



Right-of-Way Dedication and Roadway Improvements are eligible for roadway Impact Fee Credits that shall be applied to the Property; and

WHEREAS, City has previously identified the portions of Hardin Boulevard and Bloomdale Road (C.R. 164) that Developer has agreed to construct on the City's Impact Fee Roadway Improvement Plan ("IFRIP"), which IFRIP is a part of the City's Roadway Impact Fee Ordinance; and

WHEREAS, for Developer's prior Right-of-Way Dedication described in Article II, Section A.9 below and for the future construction of the referenced Roadway Project, Developer shall receive roadway Impact Fee Credits, calculated in accordance with the Ordinance, which credits shall attach to the Property.

**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 Timber Creek Properties LLC, a Delaware limited liability company, and its representatives, agents, contractors, employees, and consultants.
3. *Impact Fee Credits* means Roadway Impact Fee Credits.
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 collectively, and *Party* means either City or Developer, as applicable.
7. *Property* means Developer's property known as Timber Creek Addition, Phases 2B, 7A, 7B and 8, which property is more particularly described and

depicted in the Preliminary-Final Plat attached hereto as Exhibit A and incorporated herein by reference for all purposes allowed by law.

8. *Right-of-Way Dedication* means the conveyance of approximately 267,546.90 square feet or 6.142 acres of land in the Henry H. Tucker Survey, Abstract No. 907, the William B Tucker Survey, Abstract No. 911, and the Meredith Hart Survey, Abstract No. 371, City of McKinney, Collin County, Texas, to the City of McKinney, Texas, by Donation Right of Way Warranty Deed dated May 4, 2023, and recorded in the Collin County Deed Records on May 17, 2023, as Clerk's Document No. 2023000054163.
9. *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 Exhibits B-1 and B-2, attached hereto, using those materials that meet the minimum requirements of the City's Subdivision Regulations (the "Subdivision Regulations") contained in the Unified Development Code (the "UDC"), Chapter 150 of the Code of Ordinances, City of McKinney, Texas ("McKinney Code") and the City's Engineering Design Manual, and all engineering, surveying, inspection and permit fees for the Roadway Project being constructed for the benefit of the Timber Creek Addition, Phases 2B, 7A, 7B and 8 subdivision, that is the subject of this Agreement.
10. *Roadway Project* means the construction of the following two "Roadway Segments" according to the civil engineering plans on file in the City of McKinney Engineering Department and as depicted on Exhibits B-1 and B-2, which Roadway Segments are eligible for roadway impact fee credits and identified as:
  - (a) "*Roadway Segment 1*," being the completion of construction of the full four lanes of Hardin Boulevard together with turn lanes from the current terminus of the southbound and northbound lanes of Hardin Boulevard in an area north of Davis Meadow Drive and moving in a northerly direction to Bloomdale Road together with the complete intersection of Hardin Boulevard (a divided four-lane roadway plus turn lanes) and Bloomdale Road (a divided four-lane roadway plus turn lanes) (the "Bloomdale-Hardin Intersection") through the Bloomdale-Hardin Intersection together with:
    - (i) The extension of the southern two lanes of Bloomdale Road in an easterly direction from the Bloomdale-Hardin Intersection to tie in with the existing southern two lanes of Bloomdale Road at or about the eastern boundary of the Property as generally shown and identified as "Section 1" on

Exhibit B-2 attached hereto and incorporated herein by reference for all purposes; and

- (ii) The removal of the existing transition on Bloomdale Road that currently combines the two southern lanes of Bloomdale Road with the two northern lanes of Bloomdale Road as Bloomdale Road approaches the Bloomdale-Hardin Intersection from the east, and restore the transition area to a condition suitable for the construction of the median and construct the median; and
- (iii) The design and construction of transition lanes from the full width intersection of Bloomdale Road as a four-lane divided roadway to combine the two southern lanes of Bloomdale Road with the two northern lanes of Bloomdale Road until such time as “Roadway Segment 2” and “Roadway Segment 3,” each of which Roadway Segments are described in the Facilities Agreement are completed; and

- (b) “Roadway Segment 2,” being the two southern lanes (southern half) of Bloomdale Road plus turn lanes extending in a westerly direction from the Bloomdale-Hardin Intersection to the intersection of Bloomdale Road and Sweet Birch as generally shown and identified as “Section 2” on Exhibit B-2.

Please note that while “Roadway Segment 3,” mentioned hereinabove and depicted on Exhibits B-1 and B-2, is necessary to serve the development of the Property, the road within Roadway Segment 3 is being constructed to lesser standards and requirements that do not meet the minimum standards of an impact fee roadway and is not eligible for roadway impact fee credits.

- 11. *Service Unit* means one vehicle mile of travel in the afternoon peak hour of traffic and is also referred to as a “vehicle mile” in the Ordinance. The impact fees per service unit are as set forth in Impact Fee Schedule 1 and its various equivalency tables attached to Ordinance No. 2020-12-091, 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:

- 1. Words imparting the singular will include the plural and vice versa;
- 2. All exhibits attached to this Agreement are incorporated by reference for all pertinent purposes as though fully copied and set forth at length;

3. References to any document mean that document as amended or as supplemented from time to time; and
4. References to any Party means that Party, its successors, and assigns.

## **ARTICLE II**

### **DEVELOPER CONTRIBUTION OF RIGHT-OF-WAY DEDICATION AND ROADWAY IMPROVEMENTS**

#### **A. Right-of-Way Dedication**

Developer's Right-of-Way Dedication recorded on May 17, 2023, which dedicated area includes the right-of-way for Roadway Segments 1, 2, and 3, can be converted to vehicle-miles of roadway "supply" through the City's impact fee study, separate and apart from the actual construction costs associated with the Roadway Improvements.

The Right-of-Way Dedication equates to **168.24 Service Units** of roadway Impact Fee Credits that will satisfy the roadway impact fee requirements for 34.69 single-family residential lots. The roadway Impact Fee Credits identified in this paragraph shall be available immediately for Developer's use upon the final execution of this Agreement by all Parties.

#### **B. Roadway Improvements**

1. Developer shall construct the Roadway Project described in this Agreement and depicted on the attached Exhibits B-1 and B-2. Developer shall also 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 roadway Impact Fee Credits as calculated under the Ordinance.
3. City agrees to grant Developer roadway Impact Fee Credits in conjunction with the acceptance of the Roadway Project.
  - (a) The roadway Impact Fee Credits for Roadway Segment 1 shall vest and attach to the Property upon the City's final acceptance of the construction of Roadway Segment 1.
  - (b) The roadway Impact Fee Credits for Roadway Segment 2 shall vest and attach to the Property upon the City's final acceptance of the construction of Roadway Segment 2.

4. The roadway Impact Fee Credits that attach to the Property for the completion of Roadway Segment 1 under this Agreement are **415.37 Service Units** of roadway Impact Fee Credits that will satisfy the roadway impact fee requirements for 86 single-family residential lots. The roadway Impact Fee Credits identified in this paragraph shall be available immediately for Developer's use upon the City's final acceptance of the construction of Road Segment 1.
5. The roadway Impact Fee Credits that attach to the Property for the completion of Roadway Segment 2 under this Agreement are **51.74 Service Units** of roadway impact fee credits that will satisfy the roadway impact fee requirements for 11 single-family residential lots. The roadway Impact Fee Credits identified in this paragraph shall be available immediately for Developer's use upon the City's final acceptance of the construction of Roadway Segment 2.

### **ARTICLE III**

#### **IMPACT FEE CREDITS**

##### **A. Assignment and Expiration of Roadway Impact Fee Credits**

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

##### **B. Value of Roadway Improvements**

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

##### **C. Use of Impact Fee Credits**

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

**D. Developer's Responsibilities under Development Ordinances**

Nothing herein shall relieve the Developer from its responsibilities for construction of public improvements under the UDC and the Engineering Design Manual upon development of the Property.

**ARTICLE IV**

**AGREEMENT MAY NOT BE PLEDGED AS COLLATERAL**

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

**ARTICLE V**

**GENERAL PROVISIONS**

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

1. Should any Party allege that the other has defaulted in the performance of any obligation hereunder, it will provide at least thirty (30) days' written notice to the other Party specifying the nature of the alleged default and opportunity to cure the default before exercising any remedy related to the alleged default; provided, however, if the default is not reasonably capable of being cured within such thirty (30) day period but the Party receiving such notice commences action within such thirty (30) day period which is reasonably calculated to effectuate such cure, then for such longer period as such Party continues to prosecute such cure to completion in as expeditious a manner as is reasonably practicable.
2. Upon the failure of either Party to comply with the provisions of this Agreement, which failure continues beyond the notice and cure period provided above, the other Party shall have the right to enforce the terms and provisions of this Agreement by specific performance, or by such other legal or equitable relief to which the non-defaulting Party may be entitled.
3. Any remedy or relief described in this Agreement shall be cumulative of and in addition to any other remedies and relief available at law or in equity.
4. The foregoing notwithstanding, it is understood and agreed that in addition to any other remedy which the City may have upon default by Developer under this Agreement, should Developer fail to comply with the Subdivision Regulations or any City development regulation and such failure shall continue beyond the notice and cure period provided in Section A.1 above, the City may terminate this Agreement. Upon termination pursuant to this subsection, all Impact Fee Credits shall terminate.

**B. *Entire Agreement; Interpretation of this Agreement***

1. This Agreement including any attached exhibits is the entire agreement between the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein. If there is a conflict between this Agreement and prior written or verbal representations, this Agreement shall control.
2. This Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strictly for or against either Party.

**C. *Amendment***

No amendment of this Agreement will be effective unless it is in writing and signed by the duly authorized representatives of the Parties hereto, which amendment will incorporate this Agreement in every particular not otherwise changed by the amendment.

**D. *No Amendment of Other Agreements***

Unless otherwise expressly stipulated herein, this Agreement is separate from and will not constitute an amendment or modification of any other agreement between the Parties.

**E. *Other Instruments, Actions***

The Parties hereto agree that they will take such further actions and execute and deliver such other and further consents, authorizations, instruments, or documents as are reasonably 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 and all of which together shall constitute one and the same document.

**J. Notices**

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

**DEVELOPER:**

Timber Creek Properties LLC  
2221 E. Lamar, Suite 790  
Arlington, Texas 76006  
Attention: Lauren Adams

**CITY OF MCKINNEY:**

Office of the City Manager  
P.O. Box 517  
401 E. Virginia Street  
McKinney, Texas 75069

With a copy to:

Chelsea Parish  
Forestar (USA) Real Estate Group Inc.  
2221 E. Lamar, Suite 790  
Arlington, Texas 76006

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 Regulations, the City's Engineering Design Manual, the McKinney Utility Impact Fees Article, or the McKinney Impact Fees Article – Roadways.

**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, which consent will not be unreasonably withheld, conditioned or delayed.

**O. Binding Obligation**

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

{signature page follows}

IN WITNESS WHEREOF, DEVELOPER and CITY have executed this Agreement as of the Effective Date.

**CITY OF MCKINNEY**

By: \_\_\_\_\_  
PAUL G. GRIMES  
City Manager

ATTEST:

\_\_\_\_\_  
EMPRESS DRANE  
City Secretary  
TENITRUS PARCHMAN  
Deputy City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
City Attorney

**TIMBER CREEK PROPERTIES LLC,**  
*a Delaware limited liability company,*

*by and through its Managing Member*

Forestar (USA) Real Estate Group Inc.,  
a Delaware Corporation

By: \_\_\_\_\_  
LAUREN ADAMS  
Vice President

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

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.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_  
DAY OF \_\_\_\_\_, 2026.

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

THE STATE OF TEXAS,  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by LAUREN ADAMS, in her capacity as Vice President of **FORESTAR (USA) REAL ESTATE GROUP INC.**, a Delaware Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that FORESTAR (USA) REAL ESTATE GROUP INC. is the managing member of **TIMBER CREEK PROPERTIES LLC**, a Delaware limited liability company, and that she executed the same on behalf of and as the act of **TIMBER CREEK PROPERTIES LLC**.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_  
DAY OF \_\_\_\_\_, 2026.

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

PREPARED IN THE OFFICES OF:

BROWN & HOFMEISTER, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081  
214/747-6100  
214/747-6111 Fax

**Exhibit A**

**Depiction and Description of Timber Creek Subdivision Phases 2B, 7A, 7B and 8**

*(See following 7 pages.)*





**OWNER CERTIFICATE AND DECLARATION**

DATE OF THIS 1  
COUNTY OF COLLIN 1

**UNOFFICIAL COPY**

**FINAL PLAT  
TIMBER CREEK  
PHASE 7A  
BLOCK T  
LOTS 27-38 & COMMON AREA LOT 2,  
2.880 ACRES**

AN ADDITION TO THE CITY OF MOONEY, AND  
WILLIAM B. TUCKER SURVEY, ABSTRACT NO. 811,  
COLLIN COUNTY, TEXAS.

17. RESIDENTIAL LOTS (2.645 ACRES)  
1. COMMON AREA LOT (0.235 ACRES)

STATE OF TEXAS, COUNTY OF COLLIN  
I, FOREMAN (USA) REAL ESTATE GROUP, INC., MANAGING PARTNER  
2222 ALBUQUERQUE, SUITE 700  
ALBUQUERQUE, NEW MEXICO 87102  
CONTACT: BRITAIN REPORT

ENGINEER / SURVEYOR  
PAPE-DAWSON CONSULTING ENGINEERS, LLC  
10505 WEST 13TH AVENUE, SUITE 100  
PLANO, TEXAS 75075  
CONTACT: ERIC S. JONES, P.E. /  
JAMES SWAIN, P.E.

**PAPE-DAWSON ENGINEERS**  
10505 WEST 13TH AVENUE, SUITE 100  
PLANO, TEXAS 75075  
DATE OF PREPARATION: APRIL 26, 2022

DATE: 25th DAY OF APRIL 2022

**SURVEYOR CERTIFICATE**  
KNOWN ALL MEN BY THESE PRESENTS, THAT FOREMAN (USA) REAL ESTATE GROUP, INC., MANAGING PARTNER, HAS CAUSED AND CAUSED TO BE SURVEYED AND PLATTED THE ABOVE DESCRIBED LOTS AND COMMON AREAS, ACCORDING TO THE CONDITIONS SET FORTH IN THE INSTRUMENTS RECORDED IN THE PUBLIC RECORDS OF THE CITY OF MOONEY, TEXAS.

DATE: 25th DAY OF APRIL 2022

**SURVEYOR**  
JAMES SWAIN, P.E.  
PAPE-DAWSON CONSULTING ENGINEERS, LLC  
10505 WEST 13TH AVENUE, SUITE 100  
PLANO, TEXAS 75075  
STATE OF TEXAS, COUNTY OF COLLIN

**CITY APPROVAL**  
APPROVED BY THE CITY OF MOONEY, TEXAS  
DATE: 25th DAY OF APRIL 2022

**NOTICE:** ALL INFORMATION CONTAINED HEREIN IS UNOFFICIAL AND NOT TO BE USED FOR ANY PURPOSES OTHER THAN THE CITY OF MOONEY, TEXAS. THE CITY OF MOONEY, TEXAS, DOES NOT WARRANT THE ACCURACY OF THIS INFORMATION AND IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS. THE CITY OF MOONEY, TEXAS, IS NOT A PARTY TO THIS INSTRUMENT AND DOES NOT GUARANTEE THE ACCURACY OF THIS INFORMATION.





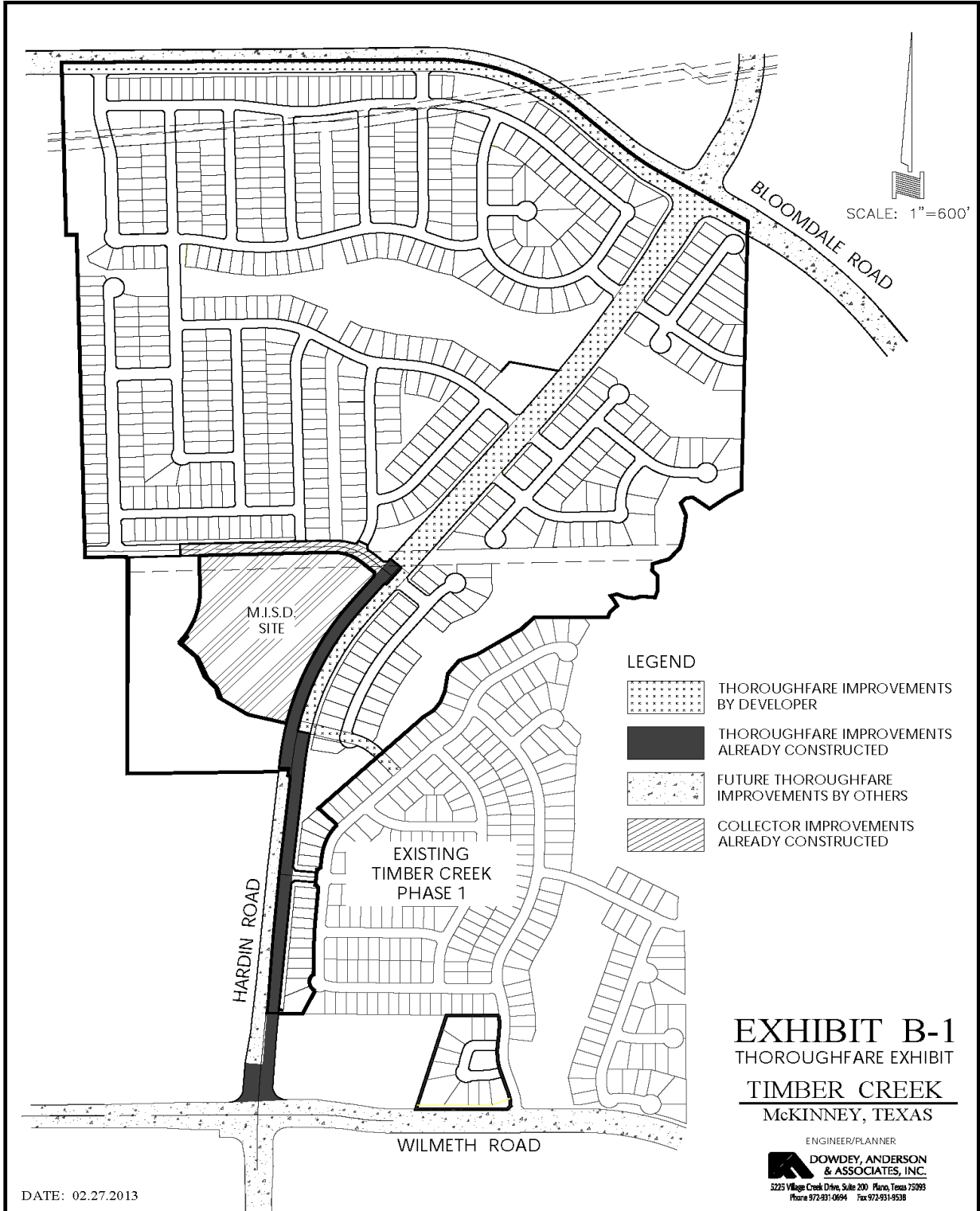




**Exhibit B-1**

**Thoroughfare Exhibit of Roadway to be Constructed by Developer**

*(See following 1 page.)*



**Exhibit B-2**

**General Location of  
Roadway Segment 1, Roadway Segment 2 and Roadway Segment 3**

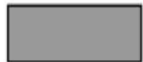
*(See following 1 page.)*



**LEGEND**



ROADWAY SEGMENT 1



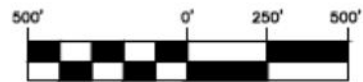
ROADWAY SEGMENT 2



ROADWAY SEGMENT 3



SCALE: 1" = 500'



Date: April 28, 2025, 8:48 AM - User: R. Searles  
 File: W:\Projects\2025\04\04\04\_00\_00\_Design\3-4\_Draft\3-4-4\_Bloomdale\_Franchise Exhibit.dwg

JOB NO. 70208-08  
 DATE APRIL 2025  
 DESIGNER DW  
 CHECKED EB DRAWN DW  
 SHEET 1 of 1

**BLOOMDALE RD. EXHIBIT**  
 MCKINNEY, TEXAS  
 COLLIN COUNTY, TEXAS



8105 TENNYSON PKWY, STE 210 | PLANO, TX 75024 | 214.420.8484  
 TEXAS ENGINEERING #15M #4670 | TEXAS SURVEYING #15M #1000880