

CITY OF KENNEDALE
DEVELOPER'S AGREEMENT
FOR THE
BROOKSTONE ESTATES ADDITION

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

THIS AGREEMENT is entered into on the 20th day of August, 2004, between the City of Kennedale, Texas, hereinafter referred to as the "CITY", and MKP & Associates, Inc., whose address is 4110 Surfside Court, Arlington, Texas, 76016, hereinafter known as the "DEVELOPER".

WHEREAS, the DEVELOPER has requested the CITY to permit the platting and/or development of a tract of land known as the Brookstone Estates Addition (the "Addition"); and

WHEREAS, the CITY has approved such platting and/or development which requires the construction of community facilities and improvements to serve the Addition as provided herein; and

WHEREAS, this Agreement shall operate as a covenant running with the land and shall be binding upon the DEVELOPER and its representatives, officers, agents, servants, employees, successors and assigns.

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

A. ZONING, PLATTING and ADDITION PLANNING

All property owned by the DEVELOPER and located within the limits of the Addition shall be zoned and platted in accordance with the Zoning Ordinance and the Subdivision Ordinance of the CITY before any Building Permit will be issued. The DEVELOPER

shall dedicate, at no cost to the CITY, all easements and other dedications as required by CITY regulations at the time of platting.

The DEVELOPER shall comply with all requirements in this Agreement as a condition of approval of the Addition.

B. PUBLIC IMPROVEMENTS

All public and private infrastructure improvements, including streets, utilities, drainage, sidewalks, street lighting, street signage, and all other required improvements, shall be provided by the DEVELOPER, at no cost to the CITY, in accordance with the Subdivision Ordinance and other Regulations of the CITY, and as approved by the City Engineer or his agent. Such improvements shall be installed within all applicable time frames in accordance with the Subdivision Ordinance of the CITY and this Agreement.

The DEVELOPER shall employ a civil engineer licensed to practice in the State of Texas for the design and preparation of plans and specifications for the construction of the public improvements. The DEVELOPER shall assume all responsibility for the adequacy and accuracy of the design, plans and specifications. Engineering studies, plan/profile sheets, and other construction documents (hereinafter referred to as the "Construction Plans") prepared by the licensed engineer shall be provided by the DEVELOPER at the time of platting as required by the Subdivision Ordinance. Such documents shall be approved by the City Engineer or his agent prior to approval and filing of a Final Plat. Construction of such improvements shall not be initiated until a Pre-Construction Conference has been conducted regarding the proposed construction.

In accordance with the Subdivision Ordinance of the CITY, construction of all public improvements shall be subject to routine review by the City Engineer or his agent to evaluate conformance with the construction plans, project specifications and CITY standards. However, such review and evaluation shall not relieve the DEVELOPER, his engineer and/or agent of responsibility for the design, construction and maintenance of the improvements as set out in this Agreement and relevant ordinances of the CITY.

Upon completion of construction of public improvements as required by this Agreement and the Subdivision Ordinance, the DEVELOPER shall deliver to the CITY the following

As-Built construction plans for the public improvements constructed or engineered by the DEVELOPER:

1. One FULL set in AutoCAD 14 (or the City's most recent version);
2. One FULL MYLAR set;
3. One FULL Blue-Line set;
4. One Blue-Line copy of the executed ("filed") Final Plat sheet;
5. One 11" X 17" copy of the Final Plat Sheet;
6. Two (2) Blue-Line copies of the Water and Sanitary Sewer Layout sheet at a scale of 1:200; and
7. One Blue-Line copy of the Storm Drain Layout sheet at a scale of 1:200.

No building permits will be issued for the Addition until all public improvements have been installed and inspected and a Letter of Acceptance has been issued by the CITY.

C. CONSTRUCTION BONDS

Prior to initiating any construction for the Addition, the construction contractor(s) for the DEVELOPER shall provide the CITY with one original and one quality copy of the following construction bonds:

1. PERFORMANCE BOND

A good and sufficient Performance Bond in an amount equal to one hundred percent (100%) of the total contract price of the contract between the DEVELOPER and the Prime Contractor for construction of public improvements (and any private improvements constructed in lieu thereof), guaranteeing the full and faithful execution of the work and performance of this contract and for the protection of the CITY against any improper execution of the work or the use of inferior materials. The Performance Bond shall guarantee completion of the public improvements within one year of execution of this Agreement.

2. PAYMENT BOND

A good and sufficient Payment Bond in an amount equal to one hundred percent (100%) of the total contract price of the contract

between the DEVELOPER and the Prime Contractor for the construction of public improvements (and any private improvements constructed in lieu thereof), guaranteeing payment for all labor, materials and equipment used in the construction of the public improvements.

3. MAINTENANCE BOND

A good and sufficient Maintenance Bond in an amount equal to one hundred percent (100%) of the total cost of the public improvements (and any private improvements constructed in lieu thereof), guaranteeing the maintenance in good condition of the facilities for a period of two (2) years from and after the date that a Letter of Acceptance is issued by the CITY indicating that the public improvements have been completed by the DEVELOPER and accepted by the CITY.

Each of the above bonds shall be in a form acceptable to the CITY. Any surety company through which a bond is written shall be duly authorized to do business in the State of Texas, provided that the CITY, through its Mayor, shall retain the right to reject any surety company for any work under this Agreement regardless of such company's authorization to do business in the State of Texas. Approval by the City shall not be unreasonably withheld or delayed.

D. STREETS

1. In conjunction with the platting and development of the Addition, all required on-site and off-site street improvements shall be constructed by the DEVELOPER in accordance with the plans and specifications prepared by the DEVELOPER's engineer and accepted by the CITY prior to the issuance of any building permit. The CITY shall assume maintenance responsibilities of the street improvements once the two-year maintenance bond is released.
2. Street lighting shall be installed by TXU Delivery Company or its agent ("TXU") in accordance with a street lighting layout plan provided by TXU and approved by the City Engineer or his agent. The DEVELOPER shall

be responsible for the installation costs of any required street lighting as provided herein.

E. SIDEWALKS

Sidewalks are required to be installed by the DEVELOPER in accordance with the CITY's Subdivision Ordinance. Due to the possible reconstruction of Mansfield Cardinal Road and Kennedale Little School Road, the DEVELOPER and CITY have agreed that the DEVELOPER will pay an escrow fee in lieu of the DEVELOPER's obligation to construct sidewalks. Any portion of this fee that is not used by the CITY for construction of sidewalks within fifteen (15) years from receipt of the fee shall be refunded to the DEVELOPER. The sidewalk escrow fee shall be in the following amount:

\$24,240.00

F. FENCES

The DEVELOPER shall be required to install and maintain a fence meeting the requirements of CITY ordinances along the portions of the Addition adjacent to public streets. The DEVELOPER shall retain ownership of the fence and the DEVELOPER shall be responsible to properly maintain the fence in a neat and presentable condition and to replace the fence as necessary.

G. UTILITIES

1. WATER

All required on-site and off-site water mains, valves, fire hydrants and other improvements shall be constructed by the DEVELOPER in accordance with the plans and specifications prepared by the DEVELOPER's engineer and accepted by the CITY prior to the issuance of any building permit. The CITY shall assume maintenance responsibilities of the water system once the two-year maintenance bond is released.

2. **SANITARY SEWER**

All required on-site and off-site sanitary sewer mains, manholes and other improvements shall be constructed by the DEVELOPER in accordance with the plans and specifications prepared by the DEVELOPER's engineer and accepted by the CITY prior to the issuance of any building permit. The CITY shall assume maintenance responsibilities of the sewer system once the two-year maintenance bond is released.

3. **DRAINAGE**

All required on-site and off-site drainage improvements shall be constructed by the DEVELOPER in accordance with the plans and specifications prepared by the DEVELOPER's engineer and accepted by the CITY prior to the issuance of any building permit. The DEVELOPER agrees to comply with all applicable EPA, TCEQ and other Federal, State and local requirements relating to the planning, permitting and management of storm water. The DEVELOPER agrees to construct the necessary drainage facilities within the Addition. These facilities shall be designed and constructed in accordance with the CITY's Subdivision Ordinance, and the Construction Plans. The DEVELOPER agrees to comply with all provisions of the Texas Water Code. The CITY shall assume maintenance responsibilities of the drainage facilities once the two-year maintenance bond is released.

I. PUBLIC FACILITIES TO BE PROVIDED BY THE CITY

1. The CITY makes no guarantee that water supply or wastewater treatment capacity will be available at any particular time or place, it being fully understood by both parties hereto that the ability of the CITY to supply water and wastewater services is subject to the CITY's water and wastewater system capacity. The CITY shall be the sole judge of the availability of such capacity to supply such water and/or wastewater services, provided, however, that the CITY will use its best efforts to insure that said water supply and wastewater treatment capacity is available.

2. The CITY does note to the DEVELOPER that in and along the Kennedale Little School Road sides of the proposed Addition, 12-inch diameter water mains exist for connections.
3. The CITY does note to the DEVELOPER that in and along the Mansfield Cardinal side of the Addition, a 6-inch diameter sanitary sewer main exists for connections. A sanitary sewer manhole is required for 6-inch connections and larger.

J. FEES TO BE PAID BY THE DEVELOPER

1. PLAT FEES

The DEVELOPER hereby agrees to pay the CITY a plat application fee of \$ n/a. Payment is due at the time of submittal for Final Plat approval.

2 CONSTRUCTION INSPECTION FEES

The DEVELOPER hereby agrees to pay the CITY construction inspection fees equal to one percent (1%) of the construction costs of water and sanitary sewer infrastructure improvements and two percent (2%) of the construction costs of street and drainage improvements for the Addition. Payment is due prior to initiating construction of these infrastructure improvements.

3. STREET NAME SIGNS and TRAFFIC CONTROL DEVICE SIGNAGE

The DEVELOPER is responsible for material costs, installation costs and maintenance costs of all street name signs, traffic control devices and school zone signs, including flashing light school zone signs as required by the City Engineer. All street name signs and traffic control device signs shall meet the current CITY standards and comply with the requirements of the Texas Manual on Uniform Traffic Control Devices at the time of installation. Installation must be completed prior to CITY acceptance of the Addition's infrastructure improvements. Traffic Control or regulatory signs shall be installed by the DEVELOPER where required.

4. IMPACT FEES

It is understood and agreed that impact fees will be assessed by the CITY at the time of final platting of the Addition, including the applicable sanitary sewer and water impact fees assessed by both the CITY and the City of Fort Worth. These fees must be paid prior to obtaining building permits for lots in the Addition.

5. PARK FEES

Required park fees (in lieu of dedication of park land) shall be paid by the DEVELOPER at the time of final plat approval.

91 lots x \$666.00 = \$60,606.00.

6. PUBLIC UTILITIES

The DEVELOPER agrees to pay the public utility companies (Charter Communications Cable Company, SBC Telephone Company, TXU Energy Company, TXU Gas Company and TXU Delivery Company) for their required costs of main installations, for street lighting, etc. for the Addition.

K. GENERAL CONDITIONS

1. LAW COMPLIANCE

The DEVELOPER agrees to comply with all federal, state and local laws that are applicable to development of the Addition.

2. EROSION CONTROL

During construction of the Addition and after the streets have been installed, the DEVELOPER agrees to keep the streets free from soil build-up. The DEVELOPER agrees to use soil control measures such as silt screening, hydromulch, etc., to prevent soil erosion. It will be the DEVELOPER'S responsibility to present to the City Engineer a soil control development plan that will be implemented for the Addition. When, in the opinion of the City Engineer or his agent, there is sufficient soil build-up on the streets or other drainage areas and notification has been given to the DEVELOPER, the DEVELOPER will have twenty-four (24) hours to clear the soil from the streets or affected areas. If the DEVELOPER does not remove the soil from the streets within the twenty-four (24) hours, the CITY may cause the soil to be removed either by contract or CITY forces and place the soil within the Addition at the DEVELOPER'S expense. All expenses must be paid to the CITY prior to acceptance of the Addition.

3. PRIVATE AMENITIES

It is understood that the Addition may incorporate a number of unique amenities and aesthetic improvements such as ponds, aesthetic lakes, unique landscaping, fences and walls, street furniture, etc. and may incorporate specialty signage and accessory facilities. The DEVELOPER agrees to accept responsibility for the construction and maintenance of all such aesthetic or specialty items. The CITY shall not be responsible for the maintenance or replacement of these items under any circumstances.

4. AMENITIES WITHIN PUBLIC RIGHT-OF-WAY

Only those amenities or specialty items listed in this section may be constructed within the public right-of-way. The CITY shall not be responsible for the replacement of these items under any circumstances. The DEVELOPER, its successors and assigns, agrees to accept responsibility for the installation and maintenance of all landscaping and irrigation, as specified on the approved Construction Plans, within any open spaces or other public right-of-way within the Addition and agrees to indemnify and hold harmless the CITY from any and all damage, loss or liability of any kind whatsoever by reason of injury to property or third persons occasioned by the location of these amenities within the public right-of-way, and the DEVELOPER, its successors and assigns, shall defend and protect the CITY against all such claims and demands. The DEVELOPER shall replace any plants, trees, or grass that die with the same type of plant, tree, or grass that is the same size and in the same stage of growth as the landscaping that died.

5. VENUE

Venue for any action brought hereunder shall be in Tarrant County, Texas.

6. ASSIGNMENT

This Agreement or any part hereof or any interest herein shall not be assigned by the DEVELOPER without the express written consent of the Mayor, which consent shall not be unreasonably withheld.

L. FINAL ACCEPTANCE OF SUBDIVISION INFRASTRUCTURE

The CITY will not issue a Letter of Acceptance until the Addition's public improvements are completely constructed (Final Completion) to the satisfaction of the City Engineer or his agent. However, upon Substantial Completion, a "punch list" of outstanding items shall be presented to the DEVELOPER'S contractor(s) indicating those outstanding items and their deficiencies that need to be addressed for Final Completion of the Addition.

The DEVELOPER agrees to deliver to the CITY clear and unencumbered title to all public improvements. Upon issuance of a Letter of Acceptance, title to all public improvements mentioned herein shall be vested in the CITY and the DEVELOPER hereby relinquishes any right, title or interest in and to such improvements or any part thereof. It is understood and agreed that the CITY shall have no liability or responsibility in connection with such public improvements until the Letter of Acceptance is issued.

M. NON-WAIVER

The DEVELOPER expressly acknowledges that by entering into this Agreement, the DEVELOPER, its successors, heirs, assigns, grantees, trustees, and/or representatives, shall never construe this Agreement as waiving any of the requirements of the Zoning Ordinance or Subdivision Ordinance or any other ordinance of the CITY.

N. HOLD HARMLESS AGREEMENT

THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT APPROVAL BY THE CITY ENGINEER OR OTHER CITY EMPLOYEE OF THE CONSTRUCTION PLANS OR ANY OTHER PLANS, DESIGNS OR SPECIFICATIONS SUBMITTED BY THE DEVELOPER PURSUANT TO THIS AGREEMENT SHALL NOT CONSTITUTE OR BE DEEMED TO BE A RELEASE OF THE RESPONSIBILITY AND LIABILITY OF THE DEVELOPER, HIS ENGINEER, EMPLOYEES, OFFICERS OR AGENTS FOR THE ACCURACY AND COMPETENCY OF THEIR DESIGN AND

SPECIFICATIONS. SUCH APPROVAL SHALL NOT BE DEEMED TO BE AN ASSUMPTION OF SUCH RESPONSIBILITY AND LIABILITY BY THE CITY FOR ANY DEFECT IN THE DESIGN AND SPECIFICATIONS PREPARED BY THE DEVELOPER'S ENGINEER, HIS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES, IT BEING THE INTENT OF THE PARTIES THAT APPROVAL BY THE CITY ENGINEER SIGNIFIES THE CITY'S APPROVAL ON ONLY THE GENERAL DESIGN CONCEPT OF THE IMPROVEMENTS TO BE CONSTRUCTED. IN THIS CONNECTION, THE DEVELOPER SHALL, FOR A PERIOD OF TWO (2) YEARS AFTER THE ACCEPTANCE BY THE CITY OF THE COMPLETED CONSTRUCTION OF INFRASTRUCTURE FOR THE ADDITION, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM ANY LOSS, DAMAGE, LIABILITY OR EXPENSE ON ACCOUNT OF DAMAGE TO PROPERTY AND INJURIES, INCLUDING DEATH, TO ANY AND ALL PERSONS WHICH MAY ARISE OUT OF ANY DEFECT, DEFICIENCY OR NEGLIGENCE OF THE DEVELOPER'S ENGINEER'S DESIGNS AND SPECIFICATIONS INCORPORATED INTO ANY IMPROVEMENTS CONSTRUCTED IN ACCORDANCE THEREWITH, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF THE CITY, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES, AND THE DEVELOPER SHALL DEFEND AT HIS OWN EXPENSE ANY SUITS OR OTHER PROCEEDINGS BROUGHT AGAINST THE CITY, ITS OFFICERS, AGENTS, OR EMPLOYEES OR ANY OF THEM, ON ACCOUNT THEREOF, AND SHALL PAY ALL EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE FEES AND EXPENSES OF ATTORNEYS) AND SATISFY ALL JUDGMENTS WHICH MAY BE INCURRED BY OR RENDERED AGAINST THEM OR ANY OF THEM IN CONNECTION THEREWITH.

THE DEVELOPER, ITS SUCCESSORS, ASSIGNS, VENDORS, GRANTEEES, AND/OR TRUSTEES DO HEREBY FULLY RELEASE AND AGREE TO, INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM ALL CLAIMS, SUITS, JUDGMENTS, AND DEMANDS OF ANY NATURE WHATSOEVER, FOR PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING DEATH, RESULTING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE CONSTRUCTION OF INFRASTRUCTURE IMPROVEMENTS AND FACILITIES IN THE ADDITION OR THE FAILURE TO SAFEGUARD THE CONSTRUCTION WORK, OR ANY OTHER ACT OR OMISSION OF THE

DEVELOPER RELATED THERETO, WHICH ACCRUE PRIOR TO ACCEPTANCE OF THE IMPROVEMENTS BY THE CITY, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF THE CITY, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.

O. AMENDMENTS

This Agreement may be changed or modified only with the written consent of both the DEVELOPER and the City Council of the CITY.

P. ASSESSMENT

In the event the DEVELOPER fails to comply with any of the provisions of this Agreement, the CITY shall be authorized to cease issuance of any further Certificates of Occupancy or building permits on property owned by the DEVELOPER, and the CITY shall be further authorized to file this Agreement in the Mechanic's Lien/Deed Records of Tarrant County as a mechanic's lien against the DEVELOPER'S property; and in the alternative, the CITY shall be authorized to levy an assessment against the DEVELOPER'S property for public improvements in accordance with applicable state law.

Q. CONTINUITY

This Agreement shall be a covenant running with the land and shall be binding upon the DEVELOPER, its successors, heirs, assigns, grantees, trustees and/or representatives.

R. SEVERABILITY

The provisions of this Agreement are severable and, in the event any word, phrase, sentence, paragraph, section or other provision of this Agreement, or the application thereof to any person or circumstance, shall ever be determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect and the application thereof to any other person or circumstance shall not be affected thereby. The invalid, illegal or unenforceable provision shall be rewritten by the parties to this Agreement to accomplish the parties' original intent as nearly as possible.

S. TERMINATION AND RELEASE

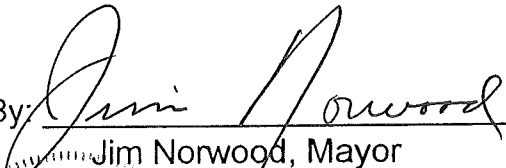
Upon the satisfactory completion by the DEVELOPER and final acceptance by the CITY of all requirements of this Agreement, this Agreement shall terminate and if this Agreement has been filed in the county records, the CITY will execute a release of covenant to the DEVELOPER, its assigns, successors, grantees, trustees and/or representatives and the CITY shall file said release in the county records.

In Witness whereof, each of the parties hereto has caused this Agreement to be executed by its undersigned duly authorized representative as of the date herein above first mentioned.

MKP & ASSOCIATES, INC.

By: 
Adlai Pennington, President

CITY OF KENNEDALE

By: 
Jim Norwood, Mayor



ATTEST:

By: 
Kathy Turner, City Secretary

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority in and for Tarrant County, Texas, on this day personally appeared Adlai Pennington, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he is the President of MKP & Associates, Inc. and that he executed the same on behalf of said company for the purposes and consideration therein expressed.

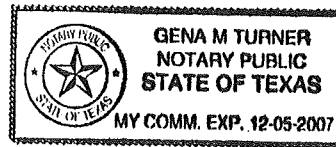
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 20th day of August, 2004.

Genia Turner

Notary Public in and for the State of Texas

GENA TURNER

Type or Print Notary's Name



My Commission Expires: 12-5-07

JOHN D. ZIMMERMAN P.E., R.P.L.S.
908 W. Main Street Arlington, Texas 76013
(817) 481-0188 Fax (817) 795-7880 E - Mail: jdzperps@swbell.net

August 6, 2004

City of Kennedale
405 Municipal Dr.
Kennedale, Texas 76060
Attn: David Miller
City Manager

**Re: Engineers Cost Estimate of Sidewalk along Mansfield
Cardinal Road to Accompany the Brookstone Addition**

Dear Mr. Miller:

I have been requested to prepare an Engineers Estimate for the sidewalk along the north-line Mansfield-Cardinal Road.

The criteria for establishing the per square foot price is to be as follows:

1. The sidewalk to be constructed with the improvement of Mansfield Cardinal.
2. The sidewalk to be per the City of Kennedale standard detail.
3. A mean unit price of \$3.00 per square foot is used for the calculation based upon costing sidewalk from several paving contractors.
4. The calculated length of the sidewalk to be 2020 LF.
5. Estimate Cost = 4ft(width) x 2020(length) x \$3.00/sq.ft. = \$24,240.00

Sincerely,



John D. Zimmerman P.E., R.P.L.S.

cc: MKP & Associates
Cheatham & Associates

