

defined). A copy of the Temporary Construction Easement is attached hereto as Exhibit "B" and incorporated herein by reference for all purposes; and

WHEREAS, in consideration of certain agreements regarding the timing of the construction of the Infrastructure Improvements and Other Improvements, Gammon has agreed to execute and deliver a temporary drainage easement (the "Temporary Drainage Easement") in the form of Exhibit "C" attached hereto and made a part hereof, a waterline easement (the "Waterline Easement") in the form of Exhibit "D" attached hereto and made a part hereof, and convey to the City the necessary right-of-way by special warranty deed (the "Deed") in the form of Exhibit "E" attached hereto and made a part hereof; and

WHEREAS, in addition the City will provide: (a) water, sanitary sewer and drainage connections to the Property, at the City's sole cost and expense and without reimbursement by Gammon, as substantially shown on Sheets 51, 54, 64, 66, 67 and otherwise in the Plans (the "Other Improvements"; the Infrastructure Improvements and Other Improvements are hereinafter collectively referred to as the "Improvements"); (b) a waiver of any roadway assessment or charge for construction thereof; and (c) certain roadway impact fee credits pursuant to City ordinances as further consideration for the grant of the Temporary Construction Easement, Temporary Drainage Easement, Deed and the other easements and agreements of Gammon described herein; and

NOW THEREFORE, in consideration of these premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Gammon agree as follows:

ARTICLE I DEFINITIONS

Section A. Definitions.

1. *City* means the *City of McKinney*, a home rule city and municipal corporation situated in Collin County, Texas, together with its successors and assigns.
2. *Effective Date* means the latter of the following dates: (a) the date this Agreement is fully executed by the Parties; or (b) the date this Agreement is approved by the City Council of the City.
3. *Gammon* means Gammon Partners I, L.P. (a/k/a Gammon Partners I, Ltd.), a Texas limited partnership, together with its successors and assigns.
4. *Notice* means any formal notice or communication required or permitted to be given by one Party to another by this Agreement.
5. *Parties* mean the City and Gammon.

DEVELOPMENT AGREEMENT

Section B. Interpretation of Terms and Incorporation of Exhibits.

Except where the context otherwise clearly requires, in this Agreement:

1. words imparting the singular will include the plural and vice versa;
2. all exhibits attached to this Agreement are incorporated by reference for all pertinent purposes as though fully copied and set forth at length; and
3. references to any document means that document as amended or as supplemented from time to time; and references to any Party means that Party, its successors, and assigns.

***ARTICLE II
OBLIGATIONS OF GAMMON***

Simultaneous with the execution and delivery hereof to the City, Gammon shall execute and deliver to the City notarized originals of: (a) the Temporary Construction Easement; (b) The Temporary Drainage Easement; (c) the Waterline Easement; and (d) the Deed. The Temporary Construction Easement, the Temporary Drainage Easement, the Waterline Easement and the Deed shall except only to those instruments filed of record as of the date of execution hereof as permitted exceptions.

***ARTICLE III
CITY OBLIGATIONS; ROADWAY IMPACT FEE CREDITS AND WAIVER OF
ASSESSMENT OR CHARGE FOR IMPROVEMENTS***

After City Council approval of this Agreement, City shall, file this Agreement, the Temporary Construction Easement, the Temporary Drainage Easement, the Waterline Easement and Deed of record and pay all required recording fees therefore. The design and construction of the Improvements shall be substantially in accordance with the Plans. The City shall provide, at its cost, drainage, water and sewer connections ("Stub Outs") along Alma Road and under the existing gas line at the locations shown on the Plans or otherwise at mutually agreed point(s) along Silverado Trail; however, in all respects, the construction of the Stub Outs shall be consistent with the gas line easement. City shall obtain all necessary consents from the gas utility to construct the Stub Outs. Upon City Council approval of this Agreement and delivery of the Deed to City, Gammon shall receive and the City hereby grants to Gammon a roadway impact fee credit of 80.34 service unit equivalents which credit shall vest and attach to the Property and be applied to development on the Property on a "first come, first served" basis and shall not be transferrable without the consent of City. Unused impact fee credits cannot be applied to other fees or converted to cash; however, at the time of full development of the Property, unused impact fee credits shall be subject to any reimbursements allowed by then existing ordinances. The impact fee credits shall have no expiration. In connection with the development of the Property, the City agrees that no onsite detention will be required as there exists adequate off-site drainage conditions to fully and adequately handle the drainage and water discharge requirements of the entire Property without the necessity of any onsite detention improvements or similar onsite impoundment of water or detention improvements on the Property (the "Offsite Drainage Conditions"). The intention is that the Property shall not be burdened by any onsite

DEVELOPMENT AGREEMENT

detention requirements now or in the future. Upon City Council approval and delivery of the Deed, City hereby waives any requirement that any onsite detention improvements be constructed on the Property and releases the Property from any such requirements (the "Detention Improvements Waiver"). Furthermore, City agrees that upon City Council approval and delivery of the Deed, the Property shall have a permanent waiver of any assessment or charge for the Improvements. In addition, the City agrees to compensate Gammon in the amount of \$68,000.00 if the City does not complete construction of the Infrastructure Improvements prior to December 31, 2012. Such compensation shall be paid to Gammon within thirty (30) days of receipt of written demand. "Complete construction" shall mean the activation of traffic control devices at the intersection of Alma and Silverado along with the opening of all traffic lanes on Alma and Silverado adjacent to the Property for vehicular travel and the completion of the Infrastructure Improvements. If the City completes construction by December 31, 2012, there shall be no compensation or further obligations owing to Gammon, and this Agreement shall automatically terminate, save and except for the roadway impact fee credits described herein, the Detention Improvements Waiver, and the permanent waiver of any assessment or charge for the Improvements, all of which shall expressly survive such termination.

GENERAL PROVISIONS

Section A. Notice of Default; Opportunity to Cure and Remedies.

1. Should any Party allege that the other has defaulted in the performance of any obligation hereunder, it will provide at least thirty (30) days written Notice to the other Party specifying the nature of the alleged default and opportunity to cure the default before exercising any remedy related to the alleged default.
2. Upon the failure of either Party to comply with the provisions of this Agreement, which failure continues beyond the thirty (30) day notice and cure period provided above, the other Party shall have the right to enforce the terms and provisions of this Agreement by specific performance, or by such other legal or equitable relief to which the non-defaulting Party may be entitled.
3. Any remedy or relief described in this Agreement shall be cumulative of, and in addition to, any other remedies and relief available at law or in equity.

Section B. Interpretation of this Agreement; Entire Agreement.

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

DEVELOPMENT AGREEMENT

Section C. Amendment.

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

Section D. No Amendment of Other Agreements.

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

Section E. Other Instruments; Actions.

The Parties hereto agree that they will take such further actions and execute and deliver such other and further consents, authorizations, instruments, or documents as are reasonably necessary or incidental to effectuate the purposes of this Agreement; provided that the same does not increase such Party's liability or obligations hereunder.

Section F. No Third Party Beneficiaries.

Except as expressly provided herein, nothing contained in this Agreement shall be construed to confer upon any person not a party to this Agreement any rights, benefits or remedies under or because of this Agreement.

Section G. Applicable Law.

This Agreement will be construed under and according to the laws of the State of Texas.

Section H. Severability.

The provisions of this Agreement are severable, and if any court will ever hold any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application of it to any person or circumstance of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances will not be affected by that and this Agreement will be construed as if it had never contained such invalid or unconstitutional portion therein; unless such clause or provision goes to the essence of the benefit of the bargains contemplated by the parties.

Section I. Personal Jurisdiction and Venue.

Personal jurisdiction and venue for any suit arising hereunder shall be in Collin County, Texas.

DEVELOPMENT AGREEMENT

Section J. Counterparts.

The Parties may execute this Agreement in one or more duplicate originals each of equal dignity.

Section K. Notices.

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

Gammon Partners I, L.P.
5220 Spring Valley Road
Suite 404
Dallas, Texas 75254
Attn: Thomas Hillsman

City of McKinney
Office of the City Manager
P.O. Box 517
McKinney Texas 75070-8013

The Parties will have the right from time to time to change their respective addresses upon written Notice to the other Party given as provided above. Formal notices, demands and communications between the parties shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed as provided above. Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein. 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.

Section L. No Waiver.

No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision or any other agreement between the Parties. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided for by written amendment to this Agreement; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent defaults of the same type. Save and except the waiver described in Article III, nothing herein shall waive any obligations of Gammon for its development of the Property under applicable ordinances, including but not limited to the subdivision ordinance, the sewer and water impact fee ordinance, or the roadway impact fee ordinance (subject to the credits granted hereunder).

Section M. Attorney's Fees.

Should either Party be required to resort to litigation to enforce the terms of this Agreement, the prevailing Party, plaintiff or defendant, shall be entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other Party.

DEVELOPMENT AGREEMENT

If the court awards relief to both Parties, each will bear its own costs in their entirety except as otherwise specified by the court.

Section N. Governmental Authority; Waiver of Governmental Immunity.

Nothing in this Agreement will be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the facilities contemplated by the terms of this Agreement except as specifically waived or modified herein or by specific action of the City Council, nor its duty to provide for the public health, safety, and welfare in the maintenance of the same. By executing this Agreement, the City waives sovereign immunity from suit for the limited purposes of enforcing the City's payment obligations under this Agreement.

Section O. Assignability.

This Agreement shall not be assignable to anyone without the prior written consent of the City.

Section P. Continuity.

This Agreement shall be a covenant running with the land and be binding upon Gammon, its successors and assigns as well as all others holding any interest in the Property now or in the future.

Section Q. Rough Proportionality and Waiver of Claims.

Gammon 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 Gammon, regarding Gammon's rights under Texas and federal law. Gammon 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 Gammon's obligations required hereby are roughly proportional or roughly proportionate to the future development's anticipated impact. Gammon specifically reserves its right to appeal the apportionment of other municipal infrastructure costs, not the subject of the Improvements described herein, in any future development of the Property in accordance with Tex. Loc. Gov't Code § 212.904. However, notwithstanding the foregoing, Gammon hereby releases the City from any and all liability under Tex. Loc. Gov't Code § 212.904 regarding or related to the construction of the Improvements.

Gammon 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 arising incident to this Agreement. Gammon further releases City from any and all claims based on excessive or illegal exactions; it being agreed that Gammon's obligations (after receiving all contractual offsets, credits and reimbursements) are roughly proportional or roughly proportionate to the demand that is placed on the roadway and utility systems by Gammon's Property. **Gammon shall indemnify and hold harmless City from any claims and suits of third parties, including but not limited to Gammon's successors, assigns, grantees, vendors,**

DEVELOPMENT AGREEMENT

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

Section R. Consideration for Approval by City Council of City.

This Agreement shall be considered for approval by the City Council of the City on or before January 31, 2012 ("Council Consideration Date"). If City Council approval is not obtained by such date, this Agreement shall be null and void *ab initio* (except for the City's obligations pursuant to this sentence), all documents executed by Gammon and delivered to the City shall be returned without recording such documents. Upon completion of such actions, the Parties shall have no further obligations, one to another.

Section S. Authority.

The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. Gammon warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Gammon to the same. The City Council of the City shall authorize the City Manager to execute this Agreement on behalf of the City.

Section T. Time is of the Essence.

Time is of the essence in the performance of this Agreement.

CITY:

CITY OF MCKINNEY

By: _____
JASON GRAY
City Manager

Date Signed: _____

ATTEST:

SANDY HART, MMC, TRMC
City Secretary

DEVELOPMENT AGREEMENT

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

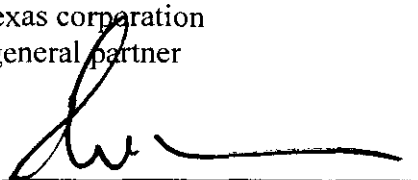
DEVELOPMENT AGREEMENT

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GAMMON:

***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

Date Signed: 12/20/11

DEVELOPMENT AGREEMENT

STATE OF TEXAS §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, by JASON GRAY, City Manager of the *CITY OF MCKINNEY*, a Texas municipal corporation, on behalf of said corporation.

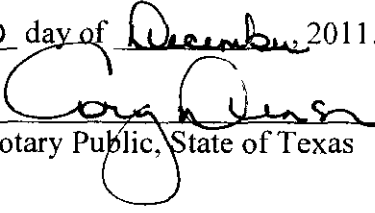
Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF COLLIN §

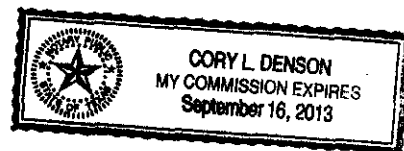
Before me on this day personally appeared Thomas C. Hillsman, the Vice President of Gammon Equities, Inc., a Texas corporation, general partner of Gammon Partners I, Ltd., a Texas limited partnership (a/k/a Gammon Partners I, L.P.), known to me to be the person whose name is subscribed to the foregoing 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 20 day of December 2011..

My Commission Expires:



Notary Public, State of Texas



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

DEVELOPMENT AGREEMENT

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List of Exhibits:

- Exhibit A: Legal Description of Property
- Exhibit B: Temporary Construction Easement form
- Exhibit C: Temporary Drainage Easement form
- Exhibit D: Waterline Easement form
- Exhibit E: Right-of-Way Deed form

DEVELOPMENT AGREEMENT

EXHIBIT A

Legal Description of Property

DEVELOPMENT AGREEMENT

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