

AFTER RECORDING, RETURN TO:

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

**City of McKinney, Texas
DEVELOPMENT AGREEMENT
with
CRAIG DRIVE SIX, L.P.**

This DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the _____ day of _____, 2021 (the "Effective Date"), by and between the **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city, hereinafter referred to as "CITY", and **CRAIG DRIVE SIX, L.P.**, a Texas limited partnership, hereinafter referred to as "OWNER," (CITY and OWNER may be referred to collectively as "PARTIES"), concerning the development of certain "Property," defined in Paragraph A below, witnesseth that:

WHEREAS, the OWNER owns certain real property located within the corporate limits of the CITY; and

WHEREAS, OWNER desires and proposes to rezone and develop the Property in a manner that would require platting or replatting the Property; and

WHEREAS, the Subdivision Regulations of the City of McKinney, Texas contained in Chapter 142 of the Code of the City of McKinney, Texas (the "Subdivision Regulations") establishes 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 Property, and providing penalties for violations, among other things; and

WHEREAS, development or redevelopment of the subject property may require the OWNER to acquire certain offsite sanitary sewer easements and stormwater easements to serve such development and adjacent or nearby properties for which acquisition OWNER may need CITY's assistance consistent with state and federal law;

NOW THEREFORE, in consideration of the intent and desire of the OWNER, as set forth herein, and to obtain the offsite sanitary sewer easements and stormwater easements necessary to serve the subject property and adjacent or nearby properties and gain approval of the CITY to record a plat or replat of the Property, the OWNER and CITY agree as follows:

A. PROPERTY

This Agreement involves the development of approximately 15.07 acres of land situated in the William H. Hunt Survey, Abstract No. A450, Sheet 2, Tract 82, located in the corporate limits of the City of McKinney, generally west of Bois D' Arc Road and south of US 380 and is more fully depicted in Exhibit A attached to this Agreement which is fully incorporated herein by reference (the "Property").

B. UTILITIES

OWNER 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 oversized 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. OWNER 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. All utility plans and improvements are subject to the approval of CITY's Engineer.

C. ASSISTANCE TO ACQUIRE OFFSITE SANITARY SEWER EASEMENTS AND STORMWATER EASEMENTS

OWNER desires to construct sanitary sewer lines and stormwater drainage lines or channels ("Public Infrastructure") to convey sanitary sewer and stormwater from the Property in a southwesterly direction upon, over, and across an adjacent property (collectively "Off-Site Infrastructure Easements") to the CITY's sanitary sewer system and the CITY's stormwater system as depicted generally in Exhibit A attached hereto and incorporated herein by reference for all purposes allowed by law.

1. Prior to the commencement of construction of the Public Infrastructure, OWNER shall submit and obtain approval of plans consistent with the Code of Ordinances, City of McKinney, Texas ("McKinney Code") and the CITY's design standards, regulations, and Master Plans. Upon approval thereof, OWNER shall acquire, where necessary, and convey or cause to be conveyed to the CITY all Off-Site Infrastructure Easements necessary for the construction of the Public Infrastructure as depicted on Exhibit A. Thereafter, OWNER shall convey, or cause said Off-Site Infrastructure Easements to be conveyed to the CITY by plat dedication or separate instrument in a form that is acceptable to the CITY (the "Conveyances"). All Conveyances shall be at no cost to the CITY. OWNER understands and acknowledges that additional Infrastructure Easements from the Property may be required at the time of platting of tracts situated adjacent to the properties conveyed hereunder. The Infrastructure Easements conveyed, dedicated, or granted to the CITY shall be free and clear of all encumbrances, unless expressly permitted in writing by the CITY, which condition of title shall be

approved by the CITY prior to the conveyance or dedication. The CITY shall have the right to terminate this Agreement if the Off-Site Infrastructure Easements have not been acquired and conveyed or caused to be conveyed by OWNER to CITY in accordance with Paragraph C. and all obligations between the PARTIES shall terminate.

2. OWNER agrees to obtain an independent appraisal of all the necessary Off-Site Infrastructure Easements ("Appraisal" whether one or more) and use commercially reasonable efforts to obtain any and all Off-Site Infrastructure Easements necessary for the construction of the Public Infrastructure as provided in Paragraph C.1., above. If OWNER has previously obtained CITY's approval of the general location of the proposed Off-Site Infrastructure Easements and OWNER is unable to acquire all of the necessary easements for the Off-Site Infrastructure Easements within a three (3) month period beginning on the effective date hereof and following OWNER's submission of a best and final offer accompanied by the Appraisal to each owner of the property(ies) upon which each of the Off-Site Infrastructure Easements is proposed to be situated (collectively "Landowners"), then CITY agrees to use its eminent domain authority, upon written request by OWNER, to the extent permitted by law to acquire such Off-Site Infrastructure Easements described in this Agreement.
3. CITY's exercise of eminent domain authority shall also be subject to CITY's determination, in its sole discretion, that the Off-Site Infrastructure Easements are necessary for and serve a public use and that OWNER exercised commercially reasonable efforts including, but not limited to, making a legitimate offer to Landowners to purchase the Off-Site Infrastructure Easements. CITY's obligation, if any, to exercise its eminent domain authority pursuant to this Paragraph C. shall also be subject to the approval and finding of necessity by the City Council.
4. OWNER shall pay all costs and expenses, whether incurred by CITY or otherwise, in connection with such eminent domain actions and acquisition of such Off-Site Infrastructure Easements including, but not limited to, settlements, court awards, damages, interest, expert witness fees, mediation fees, attorney's fees, staff time/costs, deposition costs, copy charges, courier fees, postage and taxable costs of court (collectively "Costs and Expenses").
5. From time to time and upon ten (10) calendar day's written or electronic notice from CITY, including the City Attorney, OWNER shall advance, by wire transfer, funds to CITY to pay such Costs and Expenses. Each such notice to OWNER shall itemize, in reasonable detail, the purposes (as described above) for which the funds are required, including the estimated, line-item costs. CITY shall undertake all eminent domain actions in accordance with SB 18, wherein CITY shall have the unilateral right to make the necessary determinations of which interests are necessary for public use. If it is determined by a Court of competent jurisdiction that an interest to be acquired does not constitute a public use, the

CITY shall have no obligation to continue acquisition thereof, and OWNER shall have the continuing obligation to comply with this Paragraph C. CITY shall provide to OWNER copies of all appraisal reports, including updates, if any, prior to all offers being made to Landowners. CITY shall also provide to OWNER prior notice of the attorneys, appraisers, and other consultants that CITY will engage to assist in connection with the acquisitions. CITY shall provide to OWNER an accounting of all Costs and Expenses paid or incurred by CITY in connection with this Paragraph C. OWNER's default in payment of any advance requested under this Paragraph C shall provide CITY the immediate right to cease any actions or efforts to acquire easements until full payment of all Costs and Expenses is actually received. In addition, CITY shall have the right to immediately terminate this Agreement and withhold any further development approvals and permits for the Property if OWNER fails to make any payment or advance under this Paragraph C. In the event of any conflict between the CITY's Master Utility Plan and this Agreement relative to size or width of offsite sanitary sewer easements and stormwater easements whereby such location, size, or width is altered, increased, or reduced, the CITY's Master Plans shall control.

D. NO WAIVER

OWNER expressly acknowledges that by entering into this Agreement, OWNER, 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.

E. 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 B, if any, are granted by CITY for this subdivision and/or development. If no variances are granted, Exhibit B shall state "No variances for this Property are granted and none shall be allowed."

F. INDEMNITY AND HOLD HARMLESS AGREEMENT

OWNER, 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 OWNER, and only to the extent or percentage attributable to OWNER, in the subdividing, development, or construction of public improvements, including the negligent maintenance thereof. OWNER 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 improvements.

G. REVOCAATION

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

H. ROUGH PROPORTIONALITY AND WAIVER OF CLAIMS.

OWNER 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 OWNER, regarding OWNER's rights under Texas and federal law. OWNER 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.) OWNER 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, OWNER hereby releases the City from 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 utility improvements made herein constitutes a proportional allocation of OWNER's responsibility for utility improvements for the Property. OWNER 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. OWNER further releases CITY from 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 utility systems by OWNER's Property. OWNER 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 OWNER acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. **OWNER shall indemnify and hold harmless CITY from any claims and suits of third parties, including but not limited to OWNER's successors, assigns,**

grantees, vendors, trustees, or representatives, brought pursuant to this Agreement or the claims or types of claims described in this paragraph.

I. CONTINUITY

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

J. ASSIGNABILITY

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

K. TERMINATION AND RELEASE

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

L. CONFLICT OF INTEREST

1. OWNER covenants and agrees that OWNER and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Agreement. All activities, investigations and other efforts made by OWNER pursuant to this Agreement will be conducted by employees, associates, or subcontractors of OWNER.
2. In addition, to the extent that this Agreement (a) must be approved by the CITY's governing body before it may be signed or (b) has a value of \$1,000,000, or more, OWNER shall comply with the requirements of Texas Government Code § 2252.908 by completing and submitting Form 1295 to the Texas Ethics Commission ("Commission") at the time OWNER submits this signed Agreement to CITY, and as follows:

Form 1295 Filing Process: The Commission has made available on its website a new filing application that must be used to file Form 1295. The OWNER must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the OWNER must sign the printed copy of the form and complete the

“unsworn declaration” which includes, among other things, the date of birth and address of the authorized representative signing the form. The completed Form 1295 with the certification of filing must be filed with the CITY.

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

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

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

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

M. NO BOYCOTTING OF ISRAEL

In accordance with Chapter 2271, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Chapter 2271 does not apply to (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the OWNER is not subject to Chapter 2271 for the reasons stated herein, the signatory executing this Agreement on behalf of the OWNER verifies by its signature on this Agreement that the OWNER does not boycott Israel and will not boycott Israel during the term of this Agreement.

N. GENERAL PROVISIONS

1. OWNER 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 OWNER will comply with CITY’S Subdivision Ordinance, Public Improvements Policy and any other applicable policies, rules, regulations, and ordinances of CITY regarding development of Property.
2. OWNER 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 OWNER. Likewise, coordination

with agencies requiring special conditions (i.e., railroads and the Texas Department of Transportation) shall be the responsibility of OWNER.

- 3. OWNER agrees that all development on the Property shall comply with the requirements set forth in the Code of Ordinances, City of McKinney, Texas, and all other applicable rules, regulations, guidelines, and statutes of the City as well as the State of Texas and the United States.

CITY OF MCKINNEY

By: _____
PAUL G. GRIMES
City Manager

Date Signed: _____

ATTEST:

EMPRESS DRANE
City Secretary
JOSHUA STEVENSON
Deputy City Secretary

OWNER:

CRAIG DRIVE SIX, L.P., a Texas limited partnership,

By its General Partner **ROAD EXPRESS, L.L.C.**, a Texas limited liability company,

By: _____
DAVID CRAIG
Managing Member

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 CITY's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF _____, 20____.

Notary Public _____ County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 20____, by DAVID CRAIG, in his capacity as Managing Member of **ROAD EXPRESS, L.L.C.**, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that **ROAD EXPRESS, L.L.C.**, is the General Partner of **CRAIG DRIVE SIX, L.P.**, a Texas limited partnership, and that he executed the same on behalf of and as the act of **CRAIG DRIVE SIX, L.P.**

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF _____, 20____.

Notary Public _____ County, Texas
My commission expires _____

EXHIBIT A

DEPICTION OF PROPERTY AND
SANITARY SEWER AND STORMWATER EASEMENTS

(Contained on following one page.)

EXHIBIT B

VARIANCES

1. No variances for this Property are granted and none shall be allowed.