

AFTER RECORDING, RETURN TO:

Jack Carr, P.E.  
City of McKinney  
P.O. Box 517  
222 N. Tennessee Street  
McKinney, Texas 75069

COUNTY CLERK'S MEMO  
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DOCUMENT NOT  
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WHEN RECORDED

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**City of McKinney, Texas**  
**FACILITIES AGREEMENT**  
*For*  
**HIGHLAND LAKES ADDITION**

This FACILITIES AGREEMENT for HIGHLAND LAKES ADDITION (this "Agreement"), entered into effective the \_\_\_ day of October, 2005, by and between *CITY OF MCKINNEY*, a Texas municipal corporation and home-rule city ("CITY"), and *HRC WCD PARTNERS, L.P.*, a Texas limited partnership, whose address is 4601 Langland, Suite 107, Dallas, Texas 75244, and who is the present owner of the subject property at the time of annexation into the City of McKinney, acting by and through its General Partner Thomas E. Clark, GP, LLC ("OWNER"), witnesseth that:

WHEREAS, OWNER is the owner of certain real property located within the extraterritorial jurisdiction of CITY; and

WHEREAS, OWNER has requested the City Council to approve the annexation, zoning, and platting of the Property; and

WHEREAS, the physical location of the Property, the lack of adequate roadway and utility facilities to serve the Property, and the demonstrated need for new infrastructure improvements due to the imminent construction of a new residential development by OWNER requires that a portion of certain roadways be funded, or those funds be secured, in anticipation of right-of-way acquisition (by CITY or OWNER) and construction (by OWNER), as a prerequisite to the approval of development by CITY; and

WHEREAS, OWNER has agreed to fund and construct certain public roadway and utility improvements necessitated by the foregoing conditions; and

WHEREAS, OWNER, its grantees, assigns, successors, trustees and all others holding any interest now or in the future, agrees and enters into this Agreement which shall operate as a covenant running with the land and being binding upon OWNER and its representatives;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein the OWNER and CITY agree as follows:

A. PROPERTY

This Agreement is for approximately six hundred forty-one (641) acres of land, of which land approximately one hundred ninety-four (194) acres is located within the corporate limits and approximately four hundred forty-seven (447) acres is located in the extraterritorial jurisdiction (however, the subject of a pending annexation proceeding) of the City of McKinney, on the south side of FM 1461, on the north side of Bloomdale Road along and between Ridge Road and Stonebridge Drive, more fully described in Exhibit "A" attached to this Agreement and fully incorporated herein by reference (the "Property").

B. ZONING & PLATTING

The Property shall be zoned and platted in accordance with the CITY Zoning Ordinance and Subdivision Ordinance, then in force, before any Development Permit or Building Permit will be issued for the phase being platted.

C. PUBLIC IMPROVEMENTS

All public improvements, including utilities, drainage easements, sidewalks, street lighting, street signage, parkland dedication and all other required improvements and dedications shall be constructed and provided by OWNER at no cost to CITY, in accordance with the CITY's Ordinances which are then in effect and as approved by the CITY Engineer, and accepted by the CITY prior to the filing of the record plat for any phase of the development of the Property unless otherwise authorized by a separate Construction Facilities Agreement. Engineering studies, plan/profile sheets, and other construction documents shall be provided by OWNER at the time of platting as required by the Subdivision Ordinance. Such plans shall be approved by the CITY Engineer or his agent prior to the issuance of a Development Permit. CITY asserts and OWNER agrees that no funds are currently available for any offsite construction or oversize participation for public improvements. Except as otherwise provided in Exhibit "B" to this Agreement, the only funds that may be considered for reimbursements are impact fee credits, which credits may be available for certain improvements only. CITY retains the ability to review and approve or reject OWNER's pricing for roadways, offsite and oversize water and sewer lines that are submitted for impact fee credit consideration. If CITY rejects OWNER's pricing, CITY shall give written notice of the rejection to OWNER together with an explanation of the basis for the rejection.

1. THOROUGHFARES

OWNER acknowledges that the Traffic Impact Analysis ("TIA") attached as Exhibit H to this Agreement reflects that there currently does not exist sufficient capacity in and on the roadways in the vicinity of the Property to support the traffic that will be

generated by OWNER's proposed development of the Property. OWNER further acknowledges that the TIA identifies certain roadway improvements that must be constructed at a minimum to serve the OWNER's proposed development of the Property.

OWNER shall dedicate, at no cost to CITY, that amount of right-of-way and all easements necessary for construction and safety purposes across the Property along Ridge Road which will yield the ultimate right-of-way width where Ridge Road is located completely within the Property. OWNER shall also dedicate, as a part of the Public Improvements and at no cost to CITY, that amount of right-of-way and all easements necessary for construction and safety purposes along perimeter roadways adjacent to the Property, which dedication will yield one-half (½) 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 the on-site and perimeter roadway right-of-way described above has not previously been dedicated, OWNER shall dedicate the right-of-way and all easements necessary for construction and safety purposes along roadways on the Property and perimeter roadways adjacent to the Property as required herein above upon receipt of the written request of the CITY's Engineer. OWNER shall dedicate all right-of-way and easements necessary for construction and safety purposes 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.

OWNER 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. OWNER shall construct Thoroughfare Improvements as described in attached Exhibit "B," which is fully incorporated herein by reference. The final alignment of right-of-way dedications shall be consistent with the CITY's Thoroughfare Development Plan and as approved by the City Engineer.

## 2. UTILITIES

OWNER shall dedicate, at no cost to CITY, that amount of easement right-of-way across the Property as deemed necessary by the City Engineer for the construction of water and wastewater utilities as shown on the CITY's Master Plans for Water and Wastewater. The final alignment of easement right-of-way dedications shall be consistent with the CITY's Master Plans for Water and Wastewater (hereafter referred to collectively as the "Master Plans") and as approved by the City Engineer. If the easement right-of-way described above has not previously been dedicated, OWNER shall dedicate the right-of-way and all easements necessary for construction

and safety purposes on the Property as required herein above upon receipt of the written request of the CITY's Engineer.

OWNER shall construct, at no cost to CITY, all necessary utility lines up to twelve inches (12") in diameter to serve the Property in accordance with CITY standards and the Master Plans, at such time as demand of the development on the Property requires or concurrent with the development of the Property, as determined by CITY. OWNER 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 as demand of the development on the Property or the CITY's Master Plans require. No septic systems shall be permitted.

All utility improvements are subject to the approval of the CITY Engineer, and all utility lines shall be constructed of materials of a quality and grade meeting at least the minimum standards specified by the CITY Engineering Department. Upon approval of all utility construction plans for the Property by CITY Engineer, or his designee, OWNER may develop in accordance with such approved plans.

In addition to the requirements stated herein, OWNER shall construct any off-site and oversize utility improvements as may be required to serve the Property in accordance with the CITY's minimum standards and Master Plans as described in attached Exhibit "B" which is fully incorporated herein by reference. The necessary off-site sewer line is depicted in attached Exhibit E. OWNER recognizes this Property is split between two water pressure planes which may create the need to construct additional water lines to serve the Property.

3. PARKLAND

OWNER desires to dedicate the Natural Resources Conservation Service ("NRCS") Lake 2A ("NRCS Lake 2A") to the CITY in partial satisfaction of OWNER's parkland dedication requirement. NRCS Lake 2A needs substantial improvements and repairs to the dam and spillway before it can attain the necessary performance standards consistent with an urban, flood water retarding structure as required by the Texas Commission on Environmental Quality. The cost to rehabilitate this flood water retarding structure is not the obligation of the CITY. Rather, the obligation to maintain and rehabilitate NRCS Lake 2A currently belongs to OWNER and the other owners of property within the water shed served by said lake as explained in Exhibit B below.

CITY does not wish to accept and has explained to OWNER that the CITY will not accept the dedication of any portion of NRCS Lake 2A or any portion of the NRCS Overflow Easement (hereinafter defined) until after NRCS Lake 2A, together with its dam and spillway, are fully and completely rehabilitated to performance standards consistent with an urban, flood water retarding structure. CITY has agreed to accept

the dedication of NRCS Lake 2A together with its dam and the NRCS Overflow Easement once they are fully and completely rehabilitated.

In partial satisfaction of OWNER's parkland dedication requirements, OWNER shall dedicate to CITY as hereinafter provided in this Agreement: (1) the NRCS Lake 2A; (2) the greenbelt area around the lake that is generally within the FEMA 100-year floodplain (the "Greenbelt"); and (3) the NRCS overflow easement consisting generally of the spillway area below the dam (the "NRCS Overflow Easement"). The NRCS Lake 2A, Greenbelt, and NRCS Overflow Easement contain, in the aggregate, approximately ninety-six (96) acres of land within the Property and are hereinafter collectively referred to as the "Lake 2A Parkland."

OWNER's general development plan reflects the planned dedication of the Lake 2A Parkland as a passive lake park (including nature sites, hike and bike trails, fishing piers, one picnic gazebo, picnic tables and restroom and drinking water facilities but excluding game fields, field lighting, bleachers and other similar permanent structures) and a minimum eight (8) acre school active park. OWNER shall dedicate portions of the Lake 2A Parkland, together with other parkland required by this Agreement, in accordance with this Agreement, at such time as OWNER plats phases of the Property as explained in Exhibit C to this Agreement.

OWNER shall not be allowed to file the plat for the last phase of the Property until OWNER has (1) dedicated the Greenbelt and a minimum eight (8) acre school active park to the CITY as required in Exhibit C to this Agreement, and (2) delivered into escrow a deed conveying the NRCS Lake 2A and NRCS Overflow Easement to CITY as further required in Exhibit C to this Agreement, or (3) made a cash payment to the City in lieu of such conveyance. Upon dedication by OWNER of the Greenbelt and minimum 8-acre school active park and delivery into escrow of the deed for the NRCS Lake 2A and NRCS Overflow Easement (or cash payment in lieu of such conveyance), OWNER shall have satisfied all parkland dedication requirements applicable to the Property, and no additional parkland dedication or fees in lieu shall be due in connection with the development of the Property or any portion thereof.

D. AVAILABILITY OF WATER AND WASTEWATER SERVICE IN THE FUTURE

The City makes no guarantee that water supply or wastewater treatment capacity will be available at any particular time or place, it being fully understood by both parties hereto that the ability of the City to supply water and wastewater services is subject to its contract with the North Texas Municipal Water District, a governmental agency and body politic and corporate, hereinafter referred to as "N.T.M.W.D.", and that this Agreement will only allow utilization of the CITY's water and wastewater system capacity when and if same is present and available from the N.T.M.W.D. Notwithstanding the foregoing, the City will supply the Development with water supply and wastewater treatment capacity if such capacity is present

and available from N.T.M.W.D. The City shall be the sole judge of the availability of such capacity of water supply and/or wastewater services, provided, however, that the City will use its best efforts to insure that said water supply and wastewater treatment capacity is available. In this regard, CITY will request that N.T.M.W.D. install the Stover Creek Sanitary Sewer Line.

E. CITY DEVELOPMENT ORDINANCES

OWNER 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 regarding drainage, erosion control, pro rata payments, tree preservation, Street Design Standards, Public Improvements Policy and construction standards. OWNER expressly acknowledges that by entering into this Agreement, OWNER, its successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any exhibits attached hereto as waiving any of the requirements of the CITY's Zoning Ordinance or Subdivision Ordinance or any other ordinance of the CITY, as applicable. No variances for the development of this Property are granted and none shall be allowed except as specifically identified in Exhibit C.

F. TREE ORDINANCE

OWNER expressly acknowledges the McKinney Tree Preservation Ordinance and the duty to develop the Property in accordance with the standards contained therein and any amendments to those standards.

G. STORMWATER

OWNER agrees to abide by all terms of the McKinney Storm Water Ordinance No. 99-04-39, as amended. Any variances to the Storm Water Ordinance are specified in attached Exhibit C, which is fully incorporated herein by reference.

H. PRO RATA FEES

Off-site water and sewer facilities may be subject to either pro-rata payments paid to third parties or reimbursements collected from third parties in accordance with City Ordinances. For existing facilities, OWNER shall be responsible to pay applicable pro-rata fees in the amount of one-half (½) of the actual construction and engineering costs of up to a twelve-inch (12") diameter pipe if off-site facilities are adjacent to the Property. Should OWNER construct off-site water and sewer facilities such that pro-rata fees are due to OWNER, CITY agrees to collect any fees due to OWNER related to the construction of the line(s) as those properties utilizing such facilities are developed during the period of 10 years after the date of construction and acceptance of each such off-site water and sewer facility. OWNER shall submit final construction costs to CITY prior to final acceptance of any pro-rata eligible improvements for use in determining pro-rata fees to be owed to OWNER. OWNER shall

not be required to pay pro-rata fees for any major transmission line(s) that may be constructed upon, through, under, across or adjacent to the Property that merely transport water or wastewater to or from a treatment facility and to which line(s) Owner is not permitted any right to tap or tie in to or otherwise utilize for the Property's benefit. Specific pro-rata fee arrangements are contained in Exhibit B.

I. PROPORTIONALITY FEE

OWNER, or OWNER's successor(s)-in-interest (including a builder-owner), shall pay to CITY a Proportionality Fee ("Fee") for development of the approximately four hundred forty-seven (447) acres of the Property that is currently situated in the CITY's extraterritorial jurisdiction, which Fee represents a roughly proportional amount necessary to offset the roadway infrastructure capacity needs of the Property. The Fee shall be the equivalent of the roadway impact fee assessed in the adjacent (abutting) roadway impact fee service area in effect at the time of building permit and shall be paid at the time of issuance of any building permits for any improvements on the Property. Development of the approximately one hundred ninety-four (194) acres of the Property which was in the CITY's corporate limits on or before the CITY's 2003 impact fee update shall remain subject to the CITY's roadway impact fee ordinance. OWNER, or OWNER's successor(s)-in-interest (including a builder-owner), shall also pay (at the time of building permits) to CITY of water and wastewater impact fees for the entire Property in accordance with the CITY's utility impact fee ordinance.

OWNER shall receive credits for excess vehicle miles contributed by OWNER (as such compare to the amount of vehicle miles of demand the entire Property creates) in right-of-way dedication and construction of on-site and adjacent roadways required by this Agreement. Such credits shall be issued to OWNER only for construction of impact fee eligible system roadways completed to CITY standards and accepted by CITY. Upon completion by OWNER and acceptance by CITY of such on-site and adjacent roadways, CITY shall issue credits to a credit pool in OWNER's name that may be drawn down to pay Fees and roadway impact fees. Said credits shall not include OWNER'S individual costs for eminent domain, if any. CITY acknowledges that if right-of-way dedications and roadway construction required by this Agreement are made and completed, respectively, the excess vehicle miles that result from such dedications and construction shall entitle OWNER to credits in the credit pool sufficient to pay Fees and roadway impact fees for 1,781 single family units. If the right-of-way dedications or roadway construction requirements change, the excess vehicle miles will be recalculated and the credits against Fees and roadway impact fees adjusted accordingly. In addition, if OWNER fails to construct any of the roadway segments required pursuant to this Agreement or any of said roadway segments are built by some other person or party the amount of excess vehicle miles will be recalculated and the credits against Fees and roadway impact fees adjusted accordingly. OWNER may assign credits in the credit pool without the consent of CITY, but only to owners or developers of property within the Property. CITY further acknowledges that future CITY ordinances and policies applicable to proportionality fees or roadway impact fees may create or result in a

credit calculation or excess miles formula or reimbursement methodology which, when applied to the right-of-way dedications and construction obligations of OWNER under this Agreement, could be more favorable to OWNER, in which case, CITY agrees that the more favorable ordinances or policies shall apply to the development of the Property.

J. NO WAIVER

OWNER expressly acknowledges that by entering into this Agreement, OWNER, 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 in force by CITY, except as herein agreed.

K. VARIANCES

It is expressly acknowledged that only the variances to the Zoning Ordinance and Subdivision Ordinance stipulated in attached Exhibit C, if any, are granted by CITY for this subdivision and/or development. If no variances are granted, Exhibit C shall state "No variances for the Property are granted and none shall be allowed."

L. INDEMNITY AND HOLD HARMLESS AGREEMENT

**OWNER, 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 OWNER, and only to the extent or percentage attributable to OWNER, in the subdividing, development, or construction of public improvements, including the negligent maintenance thereof. OWNER 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.**

M. REVOCAION

In the event OWNER 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 OWNER'S property; and in the alternative, CITY shall be authorized to levy an assessment against OWNER'S property for public improvements to be held as a tax lien against the Property by CITY.



N. RELATIONSHIP TO ROADWAY AND SEWER/WATER IMPACT FEES AND WAIVER OF CLAIMS.

It is the intent of this Agreement that the provision for roadway and utility improvements made herein constitutes a proportional financial allocation of OWNER's responsibility for roadway and utility improvements for its Property and that the financial contribution, including the proportionality fee and in-kind construction of improvements made by OWNER pursuant to this Agreement, are necessary and attributable to development of the Property. The financial obligation of OWNER herein set forth shall relieve OWNER of any obligation for roadway and water/sewer impact fees for the Property unless impact fees are applicable to this Property, or as otherwise provided herein above. OWNER further waives any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code, any federal constitutional claims, and any claims for reimbursement under any existing or future impact fee ordinances of the City of McKinney to the extent such claims are based on OWNER's dedication, construction, or payment obligations under this Agreement. OWNER further releases CITY from any and all claims based on excessive or illegal exactions; it being agreed that the amount of OWNER's infrastructure contribution proportionality fee (after receiving all contractual offsets, credits and reimbursements) is roughly proportional to the demand that is placed on the CITY's roadway and utility systems by OWNER's development. OWNER further acknowledges that the benefits of annexation, 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 OWNER acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. OWNER and each successor, assign, vendor, grantee, and/or trustee does hereby individually agree to indemnify and hold CITY harmless from any claims and suits brought by such person or entity against CITY pursuant to this Agreement or claims or types of claims against CITY described in this paragraph. The indemnification contined in the immediately preceeding sentence does not apply as among the entities or persons named as indemnifying the CITY (for example, OWNER is not indemnifying the CITY for claims and suits against CITY by its successors, assigns, vendors, grantees and/or trustees) but rather each individual person or entity is indemnifying the CITY hereby for its claims and suits.

O. CONTINUITY

This Agreement shall be a covenant running with the land, and be binding upon OWNER, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future. Notwithstanding the foregoing, however, this Agreement shall not be binding on, and shall not constitute an encumbrance against title with respect to, any lot for which a final plat has been recorded in the deed records.

P. ASSIGNMENT

Subject to CITY's prior written approval, OWNER shall have the right, from time to time, to assign this Agreement, in whole or in part, or any right, title, or interest of OWNER under this Agreement, to any person or entity (an "Assignee"). Each assignment shall be in writing executed by OWNER and the Assignee and shall obligate the Assignee to be bound by this Agreement. A copy of each assignment shall be provided to CITY within 15 days after execution. If CITY approves the Assignee in writing (which approval shall not be unreasonably withheld or delayed if the Assignee can demonstrate, to the reasonable satisfaction of CITY, that the Assignee has the financial ability to perform the assigned obligations), then CITY agrees to look solely to the Assignee for the performance of all obligations assigned to the Assignee and agrees that OWNER shall be released from subsequently performing the assigned obligations and from any liability that results from the Assignee's failure to perform the assigned obligations. If CITY fails or refuses to approve the Assignee, the assignment shall nevertheless be effective; however, OWNER shall continue to be responsible jointly and severally with the Assignee for the performance of all obligations assigned. No assignment by OWNER shall release OWNER from any liability resulting from an act or omission by OWNER that occurred prior to the effective date of the assignment unless CITY approves the release in writing. OWNER shall maintain written records of all assignments made by OWNER to Assignees, including a copy of each executed assignment and the Assignee's notice information.

Q. TERMINATION AND RELEASE

Upon satisfactory completion by OWNER and final acceptance by CITY of all requirements of this Agreement, this Agreement shall terminate and CITY will execute a release of covenant to OWNER, its heirs, successors, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

R. MAINTENANCE BOND

Prior to final acceptance of improvements to Property, OWNER shall furnish 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.

S. GENERAL PROVISIONS

OWNER 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 further agrees that OWNER 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.

OWNER agrees that construction shall not begin on any proposed improvements to Property prior to City Council approval of this Agreement.

OWNER 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 OWNER. Likewise, coordination with agencies requiring special conditions (i.e., railroads and the Texas Department of Transportation) shall be the responsibility of OWNER.

It is understood that any obligation on the part of CITY to make any refunds with respect to infrastructure improvements constructed within the Property shall cease, with respect to such improvements, on the 10<sup>th</sup> anniversary after the improvements are completed, inspected, and accepted by CITY. Such 10-year period may be extended for good cause and agreed to in writing by CITY and OWNER.

This Agreement does not constitute a "permit" under Chapter 245, Texas Local Government Code and no "rights" are vested by this Agreement; however, nothing in this Agreement shall constitute a waiver by OWNER of any rights of OWNER under said Chapter 245.

The Agreement is conditioned upon the annexation and zoning of the Property as contemplated by this Agreement. If the Property is not annexed or is not zoned as contemplated by this Agreement, then OWNER or CITY shall have the right to terminate this Agreement; whereupon, neither party shall have any further duties, obligations, rights, or remedies under this Agreement. If this Agreement is terminated by either party pursuant to this paragraph, the Property shall be developed in accordance with the standards as set forth in City of McKinney Zoning, Subdivision and land development ordinances, including but not limited to provisions regarding drainage, erosion control, pro rata payments, tree preservation, Street Design Standards, Public Improvements Policy and construction standards.

In the event of any conflict between the main body of this Agreement and any of the Exhibits attached to this Agreement, the Exhibits shall control.

CITY OF MCKINNEY

By: 

LAWRENCE W. ROBINSON  
City Manager

Date Signed: 10.31.15

ATTEST:

Sandy Hart 11/105  
SANDY HART, CMC, City Secretary  
BEVERLY COVINGTON, Deputy City Secretary



HRC WCD PARTNERS, L.P., a Texas Limited Partnership, Acting by and through its General Partner, THOMAS E. CLARK, GP, LLC.

By: Thomas E. Clark  
Name: THOMAS E. CLARK  
Title: MANAGER  
Date Signed: 10-28-05

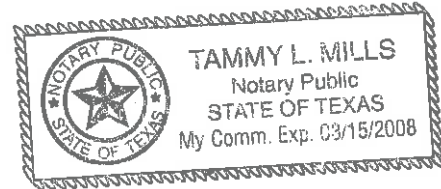
THE STATE OF TEXAS,  
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared **Lawrence W. Robinson**, 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 CITY's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 31  
DAY OF Oct, 2005.

Tammy L. Mills

Notary Public Collin County, Texas  
My commission expires 3/15/08



THE STATE OF TEXAS,  
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared Thomas E. Clark, in his capacity as MANAGER of Thomas E. Clark G.P., LLC, a Texas limited liability Co., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that Thomas E. Clark G.P., LLC is the General Partner of HRC WCD PARTNERS, L.P., a Texas Limited Partnership, and that he executed the same on behalf of and as the act of the Texas Limited Partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 28<sup>th</sup>  
DAY OF October, 2005.

Marjorie G. Turner

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

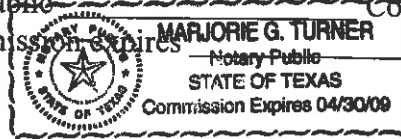


EXHIBIT A

DESCRIPTION OF PROPERTY

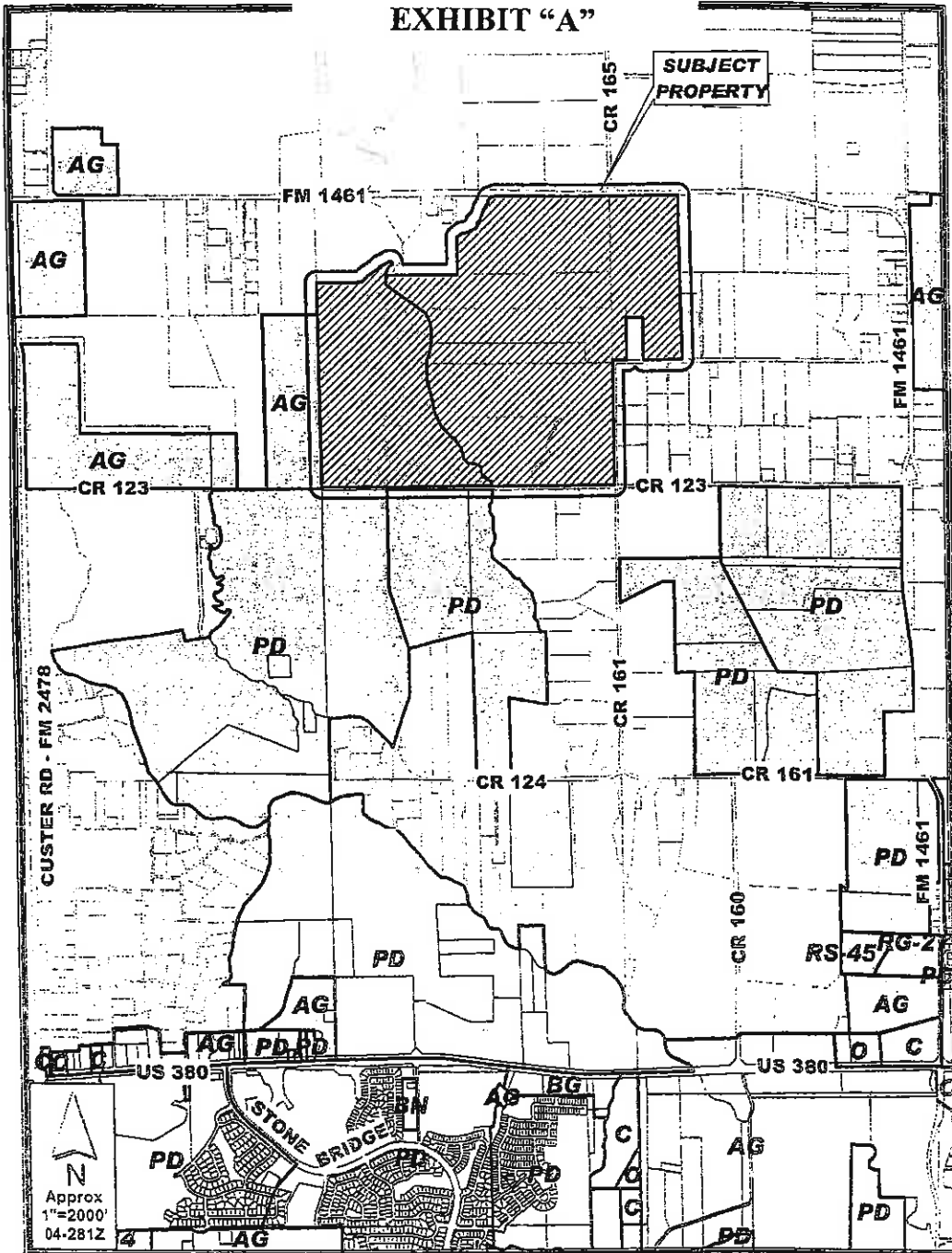


Exhibit "A"  
page 1 of 2

LEGAL DESCRIPTION

BEING a tract of land situated in the Thomas Shiloh Survey, Abstract No. 844, and the Joel F. Stewart Survey, Abstract No. 838, Colton County, Texas and also being part of a 48.294 acre tract as recorded in Volume 3301, Page 248, all of a 35.000 acre tract and a 102.884 acre tract recorded in Volume 3301, Page 255, D.R.C.C.T., all of a 20.000 acre tract as recorded in Volume 3301, Page 258, D.R.C.C.T., all of a 37.000 acre tract as recorded in Volume 3301, Page 264, D.R.C.C.T., all of a 82.447 acre tract as recorded in Volume 3301, Page 235, D.R.C.C.T., and also being part of a 75.848 acre tract as recorded in Volume 3301, Page 231, D.R.C.C.T., and being more particularly described by metes and bounds as follows:

BEGINNING at 1/2 inch iron rod found for corner at the northwest corner of said 75.848 acre tract, said iron rod being at the northwest corner of a 38.814 acre tract as recorded in Volume 3486, Page 134, D.R.C.C.T., said iron rod also being in the south right of Way line of F.M. No. 1461;

THENCE South 00 degrees 29 minutes 08 seconds West a distance of 2998.80 feet to a 00 if not found for corner in County Road No. 163 (private);

THENCE North 89 degrees 58 minutes 34 seconds West following C.R. No. 163 a distance of 688.06 feet to a 1/2 inch iron rod found for corner at the southeast corner of a 3.00 acre tract as recorded in Volume 4287, Page 2503, D.R.C.C.T.;

THENCE North 00 degrees 18 minutes 45 seconds East following the east line of said 3.00 acre tract a distance 537.85 feet to a 1/2 inch iron rod set for corner;

THENCE North 00 degrees 54 minutes 35 seconds West following the east line of said 3.00 acre tract a distance of 241.02 feet to a wood fence corner post marking the northeast corner of said 3.00 acre tract;

THENCE South 87 degrees 30 minutes 44 seconds West following the north line of said 3.00 acre tract a distance of 262.48 feet to a 1/2 inch iron rod set for corner marking the northwest corner of said 3.00 acres;

THENCE South 1 degree 30 minutes 53 seconds West following the west line of said 3.00 acre tract a distance of 787.25 feet to a 1/2 inch iron rod found for corner in C.R. No. 163;

THENCE North 88 degrees 38 minutes 34 seconds West following C.R. No. 163 a distance of 258.24 feet to a 1/2 inch iron rod set for corner in a turn in the road to the south;

THENCE South 00 degrees 54 minutes 48 seconds West following C.R. No. 163 a distance of 2273.88 feet to a 1/2 inch iron rod found for corner (constraining monument) for corner at the intersection of C.R. No. 163 and C.R. No. 123;

THENCE North 88 degrees 01 minutes 11 seconds West following C.R. No. 123 a distance of 1887.85 feet to a 1/2 inch iron rod set for corner at the southeast corner of a 0.289 acre tract conveyed to Colton County as recorded in Volume 4038, Page 1480 D.R.C.C.T.;

THENCE North 00 degrees 34 minutes 07 seconds East a distance of 45.12 feet to a 1/2 inch iron rod set for corner of the northeast corner of said 0.289 acre tract;

THENCE North 88 degrees 25 minutes 53 seconds West following the north line of said 0.289 acre tract a distance of 84.03 feet to a 1/2 inch iron rod set for corner;

THENCE North 88 degrees 27 minutes 38 seconds West following the north line of said 0.289 acre tract a distance of 178.84 feet to a 1/2 inch iron rod set for corner in the east line of a 183.825 acre tract as conveyed to CTE Group and recorded in Volume 3377, Page 4963, D.R.C.C.T., said iron rod being in a creek;

THENCE North 25 degrees 55 minutes 47 seconds West following the creek a distance of 1027 feet to a 1/2 inch iron rod found for corner;

THENCE North 36 degrees 42 minutes 08 seconds West following the creek a distance of 283.12 feet to a 1/2 inch iron rod found for corner;

THENCE North 67 degrees 08 minutes 43 seconds West following the creek a distance of 328.85 feet to a 1/2 inch iron rod found for corner;

THENCE North 14 degrees 36 minutes 18 seconds West following the creek and crossing the dam of a Soil Conservation Lake and continuing for a distance of 282.80 feet to a point in said Lake;

THENCE through said lake the following course and distances:

- L10 N 17°43'11" E 88.81'
- L11 N 02°08'01" W 82.00'
- L12 N 34°34'01" W 362.00'
- L13 N 71°54'01" W 192.00'
- L14 N 07°58'01" W 275.00'
- L15 N 15°08'58" E 177.00'
- L16 N 23°53'01" W 595.00'
- L17 N 83°42'58" E 757.00'
- L18 N 02°27'01" W 476.00'
- L19 N 05°38'58" E 456.00'
- L20 N 48°58'01" W 1087.50'
- L21 N 00°53'36" E 126.93'

THENCE South 88 degrees 20 minutes 52 seconds East a distance of 1329.00 feet to a 1/2 inch iron rod set for corner;

THENCE North 00 degrees 55 minutes 04 seconds West a distance of 709.27 feet to a point in creek heading northwest;

THENCE following said creek the following course and distances:

- L22 N 57°01'07" E 85.11'
- L23 S 80°04'48" E 98.00'
- L24 N 82°53'33" E 89.82'
- L25 N 22°53'33" E 34.00'
- L26 N 32°14'24" W 87.25'
- L27 N 07°48'26" W 32.38'
- L28 N 35°54'24" E 54.33'
- L29 N 60°23'51" E 96.48'
- L30 N 83°28'27" E 112.18'
- L31 N 18°13'23" E 184.33'
- L32 N 75°50'56" E 27.25'
- L33 N 22°15'21" E 115.48'
- L34 N 55°27'18" E 46.85'
- L35 N 08°58'12" W 86.10'
- L36 N 64°19'22" E 82.24'
- L37 N 81°58'49" E 111.26'

to a point in a curve to the right in the south ROW line of F.M. No. 1461, said curve having a chord bearing of South 87 degrees 07 minutes 21 seconds East and a chord distance of 47.08 feet;

THENCE along said curve to the right following the south ROW line of said F.M. No. 1461 through a central angle of 00 degrees 28 minutes 27 seconds a radius distance of 5684.58 feet and a arc distance of 47.08 feet to a 1/2 inch iron rod set for corner;

THENCE South 85 degrees 53 minutes 08 seconds East following the south ROW line of said F.M. No. 1461 a distance of 1504.84 feet to a 1/2 inch iron rod set for corner at the beginning of a curve to the left with a chord bearing of South 88 degrees 10 minutes 38 seconds East a chord distance of 250.38 feet;

THENCE along said curve to the left following the south ROW line of said F.M. No. 1461 through a central angle of 2 degrees 33 minutes 00 seconds a radius of 3774.58 feet and a arc distance of 260.38 feet to a 1/2 inch iron rod set for corner;

THENCE South 88 degrees 28 minutes 08 seconds East following the south ROW line of said F.M. No. 1461 a distance of 113.78 feet to a 1/2 inch iron rod set for corner;

THENCE South 43 degrees 38 minutes 38 seconds East following the south ROW line of said F.M. No. 1461 a distance of 140.25 feet to a 1/2 inch iron rod found for corner;

THENCE South 88 degrees 28 minutes 08 seconds East following the south ROW line of said F.M. No. 1461 a distance of 90.01 feet to a concrete monument found for corner;

THENCE North 48 degrees 00 minutes 22 seconds East following the south ROW line of F.M. No. 1461 a distance of 142.61 feet to a 1/2 inch iron rod set for corner;

THENCE South 88 degrees 28 minutes 08 seconds East following the south ROW line of said F.M. No. 1461 a distance of 1074.43 feet to the POINT OF BEGINNING and containing 19,501.453 square feet or 447.893 acres of land.

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Exhibit "A"  
page 2 of 2

LEGAL DESCRIPTION

BEING a tract of land situated in the T Stallcup Survey, Abstract No. 846, Collin County, Texas, and also be all of a 194.18 acre tract conveyed to Edward F. Scanlon and Debra J. Scanlon as recorded in County Clerks No. 94-0063641 of Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod found (controlling monument) for corner at the southwest corner of said 194.18 acre tract and at the southeast corner of a 73.4619 acre tract as recorded in County Clerks, No. 92-0053214, Collin County, Texas, said iron rod being in County Road No. 206;

THENCE North 00 degrees 34 minutes 35 seconds East following the east line of said 73.4618 acre tract a distance of 3761.76 feet to a 1 inch iron pipe found (controlling monument) for corner;

THENCE South 88 degrees 15 minutes 55 seconds East following the general course of a barbwire fence a distance of 603.21 feet to a point in a small creek branch;

THENCE down said small creek branch

- N 45°42'16" E 28.23'
- N 80°11'16" E 31.06'
- N 78°32'34" E 55.27'
- N 81°20'35" E 46.04'
- N 41°45'03" E 12.49'
- S 63°45'35" E 19.25'
- N 59°03'00" E 39.62'
- S 77°21'32" E 43.92'
- N 84°17'31" E 37.08'
- N 04°06'21" E 40.40'
- N 49°09'07" E 49.84'
- N 85°18'39" E 20.10'
- N 13°00'19" E 23.47'
- N 42°45'20" E 53.73'
- N 86°58'59" E 37.18'
- N 39°05'56" E 28.91'
- S 68°05'45" E 23.79'
- N 56°54'40" E 41.44'
- N 45°02'54" E 86.56'
- N 79°13'04" E 82.08'
- S 62°56'35" E 47.69'
- S 22°36'01" E 112.00'

to a point in Stover Creek;

THENCE down Stover Creek an thru a Soil Conservation Service Lake

- S 52°20'59" W 24.27'
- S 39°34'59" W 53.03'
- S 00°53'59" W 133.27'
- S 49°59'01" E 1067.50'
- S 05°38'59" W 456.00'
- S 00°22'01" E 478.00'
- S 53°52'59" W 157.00'
- S 23°53'01" E 525.00'
- S 15°06'59" W 177.00'
- S 07°38'01" E 275.00'
- S 71°54'01" E 192.00'
- S 54°36'01" E 362.00'
- S 02°06'01" E 87.00'
- S 17°43'51" W 52.61'
- S 14°56'15" E 262.80' to 1/2" iron rod found
- S 67°08'43" E 328.86'
- S 38°42'06" E 283.12'
- S 25°55'47" E 159.56'

to a "X" cut set in the concrete bridge over Stover Creeks, said "X" cut being in County Road No. 123;

THENCE North 89 degrees 05 minutes 26 seconds West following C.R. No. 123 a distance of 2078.81 feet to a 1/2 inch iron rod found (controlling monument) for corner;

THENCE North 89 degrees 16 minutes 46 seconds West a distance of 1173.12 feet to the POINT OF BEGINNING and containing 8,452,949 square feet or 194.053 acres of land.

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EXHIBIT B

## PUBLIC IMPROVEMENTS

OWNER 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 OWNER, 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, about or in any phase of development of the Property until Final Acceptance of the Public Improvements necessary to serve that particular phase of development of the Property.

- A. **THOROUGHFARES.** Construction of thoroughfares includes paving, drainage, striping, street lighting, sidewalks, erosion control and all other necessary appurtenances.
1. OWNER shall dedicate, at no cost to CITY, that amount of right-of-way across the Property along Ridge Road which will yield the ultimate right-of-way width where the roadway is located completely within the Property and that amount of right-of-way along the perimeter of the Property along Ridge Road, Bloomdale Road, Stonebridge Drive and FM 1461 which will yield one-half of the ultimate right-of-way width where the roadway is located adjacent to the Property as depicted generally on the attached exhibit "D" as requested by CITY. The final alignment of right-of-way dedications shall be consistent with the CITY's Thoroughfare Plan.
  2. OWNER shall construct, as part of the Public Improvements and at no cost to CITY, the following thoroughfare improvements together with all appurtenances necessary thereto, concurrent with the development and platting of the adjacent portion of the Property or as otherwise determined by the CITY Engineer to serve the Property if such roadways and intersections together with all necessary appurtenances thereto have not been constructed and accepted by the CITY prior to the filing of OWNER'S record plat:
    - a. the southbound two (2) lanes of Ridge Road beginning at the south line of the Property from its intersection with Bloomdale Road and extending north approximately 800 linear feet to a point from which the full four (4) lanes of Ridge Road will be constructed to the north line of the Property at its intersection with FM 1461;

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<sup>1</sup> For purposes of calculating credits against Fees or impact fees the two (2) eastern lanes of Ridge Road between a point approximately 800 linear feet north of Bloomdale Road extending north to the mid-point of County Road 163 shall be treated as off-site roadway construction. This approximately 1,422 linear feet segment of two-lane roadway, if constructed by OWNER, is entitled to dollar-for-dollar credit as an off-site roadway.

- b. the westbound two (2) lanes of Bloomdale Road adjacent to the Property and along the entire frontage of the Property between Stonebridge Drive and Ridge Road;
  - c. the northbound two (2) lanes of Stonebridge Drive adjacent to and along the entire frontage of the Property; and,
  - d. the eastbound two (2) lanes of FM 1461 adjacent to the Property and along the entire frontage of the Property between Stonebridge Drive and the northeast corner of the Property.
3. Such thoroughfare construction shall be in accordance with the Subdivision Ordinance and Street Design Standards of CITY, and plans shall be approved by CITY Engineer or his agent prior to approval of a Development Permit for any portion of the development adjacent to the respective thoroughfare. On-site thoroughfare costs related to the construction of roadways identified on the CITY's Thoroughfare Development Plan shall be eligible for roadway impact fee credits on the standard vehicle mile method of calculation if and only if, and only to the extent that, such thoroughfares are constructed to CITY standards. In order to be eligible for impact fee credits, the CITY Engineer shall be informed of OWNER's intent to request impact fee credits and OWNER must obtain the CITY Engineer's prior written approval of OWNER's construction plans and projected construction costs related to the roadway improvements for which impact fee credits are sought. Nothing contained in this Paragraph A(3) shall be deemed or otherwise interpreted to relieve OWNER from the obligation to extend and construct the thoroughfare improvements and necessary appurtenances thereto off-site from the Property as such necessary improvements are identified in the Traffic Impact Analysis ("TIA") attached as Exhibit H to this Agreement.
  4. OWNER shall construct turn lanes and median openings at no cost to the CITY as required by the CITY Engineer prior to issuance of a certificate of occupancy.
  5. CITY, at its cost and expense, shall provide signalization of thoroughfare intersections at such time as CITY deems necessary.
  6. CITY's Master Trail Plan indicates a trail system through the Property; therefore OWNER shall construct a ten foot (10') wide hike and bike trail with respect to the development of the Property. The hike and bike trail will be constructed generally running along the west side of NRCS Lake 2A with a connecting trail to the proposed school site area and will include one pedestrian bridge crossing at the north end of the lake designed to be above the 25-year storm water level in that area. Final location and design of the trail shall be subject to review and approval by the Director of Parks and Recreation. The hike and bike trail shall be constructed contemporaneously with each phase of the development adjacent to, adjoining, or

abutting the area in which the trail is situated as development progresses (or earlier at the direction of the Director of Parks and Recreation).

7. If OWNER is constructing one-half of any divided roadway, OWNER shall have the option to pay cash in lieu of constructing OWNER's share of the median landscaping in accordance with the then-current CITY ordinance.
8. OWNER shall construct the off-site roadway improvements described below to provide access to the Property if such roadways and intersections, together with all necessary appurtenances thereto, have not been constructed and accepted by CITY prior to the filing of OWNER'S record plat. Off-site thoroughfare costs related to the construction of roadways identified on CITY's Thoroughfare Development Plan shall be eligible for roadway impact fee credits or credits toward Fees on a dollar-for-dollar method calculation, using actual construction costs, if and only if and only to the extent that such thoroughfares are constructed to City standards. In order to be eligible for impact fee credits, the CITY Engineer shall be informed of OWNER's intent to request impact fee credits and OWNER must obtain the CITY Engineer's prior written approval of Owner's construction plans and projected construction costs related to the roadway improvements for which impact fee credits are sought.
  - a. The only off-site roadway improvements required to support residential development within the Property are those improvements identified in the Traffic Impact Analysis ("TIA") attached as Exhibit H to this Agreement. Prior to the issuance of the first building permit for commercial development (or any other classification of development save and except single-family residential development) within the Property, OWNER shall update the attached TIA to reflect the traffic anticipated to be generated by such development, which updated TIA shall identify changes, if any, to on-site and off-site roadway improvements required to support the remaining development within the Property.
  - b. OWNER shall acquire all necessary right-of-way for and construct the on-site and off-site roadway improvements identified in the TIA if such roadways and intersections, together with all necessary appurtenances thereto, have not been constructed prior to the filing of OWNER'S record plat.
9. In order to provide two points of emergency access to the developing portions of the Property from off-site roadways during the phased construction of the project, OWNER shall have the right, subject to specific approval and consent of the City's Fire Marshall, to use one or more of the existing farm-to-market roadways or other county roadways contingent upon the unimproved portion of such existing roadways meeting the current paving requirements of the State Farm to Market Highway standards. Any roadways and intersections that are constructed to State Farm to

Market Highway standards rather than being constructed consistent with City standards shall not be eligible for Fee or impact fee reimbursement or credit.

10. All credits against Fees or roadway impact fees (whether based on excess vehicle miles for on-site and adjacent roadways or dollar-for-dollar for off-site roadways) shall be used as development occurs within the Property. Unused credits for any phase of development within the Property may be transferred to any other phase of development within the Property. However, unused credits can not be applied to other fees, converted to cash or used on other tracts or parcels of land not within the Property. Upon exhaustion of the credits, any additional development within the Property (such as the creation of additional lots) shall pay then existing Fees or roadway impact fees at the appropriate rate until such time as additional roadway improvements are constructed and new credits are added to the credit pool.
11. If less than 1,781 single family units are platted, in the aggregate, for all phases of the Property the remaining credits in the single family unit credit pool shall be converted from single family units to vehicle miles credits and then applied as such to Fees or impact fees attributable to commercial uses within the Property. Again, however, these unused credits can not be applied to other fees, converted to cash or used on other tracts or parcels of land not within the Property. Upon exhaustion of the credits, any additional development within the Property (such as the creation of additional lots) shall pay then existing Fees or roadway impact fees at the appropriate rate until such time as additional roadway improvements are constructed and new credits are added to the credit pool.

**B. UTILITIES.**

1. OWNER shall construct water and wastewater improvements concurrent with the development and platting of the adjacent portion of the Property as necessary to support development of that portion of the Property.
2. OWNER shall construct sanitary sewer line(s) in order to connect the existing CITY sanitary sewer system to the Property, as shown on the attached Exhibit E. CITY shall reimburse OWNER for the actual costs of any sewer line in excess of the cost of a twelve-inch (12") diameter line and for any other costs of oversizing determined to be necessary by the CITY Engineer through the grant or award of impact fee credits or the payment of funds specifically designated for the lines in question to the extent that any funds are then available for such purpose. CITY shall also reimburse OWNER for the cost of off-site sewer lines constructed by OWNER, which reimbursement shall be limited to pro-rata charges paid to CITY from third parties using such off-site lines. OWNER shall provide proof of actual expenditures for oversizing and off-site improvements. Reimbursement shall be made (a) with respect to oversizing, no later than twenty-four (24) months following CITY acceptance of

the sewer line improvements, and (b) with respect to pro-rata charges, within ninety (90) days after the payments are made to CITY by third-party users.

3. OWNER shall construct water line(s) in order to connect the existing City water system to the Property, as shown on the attached Exhibit F. CITY shall reimburse OWNER for the actual costs of any water line in excess of the cost of a twelve-inch (12") diameter line and for any other costs of oversizing determined to be necessary by the CITY Engineer through the grant or award of impact fee credits or the payment of funds specifically designated for the lines in question to the extent that any funds are then available for such purpose. CITY shall also reimburse OWNER for the cost of off-site water lines constructed by OWNER, which reimbursement shall be limited to pro-rata charges paid to CITY from third parties using such off-site lines. OWNER shall provide proof of actual expenditures for oversizing and off-site improvements. Reimbursement shall be made (a) with respect to oversizing, no later than twenty-four (24) months following CITY acceptance of the water line improvements, and (b) with respect to pro-rata charges, within ninety (90) days after the payments are made to CITY by third-party users.
4. Utility impact fee credits are available for oversize participation for only those water and sanitary sewer or wastewater lines identified on the Impact Fee Capital Improvement Plan ("IFCIP") at the time of construction. Those water and wastewater lines not found on the IFCIP will be available for credits upon their inclusion on a future IFCIP. CITY shall have the option to grant or award water and wastewater impact fee credits against the actual costs of constructing any of the water and/or wastewater oversize improvements above the twelve-inch (12") diameter portion of the utility lines as described in Item Nos. B.2 and B.3 above rather than paying an oversize reimbursement.
5. OWNER shall have the right, but not the obligation, to participate in the cost and/or construction of future water lines in Stonebridge Drive from University Drive to FM 1461 that will provide water service for the "920 Pressure Area" to serve the Property. This future water service shall be provided by two waterlines to be installed within the Stonebridge Drive alignment north of University Drive, one being the twelve-inch (12") diameter line and the other a thirty-six-inch (36") diameter line.

OWNER shall escrow with the CITY an amount equal to one hundred twenty percent (120%) of the estimated cost of the portion of the twelve-inch (12") diameter line being constructed within ten (10) calendar days following receipt of a written request from CITY with the understanding that the funds will be used by either CITY or any other third-party constructing the Stonebridge Drive water improvements from University Drive to FM 1461. It is anticipated that construction of the water lines would coincide with the phased construction of Stonebridge Drive and, therefore OWNER would only be required to escrow funds for the portion of the twelve-inch

(12") diameter water line being proposed to be constructed with each phase. If OWNER fails to escrow the funds within this timeframe, then OWNER's right to participate in the costs of said water lines will become null and void. CITY makes no assurances or guarantee that the twelve-inch (12") diameter water line, for which OWNER escrows funds, will be included in the construction plans for Stonebridge Drive.

As an alternative to escrowing such funds, OWNER shall have the right to design and construct the twelve-inch (12") diameter waterline in the median of Stonebridge Drive at the same time the thirty-six-inch (36") diameter line is being constructed in or along Stonebridge Drive or otherwise at such time as the right-of-way within the median is available.

6. There are no pro-rata fees due for any existing water and/or wastewater improvements OWNER would be required to pay in connection with the development of the Property as of the effective date of this Agreement.

**C. RIGHT-OF-WAY ACQUISITION.**

1. OWNER shall use reasonable and diligent efforts to obtain any and all offsite right-of-way and/or easements as necessary for the construction of the public improvements as described above in the Item No. A – Thoroughfares and Item No. B – Utilities. However, in the event that OWNER is unable to acquire all the necessary right-of-way and/or easements within a three (3) month period beginning upon written notice to CITY and OWNER provides evidence that reasonable and diligent efforts have been pursued to obtain such right-of-way, then the CITY agrees to use its eminent domain authority, upon written request by OWNER, for right-of-way and easement acquisition to the extent allowed by law and authorized by the then sitting City Council. OWNER shall provide copies of all correspondence related to the acquisition of right-of-way and/or easements to the CITY upon request.

All costs in eminent domain shall be reimbursed by OWNER as such are billed to CITY by its designated legal counsel. Such costs include all reasonable and necessary legal expenses for the acquisition of all right-of-way and easements including by way of illustration and not limitation: attorney's fees, expert witness fees, deposition fees, photocopy charges, courier charges, telephone and facsimile charges, travel charges and costs associated with the preparation of exhibits and demonstrative aids.

2. OWNER shall be allowed to use existing easements and rights-of-way that are already in the possession of the CITY for the construction of necessary utilities to the extent that the CITY has the right to use such easements and rights-of-way for the purpose sought by OWNER. OWNER's use of such CITY-owned easements and rights-of-way shall also meet the requirements of the Master Plans and be approved

in advance by the CITY Engineer. OWNER shall comply with all CITY ordinances and state and federal laws and regulations regarding the use of the CITY's existing easements and rights-of-way. OWNER shall backfill, compact and restore the surface of any such easements and rights-of-way in accordance with the CITY's ordinances, state law and best engineering or best management practices.

**D. DRAINAGE COST PARTICIPATION.**

1. CITY policy currently requires that at least 50% of the estimated costs to rehabilitate the NRCS Lake 2A dam and spillway to performance standards consistent with an urban, flood water retarding structure shall be paid by the owners and developers of property within the water shed served by NRCS Lake 2A. The 50% share to be paid by such owners and developers is hereinafter referred to as the "Watershed Improvement Cost." Each owner and developer will pay its proportionate share of the Watershed Improvement Cost as a "per-acre" charge based on the ratio of the acreage owned or being developed and the total acreage in the watershed served by NRCS Lake 2A. Each owner and developer will pay such per-acre charges with the submittal of each Record Plat until the dam structure is rehabilitated. OWNER's share of the Watershed Improvement Cost shall be a fraction (a) the numerator of which is the total acreage within the Property and (b) the denominator of which is the total acreage within the watershed served by NRCS Lake 2A. OWNER's share of the Watershed Improvement Cost shall be paid in installments concurrently with the submittal of the Record Plat for each phase of development within the Property.
2. The CITY plans to assist with or facilitate, but is not obligated to participate in, the rehabilitation of NRCS Lake 2A dam and spillway in accordance with CITY policy by the submission of a request for grant funds to upgrade and rehabilitate the dam and spillway once adequate matching funds are obtained from the owners and/or developers of property within the watershed. CITY makes no guarantee, representation or assurance that funds will be available for the CITY's share of the rehabilitation, which funds may come from City funds or bonds allocated for the purpose or from grant funds obtained through the federal government.
3. CITY will prepare a preliminary study and preliminary construction cost estimate to improve NRCS Lake 2A as described above. Except as provided in this section D., OWNER shall have no responsibility to participate in the cost to improve NRCS Lake 2A save and except as may otherwise be required by any governmental agency prior to ownership of the lake being transferred to and unconditionally accepted by the CITY. OWNER's right to fully develop the Property is conditioned solely upon payment of the per-acre charge described in this section D. and is in no way conditioned upon or subject to the completion of the above-described improvements to NRCS Lake 2A save and except as may otherwise be required by any governmental agency prior to ownership of the lake being transferred to and unconditionally accepted by the CITY.

4. OWNER shall have the right, but not the obligation, to reclaim flood plain along Stover Creek to the extent allowable and in accordance with the regulations governing flood plain development as set forth by the Federal Emergency Management Agency (FEMA) and the City of McKinney's Ordinances.



## EXHIBIT C

## VARIANCES TO SUBDIVISION ORDINANCE

A. EROSION CONTROL FOR FRANCHISE UTILITIES

1. OWNER shall install franchise utility crossings under roadways and stub them out beyond the right-of-way line. (Note: The subdivisions will have utility easements outside of the right-of-way along the front of the lots or at the rear for alley lots for franchise utilities improvements.)
2. OWNER, in accordance with the requirements established by CITY, shall install Curlex (or a similar product) and silt fence, per CITY standards, immediately behind the curb.
3. In order to expedite completion, OWNER, or its engineering firm of record, shall perform daily inspections for improvements listed above, together with daily coordination with franchise utilities for their installation.
4. OWNER will maintain full maintenance responsibility for the duration of the installation of all franchise utilities for items outlined in condition No. 2 above, and all CITY-owned infrastructure, including, but not limited to, sidewalks, streets, water, sewer, and storm drainage systems.
5. OWNER shall maintain a Fifty Thousand and No/100 Dollars (\$50,000.00) non-interest bearing penalty account with CITY for failure to maintain those items as outlined in condition No. 4.
6. In the event OWNER shall fail or neglect to fulfill its obligations under No. 4 of this Agreement, a Two Thousand and No/100 Dollars (\$2,000.00) per day penalty shall be imposed for each day of such failure or neglect, to be an automatic draw-down by CITY if failure is not corrected within a twenty-four (24) hour period after written notice from CITY of the specific failed or neglected event. CITY may also withhold issuance of pending certificates of occupancy, or withhold inspections of existing permitted dwellings, until such time as any failed or neglected event is corrected. In addition, infrastructure damage not repaired in a timely manner may be repaired by CITY at OWNER'S cost.
7. In the event that the amount of said penalty account reaches Thirty Thousand and No/100 Dollars (\$30,000.00), OWNER shall immediately replenish said account to the established amount of Fifty Thousand and No/100 Dollars (\$50,000.00).

8. CITY shall not grant certificates of occupancy for any subdivision until the installation of franchise utilities is complete in that subdivision. Upon the issuance of certificates of occupancy for the final subdivision to be completed, CITY will remit to OWNER any remaining monies in the penalty account within thirty (30) days.

#### B. PARKLAND DEDICATION

1. OWNER shall dedicate land within the Property to CITY to satisfy the parkland dedication requirements set forth in this Agreement as generally shown on the attached Exhibit G and as generally described below.
2. The parkland areas to be dedicated to CITY are generally described as follows:
  - a. The Lake 2A Parkland consisting of approximately 96 acres and including the NRCS Lake 2A together with the Greenbelt and NRCS Overflow Easement.
  - b. The minimum eight (8) net useable acre school park site located adjacent to the proposed ten (10) acre school site. In the event the Prosper Independent School District does not purchase the school site, OWNER shall be allowed to reconfigure the proposed eighteen-acre (18) school and park site complex into one ten-acre (10) active neighborhood park and a maximum of twenty-five (25) single family units on the remaining eight (8) acres of land within the same general area subject to administrative approval by CITY's Planning Department.

As is noted above, in Paragraph C(3) of the Facilities Agreement for Highland Lakes the dedication of the parkland identified herein satisfies the CITY's park fees for the entire development and no additional fees are due. OWNER shall be granted credits for such planned parkland in advance of its actual dedication to and acceptance by the CITY. Said park fee credits may be used only in connection with the development of the Property.

3. OWNER shall dedicate the above-described eight-acre (8) park site to CITY at such time as the proposed school site is developed, seven hundred fifty (750) residential lots have been permitted or within ninety (90) days after dedication is requested in writing by the CITY's Parks Director, whichever event occurs first. CITY will assume full ownership and maintenance responsibility for the eight-acre (8) park site once the dedication is complete as evidenced by a recorded deed.
4. Concurrently with the submittal of each successive Record Plat containing residential dwelling units beyond the first 750 dwelling units, OWNER shall dedicate to CITY (on the basis of one acre for each 50 lots being platted) the Hike and Bike Trail and

adjoining green space located within the Greenbelt as shown on the general development plan and as approved by the Parks Director.

5. When all of the Greenbelt has been dedicated to CITY, OWNER shall, concurrently with the submittal of the next successive Record Plat, deliver into escrow (with a title company approved by CITY) a deed conveying the NRCS Lake 2A and the NRCS Overflow Easement to CITY. The title company shall be instructed to deliver the deed to CITY when City delivers to the title company written notice that the NRCS Lake 2A dam and spillway have been rehabilitated to meet the urban standards of the Texas Commission on Environmental Quality.

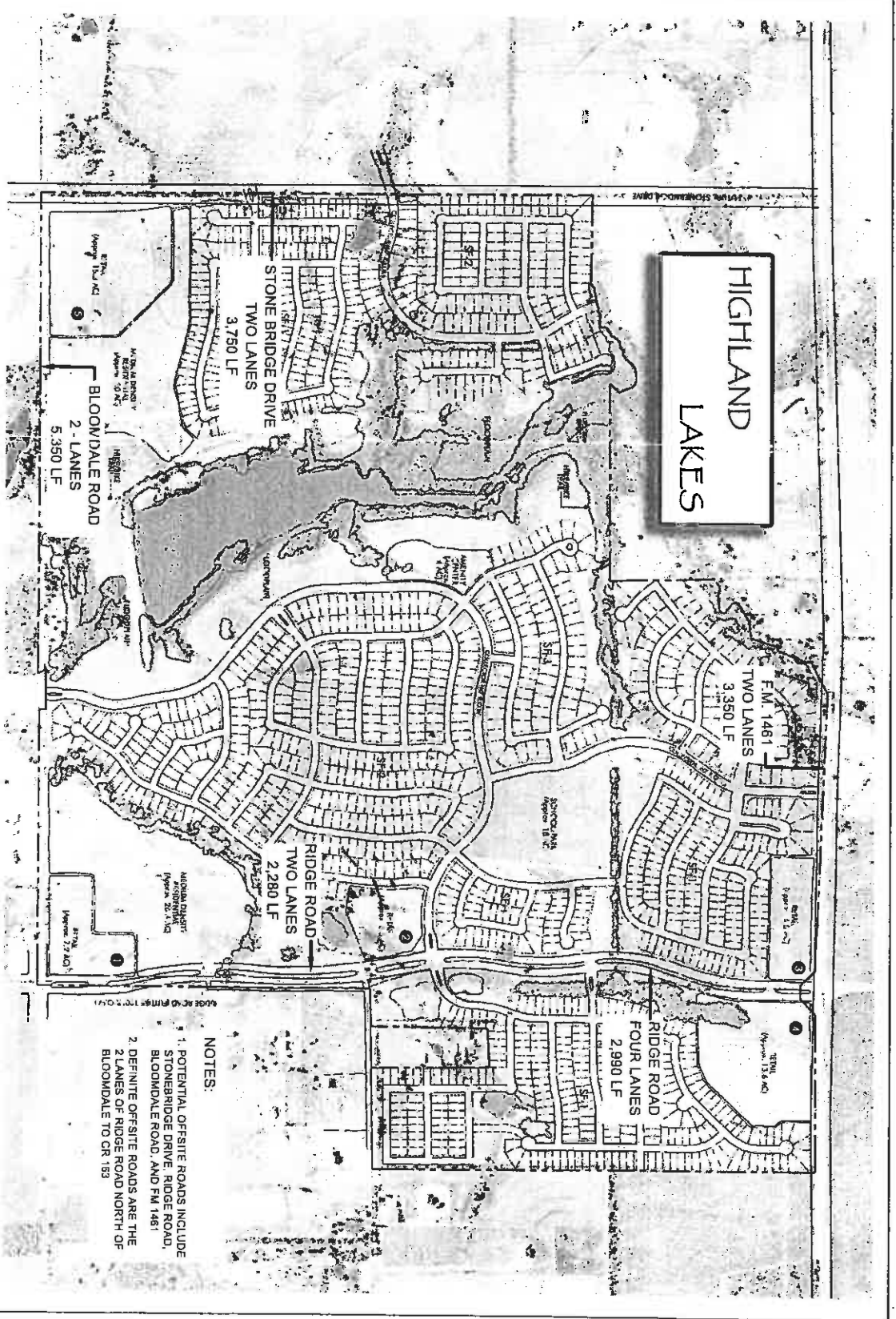
It is specifically agreed and understood that fee simple title in NRCS Lake 2A shall remain vested in OWNER after the deed is placed into escrow and until such time as the improvements to the dam and spillway are completed, the deed is removed from escrow and delivered to CITY, and the deed is accepted by CITY. OWNER or the homeowners association or both shall maintain NRCS Lake 2A and the NRCS Overflow Easement at all times during which the deed is in escrow. From and after the date the deed is accepted by CITY, OWNER and/or the homeowners association shall be relieved of further maintenance responsibility for the lake and greenbelt area.

Prepared For:  
HRC / WOOD PARTNERS, L.P.  
1401 LAKESHORE DRIVE SUITE 200  
OCTOBER 21, 2005



# HIGHLAND LAKES

EXHIBIT "D"  
THOROUGHFARE IMPROVEMENTS



**NOTES:**

- 1. POTENTIAL OFFSITE ROADS INCLUDE STONEBRIDGE DRIVE, RIDGE ROAD, BLOOMDALE ROAD, AND FM 1461
- 2. DEFINITE OFFSITE ROADS ARE THE 2 LANES OF RIDGE ROAD NORTH OF BLOOMDALE TO CR 193

Prepared By:  
**HUNT-ZOLLARS**  
1401 LAKESHORE DRIVE SUITE 200  
OCTOBER 21, 2005

City of McKinney

Impact Fees for Residential Subdivisions

Subdivision Name:	Highland Lakes
Lots:	
Plat Recordation Date	May 31, 2005
Previous Roadway Service Area	c <small>1-271 if filed before Sept. 1, 2003 A-M if filed after Sept. 1, 2003</small>
Service Area Account:	C
Collect Roadway	Yes
Roadway Credits Applied:	1781.34 units
Collect Utility:	yes
Utility Credits Applied:	units

On-site & Perimeter Roads:	Length (LF)	Vehicle Miles Supplied	Roadway Imp. Fees Offset by Dwelling Unit Credits
Ridge Road, 2-lanes, along CR 163*	2,222	589.17	188.23
Ridge Road, 4-lane, through site*	3,178	1,685.30	538.44
FM 1461, 2-lanes, north perimeter	3,350	888.26	283.79
Bloomdale, 2-lanes, south perimeter	5,350	1,418.56	453.21
Stonebridge Dr, 2 lanes, west bounda	3,750	994.32	317.67
<b>Totals</b>	<b>17,850</b>	<b>5,575.61</b>	<b>1,781.34</b>

\* For purposes of calculating credits against Fees or impact fees the two (2) eastern lanes of Ridge Road between a point approximately 800 linear feet north of Bloomdale Road extending north to the mid-point of County Road 163 shall be treated as off-site roadway construction. This approximately 1,422 linear feet segment of two-lane roadway, if constructed by OWNER, is entitled to dollar-for-dollar credit as an off-site roadway.

Service Area	After 9/1/2003	After 6/1/2004	After 1/1/2005	After 6/1/2005
c	\$1,012.50	\$1,262.50	\$1,762.50	\$2,300.00

Meter Size	After 9/1/2003	After 6/1/2004	After 1/1/2005	After 6/1/2005
3/4 inch	\$687.50	\$937.50	\$937.50	\$1,400.00
1 inch	\$1,194.37	\$1,444.37	\$1,444.37	\$2,400.00

If the plat was filed prior to September 1, 2003 and the property is outside of the Utility Impact Fee Service Area from the previous impact fee ordinance, no utility impact fee can be charged.

6065 00236

**Residential Roadway Impact Fees and Offset Credits**

Vehicle Miles Demanded				
Dwelling Units	Times	Vehicle Miles per Dwelling Unit	Equals	Vehicle Miles Demanded
200	X	3.13	=	626.00

Vehicle Miles Supplied				
Service Area	c	Ridge Road (2 lane portion)		
Road Type	M6D			
Vehicle Miles per Lane Mile	Divided by	Lane Feet per Lane Mile	Equals	Vehicle Miles per Lane Foot
700	/	5,280	=	0.13
Lane Feet Constructed	Times	Lanes	Equals	Total Lane Feet Constructed.
2222.00	X	2	=	4,444.00
Vehicle Miles per Lane Foot	Times	Total Lane Feet Constructed.	Equals	Vehicle Miles Supplied
0.13	X	4,444.00	=	589.17

Roadway Impact Fee Offset				
Vehicle Miles Supplied	Divided by	Vehicle Miles per Dwelling Unit	Equals	Dwelling Units Credited
589.17	/	3.13	=	188.23

See Offset Credit Agreement for Official Numbers .

**Residential Roadway Impact Fees and Offset Credits**

Vehicle Miles Demanded				
Dwelling Units	Times	Vehicle Miles per Dwelling Unit	Equals	Vehicle Miles Demanded
200	X	3.13	=	626.00

Vehicle Miles Supplied				
Service Area	c	Ridge Road (4 lane portion)		
Road Type	M6D			
Vehicle Miles per Lane Mile	Divided by	Lane Feet per Lane Mile	Equals	Vehicle Miles per Lane Foot
700	/	5,280	=	0.13
Lane Feet Constructed	Times	Lanes	Equals	Total Lane Feet Constructed.
3178.00	X	4	=	12,712.00
Vehicle Miles per Lane Foot	Times	Total Lane Feet Constructed.	Equals	Vehicle Miles Supplied
0.13	X	12,712.00	=	1,685.30

Roadway Impact Fee Offset				
Vehicle Miles Supplied	Divided by	Vehicle Miles per Dwelling Unit	Equals	Dwelling Units Credited
1685.30	/	3.13	=	538.44

**See Offset Credit Agreement for Official Numbers**

**Residential Roadway Impact Fees and Offset Credits**

Vehicle Miles Demanded				
Dwelling Units	Times	Vehicle Miles per Dwelling Unit	Equals	Vehicle Miles Demanded
200	X	3.13	=	626.00

Vehicle Miles Supplied				
Service Area	c	1461 (2 lanes)		
Road Type	M6D			
Vehicle Miles per Lane Mile	Divided by	Lane Feet per Lane Mile	Equals	Vehicle Miles per Lane Foot
700	/	5,280	=	0.13
Lane Feet Constructed	Times	Lanes	Equals	Total Lane Feet Constructed.
3350.00	X	2	=	6,700.00
Vehicle Miles per Lane Foot	Times	Total Lane Feet Constructed.	Equals	Vehicle Miles Supplied
0.13	X	6,700.00	=	888.26

Roadway Impact Fee Offset				
Vehicle Miles Supplied	Divided by	Vehicle Miles per Dwelling Unit	Equals	Dwelling Units Credited
888.26	/	3.13	=	283.79

See Offset Credit Agreement for Official Numbers



**Residential Roadway Impact Fees and Offset Credits**

Vehicle Miles Demanded				
Dwelling Units	Times	Vehicle Miles per Dwelling Unit	Equals	Vehicle Miles Demanded
200	X	3.13	=	626.00

Vehicle Miles Supplied				
Service Area	c	Bloomdale (2 lanes)		
Road Type	M6D			
Vehicle Miles per Lane Mile	Divided by	Lane Feet per Lane Mile	Equals	Vehicle Miles per Lane Foot
700	/	5,280	=	0.13
Lane Feet Constructed	Times	Lanes	Equals	Total Lane Feet Constructed.
5350.00	X	2	=	10,700.00
Vehicle Miles per Lane Foot	Times	Total Lane Feet Constructed.	Equals	Vehicle Miles Supplied
0.13	X	10,700.00	=	1,418.56

Roadway Impact Fee Offset				
Vehicle Miles Supplied	Divided by	Vehicle Miles per Dwelling Unit	Equals	Dwelling Units Credited
1418.56	/	3.13	=	453.21

**See Offset Credit Agreement for Official Numbers**

## Highland Lakes with 4 lane ridge101805.xls

**Residential Roadway Impact Fees and Offset Credits**

Vehicle Miles Demanded				
Dwelling Units	Times	Vehicle Miles per Dwelling Unit	Equals	Vehicle Miles Demanded
200	X	3.13	=	626.00

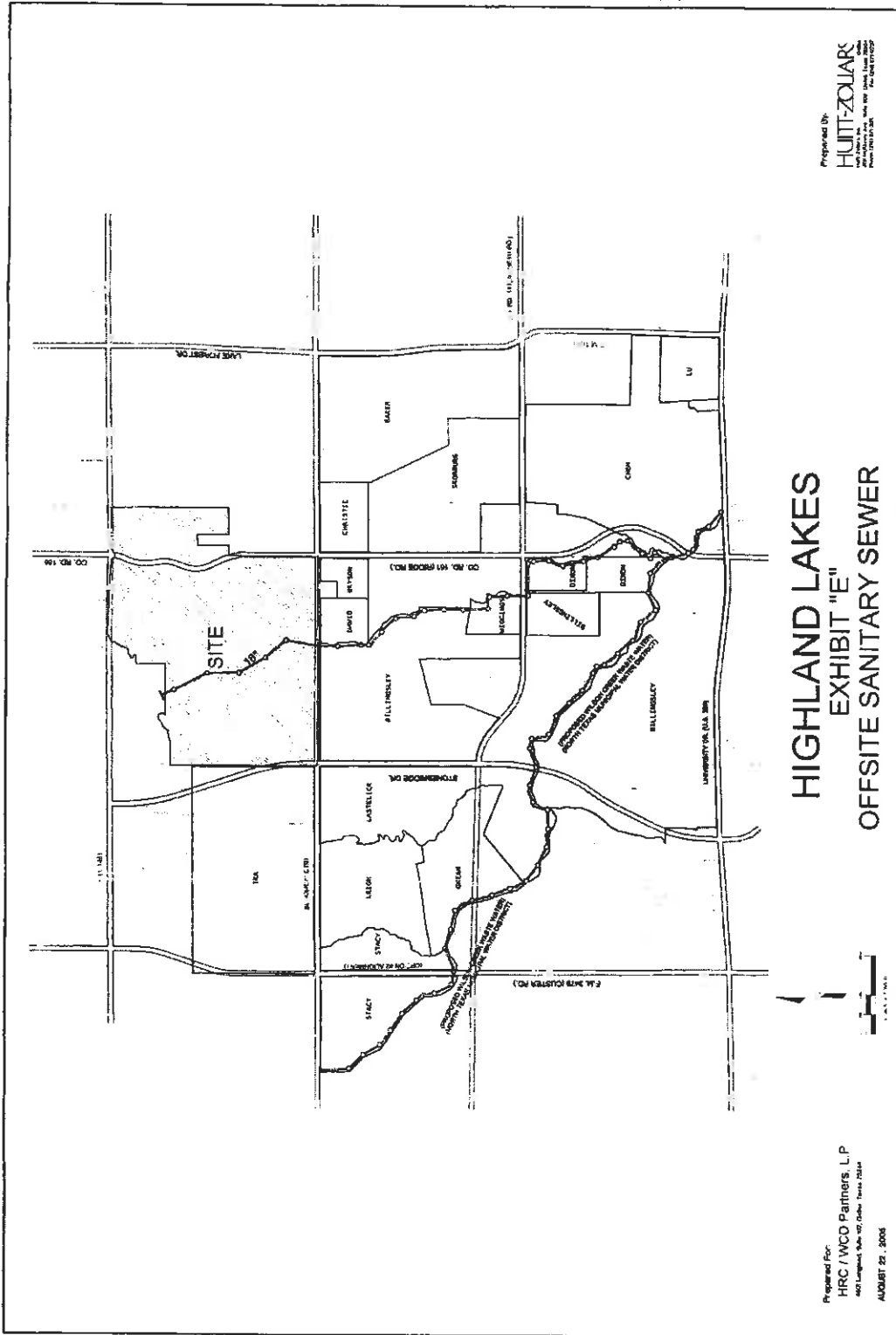
Vehicle Miles Supplied				
Service Area	c	Stonebridge (2 lanes)		
Road Type	M6D			
Vehicle Miles per Lane Mile	Divided by	Lane Feet per Lane Mile	Equals	Vehicle Miles per Lane Foot
700	/	5,280	=	0.13
Lane Feet Constructed	Times	Lanes	Equals	Total Lane Feet Constructed.
3750.00	X	2	=	7,500.00
Vehicle Miles per Lane Foot	Times	Total Lane Feet Constructed.	Equals	Vehicle Miles Supplied
0.13	X	7,500.00	=	994.32

Roadway Impact Fee Offset				
Vehicle Miles Supplied	Divided by	Vehicle Miles per Dwelling Unit	Equals	Dwelling Units Credited
994.32	/	3.13	=	317.67

**See Offset Credit Agreement for Official Numbers**

**EXHIBIT E**

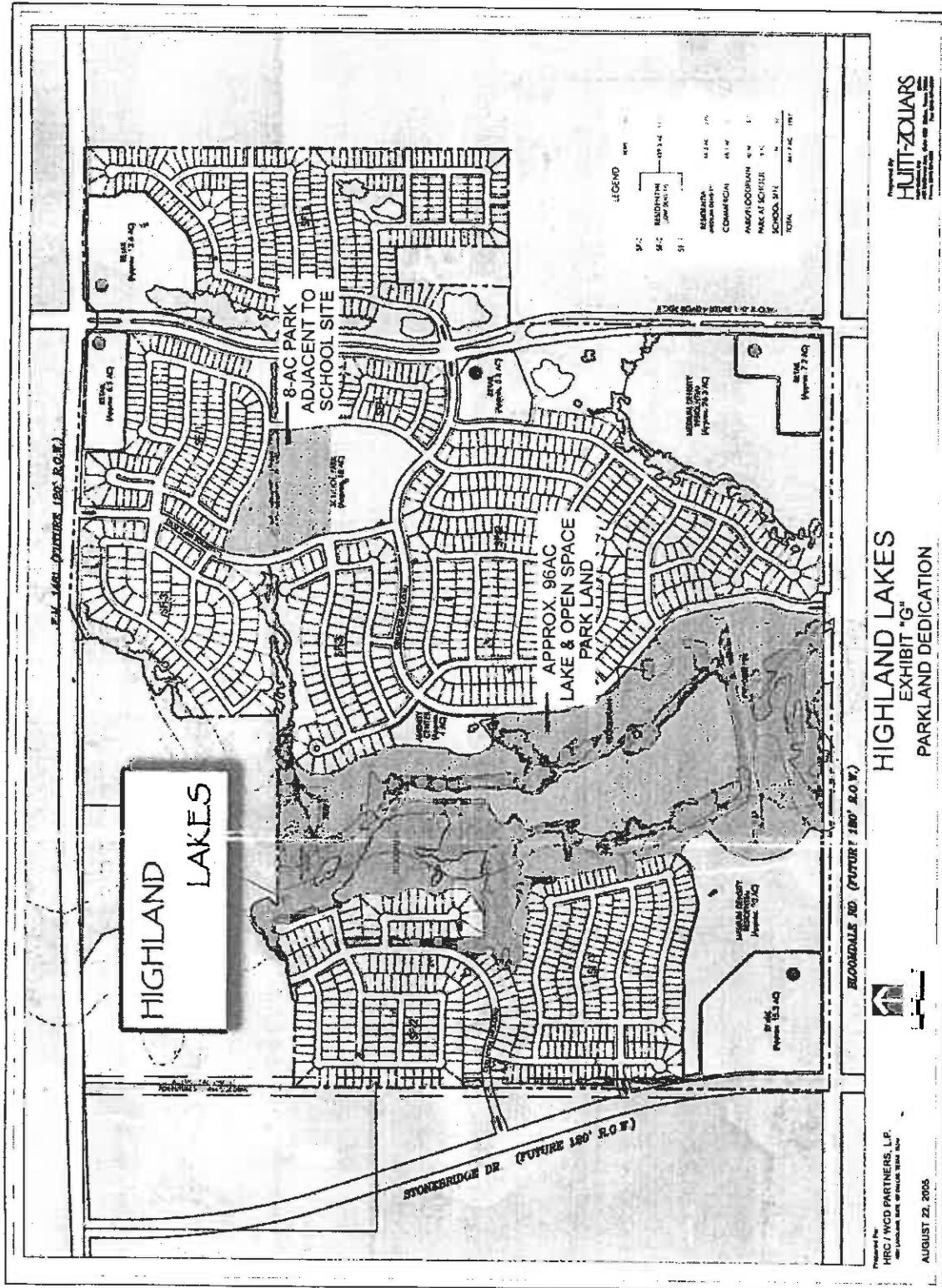
**OFFSITE SANITARY SEWER LINE(S)**





**EXHIBIT G**

**PARK LAND DEDICATION AREAS**



**TRAFFIC IMPACT  
OVERVIEW**  
for  
**Highland Lakes**  
at  
**FM 1461 / future Ridge Road**  
**McKinney, Texas**

Submitted to:

The City of McKinney

Prepared for:

HRC / WCD Partners, LP

Prepared by:

Innovative Transportation Solutions, Inc.  
2701 Valley View Lane  
Farmers Branch, Texas 75234

August 2005

**AVAILABLE IN THE CITY SECRETARY'S OFFICE**