

AFTER RECORDING, RETURN TO:

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

**PRE-ANNEXATION AGREEMENT
BETWEEN
THE CITY OF MCKINNEY, TEXAS
AND
HIJO, LTD.
AND
SUTTON FIELD INVESTMENTS, LLC
FOR
MCKINNEY-74**

THIS PRE-ANNEXATION AGREEMENT (“Agreement”), is entered into pursuant to Chapter 43 and Section 212.172 of the Texas Local Government Code and the Unified Development Code of the City of McKinney, Texas (“UDC”), as codified in Chapter 150 of the Code of Ordinances, City of McKinney, Texas (“McKinney Code”), effective the ____ day of _____, 2023,¹ by and between the **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city (“CITY”), and **HIJO, LTD.**, a Texas limited liability company, whose address is 1 Cowboys Way, Frisco, Texas 75034-1962, and **SUTTON FIELD INVESTMENTS, LLC**, a Texas limited liability company, whose address is 12400 Preston Road, Suite 100, Frisco, Texas 75033-6401 (hereinafter referred to collectively as “DEVELOPER” whether one or more) (the CITY and the DEVELOPER may be referred to collectively as the “PARTIES”), concerning the annexation and development of the “Property” described herein-below and by metes and bounds in Exhibit “A” hereto, witnesseth that:

WHEREAS, DEVELOPER is the owner of the approximately 73.896 acres of land in the C.A. Burns Survey, Abstract Number A0109 and the Coleman Watson Survey, Abstract Number A0945, that is located in the extraterritorial jurisdiction of the City of McKinney, Collin County, Texas (“ETJ”) (the “Property”); and

WHEREAS, this Agreement is entered into pursuant to Chapter 43 and Section 212.172 of the Texas Local Government Code, in order to address the desires of the DEVELOPER and the CITY and the procedures of the CITY; and

WHEREAS, the Parties have the authority to enter into this Agreement pursuant to Section 212.171, *et seq.*, of the Texas Local Government Code; and

¹ If this date is omitted, the effective date shall be the date the Agreement is executed by the City.

WHEREAS, the DEVELOPER and the CITY acknowledge that this Agreement is binding upon the CITY and the DEVELOPER and their respective successors and assigns for the term of this Agreement, as defined herein below; and

WHEREAS, the physical location of the Property and the lack of adequate roadway and parkland facilities to serve the Property demonstrate that infrastructure improvements and parkland dedication will be required as a condition to development in the future; and

WHEREAS, the DEVELOPER understands that the CITY'S development requirements and ordinances will require the DEVELOPER to dedicate and/or construct certain roadway and parkland improvements, as set forth in the CITY'S subdivision and other development ordinances, that are necessitated by the development of the Property and a general statement of such required public improvements (based on existing conditions) is outlined herein; and

WHEREAS, DEVELOPER hereby confirms that DEVELOPER shall promptly petition the City of McKinney to annex the Property into the City's corporate limits and zone the Property consistent with the development standards provided herein before DEVELOPER submits a final plat for the Property to the CITY; and

WHEREAS, the Subdivision Regulations of the City of McKinney, Texas contained in Article 2 of the UDC (the "Subdivision Regulations") establish procedures and standards for the development and subdivision of real estate and for the surveying and platting thereof, requiring the installation of adequate public facilities to serve the subject property and providing penalties for violations, among other things; and

WHEREAS, DEVELOPER understands that prior to platting the Property, the CITY's Subdivision Regulations require the DEVELOPER to fund and construct the roadway improvements and dedicate the required parkland that are necessitated by the development of the Property; and

WHEREAS, the Subdivision Regulations also prohibit recording the Final Plat of a subdivision within the incorporated area of the City until the DEVELOPER has completed all of the public facilities required to serve the property being developed that must be dedicated to the City ("Public Improvements") or has entered into a Facilities Agreement and guaranteed to the satisfaction of the CITY such improvements will be installed; and

WHEREAS, DEVELOPER and CITY have agreed that this Pre-Annexation Agreement to provide DEVELOPER with greater certainty to begin platting and developing the Property as **MCKINNEY-74**.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the CITY and the DEVELOPER do mutually contract and agree as follows, to-wit:

A. INCORPORATION OF RECITALS

The Recitals set forth above, are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

B. PROPERTY

This Agreement is for Property located in the extraterritorial jurisdiction of the City of McKinney, Collin County, Texas, in an area located on the north side of Farm to Market Road 1461 ("Laud Howell Parkway") and generally east of Farm to Market Road 2478 ("Custer Road") containing approximately 73.896 acres of land, more fully described in Exhibit "A" attached hereto and fully incorporated herein by reference (the "Property").

C. CONTINUING EXTRATERRITORIAL STATUS AND ANNEXATION

It is specifically understood and agreed that the Property is outside the CITY's corporate limits and that the CITY has not identified the Property in its Annexation Plan. It is also specifically understood and agreed that but for the DEVELOPER's petition requesting the Property be annexed into the CITY's corporate limits the Property would remain outside the CITY's corporate limits and within the CITY's extraterritorial jurisdiction. It is further understood and agreed that the CITY does not currently have public improvements in place to serve the Property. It is also understood and agreed that the CITY does not have any plans to improve or construct the roadways, extend the water, sanitary sewer and storm sewer lines, and construct the parks necessary to serve the Property. Neither does the CITY have the funds budgeted or otherwise available or projects and bonds approved by the voters to provide the public improvements necessary to serve the Property. **The DEVELOPER acknowledges that the Property is within the CITY's extraterritorial jurisdiction and represents to the CITY that the DEVELOPER has not engaged in any discussions or negotiations with any other city or town seeking to have the Property annexed into the extraterritorial jurisdiction or corporate limits of any municipality or town save and except the CITY. The DEVELOPER specifically understands and agrees that the CITY shall have no obligation to design, extend, construct and provide the public improvements necessary to serve the Property and that should DEVELOPER desire to develop the Property prior to the time that adequate public improvements are on or adjacent to the Property, it shall be the DEVELOPER'S responsibility and obligation to design, extend and construct such public improvements. Additionally, DEVELOPER hereby agrees to submit an application to the CITY for annexation of the entirety of the Property into CITY's corporate limits within ninety (90) days of CITY Council**

approval of this Agreement. The DEVELOPER does hereby, in exchange for the annexation of the Property, waive and hold harmless and agree to indemnify the CITY from and against any and all claims or demands that the CITY design, extend, construct and provide the public improvements necessary to serve the Property. In addition, DEVELOPER hereby waives any vested rights they may otherwise have under Section 43.002(a) (2), Section 212.172(g), and Chapter 245 of the Texas Local Government Code to develop the Property in whole or in part in any manner that conflicts with the "Governing Regulations," defined hereinbelow.

D. ZONING & PLATTING

The Property shall be zoned and platted in accordance with the CITY's Zoning Regulations contained in Article 2 of the UDC ("Zoning Regulations") and the CITY's Subdivision Regulations, and as amended.

The CITY shall process the zoning on the Property contemporaneously with the annexation of the Property. Pursuant to Tex. Loc. Gov't Code 212.172, the uses allowed and development standards to be applied within the Property shall be substantially similar to and governed by the following regulations (collectively, the "Governing Regulations"):

- (1) the land uses and development standards contained in Section 204L ("MF30 – Multi-Family Residential") of the UDC shall apply to those areas designated as Multi-Family shown in the Concept Plan, attached hereto as Exhibit B; and
- (2) the land uses and development standards contained in Section 204I ("TR1.8 – Townhome Residential") of the UDC shall apply to those areas designated for townhomes shown in the Concept Plan, attached hereto as Exhibit B; and
- (3) the maximum density for the Multi-Family area shall be 30 dwelling units per acre, and shall not exceed 600 total dwelling units; and
- (4) the maximum density for the Townhome area shall be 12 dwelling units per acre, and shall not exceed 140 total dwelling units;
- (5) DEVELOPER may make adjustments to the land use areas shown in Exhibit B as a part of the site planning process provided that such adjustments do not increase or decrease the land use areas shown in Exhibit B by more than ten percent (10%), except that the densities and unit caps established herein shall not change;
- (6) the parkland dedication required by this Agreement shall be generally located at the northern end of the site and east of future Stonebridge Drive

unless another site is mutually agreed upon by both Parties. The Parties acknowledge and agree that engineering has not been performed for the project and, as such, it is anticipated that final layout has not been determined. and

- (7) all other applicable provisions of the McKinney Code as hereby amended or hereafter amended.

It is specifically understood and agreed by and between the Parties that the submission of a preliminary plat, a minor plat, or conveyance plat (collectively "Plat") for the Property prior to the annexation and zoning of the Property in accordance with this Agreement shall make the Plat deemed "Administratively Incomplete" under the CITY's Subdivision Regulations, and as they may hereafter be amended. It is further specifically understood and agreed by and between the Parties that the submission of a Plat that does not conform to the Governing Regulations shall make the Plat deemed "Administratively Incomplete" under the CITY's Subdivision Regulations, and as they may hereafter be amended. Moreover,

Following annexation of the Property into the corporate limits of the City of McKinney, it is hereby agreed by and between DEVELOPER and CITY that the Property shall be zoned and developed in accordance with the Governing Regulations of this Agreement and shall be subject to the City's Engineering Design Manual, and Standard Details for Construction. Following annexation and zoning of the Property in conformance with the terms provided herein, the terms of this subsection D(1) – D(6) shall expire.

E. TERM OF AGREEMENT

The term of this Agreement (the "Term") is Ten (10) years from the Effective Date of this Agreement.

F. PUBLIC IMPROVEMENTS

All public improvements, including utilities, drainage structures and easements, roadways, sidewalks, hike and bike trails, street lighting, street signage, rights-of-ways, parkland dedication and all other required improvements and dedications shall be constructed and provided to the CITY by the DEVELOPER, at no cost to the CITY, in accordance with the CITY's Ordinances which are then in effect. The following provides a general description of the minimum construction requirements for roadways and utilities which, under current conditions, would be required by DEVELOPER as a condition to development of the Property (subject to the City's approval of phases or partial development):

1. Intentionally Omitted.

2. Intentionally Omitted.

3. Thoroughfares.

DEVELOPER shall dedicate, as a part of the Public Improvements and at no cost to CITY, that amount of right-of-way along perimeter roadways adjacent to the Property (as reflected on the draft proposed preliminary-final plat heretofore reviewed by the CITY) 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. The CITY will compensate DEVELOPER for that portion of the Master Plan roadway right-of-way that is so dedicated, and which is not roughly proportionate to the impact the development of the Property will have on the CITY's roadway system. The DEVELOPER shall dedicate all right-of-way for the interior streets serving the Property at the time of development. DEVELOPER shall also dedicate all easements necessary for construction and safety purposes for roadways on the Property and perimeter roadways adjacent to the Property as required herein-above. Specific uses may require additional right-of-way dedication at the time of site plan approval. 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.

Notwithstanding the foregoing, the DEVELOPER and CITY hereby agree that DEVELOPER shall dedicate at no cost to CITY the following rights-of-ways:

a. Stonebridge Drive.

The DEVELOPER shall dedicate to the CITY, at no cost to the CITY, the full width right-of-way for Stonebridge Drive located within the Property together with any necessary utility and drainage easements as development occurs within the Property unless such dedication is requested earlier in writing by the City, in which event DEVELOPER shall dedicate such right-of-way and easements within forty-five (45) days following receipt of such request.

4. Roadway Plan Approval. All roadway construction plans shall be approved by the CITY's Engineer or his agent prior to approval of a Development Permit for any portion of the Property.

5. Roadway Construction. DEVELOPER shall construct, at no cost to the CITY, all required roadway improvements in accordance with the CITY's Subdivision Regulations and Street Design Standards, then in effect. In addition to complying with the CITY's ordinance and standards, DEVELOPER shall also comply with TxDOT's standards and specifications

when the roadway improvements are being made on along, about or to TxDOT roadways.

- a. Gravel and seal coat roadways are not acceptable.
- b. Roadways along the anticipated traffic routes must be asphalt or reinforced concrete pavement with appropriate subgrade treatment all of which items must be approved by the CITY Engineer. The pavement on all such roadways must be designed for a minimum service life of thirty (30) years without the need for any major maintenance overhauls.
- c. A pavement analysis shall be performed by the DEVELOPER, at no cost to the CITY, to determine the adequacy of the current pavement structure to handle the DEVELOPER's projected traffic along with existing traffic volumes and recommendations by the DEVELOPER must be made based upon the analysis for roadway improvements as needed. The DEVELOPER shall create a pavement design to handle the expected traffic volumes and other criteria as determined by the circumstances surrounding the development of the Property and as approved by the CITY Engineer.
- d. Additional roadway improvements may be required to maintain safe roadway conditions. The determination regarding what additional improvements may be necessary shall be based upon the engineering judgment of the CITY Engineer and good engineering practices criteria.
- e. If the CITY has a project to construct any of the roadways for which the DEVELOPER is responsible, in whole or in part, the CITY and the DEVELOPER may enter into a separate agreement whereby the DEVELOPER is allowed, in the sole discretion of the CITY, to provide the CITY a cash escrow in an amount that will cover the DEVELOPER's roughly proportionate obligation for construction of such roadway(s) in lieu of constructing said roadway improvements.
- f. Agreed Construction of Stonebridge Drive. DEVELOPER shall construct, at no cost to CITY, the full width of that portion of Stonebridge Drive located within the Property running in a north-south direction, as more fully described on the attached Exhibit D, which is fully incorporated herein by reference. Said roadway improvements shall be constructed in accordance with the CITY's Subdivision Regulations 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.

G. AGREED DEDICATION OF PARKLAND

DEVELOPER shall dedicate that parkland depicted in Exhibit B concurrent with platting and development of any portion of the Property to satisfy any current or future parkland dedication ordinances adopted by CITY, subject to the following terms: (subject to the City's approval of phases or partial development):

1. Any parkland that DEVELOPER is required to dedicate to the CITY shall be shown on the plat of the Property as a fee simple conveyance to the CITY and shall be conveyed to the CITY by Special Warranty Deed free of all liens and encumbrances, save and except the encumbrances affecting the Property at the time of DEVELOPER's acquisition thereof, and at no cost to the CITY. DEVELOPER shall also provide the CITY with an owner's title policy of insurance in an amount equal to the value of the land conveyed, which amount shall be determined by the CITY.
2. Subject to any waivers the CITY Council may grant for the conveyance of an amount of land in excess of the minimum park land dedication requirements, DEVELOPER shall also be responsible for, and pay the costs of, providing convenient access by improved streets and sidewalks, and providing adequate drainage improvements so that the parkland site is suitable for the purpose intended, and shall provide water, sewer and electrical utilities to the parkland site in accordance with the procedures applicable to other public improvements as specified in the CITY's Subdivision Regulations.
3. Any parkland DEVELOPER designates for dedication or dedicates to the CITY shall be left in its natural state unless previously agreed otherwise in writing by the CITY's Director of Parks and Recreation. In addition, such parkland shall not be used to provide topsoil for the development of the Property. Further, said parkland shall not be used for construction staging and/or storage or the operation and parking of vehicles. The parkland so designated for dedication or dedicated to the CITY shall not be used for the relocation of dirt from the Property or for fill unless the site must be altered for health and safety concerns and the placement of fill on the parkland is previously agreed to in writing by the CITY's Director of Parks and Recreation.

H. CONSTRUCTION OF PARK IMPROVEMENTS

DEVELOPER shall be eligible for credits to the Park Development Fee contained in the CITY's Subdivision Regulations for those park improvements constructed within thirty-six (36) months of DEVELOPER's parkland dedication described in Paragraph G, above, as follows:

1. Any Public Parks Improvements approved by the CITY's Director of Parks and Recreation and constructed by DEVELOPER shall be granted a dollar-

for-dollar credit towards park development fees owed for the development as permitted by Ordinance No. 2022-02-029 (Parkland Dedication), effective October 1, 2022.

- a. Public Park Improvements may include children's play equipment similar to that found in other CITY parks and open space graded with native material to provided suitable areas for recreational activities such as youth sports practices.
2. Any Private Park Improvements constructed by DEVELOPER and approved by the CITY's Director of Parks and Recreation shall be eligible for park development fee credits as permitted by Ordinance No. 2022-02-029 (Parkland Dedication), effective October 1, 2022.

DEVELOPER, or a properly established homeowner's association or property owner's association ("Association"), shall be responsible for all routine maintenance, pursuant to the "Minimum Parks Maintenance Requirements", attached hereto as Exhibit C and incorporated herein by reference for all purposes allowed by law. CITY shall only be responsible for repair or replacement of equipment and appurtenances, if necessary.

I. 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 capacity is present and available from the N.T.M.W.D. Notwithstanding the foregoing, the CITY will supply the development on the Property 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 attempt to insure that said water supply and wastewater treatment capacity is available.

J. CITY DEVELOPMENT ORDINANCES

DEVELOPER shall develop the Property in accordance with the standards as set forth in City of McKinney zoning, subdivision and land development ordinances, including but not limited to provisions as to drainage, erosion control, pro rata payments, storm water, tree preservation, park land dedication, hike and bike trails, impact fees as provided herein, Street Design Standards, Public Improvements Policy and construction standards.

K. TREE ORDINANCE

DEVELOPER 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.

L. STORMWATER

DEVELOPER agrees to abide by all terms of the McKinney Storm Water Ordinance set out in Article 7 (Stormwater Management) of the Unified Development Code, Chapter 150 of the Code of Ordinances, City of McKinney, Texas, as amended.

M. 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 any applicable off-site facilities in place as of the date of DEVELOPER's development of the Property, the DEVELOPER shall be responsible to pay applicable pro-rata fees in the amount of one-half ($\frac{1}{2}$) of the actual construction and engineering costs of up to a twelve-inch (12") diameter pipe if off-site facilities have been constructed adjacent to the Property by the CITY or any other party prior to the date hereof and the DEVELOPER utilizes such facilities for the Property. If, however, the water or sewer facilities are bounded on both sides by the Property then the DEVELOPER shall be responsible to pay applicable pro-rata fees in the full amount of the actual construction and engineering costs of up to a twelve-inch (12") diameter pipe if the DEVELOPER utilizes such facilities. Should the DEVELOPER construct off-site water and sewer facilities such that pro-rata fees are due to the DEVELOPER, the CITY agrees to collect any fees due to the DEVELOPER related to the construction of the line(s) as those properties utilizing such facilities are developed during the period of ten (10) years after DEVELOPER's installation of such off-site water and sewer facilities. The DEVELOPER shall submit final construction costs to the CITY for approval prior to final acceptance of the improvements for use in determining pro-rata fees to be collected on behalf of the DEVELOPER.

The DEVELOPER 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(s) water or wastewater to or from a treatment facility and to which line(s) DEVELOPER is not permitted any right to tap or tie in to.

N. PROPORTIONALITY FEE

The DEVELOPER, or the DEVELOPER's successor(s)-in-interest (including a builder-owner), shall pay to the CITY a Proportionality Fee ("Fee") for development of the approximately 73.929 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 (or that service area nearest to the Property if not adjacent) 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. The DEVELOPER, or the DEVELOPER's successor(s)-in-interest (including a builder-owner), shall also pay (at the time of building permit issuance) to the CITY a water and wastewater proportionality fee in an amount equivalent to the then existing fee charged for a particular use in accordance with the CITY's utility impact fee ordinance.

In accordance with the methodology and provisions of the CITY's roadway impact fee ordinance, the DEVELOPER shall receive credits for excess vehicle miles contributed by the DEVELOPER (as such compare to the amount of vehicle miles of demand the entire Property creates) for right-of-way dedication and construction of on-site and adjacent roadways required by this Agreement. Such credits shall be issued to the DEVELOPER only for construction of impact fee eligible system roadways, or roadways which become impact fee eligible system roadways, completed to CITY standards and accepted by the CITY. Upon completion by the DEVELOPER and acceptance by the CITY of such on-site and adjacent roadways, the CITY shall issue credits to a credit pool in the DEVELOPER's name that may be drawn down to pay Fees and roadway impact fees. Said credits shall not include the DEVELOPER's individual costs for eminent domain, if any.

O. IMPACT FEES

If the CITY's Impact Fee Capital Improvement Plan is updated and the Property is designated as falling within a specific roadway service area and/or a specific utility service area before the Property is developed, the DEVELOPER shall pay roadway impact fees and/or utility impact fees on the proposed development of the Property rather than paying the roadway proportionality fee and/or the water and wastewater proportionality fee discussed in Paragraph N, herein above. In such event, Impact fees for the Property shall be charged in accordance with Ordinance No. 2020-12-091 (Roadway) and Ordinance No. 2020-12-092 (Utility), and as these ordinances may be amended in the future. These fees shall be due upon the time established by these Ordinances save and except only to the extent any waiver of or variance from said Ordinances is granted by the CITY and is contained in a separate agreement between DEVELOPER and CITY which agreement shall supersede and control.

To the extent that the portion of Stonebridge Drive situated within the Property is contained within the CITY's Impact Fee Roadway Improvement Plan CITY will enter into a Roadway Impact Fee Credit Agreement with DEVELOPER to provide credits for DEVELOPER's right-of-way dedication and construction relating to the

portion(s) of Stonebridge Drive contemplated in Section F.5.F herein above upon CITY's final acceptance of said improvements.

P. NO WAIVER

DEVELOPER expressly acknowledges that by entering into this Agreement, DEVELOPER, its successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any Exhibits as waiving any of the requirements of the Zoning Regulations or Subdivision Regulations or any other ordinance of the CITY except as herein specifically agreed.

Q. VARIANCES

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

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

The DEVELOPER has been represented by legal counsel in the negotiation of this Agreement and been advised, or has had the opportunity to have legal counsel review this Agreement and advise the DEVELOPER, regarding the DEVELOPER's rights under Texas and federal law. The DEVELOPER hereby waives any requirement that the CITY retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the CITY as a condition of approval for the development of this Property are roughly proportional or roughly proportionate to the proposed development's anticipated impact. (These exactions may include but are not limited to the making of dedications or reservations of land, the payment of fees, the construction of facilities, and the payment of construction costs for public facilities.) The DEVELOPER specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with Tex. Loc. Gov't Code § 212.904. However, notwithstanding the foregoing, the DEVELOPER hereby releases the City from any and all liability under Tex. Loc. Gov't Code § 212.904 regarding or related to the cost of those municipal infrastructure improvements required for the development of the Property.

It is the intent of this Agreement that the provision for roadway and utility improvements made herein constitutes a proportional financial allocation of the DEVELOPER'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 the DEVELOPER pursuant to this Agreement, are necessary and attributable to development

of the Property. The financial obligation of the DEVELOPER herein set forth shall relieve the DEVELOPER 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. The DEVELOPER 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 the DEVELOPER's dedication, construction, or payment obligations under this Agreement. The DEVELOPER further releases the CITY from claims based on excessive or illegal exactions in relation to the infrastructure contemplated herein; it being agreed that the amount of the DEVELOPER'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 DEVELOPER's development. The DEVELOPER 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 the DEVELOPER acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. The DEVELOPER shall indemnify and hold harmless the CITY from and against any claims and suits of any third parties, including but not limited to DEVELOPER's successors, assigns, grantees, vendors, trustees or representatives, brought solely pursuant to this Agreement and/or asserting the claims or types of claims described in this paragraph.

S. REVOCATION

In the event DEVELOPER fails to comply with any of the provisions of this Agreement following thirty (30) days' written notice and opportunity to cure, CITY shall be authorized to revoke any and all Certificates of Occupancy that may have been previously issued in relation to the subdivision and/or development of Property; and CITY shall be further authorized to file this instrument in the records of Collin County as a Mechanic's Lien against DEVELOPER'S property; and in the alternative, CITY shall be authorized to levy an assessment against DEVELOPER'S property for public improvements to be held as a tax lien against the Property by CITY.

T. CONTINUITY

This Agreement shall be a covenant running with the land, and be binding upon DEVELOPER, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

U. NOTICES

All Notices shall be in writing, shall be signed by or on behalf of the PARTY giving the Notice, and shall be effective as follows: (a) on or after the 3rd business day after being deposited with the United States mail service, Certified Mail, Return Receipt Requested with a confirming copy sent by FAX; (b) on the day delivered by a private delivery or private messenger service (such as FedEx or UPS) as evidenced by a receipt signed by any person at the delivery address (whether or not such person is the person to whom the Notice is addressed); or (c) otherwise on the day actually received by the person to whom the Notice is addressed, including, but not limited to, delivery in person and delivery by regular mail or by E-mail (with a confirming copy sent by FAX). All Notices given pursuant to this section shall be addressed as follows:

To the DEVELOPER: Hijo, LTD
 Attn: Tom Walker
 1 Cowboys Way
 Frisco, Texas 75034

 Sutton Field Investments, LLC
 Attn: Rex Glendenning
 12400 Preston Road, Suite 100
 Frisco, Texas 75033

To the CITY: City of McKinney
 Attn: City Manager
 P.O. Box 517
 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 given as provided above. 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.

V. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the PARTIES relative to the subject matter hereof. There have not been and are no agreements, covenants, representations or warranties among the PARTIES, either oral or written, relative to such subject matter other than those expressly stated or provided for herein.

W. PARTIES BOUND/PROPERTY BENEFITED

This Agreement shall be binding upon and inure to the benefit of the authorized successors and/or assigns of the PARTIES. The PARTIES hereto acknowledge that each has entered into this Agreement willingly and that each PARTY has equal bargaining powers. Neither PARTY has been coerced or has acted under duress.

X. ASSIGNABILITY

This Agreement shall be freely assignable to any person or entity (the "Assignee") to which Owner conveys all or part of the Property. Owner and/or Assignee shall promptly notify City of any such conveyance and assignment. It is specifically understood and agreed that any Assignment shall be deemed to be an assumption by the Assignee of all the obligations, liabilities, and responsibilities of the Owner, whether performed or not, as of the date of the Assignment just as though the Assignee was the original Owner under this Agreement.

Y. TERMINATION AND RELEASE

Upon satisfactory completion by DEVELOPER and final acceptance by CITY of all requirements of this Agreement, this Agreement shall terminate and CITY will execute a release of covenant to DEVELOPER, its heirs, successors, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future. This Agreement shall not terminate until the requirements of all parties have been fulfilled.

Z. APPLICABLE LAW; VENUE

This Agreement is entered into pursuant to, and is to be construed and enforced in accordance with, the laws of the State of Texas, and all obligations of the PARTIES are performable in Collin County. Exclusive venue for any action to enforce or construe this Agreement shall be in the Collin County District Court.

AA. COUNTERPART ORIGINALS

This Agreement may be executed in multiple counterpart originals, each of which shall have equal dignity and effect.

BB. NO THIRD-PARTY BENEFICIARIES

This Agreement only inures to the benefit of, and may only be enforced by, the PARTIES. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

CC. CONFLICT OF INTEREST

DEVELOPER covenants and agrees that DEVELOPER and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Agreement. All activities, investigations and other efforts made by DEVELOPER pursuant to this Agreement will be conducted by employees, associates or subcontractors of DEVELOPER.

DEVELOPER shall comply with the requirements of Texas Government Code § 2252.908 by completing and submitting Form 1295 to the Texas Ethics Commission ("Commission") at the time DEVELOPER submits this signed Agreement to CITY, and as follows:

Form 1295 Filing Process: The Commission has made available on its website a new filing application that must be used to file Form 1295. The DEVELOPER must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the DEVELOPER must sign the printed copy of the form and complete the "unsworn declaration" which includes, among other things, the date of birth and address of the authorized representative signing the form. The completed Form 1295 with the certification of filing must be filed with the CITY.

The CITY must notify the Commission, using the Commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the Agreement binds all parties to the Agreement. The Commission will post the completed Form 1295 to its website within seven business days after receiving notice from the CITY.

Form 1295 Availability: Certificate of Interested Parties Form is available from the Texas Ethics Commission website at the following address:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

For questions regarding and assistance in filling out Form 1295, please contact the Texas Ethics Commission at 512-463-5800.

DD. GENERAL PROVISIONS

1. DEVELOPER hereby relieves CITY of any responsibilities for any inadequacies in the preliminary plans, exhibits and cost estimate supplied for the purpose of this Agreement, and further agrees that DEVELOPER will comply with CITY'S Subdivision Regulations, Street Design Standards, Public Improvements Policy and any other applicable policies, rules, regulations and ordinances of CITY regarding development of the Property.

2. DEVELOPER agrees that construction shall not begin on any proposed improvements to the Property prior to City Council approval of this Agreement.
3. DEVELOPER agrees that all coordination required with public and/or private utility agencies to eliminate conflicts with proposed street grades or underground improvements shall be the responsibility of DEVELOPER. Likewise, coordination with agencies requiring special conditions (i.e., railroads and the Texas Department of Transportation) shall be the responsibility of DEVELOPER.
4. It is understood that any obligation on the part of the CITY to make any refunds with respect to infrastructure improvements constructed within the Property shall cease, with respect to such improvements, on the tenth (10th) anniversary after the improvements are completed, inspected, and accepted by the CITY. Such 10-year period may be extended for good cause and agreed to in writing by the CITY and the DEVELOPER.
5. If DEVELOPER fails or refuses to submit an application to the CITY for annexation of the entirety of the Property into CITY's corporate limits within ninety (90) days of CITY Council approval of this Agreement as provided above in Paragraph C, DEVELOPER agrees that this Agreement shall not constitute a "permit" under Chapter 245 of the Texas Local Government Code and no "rights" are vested by this Agreement.
6. CITY agrees to record said Plat at such time as the Plat complies with the requirements set forth by the Subdivision Regulations of CITY, and has been approved in the manner described therein.

[Signature Page Follows]

CITY OF MCKINNEY

By: _____
PAUL G. GRIMES
City Manager

Date Signed: _____

ATTEST:

EMPRESS DRANE
City Secretary
TENITRUS BETHEL
Deputy City Manager

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

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 CITY's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____, 2023.

Notary Public _____ County, Texas
My commission expires _____

DEVELOPER:

HIJO, LTD,
a Texas limited liability company

By: 

Name: Tom Walker

Title: CFO / Treasurer

Date Signed: 10/23/2023

SUTTON FIELD INVESTMENTS, LLC,
a Texas limited liability company

By: 

Name: Rex Blending

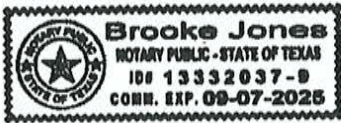
Title: Manager

Date Signed: Oct. 23, 2023

THE STATE OF TEXAS,
COUNTY OF Collin

This instrument was acknowledged before me on the 23 day of October, 2023,
by TDM Walker, in his capacity as CEO/Treasurer of HIJO, LTD,
a Texas limited liability company, known to me to be the person whose name is
subscribed to the foregoing instrument, and acknowledged to me that he executed the
same on behalf of and as the act of HIJO, LTD.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 23 DAY OF
October, 2023.

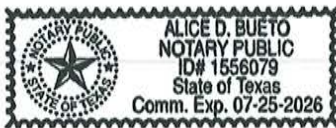


Brooke Jones
Notary Public Dallas County, Texas
My commission expires 9-7-25

THE STATE OF TEXAS,
COUNTY OF Coleen

This instrument was acknowledged before me on the 23rd day of October, 2023,
by Rex Splendening, in his capacity as Manager of SUTTON
FIELD INVESTMENTS, LLC, a Texas limited liability company, known to me to be the
person whose name is subscribed to the foregoing instrument, and acknowledged to me
that he executed the same on behalf of and as the act of SUTTON FIELD
INVESTMENTS, LLC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 23rd DAY OF
October, 2023.



Alice D. Bueto
Notary Public Dallas County, Texas
My commission expires 7-25-2026

Exhibit "A"

*Description of Property
(Containing Approximately 73.896 Acres of Land)*

LAND DESCRIPTION

BEING A TRACT OF LAND LOCATED IN THE C.A. BURNS SURVEY, ABSTRACT NO. 109 AND THE COLEMAN WATSON SURVEY, ABSTRACT NO. 945, COLLIN COUNTY, TEXAS AND BEING ALL OF A TRACT OF LAND DESCRIBED IN DEED TO SAMUEL E. LEWIS AND WIFE, ELIZABETH J. LEWIS, RECORDED IN INSTRUMENT NO. 96-0010626, OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS (O.P.R.C.C.T.) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8-INCH IRON ROD WITH A PINK TXDOT CAP FOUND AT THE INTERSECTION OF THE NEW NORTH RIGHT-OF-WAY LINE OF FARM-TO-MARKET ROAD (F.M.) 1461, A VARIABLE WIDTH RIGHT-OF-WAY, WITH THE COMMON LINE OF SAID LEWIS TRACT AND A TRACT OF LAND DESCRIBED IN DEED TO CB-MERRELL ROAD, LIMITED, RECORDED IN INSTRUMENT NO. 20160216000178090, O.P.R.C.C.T., FROM WHICH A 1/2-INCH IRON ROD FOUND AT THE SOUTH COMMON CORNER OF SAID LEWIS TRACT AND SAID CB-MERRELL TRACT BEARS SOUTH 00°57'28" WEST, A DISTANCE OF 52.04 FEET;

THENCE NORTH 00°57'28" WEST, LEAVING SAID NORTH RIGHT-OF-WAY LINE AND A LONG THE COMMON LINE OF SAID LEWIS TRACT AND SAID CB-MERRELL ROAD TRACT AND SUBSEQUENTLY A TRACT OF LAND DESCRIBED IN DEED TO LBP 2008 INVESTMENT, INC., RECORDED IN INSTRUMENT NO. 20160216000178100, O.P.R.C.C.T., A DISTANCE OF 1884.55 FEET TO A 2-INCH METAL FENCE POST FOUND AT THE NORTH COMMON CORNER OF SAID LEWIS TRACT AND SAID LBP 2008 INVESTMENT TRACT AND A TRACT OF LAND DESCRIBED IN DEED TO BCO TURNPIKE DISTRIBUTION CENTER M, LLC, RECORDED IN INSTRUMENT NO. 20160216000178110, O.P.R.C.C.T.;

THENCE SOUTH 89°26'14" EAST, ALONG THE COMMON LINE OF SAID LEWIS TRACT AND SAID BCO TURNPIKE DISTRIBUTION CENTER M TRACT, PASSING A 1/2-INCH IRON ROD FOUND AT A DISTANCE OF 1083.76 FEET, AND CONTINUING FOR A TOTAL DISTANCE OF 1,230.80 FEET TO A POINT FOR CORNER IN THE APPROXIMATE CENTER OF STOVER CREEK;

THENCE SOUTHERLY, WITH THE APPROXIMATE CENTERLINE OF SAID CREEK, THE FOLLOWING THIRTY-ONE (31) COURSES AND DISTANCES:

SOUTH 08°22'03" WEST, A DISTANCE OF 142.61 FEET TO A POINT FOR CORNER;

SOUTH 18°55'16" WEST, A DISTANCE OF 118.38 FEET TO A POINT FOR CORNER;

SOUTH 05°24'00" EAST, A DISTANCE OF 40.27 FEET TO A POINT FOR CORNER;

SOUTH 38°12'11" EAST, A DISTANCE OF 49.05 FEET TO A POINT FOR CORNER;

SOUTH 82°58'55" EAST, A DISTANCE OF 112.82 FEET TO A POINT FOR CORNER;

SOUTH 73°29'49" EAST, A DISTANCE OF 63.29 FEET TO A POINT FOR CORNER;
SOUTH 62°08'35" EAST, A DISTANCE OF 228.53 FEET TO A POINT FOR CORNER;
SOUTH 54°10'08" EAST, A DISTANCE OF 150.61 FEET TO A POINT FOR CORNER;
SOUTH 30°22'01" EAST, A DISTANCE OF 55.02 FEET TO A POINT FOR CORNER;
SOUTH 13°16'04" WEST, A DISTANCE OF 59.34 FEET TO A POINT FOR CORNER;
SOUTH 31°00'34" WEST, A DISTANCE OF 90.71 FEET TO A POINT FOR CORNER;
SOUTH 42°58'20" WEST, A DISTANCE OF 66.81 FEET TO A POINT FOR CORNER;
SOUTH 50°19'09" WEST, A DISTANCE OF 70.79 FEET TO A POINT FOR CORNER;
SOUTH 60°58'53" WEST, A DISTANCE OF 83.66 FEET TO A POINT FOR CORNER;
SOUTH 41°23'59" WEST, A DISTANCE OF 50.56 FEET TO A POINT FOR CORNER;
SOUTH 06°10'09" WEST, A DISTANCE OF 20.46 FEET TO A POINT FOR CORNER;
SOUTH 25°25'46" EAST, A DISTANCE OF 58.04 FEET TO A POINT FOR CORNER;
SOUTH 68°57'55" EAST, A DISTANCE OF 147.24 FEET TO A POINT FOR CORNER;
SOUTH 56°56'25" EAST, A DISTANCE OF 71.56 FEET TO A POINT FOR CORNER;
SOUTH 68°32'57" EAST, A DISTANCE OF 117.81 FEET TO A POINT FOR CORNER;
SOUTH 83°31'28" EAST, A DISTANCE OF 246.52 FEET TO A POINT FOR CORNER;
NORTH 63°21'40" EAST, A DISTANCE OF 43.91 FEET TO A POINT FOR CORNER;
NORTH 86°35'14" EAST, A DISTANCE OF 36.16 FEET TO A POINT FOR CORNER;
SOUTH 68°25'41" EAST, A DISTANCE OF 34.24 FEET TO A POINT FOR CORNER;
SOUTH 41°53'09" EAST, A DISTANCE OF 44.13 FEET TO A POINT FOR CORNER;
SOUTH 32°29'58" EAST, A DISTANCE OF 165.47 FEET TO A POINT FOR CORNER;
SOUTH 21°17'51" EAST, A DISTANCE OF 102.94 FEET TO A POINT FOR CORNER;
SOUTH 05°36'53" EAST, A DISTANCE OF 81.13 FEET TO A POINT FOR CORNER;

SOUTH 31°25'40" WEST, A DISTANCE OF 93.83 FEET TO A POINT FOR CORNER;

SOUTH 49°56'58" WEST, A DISTANCE OF 217.22 FEET TO A 5/8-INCH IRON ROD WITH A CAP STAMPED "RPLS 5674" SET FOR CORNER;

THENCE SOUTH 39°50'27" WEST, A DISTANCE OF 89.91 FEET TO A POINT FOR CORNER IN SAID NEW NORTH RIGHT-OF-WAY LINE OF F.M. 1461;

THENCE WESTERLY, ALONG SAID NEW NORTH RIGHT-OF-WAY LINE, THE FOLLOWING FOUR (4) COURSES AND DISTANCES:

SOUTH 88°32'59" WEST, A DISTANCE OF 358.07 FEET TO A 5/8-INCH IRON ROD WITH A PINK TXDOT CAP FOUND;

SOUTH 73°22'00" WEST, A DISTANCE OF 210.00 FEET TO A 5/8-INCH IRON ROD WITH A PINK TXDOT CAP FOUND;

SOUTH 88°32'59" WEST, A DISTANCE OF 876.12 FEET TO A 5/8-INCH IRON ROD WITH A PINK TXDOT CAP FOUND;

SOUTH 89°43'59" WEST, A DISTANCE OF 569.67 FEET TO THE POINT OF BEGINNING AND CONTAINING 3,218,906 SQUARE FEET OR 73.896 ACRES OF LAND, MORE OR LESS.

Exhibit "B"

Concept Plan (Showing Parkland Dedication)

PARKLAND DEDICATION	
PROPERTY IN FLOODPLAIN	+/- 1.61 ACRES
PROPERTY OUTSIDE OF FLOODPLAIN	+/- 5.67 ACRES
TOTAL	+/- 7.28 ACRES

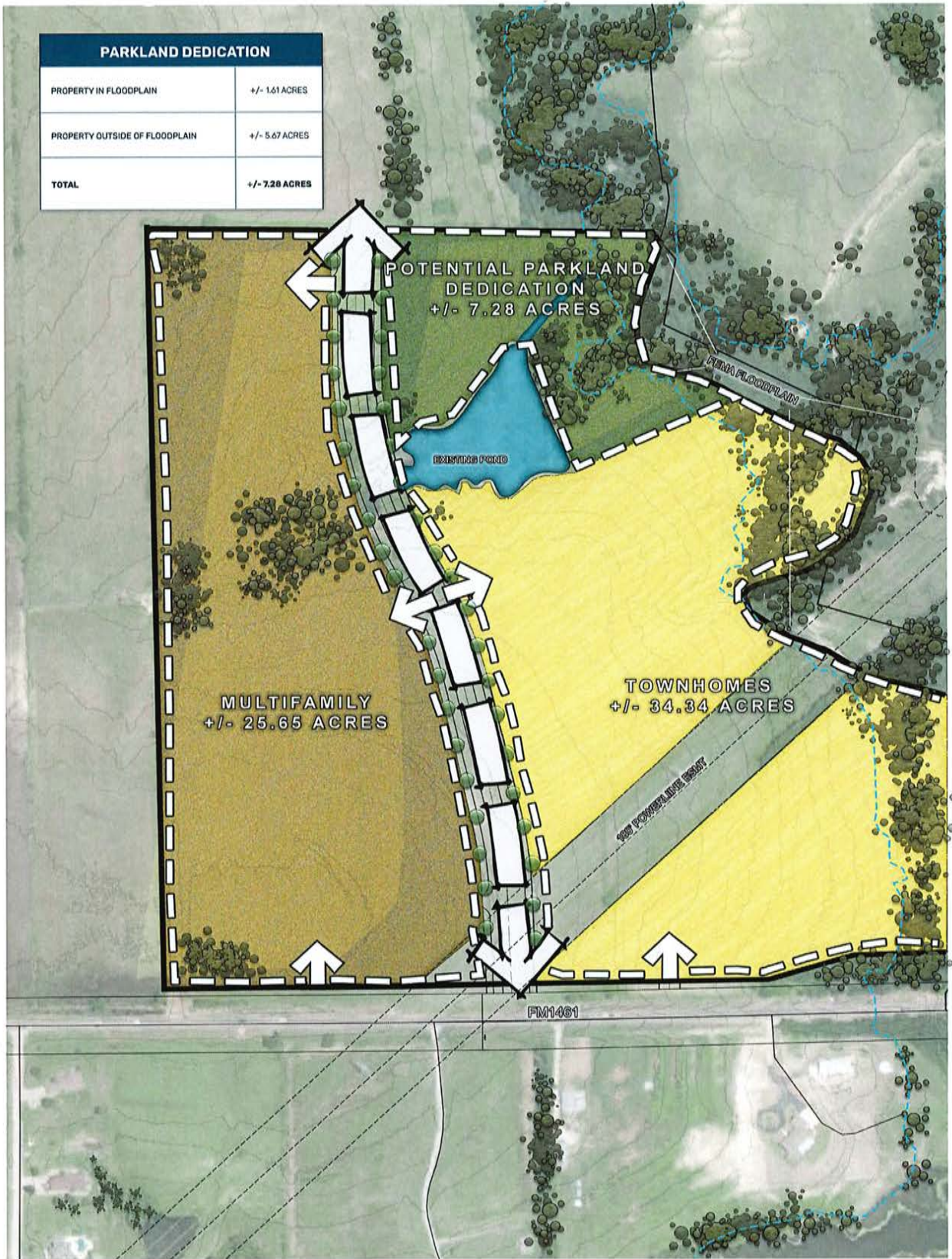


Exhibit "C"

Minimum Parks Maintenance Requirements

Owners or designee shall perform all necessary and required upkeep and maintenance of all Parks and/or Trails including all active and passive amenity improvements within the Property, at no cost to CITY, to retain the safety and integrity of the Parks and Trails together with all installed active and passive amenity improvements. Owners or designee shall at a minimum meet or exceed the following standards:

- Plan and carry out a seven-day mowing/weed-eating/edging cycle during mowing season;
- Perform litter and trash removal from waste receptacles and on and about the Parks and Trails on a recurring basis;
- Inspect the Trails on a recurring basis, as necessary, and always keep the Trails free of sediment and landscape debris, and perform any repairs as may be required to keep the Trails in a safe condition;
- Remove and contain any biohazards (vomit, blood, urine, feces, etc.) from all Parks and Trails;
- Perform bathroom inspections and cleanings on a recurring basis, as needed to keep the bathroom facilities sanitary and useable;
- Inspect irrigation systems at least once every two weeks and repair as needed;
- Trim trees once a year during the dormant period, and as needed throughout the growing season;
- Fertilize Parks 3 times a year, 1 pre-emergent herbicide application, post-emergent herbicide applications at least twice, and as needed after the pre-emergent application;
- Perform mulching and topdressing of all beds at least annually, and otherwise as needed to maintain a proper appearance;
- Inspect playground equipment, play areas, furniture, pavilions, sport courts, lighting and similar amenities at least monthly;
- Repair vandalism and remove graffiti immediately;
- Inspect sidewalks, walkways, and parking lots at Parks at least annually;
- Winterize irrigation, drinking fountains, splash pads, and bathrooms before each winter season;

- Monitor and control pests, insects, and fire ants when as needed;
- Keep gutters and underpasses clean from soil erosion and trash during and following a flooding event;
- All Parks and/or Trails including all active and passive amenity improvements shall be maintained in accordance with all applicable provisions of the McKinney Code; and

Permits, inspections, and green tags or certificates of occupancy, as appropriate, shall be required for all Parks and/or Trails including all related active and passive amenity improvements.

Exhibit "D"

Roadway Dedication and Construction Depiction

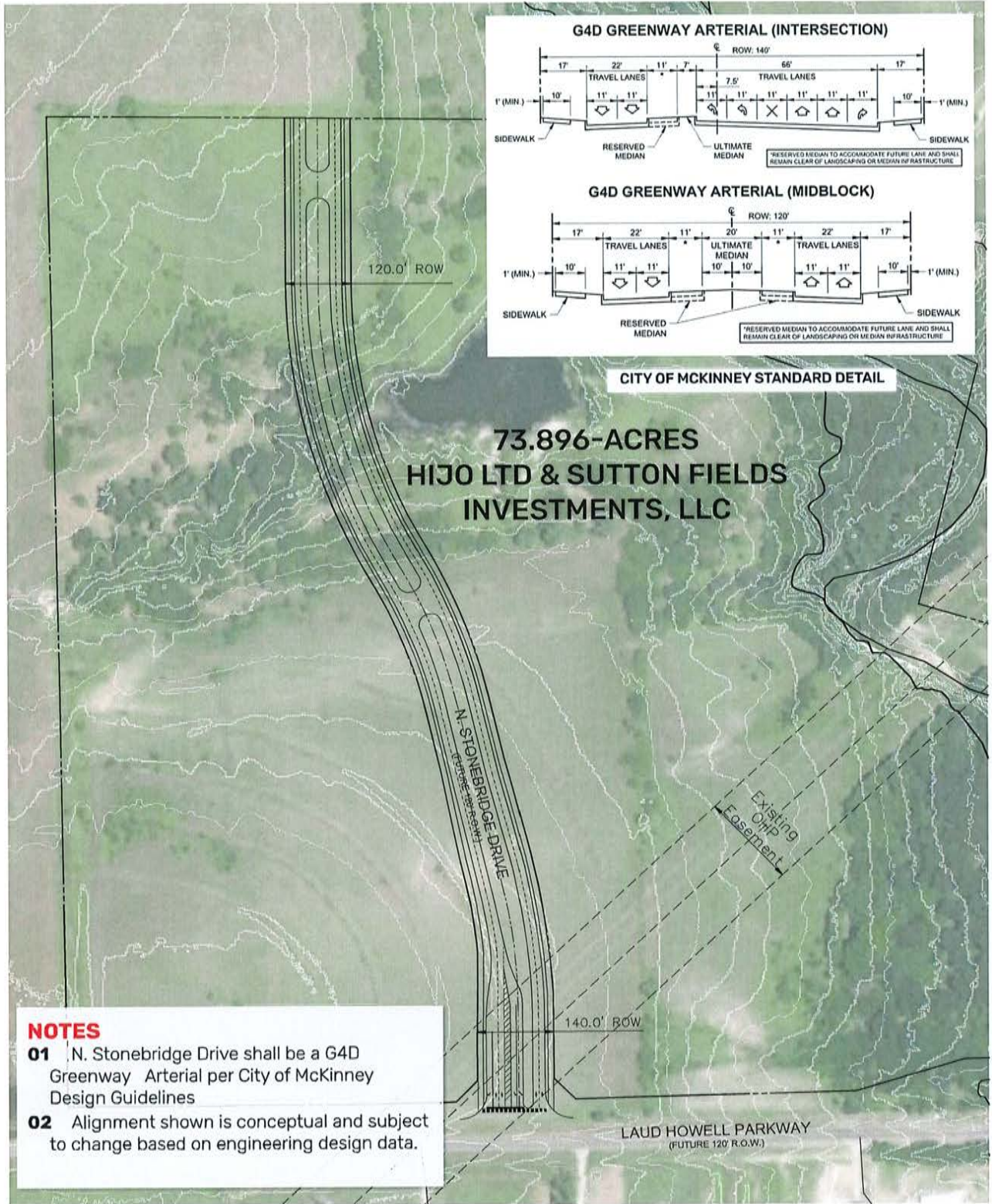


Exhibit "E"

Variances

1. ___ No other variances for this Property are granted by this Agreement