

WHEREAS, Developer is obtaining the right-of-way for the portion of Hardin Boulevard situated outside of the City's corporate limits for the construction of the roadway but does not control the annexation of the area within which it is situated; and

WHEREAS, City plans to include the portion of Hardin Boulevard situated outside of the City's corporate limits in the City's roadway improvement plan at such time as the area around the roadway and the roadway are annexed into the City's corporate limits; and

WHEREAS, the portion of Hardin Boulevard situated outside of the City's corporate limits will be eligible for impact fee credit reimbursements at such time as it is annexed and included in the City's roadway improvement plan; and

WHEREAS, City and Developer desire to memorialize Developer's right to receive impact fee credits for the portion of Hardin Boulevard situated outside of the City's corporate limits that Developer constructs by and through this Agreement;

NOW THEREFORE, in consideration of these premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which both Parties acknowledge, the City and Developer agree as follows:

ARTICLE I

DEFINITIONS

A. 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 Lennar Homes of Texas Land and Construction, LTD., its representatives, agents, contractors, employees, and consultants.
3. *Effective Date* means the date on which City accepts the construction of Roadway Improvements.
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 "McKinney Impact Fees Article – Roadways" as set forth in Section 130-103, *et seq.*, of the Code of Ordinances, City of

McKinney, Texas, and as it may further be amended, including any schedules or exhibits attached thereto.

6. *Parties* means the City and Developer.
7. *Property* means the area of land known as Honey Creek 313 that is more particularly described in Exhibit A attached hereto and incorporated herein by reference for all purposes allowed by law and which area of land the Developer plans to acquire and develop as a residential subdivision.
8. *Roadway Improvements* means and includes acquisition of all required rights-of-way, right-of-way preparation, paving excavation, construction of concrete paving, curbs, signage, roadway transitions, turn lanes, pavement markings, sidewalks, irrigation, landscaping, lighting and any other improvements necessary for a complete roadway system, and all engineering, surveying, inspection and permit fees for (a) two (2) northbound and two (2) southbound lanes of Hardin Boulevard together with a median extending in a northerly direction from the northern intersection line of Hardin Boulevard with future Weston Road / FM 543 a distance of approximately 2,400 linear feet to the eastern boundary of the Property together with a transition reducing the roadway width from a four lane divided roadway to a (b) two lane roadway extending from the eastern border of the Property in a northerly direction across an area of right-of-way outside of the Property and the City's corporate limits a distance of approximately 510 linear feet until the right-of-way re-enters the Property and the City's corporate limits and (c) continues as a two lane roadway extending an additional 2,410 linear feet in a northerly direction until the roadway reaches the northern boundary of the Property that is the subject of this Agreement.
9. *Roadway Project* means the Roadway Improvements along and about Hardin Boulevard extending from the northern intersection line of Hardin Boulevard with future Weston Road / FM 543 extending in a northerly direction a total distance, as more particularly described above, of approximately 5,300 linear feet, subject to the City's approval of the civil engineering plans for Hardin Road – Honey Creek 313.
10. *Service Unit* means one vehicle mile of travel in the p.m. hour afternoon peak hour of traffic. The impact fees per service unit are as set forth in Impact Fee Schedule 1 and its various equivalency tables attached to Ordinance No. 2013-10-108 - as Impact Fee Schedule 1 and its various equivalency tables may be amended from time to time - and serve as the standardized measure of consumption or use of roadway facilities attributable to new development.

B. Interpretation of Terms, and Incorporation of Exhibits.

Except where the context otherwise clearly requires, in this Agreement: words imparting the singular will include the plural and vice versa;

1. all exhibits attached to this Agreement are incorporated by reference for all pertinent purposes as though fully copied and set forth at length; and
2. 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.

ARTICLE II

**DEVELOPER CONTRIBUTION
OF ROADWAY IMPROVEMENTS**

A. Roadway Improvements

1. Developer shall construct the Roadway Project depicted on the attached Exhibit B. Developer shall construct all Roadway Improvements appurtenant to the Roadway Project.
2. At this time, all but approximately 510 linear feet of two lanes of roadway contained in the Roadway Project is within the City's corporate limits and included in the City's Roadway Improvement Plan ("RIP"). That portion of the Roadway Project which is inside the City's corporate limits is therefore currently eligible for roadway impact fee credits as calculated under the Ordinance. The City intends to add the other 510 linear feet of the Roadway Project to the RIP once the area is annexed into the City's corporate limits.
3. City agrees to grant Developer roadway impact fee credits in conjunction with the acceptance of that portion of the Roadway Project that is within the City's corporate limits and included in the RIP. The impact fee credits associated with this portion of the Roadway Project shall vest and attach to the Property as of the Effective Date.
4. The roadway impact fee credits that shall attach to the Property on the Effective Date under this Agreement are:
 - (a) 219.43 Service Units for approximately 2,400 linear feet of 4 lanes of Hardin Boulevard together with a transition to 2 lanes of Hardin Boulevard that will be applied to that portion of the Property situated within the boundaries of Roadway Service Area D; and,

- (b) 798.75 Service Units for approximately 2,410 linear feet of 2 lanes of Hardin Boulevard that will be applied to that portion of the Property situated within the boundaries of Roadway Service Area B.
5. The roadway impact fee credits for that section of the Roadway Project that is currently outside of the City's corporate limits (the "ETJ Area") shall attach to the Property under this Agreement when the ETJ Area is annexed into the City's corporate limits and the ETJ Area of the Roadway Project is added to the RIP for approximately 510 linear feet of 2 lanes of Hardin Boulevard is 169.03 Service Units that will be applied to that portion of the Property situated within the boundaries of Roadway Service Area B.
6. If the Roadway Project is constructed by some party other than Developer or if Developer fails to construct the Roadway Project then Developer shall not be entitled to impact fee credits.

ARTICLE III

IMPACT FEE CREDITS

A. Assignment and Expiration of Roadway Impact Fee Credits

The Impact Fee Credits granted under this agreement shall only be assigned with the City's consent pursuant to Section 130-111(b)(2) of the Ordinance. The impact fee credits shall have no expiration; but in any event, the impact fee credits shall only be applied to the Property. Application of the impact fee credits to future developed lots and any reimbursement for unused impact fee credits shall be governed by the Ordinance.

B. Value of Roadway Improvements

Developer and City agree that the value of the Roadway Improvements shall be expressed in Service Units.

C. Use of Impact Fee Credits

Impact fee credits shall be used as development occurs on the Property. Service Unit calculations for proposed uses on the Property shall be in accordance with then existing tables of the Ordinance. Unused impact fee credits shall not be transferable and cannot be applied to other fees, converted to cash, or used on other tracts; however, impact fee credits shall be subject to any reimbursements allowed by then existing ordinances. Upon the exhaustion of the impact fee credits by Developer on the Property, any additional development on the Property (such as the creation of additional lots) shall pay then existing Roadway impact fees or

receive credits for construction of additional roadway improvements under then existing ordinances.

D. *Developer Responsibilities under Development Ordinances*

Nothing herein shall relieve the Developer from its responsibilities for construction of public improvements under applicable development ordinances upon development of the Property.

ARTICLE IV

AGREEMENT MAY NOT BE PLEDGED AS COLLATERAL

Developer may not pledge this Agreement, or any credits granted hereunder, as collateral for purposes of securing financing for development of the Property.

ARTICLE V

GENERAL PROVISIONS

A. *Notice of Default; Opportunity to Cure; Remedies*

1. Should any Party allege that the other has defaulted in the performance of any obligation hereunder, 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 Agreement, 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 Agreement 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 Agreement shall be cumulative of and in addition to any other remedies and relief available at law or in equity.
4. The foregoing notwithstanding, it is understood and agreed that in addition to any other remedy which the City may have upon default by Developer under this Agreement, should Developer fail to comply with the Subdivision Ordinance or any City development regulation, the City may terminate this Agreement. Upon termination pursuant to this subsection, all impact fee credits shall terminate.

B. *Entire Agreement; Interpretation of this 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.

C. *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.

D. *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.

E. *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.

F. *No Third Party Beneficiaries*

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

G. *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.

H. 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.

I. Counterparts

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

J. Notices

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

DEVELOPER:

Lennar Homes of Texas
1707 Market Place Blvd., Ste. 100
Irving, Texas 75063

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.

K. No Waiver of Development Ordinances

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. Nothing herein shall waive any obligations of Developer under applicable ordinances, including but not limited to the subdivision ordinance, the sewer and water impact fee ordinance, or the roadway impact fee ordinance.

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. Assignability

This Agreement shall not be assignable by Developer without the prior written consent of the City.

O. Binding Obligation

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

P. Waiver of Claims.

Developer has voluntarily agreed to undertake the construction of the Roadway Improvements for the Roadway Project in exchange for impact fee credits to be applied to the Property. The construction of the Roadway Project is not a condition of approval or acceptance the development of the Property. **Developer waives any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code and any federal constitutional claims. Developer further releases City from any and all claims based on excessive or illegal exactions. 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.**

CITY OF MCKINNEY

By: _____
PAUL G. GRIMES
City Manager

Date Signed: _____

ATTEST:

SANDY HART, TRMC, MMC
City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

**LENNAR HOMES OF TEXAS LAND
AND CONSTRUCTION, LTD.**, a Texas
limited partnership, by and through its
General Partner

LENNAR TEXAS HOLDING COMPANY,
a Texas corporation

By: _____
Name: David Grove
Title: Division President
Date Signed: 6/8/2018

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 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 _____, 20_____.

Notary Public _____ County, Texas
My commission expires _____

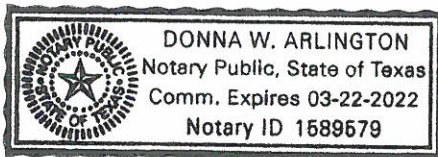
THE STATE OF TEXAS,
COUNTY OF DALLAS

This instrument was acknowledged before me on the 8th day of June, 2018, by David Grove, in his her capacity as Division President of Lennar Texas Holding Company, a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that Lennar Texas Holding Company, is the General Partner of **LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD.**, a Texas limited partnership, and that he / she executed the same on behalf of and as the act of the Limited Partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 8th
DAY OF June, 2018.

Donna W. Arlington

Notary Public Dallas County, Texas
My commission expires 3/22/22



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

THENCE S 01°03'27" E a distance of 2428.17 feet to a 1" iron pipe found at the common corner of said called 313.22 acre tract and a called 30.04 acre tract of land describe in Instrument Number 20091215001497350 of the D.R.C.C.T.;

THENCE N 88°16'27" W a distance of 399.64 feet to a 1/2" iron rod found at the common corner of said called 313.22 acre tract and said called 30.04 acre tracts of land and being in the general centerline of county road 227 and county road 229;

THENCE S 01°03'40" E a distance of 815.79 feet to a 1/2" iron pipe found in the East line of said called 313.22 acre tract, being the Southwest corner of said called 30.04 acre tract of land, and being the Northwest corner of a called 38.94 acre tract of land described in Volume 3578, Page 252 of the D.R.C.C.T.;

THENCE S 01°03'34" E a distance of 1455.48 feet to a 5/8" iron rod set stamped ADAMS SURVEYING COMPANY at the Southeast corner of said called 313.22 acre tract of land, being the Southwest corner of said called 38.94 acre tract, and being in the North line of Fm. 543;

THENCE N 84°58'28" W along the North line of said Fm. 543 a distance of 612.68 feet to a 1/2" iron rod found in the South line of said called 313.22 acre tract of land and being in the North line of said Fm. 543;

THENCE N 84°22'26" W along the North line of said Fm. 543 a distance of 495.79 feet to a 1/2" iron rod found in the South line of said called 313.22 acre tract, being in the North line of said Fm. 543, and being at the beginning of a curve to the left whose chord bears N 86°33'10" W, 230.30 feet;

THENCE along said North line of Fm. 543, said South line of called 313.22 acre tract of land, and said curve to the left having a radius of 3065.36, central angle of 4°18'21", and length of 230.36 feet to a 5/8" iron rod found in the North line of Fm. 543 and in the South line of called 313.22 acre tract;

THENCE N 88° 52'26" W along the North line of said Fm. 543 and South line of said called 313.22 acre tract of land a distance of 848.63 feet to a 1/2" iron rod found at the Southwest corner of said called 313.22 acre tract of land, being the Southeast corner of a called 97.21 acre tract of land described in Instrument Number 20050428000558900 D.R.C.C.T., and being in the North line of said Fm. 543;

THENCE N 00°34'11" E a distance of 2204.40 feet to a 5/8" iron rod found in the West line of said called 313.22 acre tract of land, in the East line of said called 97.21 acre tract of land, and generally in the center of county road 203;

THENCE N 00°30'06" E a distance of 2294.98 feet to a 1/2" iron rod found being in the South line of a called 2.00 acre tract of land described in Volume 5221, Page 89 of the D.R.C.C.T.;

THENCE S 88°14'00" E a distance of 944.61 feet to a 1/2" iron rod found at the common corner of said called 313.22 acre tract of land and a called 10.00 acre tract of land described in Volume 815, Page 477 of the D.R.C.C.T.;

THENCE N 02°37'03" E a distance of 1129.33 feet to a 1/2" iron rod found at the common corner of said called 313.22 acre tract of land and a called 8.84 acre tract of land described in 815, Page 477 of the D.R.C.C.T.;

THENCE N 89°54'00" W a distance of 772.05 feet to a 1/2" iron rod found, being in the East line of a called 22.70 acre tract of land describe in Instrument Number 20081117001339790 of the D.R.C.C.T.;

THENCE N 06°36'57" E a distance of 1096.98 feet to a 5/8" iron rod found at the Northwest corner of said called 313.22 acre tract of land, being in the South line of a called 40.00 acre tract of land described in Instrument Number 20111004001062390 D.R.C.C.T., and being in the general center line of county road 204;

THENCE N 89°41'27" E a distance of 549.33 feet to a 1" iron pipe found in the North line of said called 313.22 acre tract of land, being in the general center line of said county road 204, and being the Southwest corner of said called 7.34 acre tract of land;

THENCE S 89°56'10" E a distance of 1138.18 feet to the POINT OF BEGINNING and containing 313.21 acres or 13,643,439 square feet of land, more or less.

Exhibit B

ROADWAY PROJECT PLAN

