

EXHIBIT B

Temporary Construction Easement

AFTER RECORDING, RETURN TO:

**City Manager
CITY OF MCKINNEY
P.O. Box 517
McKinney, Texas 75070**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

(Space Above For Recorder's Use Only)

TEMPORARY CONSTRUCTION AND STAGING EASEMENT

THIS TEMPORARY CONSTRUCTION AND STAGING EASEMENT (this "**Agreement**") is entered into this ____ day of _____, 201_, (the "**Effective Date**") by and between **GAMMON PARTNERS I, L.P.** (a/k/a Gammon Partners I, Ltd.), a Texas limited partnership ("**Grantor**"), and the **CITY OF MCKINNEY**, a Texas municipal corporation ("**Grantee**").

RECITALS

A. Grantor owns certain real property (the "**Grantor's Parcel**") in the City of McKinney, County of Collin, State of Texas, located at the northeast corner of Alma Road and Silverado Trail, and more particularly described on Exhibit "A" and made a part hereof.

B. By separate instrument captioned "Temporary Drainage Easement", which instrument is recorded under Clerk's File No. _____, Real Property Records of Collin County, Texas, the Grantor conveyed to the City that certain 20' wide temporary drainage easement (the "**Drainage Easement**") for the purpose of constructing and installing temporary drainage improvements (the "**Drainage Improvements**"). The land in, over and through which the Drainage Easement was dedicated shall be referred to herein as the "Drainage Easement Area."

C. By separate instrument captioned "Right of Way Warranty Deed", recorded under Clerk's File No. _____, Real Property Records of Collin County, Texas, Grantor conveyed to the City certain real property for the purpose of constructing and installing improvements to Alma Road and Silverado Trail (the "**Roadway Improvements**").

D. Grantee desires to obtain a temporary, non-exclusive construction and staging area easement (the "**Temporary Staging Area Easement**") on, over and across that certain portion of Grantor's Parcel which is thirty-five feet (35') in width and running along the eastern

boundary of the Drainage Easement which is parallel to Alma Road and that portion of Grantor's Property which is thirty feet (30'" in width and running along the northern boundary of the Drainage Easement which is parallel to Silverado Trail (the "**Temporary Staging Area**") for the movement and storage of material, equipment and machinery (the "**Staging Activities**") used in connection with the construction of the Drainage Improvements and the Roadway Improvements. Grantor is willing to grant the Temporary Staging Area Easement to Grantee on the terms and conditions set forth herein.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) paid by Grantee to Grantor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the mutual promises and subject to the conditions set forth below, the parties hereto agree as follows:

1. **Grant of Temporary Staging Area Easement.** Grantor hereby conveys to Grantee the Temporary Staging Area Easement for the sole purpose of performing the Staging Activities in connection with the construction of the Drainage Improvements and the Roadway Improvements. At no time during the term of this Agreement shall Grantee or "Grantee's Agents" (as hereinafter defined) block access to any driveways or pathways over or across Grantor's Parcel. Grantee covenants and agrees, on or before the "Termination Date" (as hereinafter defined), to cause the Temporary Staging Area to be restored to its condition as of the Effective Date, which restoration shall include, without limitation, (i) repairing any damage to any utility systems or other improvements located on, in, under or adjacent to the Temporary Staging Area, (ii) filling any ditch, trench or other excavation in the Temporary Staging Area with compacted clean dirt such that the ground is even and level with the surrounding surface, (iii) replacing any trees, shrubs or other landscaping, to the extent such damage is related to the use of the Temporary Staging Area Easement, and removing all equipment, materials, and other personal property from the Temporary Staging Area. Any personal property remaining in the Temporary Staging Area following the Termination Date shall be deemed to be abandoned and Grantor may proceed to dispose of such property at its sole discretion with any associated costs of removal and/or disposal being the sole responsibility of Grantee. Grantee acknowledges that there is a fifty foot (50') wide easement to Enserch Corporation as evidenced by a document recorded under Clerk's File No. 93-0110477 and, to the extent the same exists and affects the Grantor's Parcel, Volume 3483, Page 77, Real Property Records of Collin County, Texas (collectively, the "**Ensearch Easement**"). Grantee agrees not to violate any of the terms of the Enserch Easement, to obtain such permission as is necessary to cross the Enserch Easement and to repair any damage to the Enserch Easement and the facilities located therein.

2. **Term.** The Temporary Staging Area Easement will automatically terminate on the earlier of (i) the date the Drainage Improvements have been installed in the Drainage Easement and the Roadway Improvements have been completed, (ii) the date that both the Staging Activities and any construction activities related to the installation of the Drainage Improvements and Roadway Improvements have, after being commenced, are discontinued in the Temporary Staging Area for forty-five (45) consecutive days, (iii) that date which is ninety (90) days from the Effective Date if neither the Staging Activities nor any construction activities related to the installation of the Drainage Improvements or Roadway Improvements have

commenced, or (iv) January 31, 2013 (in each such event, the “**Termination Date**”). In the event of a termination, upon request by the Grantor, the Grantee shall promptly execute and deliver to Grantor a written release of this Temporary Construction and Staging Easement in form acceptable for recording.

3. **Access.** Grantee and its agents, employees, consultants, contractors and subcontractors (collectively, “**Grantee’s Agents**”) shall have the right to enter upon the Temporary Staging Area Easement for the purposes of the Staging Activities. Grantee and Grantee’s Agents shall enter upon the Temporary Staging Area at their sole risk and hazard, and Grantee, for itself, its successors and assigns and the Grantee’s Agents hereby release the “Grantor Parties” (as hereinafter defined) from any claims relating to the Temporary Staging Area Easement and the use thereof by Grantee and Grantee’s Agents. Grantee covenants and agrees to use appropriate care and take appropriate measures to protect any and all trees from damage during the Staging Activities, including, without limitation, creating a perimeter not less than three (3) feet in diameter around each such tree in which no Staging Activities shall occur. Grantee covenants and warrants that any damages caused to any utility or other improvements on Grantor’s Parcel in the course of the Staging Activities shall be the sole responsibility of Grantee and Grantee shall repair and/or replace such improvements in the event that any such damage occurs. Grantee shall, and shall cause Grantee’s Agents to, perform all Staging Activities and the installation of the Drainage Improvements with due care and in a good and workmanlike manner. At those times that work relating to the Staging Activities or the installation of the Drainage Improvements is not being performed, Grantee shall cause all materials maintained by Grantee and/or Grantee’s Agents on or in the Temporary Staging Area or Drainage Easement Area to be secured in such a way so as to, to the extent reasonably possible, (i) cause the least danger to users of Grantor’s Parcel or any adjacent parcels, and (ii) prevent an “attractive nuisance” to children. Under no circumstances shall the Grantee or Grantee’s Agents be permitted to perform any environmental testing on Grantor’s Parcel, or to use or store hazardous materials in the Temporary Staging Area or Drainage Easement Area.

4. **Condition of the Temporary Staging Area.** In connection with the Staging Activities and the installation of the Drainage Improvements, Grantee hereby accepts, on behalf of itself and Grantee’s Agents, the Drainage Easement Area’s and the Temporary Staging Area’s “as is and where is”, “with all faults” condition.

5. **Compliance with Laws.** Grantee shall obtain, at its sole cost and expense, any and all consents, approvals, licenses, permissions, permits, authorizations and agreements necessary to permit the installation of the Drainage Improvements in the Drainage Easement. Grantee will comply with all applicable laws, statutes, codes, acts, ordinances, rules, regulations, orders, judgments, decrees, injunctions, permits, licenses, authorizations, directions and requirements of, and agreements with, all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers.

6. **Liens.** Grantee shall keep the Grantor’s Parcel free from, and Grantee shall be solely responsible for the payment of, any and all liens arising out of any work performed, materials furnished or obligations incurred by, through, for or under Grantee or Grantee’s Agents or in connection with the Staging Activities or the installation of the Drainage Improvements, and shall indemnify, defend and hold harmless the Grantor Parties from any loss or liability

arising out of or related to the Staging Activities or the installation of the Drainage Improvements. Grantee shall cause any such liens to be promptly released of record. The provisions contained in this Section 6 shall survive the termination of this Agreement.

7. **Indemnification.**

7.1 Grantee shall, indemnify, defend and hold Grantor, its parents and their respective officers, directors, trustees, beneficiaries, members, retirants, employees, agents, attorneys or contractors (individually and collectively, the “Grantor Parties”) free and harmless from and against any and all loss, liability, claims, demands, damages and costs (including attorneys’ fees and expenses) arising or resulting from Grantee’s entry and activities upon the Temporary Staging Area or Drainage Easement Area, including, without limitation, the Staging Activities and installation of the Drainage Improvements. The provisions contained in this Section 7 shall survive the termination of this Agreement.

7.2 Grantee’s defense of the Grantor Parties pursuant to this Section 7 and Section 6 shall be with counsel reasonably acceptable to the applicable Grantor Party(ies) (in the context of this Section 7.2, each an “Indemnitee”); provided, however, such Indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by Grantee, if such Indemnitee reasonably believes that representation of such Indemnitee by the counsel retained by Grantee would be inappropriate due to actual or potential conflicting interests between such Indemnitee and any other party represented in such proceeding by counsel retained by Grantee. Any delay by such Indemnitee in delivering written notice to Grantee after Indemnitee receives notice of an indemnified claim shall not relieve Grantee of any liability to the Indemnitee unless, and then only to the extent that, such delay is actually prejudicial to Grantee’s ability to defend such action, and the failure to deliver written notice to Grantee will not relieve Grantee of any other liability that it may have to any Indemnitee. The settlement of a claim without the prior written consent of Grantee shall not release Grantee from liability with respect to such claim if Grantee has unreasonably withheld consent to such settlement or has failed to provide or pay for a defense thereof as provided herein. All fees, costs and expenses to be paid by Grantee hereunder shall be made on a “paid as incurred” basis within thirty (30) days of Grantee’s receipt of a statement or invoice therefor.

8. **Insurance.** During the term of this Agreement, Grantee and Grantee’s Agents shall each obtain and keep in full force and effect, general commercial liability insurance, umbrella, and automobile liability insurance for owned, hired or non-owned vehicles, issued by an “A-VIII” or better rated insurance carrier as rated by A.M. Best Company as of the date that Grantee or Grantee’s Agents, as applicable, obtain or renew their insurance policies, on an occurrence basis, in which Grantor, its officers, employees, agents and representatives are named as additional insureds with endorsement CG 2010 10 01 (or its equivalent) Additional Insured - Owners, Lessees or Contractors Scheduled Person or Organization, with Grantee or Grantee’s Agents, as applicable, and worker’s compensation insurance, as required by applicable law. Grantee shall furnish a certificate or certificates of insurance to Grantor prior to the commencement of the Staging Activities evidencing the foregoing and shall furnish complete copies of such policy or policies upon request by Grantor. The commercial general liability

insurance shall have a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence with a Two Million Dollar (\$2,000,000) aggregate limit with endorsement CG 2037 10 01 (or its equivalent) Completed Operations should be included for contractors with products /completed operations, and excess umbrella liability insurance in the amount of Two Million Dollars (\$2,000,000). The business auto liability coverage shall insure bodily injury and property damage with a combined single limit of not less than One Million Dollars (\$1,000,000) per accident for owned, non-owned and hired vehicles. Without limiting the foregoing, prior to the commencement of any Construction Activities, to the extent permitted by this Agreement or with the express written consent of Grantor, Grantee shall furnish to Grantor evidence that the policy or policies of insurance required hereunder bear an endorsement or shall have attached a rider providing that Grantor shall be notified not less than thirty (30) days before any expiration, cancellation, non-renewal, reduction in coverage, increase in deductible, or other material modification of such policy or policies, and shall be notified not less than ten (10) days after any event of nonpayment of premium. Acceptance of the insurance certificates and endorsements to the extent required under this Agreement shall not relieve Grantee from liability under the indemnification and hold harmless provision set forth in Section 7 hereof; such indemnification and hold harmless provision shall apply whether or not such insurance policies be determined to be applicable to any damage or claim for damage.

9. **Notices.** All notices, objections and approvals referred to in this Agreement must be given in writing and will be effective on the day the notice is (i) delivered at the address of the addressee thereof after being sent by overnight delivery such as Federal Express or having been personally hand delivered by the sender, (ii) delivered by the United States Mail, postage prepaid, registered or certified mail, return receipt requested, and properly addressed to the party to receive said notice, or (iii) received by the addressee by facsimile or similar transmitting machine, as the case may be. The notice addresses of the parties will be those specified below until further notice:

Grantor: Gammon Partners I, L.P.
Attn: Thomas C. Hillsman
5220 Spring Valley Road, Suite 404
Dallas, Texas 75254
Phone: (214) 368-5900
Fax: (214) 368-7525

Grantee: City of McKinney
Office of the City Manager
P.O. Box 517
McKinney, Texas 75070-8013
Phone: (972) 547-7520
Fax: (972) 547-2607

10. **Miscellaneous.**

10.1 **Interpretation.** Section titles and captions to this Agreement are for convenience only and shall not be deemed part of this Agreement and in no way define, limit, augment, extend, or describe the scope, content, or intent of any part of this

Agreement. This Agreement has been arrived at through negotiation between Grantor and Grantee. As a result, the normal rule of contract construction that any ambiguities are to be resolved against the drafting party shall not apply in the construction or interpretation of this Agreement.

10.2 **Applicable Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

10.3 **Run with the Land/Successors.** Subject to the terms and conditions of this Agreement, the easement granted herein shall run with the land, and the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns. This Agreement shall not be assigned by Grantee without Grantor's prior written consent, which may be granted or withheld in Grantor's sole and absolute discretion.

10.4 **Integration.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto. No covenant, representation or condition not expressed in this Agreement shall affect or be deemed to interpret, change, or restrict the express provision hereof. Any amendment or modification to this Agreement shall be in writing and signed by authorized agents or officers of the parties.

10.5 **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any rights or remedy for a breach of this Agreement shall constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement, term, or condition.

10.6 **Enforceability and Litigation Expenses.** If any action, suit, or proceeding is brought by a party hereto with respect to a matter or matters covered by this Agreement or if a party finds it necessary to retain an attorney to enforce its rights under this Agreement, all costs and expenses of the prevailing party incident to such proceeding or retention, including reasonable attorneys' fees, costs and expenses, shall be paid by the non-prevailing party.

10.7 **Authorization.** Each individual executing this Agreement represents and warrants that he or she has been duly authorized to execute and deliver this Agreement in the capacity and for the entity set forth where he/she signs and that, as a result of his/her signature, this Agreement shall be binding upon the party for which he/she signs.

10.8 **Contractors and Subcontractors.** Grantee agrees that it shall cause all of Grantee's Agents and any other party acting on behalf of Grantee in connection with the Staging Activities and/or the installation of the Drainage Improvements to comply with the terms and provisions of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, this Agreement has been executed on, and is effective as of, the Effective Date.

GRANTOR:

GAMMON PARTNERS I, L.P. (a/k/a Gammon Partners I, Ltd.)

By: Gammon Equities, Inc.,
a Texas corporation
its general partner

By: _____
THOMAS HILLSMAN
Vice President

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Before me on this day personally appeared Thomas C. Hillsman, the Vice President of Gammon Equities, Inc., a Texas corporation, general partner of Gammon Partners I, Ltd., a Texas limited partnership (a/k/a Gammon Partners I, L.P.), known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this ___ day of _____, 201_.

My Commission Expires: _____

Notary Public, State of Texas

[Additional signature page follows.]

GRANTEE:

CITY OF MCKINNEY

By: _____
JASON GRAY
City Manager

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 201_, by JASON GRAY, City Manager of the ***CITY OF MCKINNEY***, a Texas municipal corporation, on behalf of said corporation.

My Commission Expires:

Notary Public, State of Texas

Being a 14.93 acre tract of land situated in the George Herndon Survey, Abstract No. 390, in the City of McKinney, Collin County, Texas, and being a portion of a tract of land conveyed to Gammon Partners I, L.P. by deed recorded in County Clerk's File No. 92-0077779, of the Deed Records of Collin County, Texas, and being more particularly described as follows

BEGINNING at a "X" cut in concrete set for the southwest corner of said Gammon tract, same being the northeast intersection of the east right-of-way line of Alma Drive (a variable width right-of-way, and the center line more or less of County Road No. 152,

THENCE North 00 deg. 17 min. 04 sec. West, along the common line of said Gammon tract, and the east right-of-way line of said Alma Drive, a distance of 806.28 feet to a 1/2 inch iron rod set for corner;

THENCE South 89 deg. 55 min. 43 sec. East, through the interior of said Gammon tract, a distance of 809.72 feet to a 1/2 inch iron rod set for corner;

THENCE South 00 deg. 17 min. 00 sec. East, through the interior of said Gammon tract, a distance of 800.09 feet to a 1/2 inch iron rod set for corner, said point being in the south line of said Gammon tract, same being in the center line more or less of said County Road No. 152;

THENCE South 89 deg. 38 min. 01 sec. West, along the common line of said Gammon tract, and the center line more or less of said County Road No. 152, a distance of 809.69 feet to the POINT OF BEGINNING and containing 650,338 square feet or 14.93 acres of computed land

EXHIBIT C

Temporary Drainage Easement

AFTER RECORDING, RETURN TO:

**Sandy Hart
CITY OF MCKINNEY
P.O. Box 517
McKinney, Texas 75070**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

TEMPORARY DRAINAGE EASEMENT

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN §

That GAMMON PARTNERS I, L.P. (a/k/a Gammon Partners I, Ltd.), a Texas limited partnership ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Grantor in hand paid by the **CITY OF MCKINNEY**, a Texas municipal corporation ("Grantee"), the receipt and sufficiency of which are hereby acknowledged, does hereby GIVE, GRANT, and CONVEY unto Grantee a non-exclusive temporary easement and right to construct, reconstruct and maintain certain temporary drainage facilities, including but not limited to positive overflow and all necessary appurtenances thereto (the "Facilities") in, on, under, over and across the following described property (the "Easement Property"):

See Exhibit "A" attached hereto and made a part hereof.

The Easement Property shall be used for the sole purposes of the Facilities and for no other purposes. Notwithstanding anything to the contrary, Grantor retains the right to use the

Easement Property for any and all purposes which will not materially interfere with the Facilities.

The Grantee herein, its successors and assigns, shall have, and it is hereby granted, the right of ingress and egress over that portion of the servient estate as is reasonably necessary to and for the limited purpose of accessing the Easement Property herein granted. To the extent that access to the Easement Property and Facilities is reasonably available by, through and across dedicated driveways and firelanes upon final platting and construction of such improvements, Grantee herein, its successors and assigns, will limit their use of the servient estate for access to the Easement Property to the use of such dedicated driveways and firelanes.

There are no liens, attachments, or other encumbrances which will affect the title or right of the Grantor to convey this easement to the Grantee for the purposes as described herein.

TO HAVE AND TO HOLD the Easement Property unto the Grantee solely for the purposes herein set forth, Grantor hereby binds itself and Grantor's successors and assigns to warrant and forever defend the easement and rights granted herein unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or attempting to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

It will be the responsibility of any parties doing any work and entering upon and utilizing the Easement Property pursuant to this Temporary Drainage Easement to, at all times after doing any such work in connection with the construction, operation or repair of the Facilities, restore the surface of the Easement Property as close to the condition in which it was found before such work was undertaken as is reasonably practicable, except for trees, shrubs and structures within the Easement Property that were removed as a result of such work. Grantor shall not be liable for any property damage and/or bodily injury caused solely by any third-parties not related to or

employed by Grantor that enter upon and utilize the Easement Property. Grantee shall not be liable for any property damage and/or bodily injury caused by any party other than Grantee that enters upon and utilizes the Easement Property. Grantor and Grantee agree this paragraph shall not be construed or interpreted as an agreement of indemnification and that this paragraph shall not inure to the benefit of any third-party, except as specifically provided above. The parties further agree that nothing contained in this document shall be deemed to be, or otherwise interpreted as being, a waiver of Grantee's sovereign immunity.

The Temporary Drainage Easement established hereby shall be deemed abandoned by Grantee and automatically released by Grantee upon Grantee's approval (such approval not to be unreasonably withheld, delayed or conditioned) and recording of a record plat with Collin County, Texas, which plat provides an alternative means of addressing the drainage requirements fulfilled by this Temporary Drainage Easement. Nothing contained herein will require the Grantee to remove any drainage improvements from the Easement Property or take any action to restore said Easement Property to its pre-easement condition. It is contemplated that the development of the Grantor's property described on Exhibit "B" attached hereto and made a part hereof ("Grantor's Property") may occur in stages, and if so, that this Temporary Drainage Easement may be released in stages as portions of the Grantor's Property is platted.

If the Facilities are not constructed by January 1, 2014, or if the Easement Property is not used for the purpose described in this Temporary Drainage Easement, all rights granted herein shall revert to the Grantor and Grantee shall cooperate in providing a document in form acceptable for recording to extinguish the easement rights granted hereunder.

[Remainder of page is blank; signature on following page]

WITNESS THE GRANTOR'S HAND this ____ day of _____, 2011.

GRANTOR:

GAMMON PARTNERS I, L.P. (a/k/a Gammon Partners I, Ltd.)

By: Gammon Equities, Inc.,
a Texas corporation
its general partner

By: _____
THOMAS HILLSMAN
Vice President

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Before me on this day personally appeared Thomas C. Hillsman, the Vice President of Gammon Equities, Inc., a Texas corporation, general partner of Gammon Partners I, Ltd., a Texas limited partnership (a/k/a Gammon Partners I, L.P.), known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this ____ day of _____, 2011.

My Commission Expires:

Notary Public, State of Texas

APPROVED AS TO FORM:

Printed Name: _____
Title: _____
Office of the City Attorney

EXHIBIT "A"

Description of Easement Property