ROADWAY IMPACT FEE CREDIT & REIMBURSEMENT AGREEMENT HUNT SOUTHWEST - WILMETH, LLC

Northern Two (2) Lanes of Wilmeth Road

STATE OF TEXAS	§	
	§	KNOW ALL BY THESE PRESENTS:
COUNTY OF COLLIN	§	

The CITY OF McKINNEY ("City"), a home rule municipal corporation situated in Collin County, Texas, and HUNT SOUTHWEST - WILMETH, LLC, a Texas limited liability company ("Developer"), make and enter into this Roadway Impact Fee Credit & Reimbursement Agreement ("Agreement"), dated as of the date of execution and effective as of the Effective Date (defined herein).

RECITALS

- WHEREAS, Wilmeth Road is an arterial road that will serve Developer's property known as Lot 1, Block A of the HSW Addition (the "Property"), which is located on the north side of Wilmeth Road, in an area west of Powerhouse and generally east of Redbud Boulevard (the "Subdivision"); and
- WHEREAS, Developer has acquired the building permit and paid the roadway impact fees associated therewith for the development of the Property; and
- WHEREAS, Developer is also constructing Roadway Improvements identified herein below that are eligible for impact fee credits in conjunction with the development of the Property which impact fee credits shall be applied to the Property; and
- WHEREAS, City has agreed that Developer shall construct a portion of the roadway project known as **Wilmeth Road** running along the southern side of the Property; and
- WHEREAS, Developer has dedicated to the City the necessary right-of-way for the Roadway Project; and
- WHEREAS, City has identified **Wilmeth Road** on the City's roadway improvement plan, which is a part of the City's Roadway Impact Fee Ordinance; and
- WHEREAS, for the construction of the referenced roadway project, Developer is entitled to receive impact fee credits, calculated in accordance with the

Ordinance, which shall attach to the Property and result in the reimbursement of at least part of Developer's overpayment of impact fees:

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 Hunt Southwest Wilmeth, LLC, a Texas limited liability company, 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 Lot 1, Block A of the HSW Addition, which property is more particularly depicted and described on the as yet unfiled record plat of Lot 1, Block A of the HSW Addition attached hereto as Exhibit A and incorporated herein by reference for all purposes allowed by law.
- 8. Roadway Improvements means 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 in the area generally depicted on Exhibit B, attached hereto, using those materials that meet the minimum requirements of the City's Subdivision Ordinance and Engineering Design

Manual, and all engineering, surveying, inspection and permit fees for the northern two (2) lanes of Wilmeth Road, which roadway segment is adjacent to the Property.

- 9. Roadway Project means the Roadway Improvements for approximately six hundred forty-eight (648) linear feet of the northern two (2) lanes of Wilmeth Road adjacent to the southern property line of the Property, as generally depicted on Exhibit B, attached hereto, and according to the civil engineering plans for the Property, on file in the City of McKinney Engineering Department;
- 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 herein by reference for all pertinent purposes as though fully copied and set forth at length; and
- references to any document means that document as amended or as supplemented from time to time; and references to any party means that party, its successors, and assigns.

ARTICLE II

DEVELOPER CONTRIBUTION OF ROADWAY IMPROVEMENTS

A. Roadway Improvements

- 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, the Roadway Project is included in the City's Roadway Improvement Plan ("RIP"). The Roadway Project is therefore eligible for impact fee credits as calculated under the Ordinance.

3. The impact fee credits to which Developer is entitled for the full complete Roadway Project under this Agreement are 111.57 Service Units for approximately six hundred forty-eight (648) linear feet of the northern two (2) lanes of Wilmeth Road adjacent to the southern property line of the Property for a completed Roadway Project final accepted by City.

ARTICLE III

IMPACT FEE CREDITS AND REIMBURSEMENT

A. Value of Roadway Improvements

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

B. Roadway Impact Fees Previously Paid

Developer has already paid the full amount of roadway impact fees attributable to its development of the Property to the City.

C. Developer Entitled to Reimbursement

Because the Roadway Project is eligible for impact fee credits, the Developer is entitled to receive a reimbursement of at least a portion of the roadway impact fees Developer has paid to the City to offset the Developer's construction of the Roadway Project.

D. Assignment and Expiration of Roadway Impact Fee Credits

The right to reimbursement for unused 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.

E. Use of Impact Fee Credits

Upon reimbursement of the cash value of the unused impact fee credits to Developer, 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.

F. 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.

G. Reimbursement of Unused Impact Fee Credits

- It is specifically agreed by and between City and Developer that Developer has by and through this Agreement timely requested reimbursement of impact fee credits that will not be used upon completion of all development subject to the current plat of the Property.
- 2. The amount to be reimbursed shall be equal to the number of unused impact fee credits (111.57 service unit equivalents) that equates to One Hundred Sixty-Two Thousand Six Hundred Sixty-Eight Dollars and Eighty-Six Cents (\$162,668.86) ("Reimbursement").
- 3. City agrees to reimburse to Developer an amount equal to the Reimbursement, without interest, from roadway impact fees collected within the same roadway service area in which the Property is situated (Service Area E) within ninety (90) days after City's final acceptance of the Roadway Project.
- Any termination or reduction of the City's authority under state law to impose impact fees in said Service Area shall terminate or correspondingly reduce any obligation to reimburse Developer under this Agreement.
- 5. Any new or additional development within and about the Property shall require payment of roadway impact fees in accordance with Schedule 1 then in effect, subject to credit for any unreimbursed impact fee credits at the time.

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

 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.

- 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.
- 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, the right to all impact fee credits not previously paid or credited to Developer 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.
- 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:

Hunt Southwest – Wilmeth, LLC Attn: T. Preston Herold 5956 Sherry Lane, Suite 1500 Dallas, Texas 75225

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 ATTEST **EMPRESS DRANE** City Secretary MELISSA LEE Deputy City Secretary APPROVED AS TO FORM: MARK S. HOUSER City Attorney

HUNT SOUTHWEST - WILMETH, LLC, a Texas limited liability company

By:Hunt Southwest Real Estate Development, LLC a Texas limited liability company Its Sole Member.

T. PRESTON HEROLD
Vice President

Date Signed: _ 9/20/18

THE STATE OF TEXAS, COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared PAUL G. GRIMES, City Manager of the *CITY OF MCKINNEY*, a Texas Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

	SEAL OF OFFICE, THIS THE
DAY OF, 20 ⁻	18.
	Notary Public Collin County, Texas
	My commission expires

THE STATE OF TEXAS, COUNTY OF DALLAS

This instrument was acknowledged before me on the 20¹ day of September , 2018, by T. PRESTON HEROLD, in his capacity as Vice President of Hunt Southwest Real Estate Development, LLC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that Hunt Southwest Real Estate Development, LLC is the Sole Member of HUNT SOUTHWEST – WILMETH, LLC, a Texas limited liability

company, and that he executed the same on behalf of and as the act of HUNT SOUTHWEST - WILMETH, LLC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 20 DAY OF September, 2018.

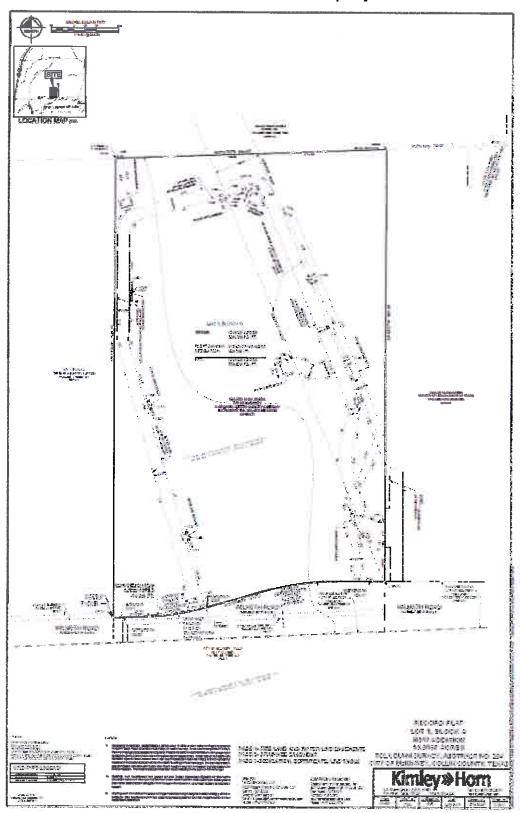
KATHY H MCDANIEL My Commission Expires April 21, 2019

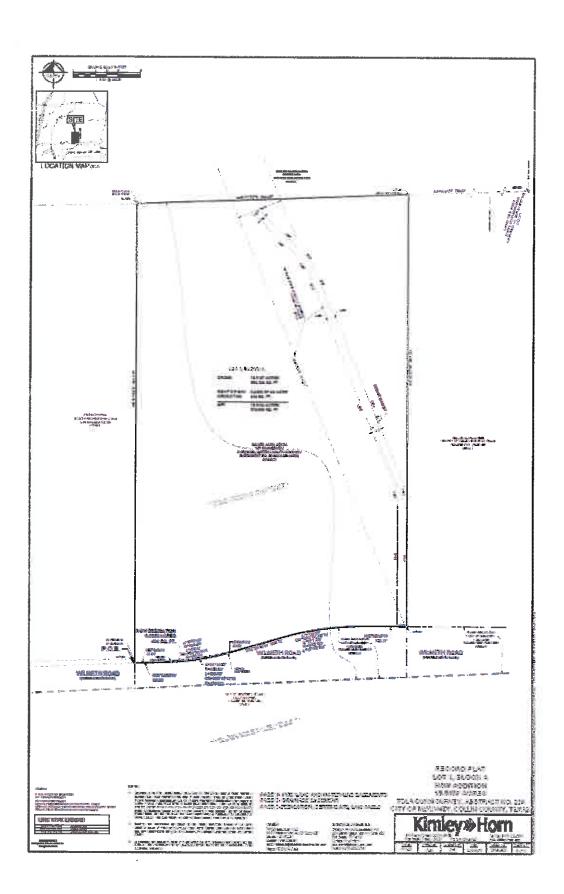
County, Texas

My commission expires 4-21-2019

PREPARED IN THE OFFICES OF: BROWN & HOFMEISTER, L.L.P. 740 East Campbell Road, Suite 800 Richardson, Texas 75081 214/747-6100 214/747-6111 Fax

EXHIBIT AUnfiled Record Plat of Property





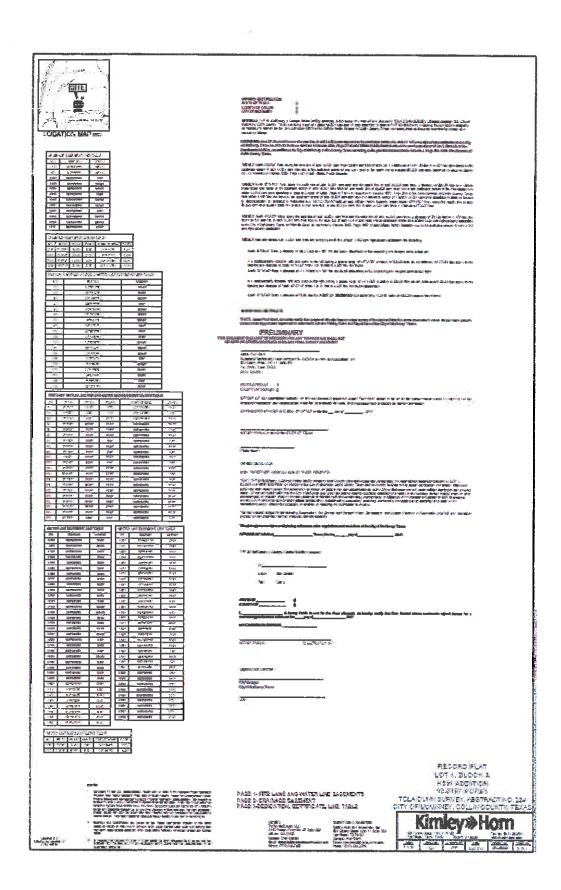


EXHIBIT B

Depiction of General Location of Roadway Project

