b. DEVELOPER shall dedicate and construct all necessary water lines to serve the interior of the Property consistent with City of McKinney standards; said lines shall be at least eight inches (8") in diameter or as otherwise necessary to serve the Property for both domestic and fire-flow for the Property. The CITY Engineering Department shall approve the size of the line.

#### Sanitary Sewer System:

- a. DEVELOPER shall construct approximately 430 linear feet of eight-inch (8") diameter SDR 35 PVC sanitary sewer together with all associated appurtenances in, upon, over and across:
  - (1) Those portions of Lot 1, Block B and Lot 2, Block B along and adjacent to both sides of Exeter Avenue between Hewitt Drive and the southern property line of each such lot; and
  - (2) That portion of Lot 1, Block A along and adjacent to the east side of Sherringham Way between Hewitt Drive and the southern property line of said lot.
- b. DEVELOPER shall also construct all necessary sanitary sewer lines to serve the interior of the Property consistent with City of McKinney standards; said lines shall be at least eight inches (8") in diameter or as otherwise necessary to serve the Property. The CITY Engineering Department shall approve the size of the line, based upon the design slope and drainage basin size.



Drainage System:

- a. DEVELOPER shall construct approximately 186 linear feet of twenty-four-inch (24") diameter Class III RCP together with all associated appurtenances in, upon, over and across that portion of Lot 1, Block B along and adjacent to the south side of Hewitt Drive and thence in a southerly direction from Hewitt Drive to the southern property line of said lot.
- b. DEVELOPER shall construct approximately 102 linear feet of twenty-one-inch (21") diameter Class III RCP together with all associated appurtenances in, upon, over and across that portion of Lot 4, Block B along and adjacent to the east side of Uplands Drive between Hewitt Drive and the southern property line of said lot.
- c. DEVELOPER shall construct approximately 259 linear feet of eighteen-inch (18") diameter Class III RCP together with all associated appurtenances in, upon, over and across:
  - (1) That portion of Lot 1, Block B along and adjacent to the east side of Exeter Avenue between Hewitt Drive and the southern property line of such lot; and
  - (2) That portion of Lot 1, Block A along and adjacent to the east side of Sherringham Way between Hewitt Drive and the southern property line of said lot.
- d. DEVELOPER shall also construct all necessary drainage lines to serve the interior of the Property consistent with City of McKinney standards; said lines shall be as necessary to serve the Property. The CITY Engineering Department shall approve the size of the line, based upon the design slope and drainage basin size.

**EXHIBIT D**

**INTENTIONALLY OMITTED**



**EXHIBIT E**

**CONSTRUCTION CONTRACT**

1. The Construction Contract is on file with the City Engineer's Office.

EXHIBIT F

ASSIGNMENT OF CONSTRUCTION CONTRACT

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN

THIS ASSIGNMENT OF CONSTRUCTION CONTRACT (this "Assignment") is made as of the \_\_\_\_ day of February, 2017, by **WELLSTONE LIVING CRAIG RANCH, LLC** a Texas limited liability company, whose address is 6301 Waterford Blvd, Suite 407, Oklahoma City, OK 73118, (hereinafter referred to as "Developer") to the **City Of McKinney**, a Texas municipal corporation ("City").

RECITALS

- A. On or about the \_\_\_\_ day of February, 2017, City entered into a Construction Facilities Agreement with **WELLSTONE LIVING CRAIG RANCH, LLC**, ("Developer") for the construction of certain infrastructure improvements including the construction of Wastewater Improvements and Storm Drain Improvements, and related appurtenances ("Required Improvements"). To secure Developer's obligations under the Construction Facilities Agreement, Developer posted a Cash Deposit with City in the amount of Two Hundred Three Thousand Three Hundred Fifty-Nine and Eighty-Four/One Hundredths Dollars (\$203,359.84).
- B. Developer has entered into construction contracts<sup>u (EXHIBIT E)</sup> for the required improvements under the Construction Facilities Agreement with **JORDAN FOSTER CONSTRUCTION LLC**, a Texas limited liability corporation (the "Construction Contracts")<sup>u</sup>
- C. Developer has agreed to conditionally assign to City the Developer's rights under the Construction Contracts<sup>u</sup>
- D. As a condition to its agreements under the Construction Facilities Agreement, City has required the execution and delivery of this Assignment by Developer.

NOW, THEREFORE, in order to further secure the obligations of Developer under the Construction Facilities Agreement, the parties hereby agree as follows:

1. Deposit of Cash. Developer agrees to tender a cash deposit in the amount of Two Hundred Three Thousand Three Hundred Fifty-Nine and Eighty-Four/One Hundredths Dollars (\$203,359.84).
2. Assignment of Construction Contracts<sup>u</sup>. As additional security for the performance of Developer's obligations under the Construction Facilities Agreement, Developer



hereby transfers and assigns to City and grants City a security interest in all of Developer's rights and interest, but not its obligations in, under, and to the Construction Contract upon the following terms and conditions:

Developer represents and warrants that the copies of any Construction Contract it has furnished or will furnish to City are a true and complete copy thereof and that Developer's interest therein is not subject to any claim, setoff, or encumbrance.

**Neither this Assignment nor any action by City shall constitute an assumption by City of any obligation under the Construction Contract, and Developer shall continue to be liable for all obligations of Developer thereunder, Developer hereby agrees to perform all of its obligations under the Construction Contract. Developer further agrees to indemnify and hold City harmless against and from any loss, cost, liability or expense (including but not limited to attorneys' fees and expenses) resulting from any failure of Developer to so perform.**

**City shall have the right at any time (but shall have no obligation) to take in its name or in the name of Developer such action as City may at any time determine to be necessary or advisable to cure any default under the Construction Contract or to protect the rights of Developer or City thereunder. City shall incur no liability if any action so taken by it or in its behalf shall prove to be inadequate or invalid, and Developer agrees to hold City free and harmless against and from any loss, cost, liability or expense (including but not limited to attorneys' fees and expenses) incurred in connection with any such action.**

Developer hereby constitutes and appoints City as Developer's attorney-in-fact, in Developer's name or in City's name to enforce all rights of Developer under the Construction Contract.

Prior to the occurrence of a default, Developer shall have the right to exercise its rights as Developer under the Construction Contract provided that Developer shall not cancel or amend the Construction Contract or do or suffer to be done any act which would impair the security constituted by this Assignment without the prior written consent of City.

3. Termination of Assignment. Upon completion of the improvements required by the Construction Facilities Agreement and acceptance thereof by City, this Assignment shall terminate. City shall return the cash deposit to Developer within ten (10) days of the termination of this Assignment.
4. Representations of Developer. Developer covenants and represents to City that (i) Developer has full right, title, power, and authority to assign the Construction Contract; (ii) no other assignment or interest therein has been made; and (iii) there are no existing defaults under the provisions of this Construction Contract.
5. Successors and Assigns. This Assignment shall inure to the benefit of Developer and City and shall be binding upon such successors and assigns.

IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year first written above.

**DEVELOPER:**

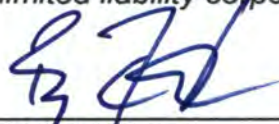
**WELLSTONE LIVING CRAIG RANCH, LLC**, a  
Texas limited liability company

By:   
RUSSELL CRIMINGER President

Date Signed: 1/26/2017

**ACCEPTED AND AGREED:**

**JORDAN FOSTER CONSTRUCTION, LLC**, a  
Texas limited liability corporation

By:   
Roy Raines  
President, Dallas Division

Date Signed: 1/31/17



**EXHIBIT G**

**VARIANCES**

1. DEVELOPER has advised the CITY that RLJT INVESTMENTS, LLC, equity partner with Wellstone Living Craig Ranch, LLC provided DEVELOPER with the cash deposit that supports this Agreement. DEVELOPER hereby requests and authorizes the CITY to refund the cash deposit supporting this Agreement to RLJT INVESTMENTS, LLC if and when all of the requirements of this Agreement have been fully and completely satisfied and CITY has finally accepted all of the Required Improvements deferred by this Agreement.
2. DEVELOPER hereby directs CITY upon successful completion of, dedication to and acceptance by CITY of the Required Improvements deferred hereby to refund or reimburse any amount of the cash deposit that is not otherwise used as provided in this Agreement to RLJT INVESTMENTS, LLC.
3. No other variances for this Property are granted and none shall be allowed.