

AFTER RECORDING, RETURN TO:

City Secretary
City of McKinney
P.O. Box 517
401 E. Virginia Street
McKinney, Texas 75069

City of McKinney, Texas
SECOND AMENDED AND RESTATED FACILITIES AGREEMENT
(Defer Construction of Certain Required Road and Park Improvements)

Timber Creek Addition

THIS SECOND AMENDED AND RESTATED FACILITIES AGREEMENT ("Agreement"), entered into by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and **TIMBER CREEK PROPERTIES, LLC**, a Delaware limited liability company, whose address is 2221 E. Lamar Blvd., Suite 790, Arlington, Texas 76006, ("DEVELOPER") witnesseth that:

WHEREAS, CITY and DEVELOPER's predecessor-in-interest Jobe Company, Inc. entered that certain Facilities Agreement for Timber Creek Addition on or about the 10th day of October 2002, and filed for record with the Collin County Clerk's Office on October 17, 2002, and recorded as Document No. 2002-0151295 (the "Original Agreement"); and

WHEREAS, CITY and DEVELOPER entered that First Amended Facilities Agreement for Timber Creek Addition on or about the 7th day of May 2013, and filed for record with the Collin County Clerk's Office on May 9, 2013, and recorded as Document No. 20130509000637710 (the "First Amendment"); and

WHEREAS, CITY and DEVELOPER now desire to amend, replace and supersede all provisions of the Original Agreement and the First Amendment by and through this Agreement; and

WHEREAS, the Subdivision Regulations of the City of McKinney, Texas contained in Article 3 of the Unified Development Code, Chapter 150 of the Code of the City of McKinney, Texas (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, Section 302B of the Subdivision Regulations requires the execution of a Facilities Agreement prior to the issuance of a Development Permit; and

WHEREAS, the development of the subdivision to be known as **Timber Creek Addition** involves the deferral of certain public facilities necessary to serve the development of the Property, certain pro rata payments, city participation in cost, escrow deposits or other future considerations, and/or other nonstandard development regulations that trigger the requirement for a Facilities Agreement by and between the CITY and the DEVELOPER in accordance with Section 302A of the Subdivision Regulations, as amended; 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 requests the recording of the Record Plat of one or more phases of a subdivision in the CITY known as **Timber Creek Addition**, which subdivision is being developed and platted in phases (hereinafter referred to as the "Plat," whether one or more) prior to the completion and acceptance of certain of the Public Improvements required to serve the subdivision as are identified in Exhibit B attached to this Agreement (the "Required Improvements"); and

WHEREAS, DEVELOPER agrees that the Required Improvements identified in Exhibit B attached to this Agreement will be installed after recordation of said Plat under the guarantees provided to the CITY as set forth herein.

NOW THEREFORE, in consideration of the intent and desire of the DEVELOPER, as set forth herein, and to gain approval of the CITY to record said Plat, the DEVELOPER and CITY agree as follows:

A. AMENDMENT

This Agreement specifically amends, replaces, and supersedes the First Amendment in its entirety, which First Amendment replaced and superseded the Original Agreement in its entirety.

B. PROPERTY

This Agreement is for Property located in the City of McKinney, on both sides of Hardin Boulevard in an area generally north of Wilmeth Road and generally south of Bloomdale Road containing approximately 204.508 acres of land, more fully described in Exhibit A attached hereto and fully incorporated herein by reference (the "Property").

C. PUBLIC IMPROVEMENTS

DEVELOPER agrees to complete the Required Improvements for the subdivision to be known as **Timber Creek Addition** within the time frames specified in this Agreement and the attached Exhibits, according to the construction plans regarding the construction of Required Improvements for said subdivision, which construction plans are on file with or will be completed and filed with and approved by the City Engineer (the "Plans") before such Public Improvements are permitted and constructed by DEVELOPER.

All Public Improvements, including utilities, drainage easements, sidewalks, street lighting, street signage, park land dedication, hike and bike trails and all other required improvements and dedications, for any phase of development within the Property shall be provided by DEVELOPER at no cost to CITY, in accordance with the CITY's Subdivision Ordinance and as approved by CITY Engineer, prior to issuance of any Certificate of Occupancy for structures within that phase of development. Engineering studies, plan/profile sheets, and other construction documents shall be provided by DEVELOPER at the time of platting as required by the Subdivision Ordinance. Such plans shall be approved by CITY Engineer or his agent prior to the issuance of a Development Permit.¹

1. THOROUGHFARES

- a. DEVELOPER has previously dedicated by plat or separate instrument to CITY, 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 depicted on Exhibit B-1 attached to this Agreement and incorporated herein by reference for all purposes allowed by law) that yielded one-half (½) of the ultimate right-of-way width that was not already dedicated by plat or legal instrument as road right-of-way upon the written request of the CITY's Engineer. DEVELOPER remains responsible for dedicating and shall dedicate all right-of-way for the interior streets and any turn lanes required along perimeter roadways serving the PROPERTY at the time of development. Specific uses may require additional right-of-way dedication at the time of site plan approval.

DEVELOPER shall construct, as part of the Public Improvements and at no cost to CITY, roadway improvements ("Roadway

¹ A "Development Permit" is a permit issued by the City that authorizes a developer to perform grading, utility, drainage, paving, and/or other similar construction activities usually associated with civil engineering plans. Unified Development Code, Chapter 150 of the Code of the City of McKinney, Texas ("UDC") § 902. In some instances, permits required to perform grading, utility installation, and paving may also be referred to as "Building Permits." *Id.* Development Permits are generally approved by the CITY's Director of Engineering while Building Permits are generally approved by the CITY's Building Inspections Department.

Improvements”) in accordance with the timing set forth in this Agreement and the requirements of the CITY’s Subdivision Ordinance and Street Design Standards then in effect. All roadway construction plans must be approved by CITY’s Engineer or his agent prior to approval of a Development Permit for that portion of the PROPERTY being developed. The Roadway Improvements that are being deferred by this Agreement to allow the early recording of the Record Plat are described on Exhibit B attached to this Agreement and fully incorporated herein by reference for all purposes allowed by law.

- b. In addition to, and notwithstanding the provisions of Subparagraph 1.a, above, and in accordance with and as further described in Exhibit B attached hereto, DEVELOPER shall also construct the three “Roadway Segments” being deferred by and through this Agreement identified as:
 - i. “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:
 - (a) 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
 - (b) 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

- (c) 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 herein below are completed; and
- ii. "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; and
- iii. "Roadway Segment 3," being a reduced roadway section of the two southern lanes (southern half) of Bloomdale Road extending in a westerly direction from the intersection of Bloomdale Road and Sweet Birch to the western boundary of the Property and tie in with the existing section of Bloomdale Road adjacent to the abutting Erwin Farms Subdivision as generally shown and identified as "Section 3" on Exhibit B-2 and shall be designed with certain reduced standards supported by City Staff, but which plans will still require a Staff-approved variance from the requirements of the Engineering Design Manual, as follows:
 - (a) Build the Roadway Segment 3 in the ultimate location of Bloomdale Road according to the Master Thoroughfare Plan;
 - (b) A twenty-four-foot (24') wide pavement area with two twelve-foot (12') wide lanes;
 - (c) Six inches (6") of concrete pavement with the specific materials to be identified in the design process;
 - (d) Eight inches (8") of lime treatment of the subgrade beneath the pavement area;
 - (e) No curb and gutter will be required on the outside (south) edge of the roadway;
 - (f) A modified drainage design will be required including a bar ditch with culverts crossing under Bloomdale Road

and any intersecting roads and driveways that meet the City's drainage design criteria;

- (g) Remove the transition that was constructed as a part of Roadway Segment 1, above, and restore the surface to a condition suitable for the construction of the median between the southern and northern lanes of Bloomdale Road and construct the median.

Roadway Segment 1, Roadway Segment 2, and Roadway Segment 3 are each being deferred by and through this Agreement and DEVELOPER's obligations and responsibilities together with the timing for completion of each Roadway Segment are more particularly set out in Exhibit B attached to this Agreement and incorporated herein by reference for all purposes allowed by law.

2. UTILITIES

DEVELOPER shall dedicate all easements and construct, at no cost to CITY, all necessary utility lines specifically including, but not limited to, any necessary off-site and oversize utility improvements ("Utility Improvements") to provide service to the PROPERTY in accordance with CITY standards, at such time as demand of the development on the PROPERTY requires or concurrent with the development of the PROPERTY, as determined by CITY. All utility easements dedicated to the CITY shall be free and clear of any and all encumbrances or restrictions on the CITY's use of the surface and subsurface areas of said utility easements that may in any way limit or restrict the CITY's access to, and use and enjoyment of, such utility easements including, but not limited to, the manner by which utilities may be accessed, installed, maintained, repaired and/or replaced in said utility easements

DEVELOPER shall construct all necessary utility lines to serve the interior of the PROPERTY; said lines shall be at least eight inches (8") in diameter or larger as demand of the development on the PROPERTY requires except that water lines along collector streets shall be a minimum twelve inches (12") in diameter. Notwithstanding the foregoing, all utility lines shall conform to the CITY's Master Water and Sewer Plans. In addition, DEVELOPER shall cooperate with CITY to allow utility lines to be upsized at no additional cost or expense to DEVELOPER in order to allow CITY to better serve adjacent and upstream properties and thereby avoid the need to replace utility lines before their useful life expectancy has been reached or run parallel utility lines. All utility plans and improvements are subject to the approval of CITY's Engineer. The Utility Improvements that are being deferred by this Agreement to allow the early recording of the Record Plat

are described on Exhibit C attached to this Agreement and fully incorporated herein by reference for all purposes allowed by law.

3. HIKE AND BIKE TRAILS

DEVELOPER shall, at no cost to the CITY, dedicate the easement or right-of-way for and construct all required concrete hike and bike trail improvements in accordance with the CITY's Subdivision Ordinance and Master Trail Plan, which such hike and bike trail improvements are more specifically described in Paragraph 4 of Exhibit G hereto and depicted on Exhibit J to this Agreement. The hike and bike trail shall be tied in or connected to the CITY's trail system or to the location(s)/area(s) identified as planned future extensions of the trail system specifically including, but not limited to, school sites and parkland sites. Final location and all hike and bike trail construction plans shall be subject to review and approval by the Director of Parks, Recreation, and Open Space, and as specified in greater detail in the attached Exhibits B, G, and J, which exhibits are fully incorporated herein by reference. All hike and bike trail construction plans must be approved by CITY's Parks, Recreation, and Open Space Director or his agent prior to approval of a Development Permit for any portion of the PROPERTY being developed.

D. SEPARATE PERFORMANCE / SUBDIVISION BOND FOR EACH ROADWAY SEGMENT

1. The DEVELOPER, in accordance with the requirements established by the Subdivision Ordinance of the CITY and this Agreement, shall tender to the CITY **before the CITY's execution of this Agreement** a guarantee of surety, specifically identified as: Subdivision Bond for Roadway Segment 1 Improvements for the Timber Creek Addition Subdivision (being a portion of the "Required Improvements" together with the Roadway Segment 2 Improvements and the Roadway Segment 3 Improvements), in the amount of _____ and _____/One Hundredths Dollars (\$_____), Bond No. _____ dated _____, 20____, with _____ (Insurance Company Name), as Surety, by order of the CITY, a copy of which Subdivision Bond for Roadway Segment 1 is attached hereto as Exhibit D-1 and fully incorporated herein by reference, assuring completion of the Required Improvements for Roadway Segment 1 prior to the issuance of any Certificate of Occupancy for any Lot within the adjacent phase of the Property.
2. In addition, the DEVELOPER, in accordance with the requirements established by the Subdivision Ordinance of the CITY and this Agreement, shall tender to the CITY **before the CITY's execution of this Agreement** a guarantee of surety, specifically identified as: Subdivision Bond for

Roadway Segment 2 Improvements for the Timber Creek Addition Subdivision (being a portion of the "Required Improvements" together with the Roadway Segment 1 Improvements and the Roadway Segment 3 Improvements), _____ in the amount of _____ and _____/One Hundredths Dollars (\$_____), Bond No. _____ dated _____, 20____, with _____ (Insurance Company Name), as Surety, by order of the CITY, a copy of which Subdivision Bond for Roadway Segment 2 is attached hereto as Exhibit D-2 and fully incorporated herein by reference, assuring completion (design and construction) of the Required Improvements for Roadway Segment 2 prior to the issuance of any Certificate of Occupancy for any Lot within the adjacent phase of the Property.

3. Further, the DEVELOPER, in accordance with the requirements established by the Subdivision Ordinance of the CITY and this Agreement, shall tender to the CITY **before the CITY's execution of this Agreement** a guarantee of surety, specifically identified as: Subdivision Bond for Roadway Segment 3 Improvements for the Timber Creek Addition Subdivision (being a portion of the "Required Improvements" together with the Roadway Segment 1 Improvements and the Roadway Segment 2 Improvements), in the amount of _____ and _____/One Hundredths Dollars (\$_____), Bond No. _____ dated _____, 20____, with _____ (Insurance Company Name), as Surety, by order of the CITY, a copy of which Subdivision Bond for Roadway Segment 3 is attached hereto as Exhibit D-3 and fully incorporated herein by reference, assuring completion (design and construction) of the Required Improvements for Roadway Segment 3 prior to the issuance of any Certificate of Occupancy for any Lot within the adjacent phase of the Property.
4. If CITY fails or refuses to execute this Agreement after DEVELOPER has provided the Subdivision Bonds for Roadway Segment 1, Roadway Segment 2, and Roadway Segment 3 the CITY will provide the DEVELOPER and the Surety a letter confirming that the CITY has declined to execute this Agreement, and that the CITY is therefore releasing the Subdivision Bonds.
5. It is specifically understood and agreed by and between DEVELOPER and CITY that time is of the essence in DEVELOPER completing the construction and obtaining the CITY's final acceptance of each of Roadway Segment 1, Roadway Segment 2, and Roadway Segment 3. DEVELOPER specifically agrees that each of Roadway Segment 1, Roadway Segment 2, and Roadway Segment 3 shall be initiated, constructed, and completed by DEVELOPER in sufficient time for each of Roadway Segment 1, Roadway Segment 2, and Roadway Segment 3 to be final accepted by CITY within

the respective times specified in Paragraph 1.G. of Exhibit B to this Agreement. Any other appurtenances or requirements necessary to the CITY's final acceptance of improvements related to Roadway Segment 1, Roadway Segment 2, and Roadway Segment 3 for which a specific time period for performance or completion is not stated shall be completed within no later than thirty (30) months from the Effective Date of this Agreement unless essential to CITY's ability to final accept Roadway Segment 1, Roadway Segment 2, and Roadway Segment 3 in which event such appurtenances or requirements shall be completed contemporaneously with the Roadway Segment impacted.

6. It is specifically understood and agreed if DEVELOPER fails to timely complete any part or portion of the work identified in Paragraph 1.G. of Exhibit B to this Agreement as being necessary to the construction of Roadway Segment 1 or Roadway Segment 2 or Roadway Segment 3 that such event(s) shall constitute a material default and breach of this Agreement by DEVELOPER. Upon the occurrence of any such event(s) of default and breach, the CITY shall provide DEVELOPER fourteen (14) days' written notice of such material default and breach together with the opportunity to cure the same within said fourteen-day cure period. If DEVELOPER fails or refuses to cure its material default and breach within said 14-day cure period, the CITY shall immediately be entitled to call on or make presentment of DEVELOPER's Subdivision Bond(s) for each of Roadway Segment 1, Roadway Segment 2, and Roadway Segment 3 that has not yet been final accepted by CITY on the date of DEVELOPER's material breach and default.
7. It is also specifically understood and agreed if DEVELOPER fails to timely obtain the CITY's final acceptance of the entirety of any one or more of Roadway Segment 1 or Roadway Segment 2 or Roadway Segment 3 within the time required by Paragraph 1.G. of Exhibit B to this Agreement that such failure to timely obtain the CITY's final acceptance thereof shall constitute a material default and breach of this Agreement by DEVELOPER. Upon the occurrence of any such failure by DEVELOPER to timely obtain CITY's final acceptance, the CITY shall provide DEVELOPER fourteen (14) days' written notice of such material default and breach together with an opportunity to cure its material default and breach within said 14-day cure period by obtaining CITY's final acceptance of the entirety of the Roadway Segments that have not yet been final accepted by the CITY. If DEVELOPER fails or refuses to cure its material default and breach within said 14-day cure period, the CITY shall immediately be entitled to call on or make presentment of DEVELOPER's Subdivision Bond(s) for each of Roadway Segment 1, Roadway Segment 2, and Roadway Segment 3 that has not yet been final accepted by CITY on the date of DEVELOPER's material breach and default.

8. The only requirements for presentment of any Subdivision Bond accepted hereunder by CITY shall be the presentation of the original thereof, together with an affidavit executed by the City Manager stating that DEVELOPER is in default under the terms of this Agreement and that DEVELOPER has failed to timely cure such material breach and default accompanied by a copy of the City's correspondence to DEVELOPER informing DEVELOPER it is in material default and breach of the Agreement and providing DEVELOPER fourteen (14) days to cure the same.
9. The CITY will return to DEVELOPER the Subdivision Bond for each respective Roadway Segment 1, 2, or 3 that is timely constructed by DEVELOPER and final accepted by CITY within the specific time frames established in Paragraph 1.G. of Exhibit B to this Agreement provided that DEVELOPER did not default on DEVELOPER's obligation to timely complete and obtain final acceptance of any other Roadway Segment and provided further that DEVELOPER has also timely provided CITY with the required all-bills' paid affidavit and Maintenance Bond for each such Roadway Segment 1 or Roadway Segment 2 or Roadway Segment 3 as required by the Subdivision Regulations.
10. The amount of the Subdivision Bond for Roadway Segment 1 pursuant to this Agreement was computed as follows: The total cost of constructing the Required Improvements for Roadway Segment 1 as reflected in the private construction contract between DEVELOPER and a contractor (the "Construction Contract"),² a copy of which contract has been provided to the Director of Engineering for the sole purpose of confirming the cost of constructing Roadway Segment 1, plus twenty percent (20%) of the Construction Contract cost for Roadway Segment 1, such additional amount to cover unexpected or incidental costs of completion, including administrative expenses, and certain other required costs and expenses such as the Performance, Payment and Maintenance Bonds and other contingencies the Contractor identified as being omitted from the Construction Contract. The Construction Contract shall be assigned to City, as security only, by Contractor's execution of the assignment attached hereto as Exhibit F, which assignment shall grant the City rights, but not obligations thereunder, to require the Contractor's performance under the Construction Contract for Roadway Segment 1.
11. The amount of the Subdivision Bond for each of Roadway Segment 2 and Roadway Segment 3 pursuant to this Agreement was computed as follows:

² DEVELOPER asserts the Construction Contract contains confidential trade secrets and proprietary information beyond the scope of this Agreement. Based on DEVELOPER's assertions, if City receives any requests for disclosure of all or any portion of the Construction Contract, City will decline to release the requested information for the purpose of allowing DEVELOPER the opportunity to request an attorney general decision regarding the privacy and property interests of DEVELOPER and whether all or any of the Construction Contract must be released in accordance with the provisions of the Texas Public Information Act and particularly Tex. Gov't Code § 552.305, as amended.

The total cost of designing and constructing the Required Improvements for each of Roadway Segment 2 and Roadway Segment 3, as reflected in the Engineer's signed and sealed Opinion of Probable Construction Costs ("OPCC"), a copy of each such OPCC being attached hereto as Exhibit E-2 for Roadway Segment 2 and Exhibit E-3 for Roadway Segment 3 and fully incorporated herein by reference, plus twenty percent (20%) of the OPCC for Roadway Segment 2 and Roadway Segment 3, respectively, such additional amount to cover unexpected or incidental costs of completion, including administrative expenses, and certain other required costs and expenses such as the Performance, Payment and Maintenance Bonds and other contingencies identified as being omitted from the OPCC.

12. In the event the DEVELOPER shall fail or neglect to fulfill its obligations under this Agreement and as required by the Subdivision Ordinance, the DEVELOPER as Principal, and the Guarantor of Surety on the subject Subdivision Bond shall be liable to pay for the cost of design and construction and installation of the Required Improvements for each of Roadway Segment 1, Roadway Segment 2, and Roadway Segment 3 (collectively the "Road Segments"), including but not limited to, engineering, legal, administrative and contingent costs together with any damages, either direct or consequential, which the CITY may sustain as a result of the failure of the DEVELOPER to carry out and execute all of the provisions of this Agreement and the provisions of the Subdivision Ordinance regarding any or all of the specific Road Segments that are the subject of DEVELOPER's failure or neglect to fully perform.
13. The DEVELOPER further agrees that the CITY, at the City's option, shall have the right to enter upon DEVELOPER'S property and design, construct and install, or pursuant to public advertisement and receipt of bids, cause to be designed, constructed and installed the Required Improvements in the event the DEVELOPER fails or refuses to do so in accordance with the terms of the Agreement for any of Roadway Segment 1, Roadway Segment 2, or Roadway Segment 3; and, that DEVELOPER shall be liable hereunder to reimburse the CITY the total cost to complete (design and construction) the Required Improvements for any of Roadway Segment 1, Roadway Segment 2, or Roadway Segment 3 plus such other and further costs and expenses enumerated in this Paragraph D.

E. PARK DEDICATION

1. DEVELOPER shall dedicate required parkland concurrently with platting and development of the Property to provide for the recreational needs created by such development as set forth herein and as determined by the CITY's Parks Department. The approved parkland site(s) shall be shown on the plat as a fee simple conveyance to the CITY and shall be conveyed to the CITY by Special Warranty Deed free of all encumbrances 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. The DEVELOPER shall also be responsible for, and pay the costs of, providing convenient access by improved streets, sidewalks and, adequate drainage improvements so that the site is suitable for the purpose intended, and shall provide water, sewer and electrical utilities to the Property in accordance with the procedures applicable to other public improvements as specified in the Subdivision Ordinance of the CITY.
3. In the alternative and subject to the determination of the Director of the CITY's Parks, Recreation, and Open Space Department all or part of the DEVELOPER'S parkland dedication requirements may be satisfied by the payment of money in lieu of land. The amount of cash to be paid in lieu of parkland dedication shall be determined based upon the Collin Central Appraisal District's most recent appraisal of all or part of the Property at the time the fees are paid for any future phase of development instead of and rather than the appraisal value of the Property on the Effective Date of this Agreement. The DEVELOPER'S park land dedication obligations (including a payment of any fees in lieu thereof) shall be as set forth on Exhibit G attached hereto provided DEVELOPER does not change the currently approved zoning applicable to the Property.
4. DEVELOPER may pay cash in lieu of dedication in advance of any phase of development for which the CITY's Parks Department has approved fees in lieu of dedication, based on the CITY ordinance requirement of one (1) acre of parkland dedication, outside of any floodplain on the Property, for each fifty (50) single-family residential lots by paying an estimated amount equal to the value of the Property established by the most recent appraisal of all or part of the Property made by the central appraisal district.³ DEVELOPER acknowledges and understands that the calculations regarding required parkland dedication and fees in lieu of dedication shall change if the number of single-family residential lots is changed. In the event of an increase in the number of single-family residential lots for any phase(s) of the Property following DEVELOPER's pre-payment of the cash in lieu of dedication, the DEVELOPER shall dedicate additional parkland or pay additional fees in lieu of dedication as recalculated by the CITY. In the event of a decrease in the number of single-family residential lots for which DEVELOPER prepaid cash in lieu of dedication under this provision, the DEVELOPER shall be entitled to a pro-rata refund or reimbursement of any "overpayment" upon completion of all phases of the Property and final build out of said lots and Property.

³ This calculation recognizes that development of this property was initiated prior to the amendment to the CITY's park dedication requirements.

5. In any event, all required parkland shall be dedicated or cash in lieu of dedication shall be paid to CITY prior to the platting of the last phase of the Property. DEVELOPER shall not be allowed to file the plat for the last phase of the Property until the parkland dedication or cash payment is satisfied.

F. CITY DEVELOPMENT ORDINANCES

Save and except as specifically modified herein, 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, Street Design Standards, Public Improvements Policy and construction standards.

G. 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 Ordinance or Subdivision Ordinance or any other ordinance of the CITY except as herein specifically agreed.

H. VARIANCES

It is expressly acknowledged that only those variances to the Zoning Ordinance and Subdivision Ordinance or other applicable CITY ordinances stipulated in attached Exhibit G, if any, are granted by CITY for this subdivision and/or development. In this regard it is recognized by the Parties that Exhibit G is attached to this Agreement and incorporated herein by reference for all purposes allowed by law.

I. INDEMNITY AND HOLD HARMLESS AGREEMENT

DEVELOPER, its successors, assigns, vendors, grantees, and/or trustees do hereby agree to fully indemnify, protect and hold CITY harmless from all third-party claims, suits, judgments, and demands, including its reasonable attorney's fees, arising out of the sole or concurrent negligence of DEVELOPER, and only to the extent or percentage attributable to DEVELOPER, in the subdividing, development, or construction of Public Improvements, including the negligent maintenance thereof. DEVELOPER shall not be responsible for or be required to indemnify CITY from CITY'S own negligence. The indemnity contained in this Paragraph shall expire five (5) years from the date of final acceptance of each phase of the Public Improvements.

J. LIEN; ASSESSMENT

In the event DEVELOPER fails to comply with any of the provisions of this Agreement and (a) the CITY is unable for any reason to collect against any one or more of the Subdivision Bonds provided by DEVELOPER to CITY pursuant to Paragraph D of this Agreement or (b) the amount of any one or more of the Subdivision Bonds provided by DEVELOPER to CITY pursuant to Paragraph D of this Agreement is insufficient to cover all of the costs required for the construction of any Required Improvements deferred by this Agreement, CITY shall be 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 any such Required Improvements to be held as a tax lien against the Property by CITY.

K. ROUGH PROPORTIONALITY AND WAIVER OF CLAIMS.

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 DEVELOPER, regarding DEVELOPER's rights under Texas and federal law. 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.) 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, 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, utility, and park improvements made herein constitutes a proportional allocation of DEVELOPER's responsibility for roadway, utility, and park improvements for the Property. DEVELOPER hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code. DEVELOPER further releases CITY from any and all claims based on excessive or illegal exactions; it being agreed that OWNERS' infrastructure contribution(s) (after receiving all contractual offsets, credits and reimbursements) is roughly proportional or roughly proportionate to the demand that is placed on the roadway, utility, and park systems by DEVELOPER's Property. DEVELOPER further acknowledges that the benefits of 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 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.**

L. 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.

M. ASSIGNABILITY

This Agreement shall not be assignable by DEVELOPER without the prior written consent of the CITY, and such consent shall not be unreasonably withheld, conditioned or delayed.

N. TERMINATION AND RELEASE

Upon satisfactory completion by DEVELOPER and final acceptance by CITY of all requirements of this Agreement as to any phase of development within the Property, this Agreement shall terminate as to such phase of development and CITY will execute a partial release of this Agreement as to such phase of development and the Property included therein in favor of DEVELOPER, its heirs, successors, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future. Otherwise, this Agreement shall not terminate until the requirements of all parties have been fulfilled.

O. MAINTENANCE BOND

Prior to final acceptance of improvements to Property, DEVELOPER has furnished to CITY a good and sufficient maintenance bond in the amount of fifteen percent (15%) of the contract price of such improvements, or in such amount as approved by the City Engineer, with a reputable and solvent corporate surety, in favor of CITY, to indemnify City against any repairs arising from defective workmanship or materials used in any part of the construction of improvements to Property, for a period of two (2) years from the date of final acceptance of such improvements.

P. GENERAL PROVISIONS

1. **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the latter of the dates on which the DEVELOPER and CITY have each executed this Agreement. If the date on which the Agreement is

executed by either party is omitted from one or both of the signature blocks below, the Effective Date shall be the latter of (a) the date on which the City Council approved this Agreement or (b) the date on which the Agreement was executed by the City Manager or his designee.

2. DEVELOPER hereby relieves CITY of any responsibilities for any inadequacies in the preliminary plans, exhibits and cost estimate(s) supplied for the purpose of this Agreement, and further agrees that DEVELOPER will comply with CITY's Subdivision Ordinance, Street Design Standards, Public Improvements Policy and any other applicable policies, rules, regulations and ordinances of CITY regarding development of Property.
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. Unless otherwise specified in this Agreement or an attachment hereto, it is understood that any obligation on the part of CITY to make any refunds under this Agreement shall cease upon the expiration of thirty (30) months from the Effective Date, except when extended for good cause and agreed to in writing by CITY and DEVELOPER. It is understood and agreed by and between the Parties that this thirty (30) month expiration provision does not impact or apply to any other agreements between the parties that are not being amended by this Agreement including, but not necessarily limited to, a Pipeline Relocation Escrow Agreement, a Roadway Impact Fee Credit Agreement, or a Utility Impact Fee Credit Agreement between the parties.
5. DEVELOPER shall provide park land to CITY or pay money to CITY in lieu of dedicating park land in accordance with Section 309.G, "Payment of Fees in Lieu of Parkland Dedication," of Article 3, "Subdivision Regulations," of Chapter 150, "Unified Development Code" and as provided in Section E of this Agreement, as such requirements may be modified by Section 2 of Exhibit G, "Variances," attached to this Agreement and incorporated herein by reference for all purposes allowed by law.
6. It is specifically understood and agreed that the Property may be developed and platted in phases. Required Improvements for each such phase shall be provided as required herein and in accordance with CITY's Subdivision Ordinance, Street Design Standards, Public Improvements Policy and any other applicable policies, rules, regulations and ordinances of CITY regarding development of Property. CITY agrees to record the plat for each such phase of development of the Property at such time as the Plat

complies with the requirements set forth by the Subdivision Ordinance of CITY, and has been approved in the manner described therein.

7. **Notices.** Whenever any notice is required or permitted under this Agreement, it shall be in writing and shall be delivered (i) by electronic mail with receipt confirmation; (ii) personally, with acknowledgment of receipt being obtained by the delivering party, (iii) by U.S. Certified Mail, pre-paid and return receipt requested; or (iv) by overnight delivery service by a reliable courier, such as Federal Express or United Parcel Service, with acknowledgement of receipt being obtained by the delivering party. Notice given in accordance with (i), (ii), (iii) or (iv) herein shall be deemed given when received. 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 Blvd., Suite 790
Arlington, Texas 76006
laurenadams@forestar.com

City:

City of McKinney
Office of the City Manager
401 E. Virginia 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. For purposes of this Agreement a "business day" is a day that is not a Saturday, Sunday or legal holiday.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers as follows.

CITY OF MCKINNEY

By: _____

PAUL G. GRIMES
City Manager

Date Signed: _____

ATTEST:

EMPRESS DRANE
City Secretary
TENITRUS PARCHMAN
Deputy City Secretary

TIMBER CREEK PROPERTIES, LLC,
a Delaware limited liability company

By: *FORESTAR (USA) REAL ESTATE
GROUP INC.*, a Delaware
corporation,
Managing Member

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 _____, 2025.

Notary Public _____ County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 2025, 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 he executed the same on behalf of and as the act of said company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF _____, 2025.

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

LAND DESCRIPTION

BEING a tract of land situated in the W.M.B. Tucker Survey, Abstract No. 911, the H. Tucker Survey, Abstract No. 907 and the Meredith Hart Survey, Abstract No. 371, City of McKinney, Collin County, Texas and being a portion of a tract of land described in instrument to Priority Development, L.P. as recorded in Volume 5203, Page 6230 and Volume 5203, Page 6224 Deed Records Collin County, Texas and being more particularly described as follows;

BEGINNING at a 5/8 inch iron rod found with cap stamped "Huitt-Zollars" at the southwest corner of Lot 12, Block D of the Record Plat of Timber Creek Phase 1, an addition to the City of McKinney as recorded in Cabinet P, Page 713 Plat Records Collin County, Texas;

THENCE North 89 degrees 19 minutes 59 seconds West a distance of 168.27 feet to a point for corner;

THENCE North 09 degrees 06 minutes 04 seconds East a distance of 22.02 feet to a point for corner;

THENCE North 04 degrees 07 minutes 01 seconds East a distance of 374.35 feet to a point for corner;

THENCE North 05 degrees 13 minutes 40 seconds East a distance of 328.07 feet to a point for corner;

THENCE North 06 degrees 10 minutes 24 seconds East a distance of 479.08 feet to a point for corner;

THENCE North 74 degrees 18 minutes 18 seconds West a distance of 13.74 feet to a point for corner;

THENCE North 10 degrees 35 minutes 40 seconds East a distance of 37.93 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

THENCE South 89 degrees 11 minutes 20 seconds West a distance of 784.35 feet to a 1/2 inch iron rod found;

THENCE North 00 degrees 32 minutes 19 seconds East a distance of 1078.85 feet to a 1/2 inch iron rod found;

THENCE South 89 degrees 27 minutes 01 seconds West a distance of 195.68 feet to a ½ inch iron rod found;

THENCE North 01 degrees 24 minutes 43 seconds West a distance of 1631.52 feet to a ½ inch iron rod found;

THENCE South 88 degrees 35 minutes 17 seconds West a distance of 50.00 feet to a ½ inch iron rod found;

THENCE North 01 degrees 24 minutes 43 seconds West a distance of 871.62 feet to a point for corner;

THENCE North 89 degrees 32 minutes 28 seconds East a distance of 1243.53 feet to a point for corner;

THENCE North 89 degrees 15 minutes 09 seconds East a distance of 505.12 feet to a point for corner at the beginning of a curve to the right having a central angle of 41 degrees 43 minutes 00 seconds a radius of 1050.00 feet and being subtended by a chord which bears South 69 degrees 53 minutes 21 seconds East a distance of 747.72 feet;

THENCE along said curve to the right an arc distance of 764.50 feet to a point for corner at the end of said curve;

THENCE South 49 degrees 01 minutes 51 seconds East a distance of 294.53 feet a point for corner at the beginning of a curve to the left having a central angle of 10 degrees 00 minutes 00 seconds a radius of 1050.00 feet and being subtended by a chord which bears South 54 degrees 01 minutes 51 seconds East a distance of 183.03 feet;

THENCE along said curve to the right an arc distance of 183.26 feet to a point for corner at the end of said curve;

THENCE South 59 degrees 01 minutes 51 seconds East, passing at a distance of 231.21 feet a 5/8 inch iron rod found with cap stamped "Huitt-Zollars" at the southwest corner of a tract of land described in instrument to Unicorn Land and Cattle Company as recorded in Volume 5527, Page 1233 (D.R.C.C.T.) and continuing in all a distance of 508.72 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars" at the southeast corner of said Unicorn Land and Cattle Company tract;

THENCE South 01 degrees 17 minutes 30 seconds West a distance of 1357.40 feet to a point for corner;

THENCE South 62 degrees 07 minutes 08 seconds West a distance of 73.13 feet to a point for corner;

THENCE South 54 degrees 35 minutes 19 seconds West a distance of 106.04 feet to a point for corner;

THENCE North 54 degrees 05 minutes 30 seconds West a distance of 99.37 feet to a point for corner;

THENCE South 80 degrees 22 minutes 44 seconds West a distance of 31.00 feet to a point for corner;

THENCE South 46 degrees 28 minutes 09 seconds West a distance of 35.96 feet to a point for corner;

THENCE South 22 degrees 07 minutes 12 seconds East a distance of 67.00 feet to a point for corner;

THENCE South 06 degrees 57 minutes 22 seconds West a distance of 107.85 feet to a point for corner;

THENCE South 15 degrees 03 minutes 37 seconds West a distance of 58.30 feet to a point for corner;

THENCE South 41 degrees 55 minutes 13 seconds West a distance of 77.97 feet to a point for corner;

THENCE South 72 degrees 56 minutes 13 seconds West a distance of 81.66 feet to a point for corner;

THENCE South 04 degrees 45 minutes 07 seconds West a distance of 33.85 feet to a point for corner;

THENCE South 43 degrees 38 minutes 44 seconds East a distance of 37.00 feet to a point for corner;

THENCE South 00 degrees 44 minutes 22 seconds East a distance of 23.47 feet to a point for corner;

THENCE South 01 degrees 40 minutes 43 seconds East a distance of 47.54 feet to a point for corner;

THENCE South 18 degrees 37 minutes 04 seconds West a distance of 40.27 feet to a point for corner;

THENCE North 84 degrees 57 minutes 45 seconds West a distance of 64.95 feet to a point for corner;

THENCE South 73 degrees 35 minutes 45 seconds West a distance of 35.17 feet to a point for corner;

THENCE North 82 degrees 56 minutes 19 seconds West a distance of 43.22 feet to a point for corner;

THENCE North 67 degrees 38 minutes 58 seconds West a distance of 41.54 feet to a point for corner;

THENCE South 74 degrees 49 minutes 51 seconds West a distance of 32.71 feet to a point for corner;

THENCE South 34 degrees 50 minutes 50 seconds East a distance of 35.10 feet to a point for corner;

THENCE South 28 degrees 36 minutes 39 seconds East a distance of 24.67 feet to a point for corner;

THENCE South 47 degrees 46 minutes 03 seconds West a distance of 45.89 feet to a point for corner;

THENCE South 20 degrees 34 minutes 40 seconds West a distance of 30.16 feet to a point for corner on the northerly line of the aforementioned Timber Creek Phase 1;

THENCE along the northerly and westerly lines of said Timber Creek Phase 1 the following;

North 89 degrees 55 minutes 30 seconds West a distance of 349.79 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 46 degrees 04 minutes 14 seconds West a distance of 86.68 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 58 degrees 34 minutes 11 seconds West a distance of 243.70 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 70 degrees 02 minutes 58 seconds West a distance of 91.26 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 39 degrees 11 minutes 00 seconds West a distance of 86.17 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 08 degrees 37 minutes 56 seconds West a distance of 88.90 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 21 degrees 17 minutes 39 seconds West a distance of 60.36 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 36 degrees 57 minutes 30 seconds West a distance of 50.13 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 55 degrees 38 minutes 01 seconds West a distance of 59.20 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 47 degrees 11 minutes 53 seconds West a distance of 681.21 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 47 degrees 04 minutes 57 seconds East a distance of 121.10 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars" at the beginning of a non-tangent curve to the left having a central angle of 36 degrees 44 minutes 39 seconds a radius of 275.00 feet and being subtended by a chord which bears South 24 degrees 32 minutes 44 seconds West a distance of 173.35 feet;

Along said curve to the left an arc distance of 176.36 feet to a point for corner at the end of said curve;

South 06 degrees 10 minutes 24 seconds West a distance of 60.49 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 50 degrees 42 minutes 02 seconds West a distance of 14.26 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

North 84 degrees 46 minutes 20 seconds West a distance of 5.28 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 05 degrees 38 minutes 58 seconds West a distance of 80.00 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 84 degrees 46 minutes 20 seconds East a distance of 5.50 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 39 degrees 46 minutes 20 seconds East a distance of 14.14 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars";

South 05 degrees 13 minutes 40 seconds West a distance of 152.28 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars" at the beginning of a curve to the left having a central angle of 04 degrees 33 minutes 39 seconds a radius of 2000.00 feet and being subtended by a chord which bears South 02 degrees 56 minutes 50 seconds West a distance of 159.16 feet;

Along said curve to the left an arc distance of 159.21 feet to a point for corner at the end of said curve;

South 00 degrees 40 minutes 01 seconds West a distance of 127.46 feet to a 5/8 inch iron rod found with cap stamped "Huitt-Zollars" at the beginning of a non-tangent curve to the left having a central angle of 115 degrees 31 minutes 59 seconds a radius of 50.00 feet and being subtended by a chord which bears South 05 degrees 08 minutes 28 seconds East a distance of 84.59 feet;

Along said curve to the left an arc distance of 100.82 feet to a point for corner at the end of said curve;

South 27 degrees 05 minutes 33 seconds West a distance of 129.39 feet to the **POINT OF BEGINNING** and containing 219.41 acres of land, more or less.

SAVE AND EXCEPT THE FOLLOWING TRACT OF LAND:

LAND DESCRIPTION

Being a 11.26 acre tract of land situated in the Wm. B. Tucker Survey, Abstract No. 911, City of McKinney, Collin County, Texas and being a portion of a tract of land described in Warranty Deed to the McKinney Independent School District as recorded in Volume 5714, Page 3765 of the Land Records Collin County, Texas and being more particularly described as follows;

COMMENCING at a 5/8 inch iron rod found with a yellow plastic cap stamped "Huitt-Zollars" at a southerly corner of said Priority Development, L.P. tract, said point also being the northeast corner of a tract of land described in instrument to the Littrell Revocable Living Trust as recorded in Volume 5024, Page 1403 and Volume 4791, Page 2752 of the Land Records Collin County Texas;

THENCE, North 02 degrees 28 minutes 10 seconds West, a distance of 239.57 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars" at the **POINT OF BEGINNING**;

THENCE, North 76 degrees 08 minutes 47 seconds West, a distance of 201.34 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 58 degrees 05 minutes 16 seconds West, a distance of 153.47 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 19 degrees 02 minutes 10 seconds West, a distance of 59.08 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 43 degrees 19 minutes 07 seconds West, a distance of 65.69 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 23 degrees 58 minutes 31 seconds West, a distance of 113.81 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 47 degrees 26 minutes 01 seconds West, a distance of 106.51 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars", from which a 1/2 inch iron rod found at a southwesterly corner of said Priority Development, L.P. tract bears North 89 degrees 27 minutes 41 seconds West a distance of 252.96 feet and South 00 degrees 32 minutes 19 seconds West a distance of 661.87 feet;

THENCE, North 42 degrees 33 minutes 59 seconds East, a distance of 45.15 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 26 degrees 32 minutes 27 seconds East, a distance of 90.94 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 18 degrees 11 minutes 29 seconds East, a distance of 56.01 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 10 degrees 56 minutes 33 seconds East, a distance of 59.82 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, North 01 degrees 26 minutes 29 seconds West, a distance of 199.41 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars", from which a 1/2 inch iron rod found at a northwesterly corner of said Priority Development, L.P. tract bears South 88 degrees 54 minutes 30 seconds West a distance of 344.09 feet;

THENCE, North 88 degrees 33 minutes 31 seconds East, a distance of 637.32 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars" at the beginning of a curve to the right having a central angle of 41 degrees 37 minutes 46 seconds, a radius of 195.40 feet and being subtended by a chord which bears South 70 degrees 37 minutes 36 seconds East a distance of 138.87 feet;

THENCE, along said curve to the right an arc distance of 141.97 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars" at the end of said curve;

THENCE, South 49 degrees 48 minutes 43 seconds East, a distance of 83.64 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, South 04 degrees 48 minutes 43 seconds East, a distance of 21.21 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars";

THENCE, South 40 degrees 11 minutes 17 seconds West, a distance of 163.68 feet to a 5/8 inch iron rod set with a yellow plastic cap stamped "Huitt-Zollars" at the beginning of a curve to the left having a central angle of 26 degrees 20 minutes 04 seconds, a radius of 1490.00 feet and being subtended by a chord which bears South 27 degrees 01 minutes 15 seconds West a distance of 678.82 feet;

THENCE, along said curve to the left an arc distance of 684.83 feet to the **POINT OF BEGINNING** and containing 11.26 acres of land, more or less.

LAND DESCRIPTION PHASE 2B

BEING a tract of land situated in the W.M.B. Tucker Survey, Abstract No. 911, City of McKinney, Collin County, Texas and being a portion of a tract of land described in instrument to Priority Development L.P. as recorded in Volume 5203, Page 6224 Deed Records Collin County, Texas and being more particularly described as follows;

BEGINNING at a 5/8 inch iron rod found with cap stamped AHuitt-Zollars@ at the southeast corner of Lot 28, Block D of the Record Plat of Timber Creek Phase 1, an addition to the City of McKinney as recorded in Cabinet P, Page 713 Plat Records Collin County, Texas and being on the westerly right-of-way line of Timber Ridge Trail (a 50' ROW) as shown on said Timber Creek Phase 1 Plat and being the beginning of a non-tangent curve to the right having a central angle of 13 degrees 14 minutes 40 seconds a radius of 575.00 feet and being subtended by a chord which bears South 02 degrees 13 minutes 29 seconds West a distance of 132.62 feet;

THENCE along the westerly right-of-way line of said Timber Ridge Trail the following;

Along said curve to the right an arc distance of 132.92 feet to a 5/8 inch iron rod found with cap stamped AHuitt-Zollars@ at the beginning of a reverse curve to the left having a central angle of 27 degrees 50 minutes 49 seconds a radius of 325.00 feet and being subtended by a chord which bears South 05 degrees 04 minutes 36 seconds East a distance of 156.41 feet;

Along said curve to the left an arc distance of 157.96 feet to a 5/8 inch iron rod found with cap stamped AHuitt-Zollars@ at the end of said curve;

South 19 degrees 00 minutes 00 seconds East a distance of 105.39 feet to a 5/8 inch iron rod found with cap stamped AHuitt-Zollars@ at the beginning of a curve to the right having a central angle of 17 degrees 44 minutes 36 seconds a radius of 225.00 feet and

being subtended by a chord which bears South 10 degrees 07 minutes 42 seconds East a distance of 69.40 feet;

Along said curve to the right an arc distance of 69.68 feet to a 5/8 inch iron rod found with cap stamped AHuitt-Zollars® at the end of said curve;

South 45 degrees 15 minutes 14 seconds West a distance of 21.36 feet to a 5/8 inch iron rod found with cap stamped AHuitt-Zollars® on the northerly line of a 60 foot right-of-way dedication for Wilmeth Road as shown on said Timber Creek Phase 1 Plat;

THENCE South 89 degrees 51 minutes 15 seconds West, along the northerly right-of-way line of Wilmeth Road, a distance of 434.73 feet to a 5/8 inch iron rod found with cap stamped AHuitt-Zollars®;

THENCE North 16 degrees 57 minutes 29 seconds East, departing the northerly right-of-way line of Wilmeth Road, a distance of 496.94 feet to a point for corner on the southerly line of the aforementioned Block D of said Timber Creek Phase 1 Plat;

THENCE South 89 degrees 19 minutes 59 seconds East, along the southerly line of said Block D, a distance of 249.76 feet to the **POINT OF BEGINNING** and containing 3.642 acres of land, more or less.

EXHIBIT B

PUBLIC THOROUGHFARE IMPROVEMENTS

DEVELOPER is responsible for the construction of the facilities detailed below. Those facilities must be complete and accepted by CITY for each phase of development of the Property as it is platted prior to the issuance of a Final Acceptance letter for the Required Improvements for each such phase platted. In the event any public facilities required to serve the development of Property are installed by a party other than DEVELOPER, those facilities must be complete and accepted by CITY prior to the issuance of a Final Acceptance letter for the Public Improvements required herein for such phase of development. No Certificate of Occupancy for any structure within a phase of development shall be issued for any building within that phase of development on the Property until Final Acceptance of the Public Improvements for the phase then being platted and developed.

1. **THOROUGHFARES.** Construction of thoroughfares includes paving, drainage, striping, street lighting, sidewalks, erosion control, and other related appurtenances.
 - A. DEVELOPER shall construct all necessary Public Improvements required to meet City of McKinney standards as stipulated in Section C of this Agreement and as shown on the attached Exhibit B-1. Thoroughfare Improvements shall include left-turn lanes, drainage, striping, street lighting, sidewalks, erosion control, and other related appurtenances.
 - B. DEVELOPER has constructed the two (2) northbound lanes of Hardin Boulevard beginning at Wilmeth Road and continuing adjacent to Phase I of Timber Creek and the two (2) southbound lanes to approximately Davis Meadow Drive, as shown in Exhibit B-1. Subsequent portions of Hardin Boulevard and Bloomdale Road identified as "Roadway Segment 1," "Roadway Segment 2," and "Roadway Segment 3" shall be constructed in strict accordance with the timing set out below in Paragraph G. DEVELOPER is obligated to construct two full lanes of Bloomdale Road adjacent to the northern boundary of the Property and that portion of the full width four-lane divided thoroughfare for Hardin Boulevard which lies wholly within the Property together with any necessary transitions from two-lane to four-lane roadway segments and turn lanes.
 - C. DEVELOPER has previously entered two (2) separate Roadway Impact Fee Credit Agreements with the CITY outside of this Agreement for construction of portions of Hardin Boulevard benefitting Timber Creek Addition Phases 2, 2C, 3, and 4, recorded in the Collin County Deed Records on or about April 27, 2016 as Clerk's Document No. 20160427000504100, and Timber Creek Addition Phases 5 and 6 recorded in the Collin County Deed Records on or about August 4, 2020 as Clerk's

Document No. 20200804001248000. DEVELOPER shall be entitled to enter into one or more additional Roadway Impact Fee Credit Agreements with the CITY outside of this Agreement to receive impact fee credits for those portions of Roadway Segments 1 and 2 actually constructed by DEVELOPER that are identified on CITY's Impact Fee Capital Improvement Program and which roadway improvements are not the subject of one or both of the earlier executed Roadway Impact Fee Credit Agreements. DEVELOPER shall also be entitled to enter into a Roadway Impact Fee Credit Agreement with the CITY outside of this Agreement to receive partial impact fee credits for the reduced roadway section of Roadway Segment 3 that is not intended to be built to the full standards of the Master Thoroughfare Plan and Engineering Design Manual to the extent Roadway Segment 3 is actually constructed by DEVELOPER and identified on CITY's Impact Fee Capital Improvement Program provided such roadway improvements are not the subject of one or both of the earlier executed Roadway Impact Fee Credit Agreements. DEVELOPER shall be responsible for paying to CITY any impact fees exceeding the impact fee credits arising out of DEVELOPER's construction of impact fee eligible roadways. Any CITY participation in the construction of any roadway eligible for impact fee credits shall be excluded from the calculation of DEVELOPER's impact fee credits. Further, DEVELOPER shall not be entitled to receive impact fee credits for any impact fee eligible roadway that is constructed by any person or party except DEVELOPER, unless DEVELOPER can provide satisfactory evidence to CITY that DEVELOPER or DEVELOPER's predecessor in title constructed portions of an eligible roadway for which such predecessor in title received no impact fee credits or money in lieu thereof. If DEVELOPER'S impact fee credits are equal to, or greater than, the value of the impact fees associated with development of the Property as calculated by the CITY Engineering Department, no roadway impact fees shall be due from DEVELOPER to CITY for this Property, and no extra impact fee credits shall be issued by the CITY to DEVELOPER for use on any other property.

- D. County Road 1007 within the limits of the Property has previously been abandoned to DEVELOPER or its assigns with each plat for development of a particular phase within the Property providing replacement access has been approved and filed of record with Collin County. CITY shall continue to abandon County Road 1007 within the limits of the Property as development continues.
- E. DEVELOPER shall dedicate and construct all other required thoroughfares and necessary internal roadways and appurtenances thereto as reflected on the Plat for each phase of development.
- F. All Public Improvements must be complete and accepted by CITY for each phase of development of the Property as it is platted prior to the issuance

of a Final Acceptance letter for the Public Improvements for each such phase platted.

G. The following three Roadway Segments are being deferred by DEVELOPER, and shall be constructed by DEVELOPER as provided generally in Subparagraphs 1. through 3. of this Paragraph G in strict conformity with the CITY's Ordinances to obtain CITY's final acceptance of each such Roadway Segment in a timely manner.

(1) "Roadway Segment 1" includes the completion of the 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:

(a) 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

(b) 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

(c) 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 herein below are completed, subject to the following additional requirements:

(i) DEVELOPER shall obtain final approval of the construction plans for Roadway Segment 1 before the CITY executes this Agreement;

- (ii) DEVELOPER shall provide CITY with a Subdivision Bond in an amount equal to the total amount of the assignable contract, identified in subparagraph (c) below, plus twenty percent (20%) as provided in Paragraph D.9. of this Agreement **prior to CITY's execution of this Agreement** to assure the construction of Roadway Segment 1;
- (iii) DEVELOPER shall provide CITY with an assignable contract with the construction contractor for Roadway Segment 1 as provided in Paragraph D of this Agreement **prior to CITY's execution of this Agreement** that authorizes the CITY to cause Roadway Segment 1 to be completed in the event DEVELOPER fails to complete Roadway Segment 1 within 120 days after the Effective Date of this Agreement at DEVELOPER'S cost;
- (iv) DEVELOPER shall promptly perform all steps necessary to begin construction of Roadway Segment 1 as soon as DEVELOPER determines it is reasonably practicable following the Effective Date of this Agreement in accordance with the CITY's Master Thoroughfare Plan and Engineering Design Manual and the permitted plans approved by the CITY Engineer or designee;
- (v) DEVELOPER shall complete construction of Roadway Segment 1 and obtain the CITY's final acceptance of Roadway Segment 1 within 120 days of the Effective Date of this Agreement;
- (vi) In addition to any other requirements, DEVELOPER shall install and maintain a four-foot-wide strip of sod behind the curb for the median and the curb for the parkway along the perimeter of the roads making up Roadway Segment 1 to provide erosion control prior to CITY's final acceptance of Roadway Segment 1 as a temporary measure until DEVELOPER installs the standard hardscape/landscape pursuant to subparagraph (f) hereof;
- (vii) DEVELOPER shall construct and install and obtain CITY's final acceptance of the balance of the hardscape/landscape behind the curb for the median

and the curb for the parkway along the perimeter of the roads making up Roadway Segment 1, adjacent to Phase 8, before DEVELOPER submits and CITY's final acceptance of DEVELOPER's planned Phase 8 of the Timber Creek Addition;

- (viii) CITY acknowledges that time is of the essence with respect to reviewing and approving DEVELOPER'S construction plans and inspecting and providing final acceptance of construction, and DEVELOPER acknowledges that time is of the essence in DEVELOPER's construction of Roadway Segment 1 in strict accordance with the CITY's Master Thoroughfare Plan and Engineering Design Manual; and
- (2) "Roadway Segment 2" includes the completion of the construction of 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, subject to the following additional requirements:
- (a) DEVELOPER shall provide CITY with a Subdivision Bond in an amount equal to the total amount of the Engineer's Opinion of Probable Construction Costs, identified in subparagraph (b) below, plus twenty percent (20%) as provided in Paragraph D.10. of this Agreement **prior to the CITY's execution of this Agreement**, to assure the construction of Roadway Segment 2; and
 - (b) DEVELOPER shall provide CITY with a signed and sealed Engineer's Opinion of Probable Construction Costs for Roadway Segment 2 as provided in Paragraph D of this Agreement **prior to CITY's execution of this Agreement**,
 - (c) DEVELOPER shall submit plans satisfying the City's Master Thoroughfare Plan and Engineering Design Manual for the construction of Roadway Segment 2 within 120 days of the Effective Date of this Agreement;
 - (d) DEVELOPER and its construction contractor for Roadway Segment 2 shall attend a preconstruction conference with CITY for the construction of Roadway Segment 2 within 90 days after DEVELOPER has received approved plans from the CITY for the construction of Roadway Segment 2;

- (e) DEVELOPER shall complete construction of Roadway Segment 2 and obtain the CITY's final acceptance of Roadway Segment 2 within 18 months after the preconstruction meeting for Roadway Segment 2 identified in subparagraph 2.(d), above, and in no event later than 30 months after the Effective Date of this Agreement; and
 - (f) CITY acknowledges that time is of the essence with respect to reviewing and approving construction plans and inspecting and providing final acceptance of construction, and DEVELOPER acknowledges that time is of the essence in DEVELOPER's construction of Roadway Segment 2 in strict accordance with the CITY's Master Thoroughfare Plan and Engineering Design Manual.
- (3) "Roadway Segment 3," includes the completion of the construction of a reduced roadway section of the two southern lanes of Bloomdale Road extending in a westerly direction from the intersection of Bloomdale Road and Sweet Birch to the western boundary of the Property and tie in with the existing section of Bloomdale Road adjacent to the abutting Erwin Farms Subdivision as generally shown and identified as "Section 3" on Exhibit B-2 and in accordance with the reduced standards supported by City Staff that are set forth herein, but which design plans therefore will still require a Staff-approved variance from the requirements of the Engineering Design Manual, subject to the following additional requirements:
- (a) DEVELOPER shall provide CITY with a Subdivision Bond in an amount equal to the total amount of the Engineer's Opinion of Probable Construction Costs, identified in subparagraph (b) below, plus twenty percent (20%) as provided in Paragraph D.10. of this Agreement **prior to CITY's execution of this Agreement**, to assure the construction of Roadway Segment 3; and
 - (b) DEVELOPER shall provide CITY with a signed and sealed Engineer's Opinion of Probable Construction Costs for Roadway Segment 3 as provided in Paragraph D of this Agreement **prior to CITY's execution of this Agreement**;
 - (c) DEVELOPER shall design and build Roadway Segment 3 in the ultimate location of Bloomdale Road according to the Master Thoroughfare Plan but with the following reduced standards:

- (i) Build Roadway Segment 3 as a twenty-four-foot (24') wide pavement area with two twelve-foot (12') wide lanes;
 - (ii) Build Roadway Segment 3 with six inches (6") of concrete pavement with the specific materials to be identified in the design process;
 - (iii) Build Roadway Segment 3 with eight inches (8") of lime treatment of the subgrade beneath the pavement area;
 - (iv) Build Roadway Segment 3 without a curb and gutter on the outside (southern) edge of Roadway Segment 3;
 - (v) Use a modified drainage design for Roadway Segment 3 including a bar ditch with culverts crossing under Bloomdale Road and any intersecting roads and driveways that meet the City's drainage design criteria;
 - (vi) Remove the transition that was constructed as a part of Roadway Segment 1, above, and restore the surface to a condition suitable for the construction of the median between the southern and northern lanes of Bloomdale Road and construct the median;
- (d) DEVELOPER shall submit plans for the construction of Roadway Segment 3 satisfying the City's Master Thoroughfare Plan and Engineering Design Manual save and except for the reduced standards set forth in subparagraphs (c)(1) through (c)(5), above, within 120 days of the Effective Date of this Agreement;
- (e) DEVELOPER and its construction contractor for Roadway Segment 3 shall attend a preconstruction conference with CITY for the construction of Roadway Segment 3 within 90 days after DEVELOPER has received approved plans from the CITY for the construction of Roadway Segment 3;
- (f) DEVELOPER shall complete construction of Roadway Segment 3 and obtain the CITY's final acceptance of Roadway Segment 3 within 18 months after the preconstruction meeting for Roadway Segment 3 identified in subparagraph 3.(e), above, and in no event later than 30 months after the Effective Date of this Agreement; and

- (g) CITY acknowledges that time is of the essence with respect to reviewing and approving construction plans and inspecting and providing final acceptance of construction, and DEVELOPER acknowledges that time is of the essence in DEVELOPER's construction of Roadway Segment 3 in strict accordance with the CITY's Master Thoroughfare Plan and Engineering Design Manual as modified by this Agreement.

- 2. **HIKE AND BIKE TRAILS.** The hike and bike trail improvements shown on Exhibit J shall be complete and accepted by the CITY for each phase of development, as amended herein, prior to recording of the Record Plat for such phase of development.

EXHIBIT B-1

THOROUGHFARE EXHIBIT

[See following 1 page.]

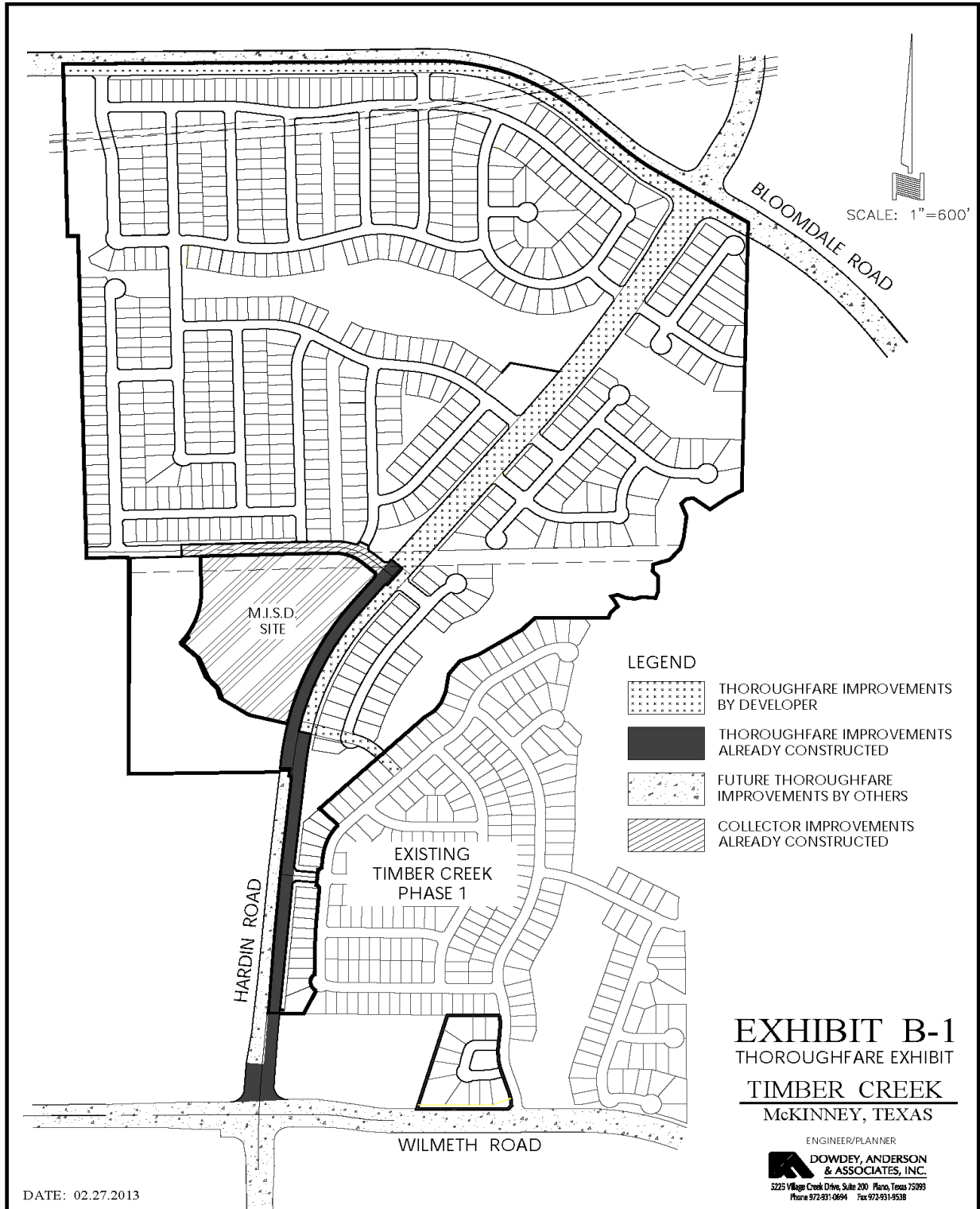


EXHIBIT B-2

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

[See following 1 page.]

EXHIBIT C

PUBLIC UTILITY IMPROVEMENTS

DEVELOPER is responsible for the construction of the facilities detailed below. Those facilities must be complete and accepted by CITY for each phase of development of the Property as it is platted prior to a Certificate of Occupancy being issued for any building on the Property for each such phase platted. In the event any public utilities required to serve the development of Property are installed by a party other than DEVELOPER, those facilities must be complete and accepted by CITY prior to a Certificate of Occupancy being issued for any building on the Property for the phase then being platted and developed.

Water

- a. No water line improvements are being deferred by this Agreement.
- b. DEVELOPER shall construct all necessary water lines to serve the interior of the Property consistent with City of McKinney standards; said lines shall be at least eight inches (8") in diameter or as otherwise necessary to serve the Property for both domestic and fire flow for the Property. The CITY Engineering Department shall approve the size of the line.
- c. All Public Improvements must be complete and accepted by CITY for each phase of development of the Property as it is platted prior to the issuance of a Final Acceptance letter for the Public Improvements for each such phase platted.

Sanitary Sewer System:

- a. No sanitary sewer improvements are being deferred by this Agreement.
- b. DEVELOPER shall construct all necessary sanitary sewer lines to serve the interior of the Property consistent with City of McKinney standards; said lines shall be at least eight inches (8") in diameter or as necessary to serve the Property and/or as required by the CITY's Master Plan. Offsite improvements outside of the phase then being developed may be required to provide facilities adequate to serve the phase then under construction prior to CITY's final acceptance of that phase, including but not limited to sanitary sewer connection(s) to existing mains. The size of the line shall be based upon the design slope and drainage basin size and require approval of the CITY Engineer.
- c. All Public Improvements must be complete and accepted by CITY for each phase of development of the Property as it is platted prior to the issuance

of a Final Acceptance letter for the Public Improvements for each such phase platted.

Impact Fee Credits:

- a. All oversized utility lines for the Property have been constructed in conjunction with another agreement. CITY will not ask DEVELOPER to construct any oversized utility lines for the Property by and through this Agreement.

EXHIBIT D
SUBDIVISION BONDS

EXHIBIT D-1

Subdivision Bond For Road Segment 1

[See following 3 pages.]

**SUBDIVISION BOND
For Roadway Segment 1**

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, that we, Timber Creek Properties, LLC, 2221 E. Lamar Blvd., Suite 790, Arlington, Texas 76006 as Principal, and Arch Insurance Company, a corporation organized and existing under the laws of the State of _____ (“Surety”), and fully authorized to transact business in the State of Texas, as surety, are held and firmly bound unto City of McKinney, Texas, 401 E. Virginia Street, McKinney, Texas, 75069, as Obligee, in the penal sum of _____ Dollars and _____ Cents (\$ _____.) in lawful money of the United States of America, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Timber Creek Properties, LLC has agreed to design and construct in and adjacent to the residential subdivision identified as the Timber Creek Addition (the “Development”) in the City of McKinney, Texas the following improvements: all engineering design work, earthwork, grading, drainage, landscaping, screening and buffering, wet utilities, pavement with curb and gutters, and sidewalks necessary to provide full and complete the full four (4) lanes of Hardin Boulevard (a divided four-lane roadway plus turn lanes) with all appurtenances thereto as more particularly described and defined by the City’s Master Thoroughfare Plan 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) through the intersection together with the extension of the southern two lanes of Bloomdale Road in an easterly direction from said intersection to tie in with the existing southern two lanes of Bloomdale Road at or about the eastern boundary of the Property, as more particularly depicted on Exhibit _____, attached hereto and incorporated herein for all purposes allowed by law and hereafter being referred to as the "Required Improvements for Roadway Segment 1."

It is specifically understood and agreed that the Principal has knowingly requested and accepted the benefits of subdividing and platting the Development into marketable lots based on the Principal's promise to design and construct the Required Improvements for Roadway Segment 1 in strict accordance with the requirements of the Code of Ordinances, City of McKinney, Texas (the "McKinney Code"); and that the design and construction of the foregoing Required Improvements for Roadway Segment 1 within and about the Development has previously been deferred by Principal and are still necessary to the provision of adequate public facilities to serve the Development as required by the McKinney Code.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall design and construct, or have designed and constructed, the Required Improvements for Roadway Segment 1 herein described, and shall pay for the cost of all labor, materials and equipment furnished in connection with the design and construction of said Required Improvements for Roadway Segment 1, and shall save the Obligee harmless from any loss, cost or damage by reason of its failure to complete the design and construction of said Required Improvements for Roadway Segment 1 or by reason of its failure to pay for the cost of same, then this obligation shall be null and void,

otherwise to remain in full force and effect; and upon receipt of a claim by the City of McKinney indicating that the design and construction of said Required Improvements for Roadway Segment 1 has not been completed, or that the costs for same have not been paid, the Surety will pay to the City of McKinney such amount up to the amount of this bond which will allow the City of McKinney to complete construction of said Required Improvements for Roadway Segment 1 and to pay for the costs of same.

PROVIDED FURTHER, that if any legal action be filed on this bond, the laws of the State of Texas shall apply and that venue shall lie exclusively in Collin County, Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no charge, extension of time, alteration or addition to the terms of any contract for the public affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of such contract.

This bond is given pursuant to the provisions of Section 212.073 of the Texas Local Government Code, as such may amended from time to time.

Signed, sealed and dated this _____ day of _____, 20____.

DEVELOPER'S NAME

SURETY COMPANY'S NAME

Principal

Surety

By: _____ By: _____
Attorney-in-Fact

EXHIBIT D-2

Subdivision Bond For Road Segment 2

[See following 3 pages.]

**SUBDIVISION BOND
For Roadway Segment 2**

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, that we, Timber Creek Properties, LLC, 2221 E. Lamar Blvd., Suite 790, Arlington, Texas 76006 as Principal, and Arch Insurance Company, a corporation organized and existing under the laws of the State of _____ (“Surety”), and fully authorized to transact business in the State of Texas, as surety, are held and firmly bound unto City of McKinney, Texas, 401 E. Virginia Street, McKinney, Texas, 75069, as Obligee, in the penal sum of _____ Dollars and _____ Cents (\$ _____.) in lawful money of the United States of America, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Timber Creek Properties, LLC has agreed to design and construct in and adjacent to the residential subdivision identified as the Timber Creek Addition (the “Development”) in the City of McKinney, Texas the following improvements: all engineering design work, earthwork, grading, drainage, landscaping, screening and buffering, wet utilities, pavement with curb and gutters, and sidewalks necessary to provide full and complete the two lanes (southern half) of Bloomdale Road (a divided four-lane roadway plus turn lanes) with all appurtenances thereto as more particularly described and defined by the City’s Master Thoroughfare Plan extending in a westerly direction from the intersection of Hardin Boulevard and Bloomdale Road to and through the intersection of Bloomdale Road and Sweet Birch, as more particularly depicted on

Exhibit ____, attached hereto and incorporated herein for all purposes allowed by law and hereafter being referred to as the "Required Improvements for Roadway Segment 2."

It is specifically understood and agreed that the Principal has knowingly requested and accepted the benefits of subdividing and platting the Development into marketable lots based on the Principal's promise to design and construct the Required Improvements for Roadway Segment 2 in strict accordance with the requirements of the Code of Ordinances, City of McKinney, Texas (the "McKinney Code"); and that the design and construction of the foregoing Required Improvements for Roadway Segment 2 within and about the Development has previously been deferred by Principal and are still necessary to the provision of adequate public facilities to serve the Development as required by the McKinney Code.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall design and construct, or have designed and constructed, the Required Improvements for Roadway Segment 2 herein described, and shall pay for the cost of all labor, materials and equipment furnished in connection with the design and construction of said Required Improvements for Roadway Segment 2, and shall save the Obligee harmless from any loss, cost or damage by reason of its failure to complete the design and construction of said Required Improvements for Roadway Segment 2 or by reason of its failure to pay for the cost of same, then this obligation shall be null and void, otherwise to remain in full force and effect; and upon receipt of a claim by the City of McKinney indicating that the design and construction of said Required Improvements for Roadway Segment 2 has not been completed, or that the costs for same have not been paid, the Surety will pay to the City of McKinney such amount up to the amount of this

bond which will allow the City of McKinney to complete construction of said Required Improvements for Roadway Segment 2 and to pay for the costs of same.

PROVIDED FURTHER, that if any legal action be filed on this bond, the laws of the State of Texas shall apply and that venue shall lie exclusively in Collin County, Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no charge, extension of time, alteration or addition to the terms of any contract for the public affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of such contract.

This bond is given pursuant to the provisions of Section 212.073 of the Texas Local Government Code, as such may amended from time to time.

Signed, sealed and dated this _____ day of _____, 20____.

DEVELOPER'S NAME

SURETY COMPANY'S NAME

Principal

Surety

By: _____ By: _____
Attorney-in-Fact

EXHIBIT D-3

Subdivision Bond For Road Segment 3

[See following 3 pages.]

**SUBDIVISION BOND
For Roadway Segment 3**

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, that we, Timber Creek Properties, LLC, 2221 E. Lamar Blvd., Suite 790, Arlington, Texas 76006 as Principal, and Arch Insurance Company, a corporation organized and existing under the laws of the State of _____ (“Surety”), and fully authorized to transact business in the State of Texas, as surety, are held and firmly bound unto City of McKinney, Texas, 401 E. Virginia Street, McKinney, Texas, 75069, as Obligee, in the penal sum of _____ Dollars and _____ Cents (\$ _____.) in lawful money of the United States of America, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Timber Creek Properties, LLC has agreed to design and construct in and adjacent to the residential subdivision identified as the Timber Creek Addition (the “Development”) in the City of McKinney, Texas the following improvements: all engineering design work, earthwork, grading, drainage, landscaping, screening and buffering, wet utilities, pavement with curb and gutters, and sidewalks necessary to provide full and complete a reduced roadway section of two lanes (southern half) of Bloomdale Road extending in a westerly direction from the intersection of Bloomdale Road and Sweet Birch to the western boundary of the Property and tie in with the existing section of Bloomdale Road adjacent to the abutting Erwin Farms Subdivision, as more particularly depicted on Exhibit _____, attached hereto and incorporated herein for all

purposes allowed by law and hereafter being referred to as the "Required Improvements for Roadway Segment 3."

It is specifically understood and agreed that the Principal has knowingly requested and accepted the benefits of subdividing and platting the Development into marketable lots based on the Principal's promise to design and construct the Required Improvements for Roadway Segment 3 in strict accordance with the requirements of the Code of Ordinances, City of McKinney, Texas (the "McKinney Code"); and that the design and construction of the foregoing Required Improvements for Roadway Segment 3 within and about the Development has previously been deferred by Principal and are still necessary to the provision of adequate public facilities to serve the Development as required by the McKinney Code.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall design and construct, or have designed and constructed, the Required Improvements for Roadway Segment 3 herein described, and shall pay for the cost of all labor, materials and equipment furnished in connection with the design and construction of said Required Improvements for Roadway Segment 3, and shall save the Obligee harmless from any loss, cost or damage by reason of its failure to complete the design and construction of said Required Improvements for Roadway Segment 3 or by reason of its failure to pay for the cost of same, then this obligation shall be null and void, otherwise to remain in full force and effect; and upon receipt of a claim by the City of McKinney indicating that the design and construction of said Required Improvements for Roadway Segment 3 has not been completed, or that the costs for same have not been paid, the Surety will pay to the City of McKinney such amount up to the amount of this

bond which will allow the City of McKinney to complete construction of said Required Improvements for Roadway Segment 3 and to pay for the costs of same.

PROVIDED FURTHER, that if any legal action be filed on this bond, the laws of the State of Texas shall apply and that venue shall lie exclusively in Collin County, Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no charge, extension of time, alteration or addition to the terms of any contract for the public affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of such contract.

This bond is given pursuant to the provisions of Section 212.073 of the Texas Local Government Code, as such may amended from time to time.

Signed, sealed and dated this _____ day of _____, 20____.

DEVELOPER'S NAME

SURETY COMPANY'S NAME

Principal

Surety

By: _____ By: _____
Attorney-in-Fact

EXHIBIT E-1

Construction Contract for Roadway Segment 1

1. A copy of the Construction Contract for Roadway Segment 1 has been provided to the Director of Engineering for the sole purpose of confirming the cost of constructing Roadway Segment 1 and is on file with the Director of Engineering's Office.
2. DEVELOPER asserts the Construction Contract contains confidential trade secrets and proprietary information beyond the scope of this Agreement.
3. Based on DEVELOPER's assertions, if City receives any requests for disclosure of all or any portion of the Construction Contract, City will decline to release the requested information for the purpose of allowing DEVELOPER the opportunity to request an attorney general decision regarding the privacy and property interests of DEVELOPER and whether all or any of the Construction Contract must be released in accordance with the provisions of the Texas Public Information Act and particularly Tex. Gov't Code § 552.305, as amended.

EXHIBIT E-2

Engineer's Opinion of Probable Construction Costs for Roadway Segment 2

[See following ____ pages.]

EXHIBIT E-3

Engineer's Opinion of Probable Construction Costs for Roadway Segment 3

[See following ____ pages.]

EXHIBIT F-1

Assignment Of Construction Contract For Roadway Segment 1

[See following 4 pages.]

ASSIGNMENT OF CONSTRUCTION CONTRACT FOR ROADWAY SEGMENT 1

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN

THIS ASSIGNMENT OF CONSTRUCTION CONTRACT FOR ROADWAY SEGMENT 1 (this "Assignment") is made as of the _____ day of _____, 2025, by **TIMBER CREEK PROPERTIES, LLC**, a Delaware limited liability company, whose address is 2221 E. Lamar Blvd., Suite 790, Arlington, Texas 76006,, (hereinafter referred to as "Owner" and "Developer") to the **CITY OF MCKINNEY**, a Texas municipal corporation ("City").

RECITALS

- A. On or about the _____ day of _____, 2025, City entered into a Second Amended Facilities Agreement ("Construction Facilities Agreement") with **TIMBER CREEK PROPERTIES, LLC**, ("Developer") for the construction of certain infrastructure improvements including the construction of earthwork, grading, drainage, landscaping, screening and buffering, wet utilities, pavement with curb and gutters, and sidewalks necessary to provide full and complete the full four (4) lanes of Hardin Boulevard (a divided four-lane roadway plus turn lanes) with all appurtenances thereto as more particularly described and defined by the City's Master Thoroughfare Plan 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) through the intersection together with the extension of the southern two lanes of Bloomdale Road in an easterly direction from said intersection to tie in with the existing southern two lanes of Bloomdale Road at or about the eastern boundary of the Property (collectively the "Roadway Segment 1 Required Improvements"). To secure Developer's obligations under the Construction Facilities Agreement for the Roadway Segment 1 Required Improvements, Developer posted a Subdivision Bond with City in the amount of _____ and _____ One Hundredths Dollars (\$_____) issued by _____ (Insurance Company Name) ("Subdivision Bond").
- B. Owner has entered into a construction contract for the Roadway Segment 1 Required Improvements under the Construction Facilities Agreement with _____ (Contractor's Name) (the "Construction Contract").
- C. Owner has agreed to conditionally assign to City the Owner's rights under the Construction Contract.

- D. As a condition to its agreements under the Construction Facilities Agreement for the Roadway Segment 1 Required Improvements, City has required the execution and delivery of this Assignment by Owner.

NOW, THEREFORE, in order to further secure the obligations of Owner under the Construction Facilities Agreement for the Roadway Segment 1 Required Improvements, the parties hereby agree as follows:

1. Deposit of Cash. Owner agrees to tender the Subdivision Bond referenced herein in the amount of _____ and _____ One Hundredths Dollars (\$_____).
2. Assignment of Construction Contract. As additional security for the performance of Owner's obligations under the Construction Facilities Agreement for the Roadway Segment 1 Required Improvements, Owner hereby transfers and assigns to City and grants City a security interest in all of Owner's rights and interest, but not its obligations in, under, and to the Construction Contract upon the following terms and conditions:
 - a. Owner represents and warrants that the copies of any Construction Contract it has furnished or will furnish to City for the Roadway Segment 1 Required Improvements are a true and complete copy thereof and that Owner's interest therein is not subject to any claim, setoff, or encumbrance.
 - b. **Neither this Assignment nor any action by City shall constitute an assumption by City of any obligation under the Construction Contract, and Owner shall continue to be liable for all obligations of Owner thereunder, Owner hereby agrees to perform all of its obligations under the Construction Contract. Owner further agrees to indemnify and hold City harmless against and from any loss, cost, liability or expense (including but not limited to attorneys' fees and expenses) resulting from any failure of Owner to so perform.**
 - c. **City shall have the right at any time (but shall have no obligation) to take in its name or in the name of Owner such action as City may at any time determine to be necessary or advisable to cure any default under the Construction Contract or to protect the rights of Owner or City thereunder. City shall incur no liability if any action so taken by it or in its behalf shall prove to be inadequate or invalid, and Owner agrees to hold City free and harmless against and from any loss, cost, liability or expense (including but not limited to attorneys' fees and expenses) incurred in connection with any such action.**
 - d. Owner hereby constitutes and appoints City as Owner's attorney-in-fact, in Owner's name or in City's name to enforce all rights of Owner under the Construction Contract.

- e. Prior to the occurrence of a default under the Construction Facilities Agreement, Owner shall have the right to exercise its rights as owner under the Construction Contract provided that Owner shall not cancel or amend the Construction Contract or do or suffer to be done any act which would impair the security constituted by this Assignment without the prior written consent of City.
 - f. Upon the occurrence of a default under the Construction Facilities Agreement, Owner confirms City shall have the right to make presentment of and use the proceeds of the Subdivision Bond to fund the performance of the Construction Contract and as otherwise authorized by the Construction Facilities Agreement.
- 3. Termination of Assignment. Upon completion of the Roadway Segment 1 Required Improvements required by the Construction Facilities Agreement and final acceptance thereof by City, this Assignment shall terminate.
 - 4. Representations of Owner and Contractor. Owner and Contractor hereby covenant and represent to City that (i) Owner has full right, title, power, and authority to assign the Construction Contract; (ii) no other assignment or interest therein has been made; and (iii) there are no existing defaults under the provisions of this Construction Contract.
 - 5. Successors and Assigns. This Assignment shall inure to the benefit of Owner and City and shall be binding upon such successors and assigns.

IN WITNESS WHEREOF, the parties have executed this instrument in one or more counterparts as of the day and year first written above.

OWNER:

TIMBER CREEK PROPERTIES, LLC,
a Delaware limited liability company

By: *FORESTAR (USA) REAL ESTATE
GROUP INC.*, a Delaware
corporation,
Managing Member

By: _____
THOMAS H. BURLESON
Executive Vice President

Date Signed: _____

ACCEPTED AND AGREED:

CONTRACTOR'S NAME

By: _____

Name: _____

Title: _____

Date Signed: _____

EXHIBIT F-2

Assignment Of Construction Contract For Roadway Segment 2

[See following 4 pages.]

ASSIGNMENT OF CONSTRUCTION CONTRACT FOR ROADWAY SEGMENT 2

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN

THIS ASSIGNMENT OF CONSTRUCTION CONTRACT FOR ROADWAY SEGMENT 2 (this "Assignment") is made as of the _____ day of _____, 2025, by **TIMBER CREEK PROPERTIES, LLC**, a Delaware limited liability company, whose address is 2221 E. Lamar Blvd., Suite 790, Arlington, Texas 76006, (hereinafter referred to as "Owner" and "Developer") to the **CITY OF MCKINNEY**, a Texas municipal corporation ("City").

RECITALS

- A. On or about the _____ day of _____, 2025, City entered into a Second Amended Facilities Agreement ("Construction Facilities Agreement") with **TIMBER CREEK PROPERTIES, LLC**, ("Developer") for the construction of certain infrastructure improvements including the construction of earthwork, grading, drainage, landscaping, screening and buffering, wet utilities, pavement with curb and gutters, and sidewalks necessary to provide full and complete the two southern lanes (southern half) of Bloomdale Road plus turn lanes extending in a westerly direction from the intersection of Hardin Boulevard and Bloomdale Road to the intersection of Bloomdale Road and Sweet Birch (collectively the "Roadway Segment 2 Required Improvements"). To secure Developer's obligations under the Construction Facilities Agreement for the Roadway Segment 2 Required Improvements, Developer posted a Subdivision Bond with City in the amount of _____ and _____ One Hundredths Dollars (\$_____) issued by _____ (Insurance Company Name) ("Subdivision Bond").
- B. Owner has entered into a construction contract for the Roadway Segment 2 Required Improvements under the Construction Facilities Agreement with _____ (Contractor's Name) (the "Construction Contract").
- C. Owner has agreed to conditionally assign to City the Owner's rights under the Construction Contract.
- D. As a condition to its agreements under the Construction Facilities Agreement for the Roadway Segment 2 Required Improvements, City has required the execution and delivery of this Assignment by Owner.

NOW, THEREFORE, in order to further secure the obligations of Owner under the Construction Facilities Agreement for the Roadway Segment 2 Required Improvements, the parties hereby agree as follows:

1. Deposit of Cash. Owner agrees to tender the Subdivision Bond referenced herein in the amount of _____ and _____ One Hundredths Dollars (\$_____).
2. Assignment of Construction Contract. As additional security for the performance of Owner's obligations under the Construction Facilities Agreement for the Roadway Segment 2 Required Improvements, Owner hereby transfers and assigns to City and grants City a security interest in all of Owner's rights and interest, but not its obligations in, under, and to the Construction Contract upon the following terms and conditions:
 - a. Owner represents and warrants that the copies of any Construction Contract it has furnished or will furnish to City for the Roadway Segment 2 Required Improvements are a true and complete copy thereof and that Owner's interest therein is not subject to any claim, setoff, or encumbrance.
 - b. **Neither this Assignment nor any action by City shall constitute an assumption by City of any obligation under the Construction Contract, and Owner shall continue to be liable for all obligations of Owner thereunder, Owner hereby agrees to perform all of its obligations under the Construction Contract. Owner further agrees to indemnify and hold City harmless against and from any loss, cost, liability or expense (including but not limited to attorneys' fees and expenses) resulting from any failure of Owner to so perform.**
 - c. **City shall have the right at any time (but shall have no obligation) to take in its name or in the name of Owner such action as City may at any time determine to be necessary or advisable to cure any default under the Construction Contract or to protect the rights of Owner or City thereunder. City shall incur no liability if any action so taken by it or in its behalf shall prove to be inadequate or invalid, and Owner agrees to hold City free and harmless against and from any loss, cost, liability or expense (including but not limited to attorneys' fees and expenses) incurred in connection with any such action.**
 - d. Owner hereby constitutes and appoints City as Owner's attorney-in-fact, in Owner's name or in City's name to enforce all rights of Owner under the Construction Contract.
 - e. Prior to the occurrence of a default under the Construction Facilities Agreement, Owner shall have the right to exercise its rights as owner under the Construction Contract provided that Owner shall not cancel or

amend the Construction Contract or do or suffer to be done any act which would impair the security constituted by this Assignment without the prior written consent of City.

- f. Upon the occurrence of a default under the Construction Facilities Agreement, Owner confirms City shall have the right to make presentment of and use the proceeds of the Subdivision Bond to fund the performance of the Construction Contract and as otherwise authorized by the Construction Facilities Agreement.
3. Termination of Assignment. Upon completion of the Roadway Segment 2 Required Improvements required by the Construction Facilities Agreement and final acceptance thereof by City, this Assignment shall terminate.
4. Representations of Owner and Contractor. Owner and Contractor hereby covenant and represent to City that (i) Owner has full right, title, power, and authority to assign the Construction Contract; (ii) no other assignment or interest therein has been made; and (iii) there are no existing defaults under the provisions of this Construction Contract.
5. Successors and Assigns. This Assignment shall inure to the benefit of Owner and City and shall be binding upon such successors and assigns.

IN WITNESS WHEREOF, the parties have executed this instrument in one or more counterparts as of the day and year first written above.

OWNER:

TIMBER CREEK PROPERTIES, LLC,
a Delaware limited liability company

By: *FORESTAR (USA) REAL ESTATE
GROUP INC.*, a Delaware
corporation,
Managing Member

By: _____
THOMAS H. BURLESON
Executive Vice President

Date Signed: _____

ACCEPTED AND AGREED:

CONTRACTOR'S NAME

By: _____

Name: _____

Title: _____

Date Signed: _____

EXHIBIT F-3

Assignment Of Construction Contract For Roadway Segment 3

[See following 4 pages.]

ASSIGNMENT OF CONSTRUCTION CONTRACT FOR ROADWAY SEGMENT 3

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN

THIS ASSIGNMENT OF CONSTRUCTION CONTRACT FOR ROADWAY SEGMENT 3 (this "Assignment") is made as of the _____ day of _____, 2025, by ***TIMBER CREEK PROPERTIES, LLC***, a Delaware limited liability company, whose address is 2221 E. Lamar Blvd., Suite 790, Arlington, Texas 76006, (hereinafter referred to as "Owner" and "Developer") to the ***CITY OF MCKINNEY***, a Texas municipal corporation ("City").

RECITALS

- A. On or about the _____ day of _____, 2025, City entered into a Second Amended Facilities Agreement ("Construction Facilities Agreement") with ***TIMBER CREEK PROPERTIES, LLC***, ("Developer") for the construction of certain infrastructure improvements including the construction of earthwork, grading, drainage, landscaping, screening and buffering, wet utilities, pavement with curb and gutters, and sidewalks necessary to provide full and complete the construction of a reduced roadway section of the two southern lanes of Bloomdale Road extending in a westerly direction from the intersection of Bloomdale Road and Sweet Birch to the western boundary of the Property and tie in with the existing section of Bloomdale Road adjacent to the abutting Erwin Farms Subdivision in accordance with the reduced standards supported by City Staff, but which design plans therefore will still require a Staff-approved variance from the requirements of the Engineering Design Manual (collectively the "Roadway Segment 3 Required Improvements"). To secure Developer's obligations under the Construction Facilities Agreement for the Roadway Segment 3 Required Improvements, Developer posted a Subdivision Bond with City in the amount of _____ and _____ One Hundredths Dollars (\$_____) issued by _____ (*Insurance Company Name*) ("Subdivision Bond").
- B. Owner has entered into a construction contract for the Roadway Segment 3 Required Improvements under the Construction Facilities Agreement with _____ (*Contractor's Name*) (the "Construction Contract").
- C. Owner has agreed to conditionally assign to City the Owner's rights under the Construction Contract.

- D. As a condition to its agreements under the Construction Facilities Agreement for the Roadway Segment 3 Required Improvements, City has required the execution and delivery of this Assignment by Owner.

NOW, THEREFORE, in order to further secure the obligations of Owner under the Construction Facilities Agreement for the Roadway Segment 3 Required Improvements, the parties hereby agree as follows:

1. Deposit of Cash. Owner agrees to tender the Subdivision Bond referenced herein in the amount of _____ and _____ One Hundredths Dollars (\$_____).
2. Assignment of Construction Contract. As additional security for the performance of Owner's obligations under the Construction Facilities Agreement for the Roadway Segment 3 Required Improvements, Owner hereby transfers and assigns to City and grants City a security interest in all of Owner's rights and interest, but not its obligations in, under, and to the Construction Contract upon the following terms and conditions:
 - a. Owner represents and warrants that the copies of any Construction Contract it has furnished or will furnish to City for the Roadway Segment 3 Required Improvements are a true and complete copy thereof and that Owner's interest therein is not subject to any claim, setoff, or encumbrance.
 - b. **Neither this Assignment nor any action by City shall constitute an assumption by City of any obligation under the Construction Contract, and Owner shall continue to be liable for all obligations of Owner thereunder, Owner hereby agrees to perform all of its obligations under the Construction Contract. Owner further agrees to indemnify and hold City harmless against and from any loss, cost, liability or expense (including but not limited to attorneys' fees and expenses) resulting from any failure of Owner to so perform.**
 - c. **City shall have the right at any time (but shall have no obligation) to take in its name or in the name of Owner such action as City may at any time determine to be necessary or advisable to cure any default under the Construction Contract or to protect the rights of Owner or City thereunder. City shall incur no liability if any action so taken by it or in its behalf shall prove to be inadequate or invalid, and Owner agrees to hold City free and harmless against and from any loss, cost, liability or expense (including but not limited to attorneys' fees and expenses) incurred in connection with any such action.**
 - d. Owner hereby constitutes and appoints City as Owner's attorney-in-fact, in Owner's name or in City's name to enforce all rights of Owner under the Construction Contract.

- e. Prior to the occurrence of a default under the Construction Facilities Agreement, Owner shall have the right to exercise its rights as owner under the Construction Contract provided that Owner shall not cancel or amend the Construction Contract or do or suffer to be done any act which would impair the security constituted by this Assignment without the prior written consent of City.
 - f. Upon the occurrence of a default under the Construction Facilities Agreement, Owner confirms City shall have the right to make presentment of and use the proceeds of the Subdivision Bond to fund the performance of the Construction Contract and as otherwise authorized by the Construction Facilities Agreement.
- 3. Termination of Assignment. Upon completion of the Roadway Segment 3 Required Improvements required by the Construction Facilities Agreement and final acceptance thereof by City, this Assignment shall terminate.
 - 4. Representations of Owner and Contractor. Owner and Contractor hereby covenant and represent to City that (i) Owner has full right, title, power, and authority to assign the Construction Contract; (ii) no other assignment or interest therein has been made; and (iii) there are no existing defaults under the provisions of this Construction Contract.
 - 5. Successors and Assigns. This Assignment shall inure to the benefit of Owner and City and shall be binding upon such successors and assigns.

IN WITNESS WHEREOF, the parties have executed this instrument in one or more counterparts as of the day and year first written above.

OWNER:

TIMBER CREEK PROPERTIES, LLC,
a Delaware limited liability company

By: *FORESTAR (USA) REAL ESTATE
GROUP INC.*, a Delaware
corporation,
Managing Member

By: _____
THOMAS H. BURLESON
Executive Vice President

Date Signed: _____

ACCEPTED AND AGREED:

CONTRACTOR'S NAME

By: _____

Name: _____

Title: _____

Date Signed: _____

EXHIBIT G

VARIANCES

1. NRCS LAKE

DEVELOPER shall pay to CITY the amount of Six Hundred Seventy-Seven and Fifty/One Hundredths Dollars (\$ 677.50) per platted acre of land contained within any phase of development of the Property prior to filing the Record Plat with Collin County, in satisfaction of the requirements of the storm water drainage ordinance regarding fees in lieu of upgrading the downstream NRCS lake located adjacent to the northeast corner of the Property.

2. ROADWAY SEGMENTS

- A. Notwithstanding the requirements of the CITY's Subdivision Ordinance, the Roadway Segments deferred by this Agreement shall be constructed by DEVELOPER and final accepted by CITY in accordance with the timing established in Paragraph 1.G of Exhibit B to this Agreement.
- B. Roadway Segment 3 shall be constructed generally in accordance with the reduced standards supported by City Staff that are set forth in Paragraph 1.G.(3) of Exhibit B to this Agreement, but which design plans and specific standards shall still require a Staff-approved variance from the requirements of the CITY's Engineering Design Manual.

3. PARK LAND

- A. **Modified Park Land Dedication Plan.** DEVELOPER'S park land dedication obligation was originally planned to be satisfied through the dedication of two separate tracts of land containing a total of approximately 16 acres of land as shown on the attached Exhibit H. However, with the Texas Department of Transportation's proposed development of the U.S. Highway 380 Bypass adjacent to, and upon and across a portion of the Property, and the DEVELOPER's further encumbrance of the 5 acres of land situated in the northwestern area of the Property that provided connectivity to the CITY's trail system and Erwin Park, the DEVELOPER's park land dedication obligation has been modified and is now planned to consist of:
 - 1. the dedication by DEVELOPER to CITY of the "11-Acre Tract," defined below, subject to the conditions of acceptance identified below in this Exhibit G together with the construction of the trails and the proposed "Outdoor Learning Center Improvements," as defined hereinbelow; and

2. the payment by DEVELOPER of fees in lieu of dedication in an amount equal to Seventy-Five Thousand Dollars (\$ 75,000) per acre attributable to the original proposed five (5) acres of park land dedication that has been removed from consideration.

B. The 11-Acre Tract.

1. Approximately 11 acres of DEVELOPER's proposed park land dedication is adjacent to the public-school site within the Property (the "11-Acre Tract"). However, DEVELOPER has chosen to utilize eight (8) acres out of the 11-Acre Tract (the "Mitigation Area") for wetland mitigation required by the US Army Corp. of Engineers ("USACE") under Individual Permit Nos. 200300064 and 20030031 (collectively, the "USACE Permit") secured by a Declaration of Restrictive Covenants recorded at Clerk's Document No. 20050419000503550 in the Deed Records of Collin County, Texas, that dedicates and restricts the Mitigation Area in perpetuity as an aquatic, riparian and upland ecosystem preserve under the regulation and control of the USACE (the "Deed Restrictions"), which Deed Restrictions have recently been amended by DEVELOPER as explained herein below in Paragraph B.3. The Deed Restrictions in favor of the USACE eliminate most park uses of the Mitigation Area and impose continuing maintenance obligations on the owner of the Mitigation Area to keep the designated Mitigation Area in compliance with the USACE's requirements. The Deed Restrictions on the Mitigation Area restrict its use in perpetuity to be an aquatic, riparian and upland ecosystem preserve to satisfy the requirements of the USACE Permit. The Deed Restrictions generally prohibit the use of the 11-Acre Tract for active park purposes or as an outdoor learning center, which latter use the Parks, Recreation and Open Space Director ("Parks Director") has agreed would be an acceptable alternative to an active park in this unique location.
2. In an effort to take advantage of the 11-Acre Tract to offset DEVELOPER's park land dedication requirements, DEVELOPER submitted to the USACE amendments to the USACE Permit and Deed Restrictions to allow the construction of a number of trails with gathering areas at the intersections of such trails all of which trails and areas are to be constructed of decomposed granite and in compliance with the requirements of the Americans with Disabilities Act for public spaces in the configuration reflected on Exhibit I (the "Outdoor Learning Center Improvements") so that the use of the 11-Acre Tract including the Mitigation Area as an outdoor learning center should not violate the USACE Permit and Deed Restrictions.

3. DEVELOPER recently received approval from the USACE of a specific amendment to the Deed Restrictions and the USACE Permit that may allow the use of the 11-Acre Tract as an outdoor learning center. The USACE specifically approved the recording of The First Amendment to Declaration of Restrictive Covenants (the "Restrictions Amendment") recorded at Clerk's Document No. 2025000039509 in the Deed Records of Collin County, Texas, that adds a new Section 2(c) to the Deed Restrictions which addition reads:

"c) Declarant may add additional hardscape, grade control structures, water mitigation structures and other improvements contemplated by and in material accordance with the Proposed Plans so long as (i) the Property is not otherwise disturbed unless otherwise approved by USACE and (ii) such improvements do not adversely affect the intended extent, condition, and function of the mitigation measures previously approved by USACE."

The phrase "Proposed Plans" as it is used in new Section 2(c) to the Deed Restrictions, quoted above, is defined in the Restrictions Amendment to mean "the improvements reflected in the Outdoor Learning Center construction plans ("Proposed Plans") as approved by the City of McKinney on March 28, 2025."

4. The DEVELOPER submitted to the CITY a "Site Plan for the Timber Creek Outdoor Learning Center" together with a Landscape and Screening Plan providing for a living screen that were approved by the Planning and Zoning Commission (the "Commission") on or about May 9, 2017, including certain additional conditions imposed by the Commission (collectively the "Learning Center Site Plan"). The Learning Center Site Plan is attached hereto as Exhibit I and is incorporated herein by reference for all purposes allowed by law. As noted above, the DEVELOPER submitted and obtained approval from the CITY and the USACE of the construction plans for certain improvements to be constructed within the proposed Timber Creek Outdoor Learning Center ("Proposed Plans"), which Proposed Plans were approved by the CITY on March 28, 2025, and are on file with the CITY.
5. DEVELOPER hereby affirms that DEVELOPER has provided CITY with the USACE Permit(s), the Deed Restrictions and the Restrictions Amendment that may allow the DEVELOPER to construct the Timber Creek Outdoor Learning Center and convey the same to CITY to use the 11-Acre Tract including the Mitigation Area

as an Outdoor Learning Center. In this regard, it is specifically understood that the Deed Restrictions as amended by the Restrictions Amendment allow the USACE to require the removal of the Outdoor Learning Center Improvements at any time in the future should the same adversely affect the intended extent, condition, and function of the mitigation measures previously approved by USACE.

6. In the absence of having dedicated the 11-Acre Tract to the CITY, DEVELOPER has to date paid CITY the amount of Four Hundred Eighty Thousand Four Hundred Nineteen Dollars (\$480,419.00) in fees in lieu of park land dedication in accordance with the requirements of the McKinney Code, which fees in lieu of dedication the CITY is holding in escrow pending any action by DEVELOPER and the USACE regarding the 11-Acre Tract and the CITY's acceptance of the 11-Acre Tract including the Mitigation Area and the Public Improvements and Outdoor Learning Center Improvements thereto (the "Escrow"). Until such time as CITY accepts the 11-Acre Tract in satisfaction of part of DEVELOPER's parkland dedication obligation, DEVELOPER shall continue to pay into escrow with CITY cash in lieu of park land dedication for lots platted by DEVELOPER in accordance with Section 309.G, "Payment of Fees in Lieu of Parkland Dedication," of Article 3, "Subdivision Regulations," of Chapter 150, "Unified Development Code," which amounts will be added to the Escrow.
7. CITY has agreed to accept the 11-Acre Tract and the Mitigation Area for use as an Outdoor Learning Center at such time as DEVELOPER shall have:
 - (a) Completed all Public Improvements adjacent to the 11-Acre Tract;
 - (b) Constructed and installed the Outdoor Learning Center Improvements on the 11-Acre Tract and the Mitigation Area in accordance with the Learning Center Site Plan and the Proposed Plans;
 - (c) Obtained approvals from the USACE confirming the additional hardscape, grade control structures, water mitigation structures and other Outdoor Learning Center Improvements contemplated by and constructed in material accordance with the Proposed Plans as recognized by the USACE and added as an exception through the Restrictions Amendment to the Deed Restrictions are acceptable to the USACE and do not violate the Deed Restrictions as amended by the Restrictions Amendment; and

- (d) Platted and conveyed the 11-Acre Tract to CITY by plat dedication and Special Warranty Deed free of all encumbrances (except the Deed Restrictions, including the Restrictions Amendment which will be permitted encumbrances) and at no cost to the CITY and provided 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.

All of the foregoing requirements in this Paragraph 3.B.7. shall be completed by DEVELOPER to allow CITY to final accept the Outdoor Learning Center Improvements identified on the Proposed Plans for the Outdoor Learning Center and close on DEVELOPER's conveyance, as described herein above, of the 11-Acre Tract to CITY within no more than twenty-four (24) months of the Effective Date of this Agreement and prior to DEVELOPER's submission of the application for a record plat or a final plat for the final phase of development of the PROPERTY.

- 8. It is specifically understood and agreed that the Timber Creek Learning Center Site Plan and the Proposed Plans regarding the Public Improvements and Outdoor Learning Center Improvements necessary to use the 11-Acre Tract and the Mitigation Area as park land for an Outdoor Learning Center have been approved by the CITY. It is further understood and agreed that the Outdoor Learning Center Improvements and all other necessary Public Improvements appurtenant thereto shall be inspected by the CITY and approved by CITY as a condition of the CITY's final acceptance of the 11-Acre Tract including the Mitigation Area.
- 9. If DEVELOPER timely satisfies all of the requirements of Paragraphs 3.B.7. and 3.B.8., hereinabove, CITY will refund the Escrow to DEVELOPER within 30 days following the last to occur of:
 - (a) the CITY's final acceptance of the Outdoor Learning Center Improvements and other supporting Public Improvements;
 - (b) the recording of the final plat dedicating the 11-Acre Tract and the Mitigation Area to CITY with Collin County, Texas; and
 - (c) the real estate closing on the DEVELOPER's conveyance of the 11-Acre Tract and the Mitigation Area to CITY by Special Warranty Deed free of all encumbrances and at no cost to the CITY accompanied by an Owner's Title Policy of Insurance provided to CITY in an amount equal to the value of the 11-

Acre Tract and the Mitigation Area as such value is determined by the CITY, less any Fees in Lieu of Dedication required to be paid in accordance with Paragraph 3.A.2, above, by DEVELOPER.

10. If (a) DEVELOPER fails to timely comply with all of the requirements of Paragraph 3.B.7., above, or (b) the USACE determines the additional hardscape, grade control structures, water mitigation structures and other Outdoor Learning Center Improvements contemplated by and in material accordance with the Proposed Plans violate the USACE required Deed Restrictions, as amended, applicable to the 11-Acre Tract and the Mitigation Area, the CITY shall have the right and authority in its sole discretion to reject the DEVELOPER's offer of the 11-Acre Tract and the Mitigation Area to satisfy the CITY's park land dedication requirements for the PROPERTY.
11. If the 11-Acre Tract and the Mitigation Area is not accepted as a part of DEVELOPER's park land dedication obligations, DEVELOPER shall pay to CITY additional fees in lieu of dedication of the park land in an amount equal to Eight Hundred Twenty-Five Thousand Dollars (\$825,000) calculated at a fee of Seventy-Five Thousand Dollars (\$75,000) per acre reduced by the net balance of the Escrow after satisfying the requirements of Paragraph 3.A.2.

4. Hike and Bike Trail

- A. In addition to the trails contained in the Learning Center Site Plan attached to this Agreement as Exhibit I and discussed in Paragraph 3.B.7., above of this Exhibit G, DEVELOPER shall construct approximately five thousand one hundred eighty (5,180) linear feet of a ten foot (10') wide hike and bike trail together with all necessary appurtenances thereto in the approximate locations depicted on Exhibit J contemporaneously with development of the applicable Phase. For the avoidance of doubt, "contemporaneously with development of the applicable Phase" means the hike and bike trail may be constructed in phases coinciding with the development of the particular phase (1) in which the portion of the trail is located within or (2) adjacent to which the trail is located (if the trail is not located within a phase) and (3) the entire length of the hike and bike trail is not required to be completed at the same time. The actual location of the hike and bike trail shall be more specifically defined during the platting of each phase in conformity to the Hike and Bike Trail Master Plan and as approved by the Parks, Recreation, and Open Space Director. Within the City of Irving Waterline Easement that crosses the Property, the hike and bike trail plans shall also be approved by the City of Irving Engineering Department, and any requirements for construction of such portion of the hike and bike trail shall

be subject to such approval. Please note that the DEVELOPER is not deferring construction of any portion or section of the required hike and bike trails identified herein, and the full length of the hike and bike trail shall be completed by DEVELOPER and final accepted by CITY before the plat for the last phase of the Property is recorded with Collin County.

- B. DEVELOPER has already paid to CITY the amount of \$ 62,500.00 for the construction of a pedestrian bridge to be located on the eastern boundary line of the Property as shown on Exhibit J at or about the time the CITY approved the Plat of the Property adjacent to, abutting, or in the vicinity of said bridge.
- C. The hike and bike trail improvements specifically described in this Section 4 and depicted on Exhibit J shall be the only hike and bike trail improvements required for development of the Property outside of the trails constructed in satisfaction of the Learning Center Site Plan.

5. No other variances for this Property are granted and no other variances shall be allowed.

EXHIBIT H

REVISED PARK LAND DEDICATION EXHIBIT

[See following 1 page.]

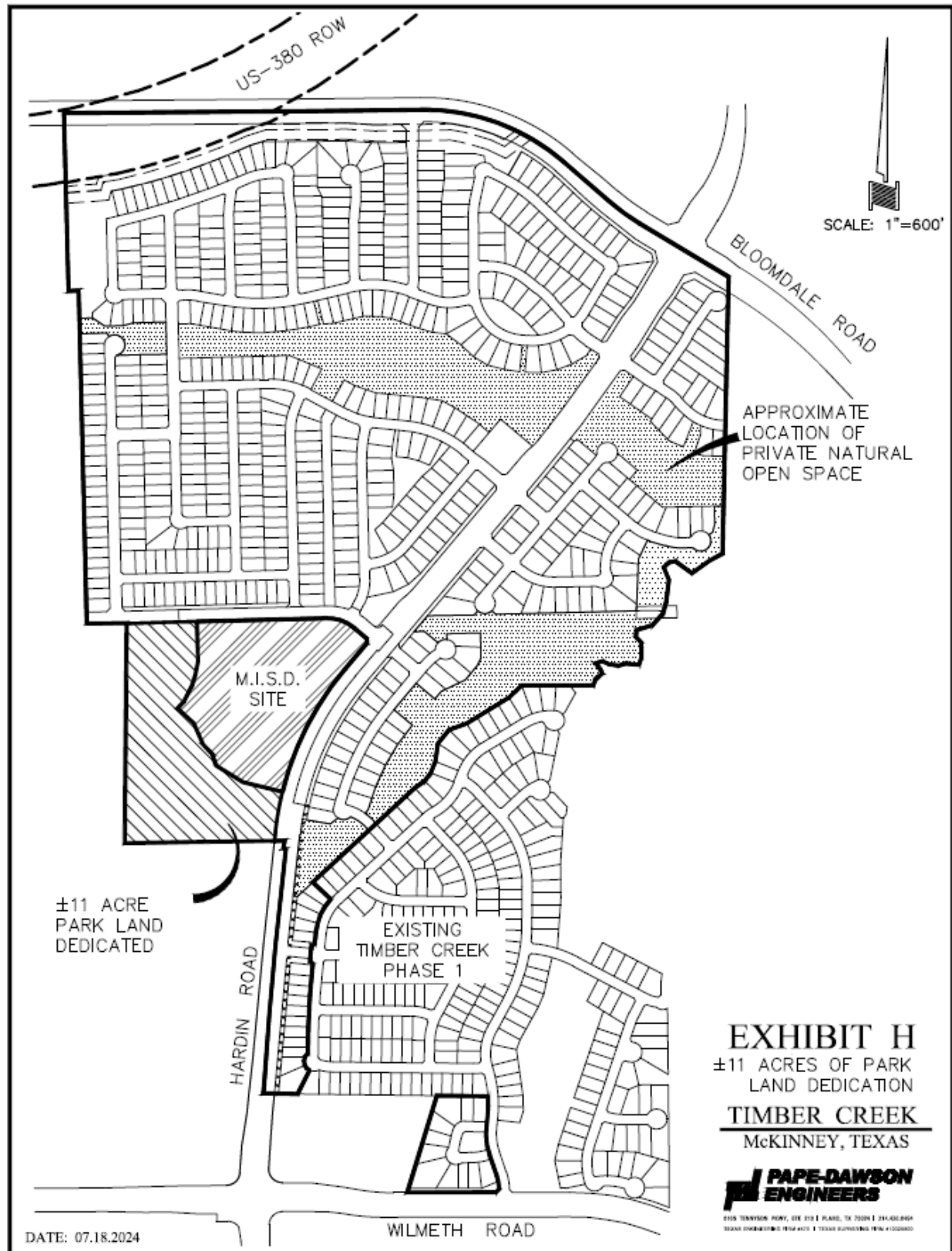


EXHIBIT I

LEARNING CENTER SITE PLAN

[See following 5 pages.]



Second Amended and Restated Facilities Agreement
(Defer Construction of Certain Required Road and Park Improvements)
Timber Creek Addition

EXHIBIT J

REVISED HIKE AND BIKE TRAIL EXHIBIT

[See following 1 page.]

