



AFTER RECORDING, RETURN TO:

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

STATE OF TEXAS       §  
  §  
COUNTY OF COLLIN   §

**DEVELOPMENT AGREEMENT**

15 This Development Agreement ("Agreement") is made and entered into as of this 15 day of February, 2016, ("Effective Date") by and between the City of McKinney, Texas, ("City") and Michael & Liese Gross (hereinafter referred to as "Owner," whether one or more) on the terms and conditions hereinafter set forth.

**WHEREAS**, Owner owns approximately 5 acres, more or less, situated in the R H LOCKE Survey, Abstract No. A0517, Collin County, Texas, as is more particularly described in Exhibit "A," attached hereto and incorporated herein for all purposes allowed by law ("Property"); and

**WHEREAS**, the City desires to involuntarily annex certain lands including the Property; and

**WHEREAS**, the Owner objects to involuntary annexation by the City and desires to have the Property remain in the City's extraterritorial jurisdiction as well as retain the agricultural, wildlife management or timber land ad valorem tax exemption status on a certain portion thereof, in consideration for which the Owner agrees to enter into this Agreement; and

**WHEREAS**, the Owner's above-recited objection to involuntary annexation by the City shall not be construed as: (1) satisfying the requirements of filing a written protest under Chapter 43 of the Texas Local Government Code, including but not limited to Section 43.063(b); or (2) negating or having any effect on the Property being deemed to be voluntarily annexed if same should occur pursuant to Section 3 or Section 5 of this Agreement; and

**WHEREAS**, the City does not make any guarantee as to the Property retaining any specific tax status or classification, whether agriculture, wildlife management, timber land or otherwise, as such tax classifications are determined by the Central Appraisal District of Collin County and not by the City; and

**WHEREAS**, this Agreement is entered into pursuant to Sections 43.035 and 212.172 of the Texas Local Government Code, in order to address the desires of the Owner and the procedures of the City; and

**WHEREAS**, the Owner and the City acknowledge that this Agreement is binding upon the City and the Owner and their respective successors and assigns for the Full Term (as defined in Section 6 of this Agreement); and

**WHEREAS**, this Development Agreement is to be recorded in the Real Property Records of Collin County;

**NOW, THEREFORE**, in consideration of the mutual benefits and premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Owner agree as follows:

1. Land Subject to Agreement. The land that is subject to this Agreement is the Property. Owner represents that it is the sole owner of the Property.

2. Continuation of Extraterritorial Status. The City guarantees and agrees to the continuation of the extraterritorial status of the Owner's Property, its immunity from annexation by the City, and its immunity from City property taxes, for the term of this Agreement, subject to the provisions of this Agreement. Except as specifically provided in this Agreement, the City agrees not to annex the Property, agrees not to involuntarily institute proceedings to annex the Property, and further agrees not to include the Property in a statutory annexation plan for the Term of this Agreement.

3. Owner's Obligations to Maintain Extraterritorial Status. The Owner covenants and agrees not to use the Property for any use other than for agriculture, including the raising of livestock and crops, wildlife management, and/or timber land consistent with Chapter 23 of the Texas Tax Code, and further including Owner's use of their existing single family dwelling on the Property, without the prior written consent of the City.

The Owner further covenants and agrees that the Owner will not file any type of subdivision plat or related development document for the Property with Collin County or the City until the Property has been annexed into, and zoned by, the City.

The Owner covenants and agrees not to construct, expand or remodel - or allow to be constructed, expanded or remodeled - any buildings on the Property that would require a building permit if the Property were in the City's corporate limits, until the Property has been annexed into, and zoned by, the City unless such construction is otherwise allowed in an AG-Agricultural District zone within the City save and except to the extent that the construction of such building(s) terminates or invalidates the agricultural, wildlife management, or timber land ad valorem tax exemption applicable to the Property. Owner agrees to obtain permits and inspections from the City, and pay all related fees therefore, when constructing or allowing the construction, on the Property, of buildings that are otherwise allowed in an AG-Agricultural District zone within the City and which buildings do not terminate or invalidate the agricultural, wildlife management,

or timber land ad valorem tax exemption applicable to the Property. Buildings needed for the continued agriculture, wildlife management, and/or timber land, such as barns, livestock structures, and similar improvements may be constructed, expanded or remodeled subject to the Owner obtaining permits and inspections as required herein and further provided that such buildings do not terminate or invalidate the agricultural, wildlife management, or timber land ad valorem tax exemption applicable to the Property. The Owner also covenants and agrees that the City's AG-Agricultural District zoning requirements, as such requirements may be amended, apply to the Property; and, that the Property shall be used only for AG- Agricultural District zoning uses that exist on that Property at the time of the execution of this Agreement, including for Owner's use of the existing single family dwelling on the Property, unless otherwise provided in this Agreement. However, the Owner may construct an accessory structure to an existing single-family dwelling in compliance with all applicable City ordinances and codes.

The Owner acknowledges that each and every owner of the Property must sign this Agreement in order for the Agreement to take full effect, and **the Owner who signs this Agreement covenants and agrees, jointly and severally, to indemnify, hold harmless, and defend the City against any and all legal claims, by any person claiming an ownership interest in the Property who has not signed the Agreement, arising in any way from the City's reliance on this Agreement.**

4. City Regulation of Use and Development. Pursuant to Sections 43.035(b)(1)(B) of the Texas Local Government Code, the City is authorized to enforce all of the City's regulations and planning authority that do not materially interfere with the use of the Property for agriculture, wildlife management, or timber, in the same manner the regulations are enforced within the City's corporate limits. The use and development of the Property before and after annexation shall conform to the uses, space limitations, density, layout, permitting requirements (including but not limited to submittal of site plans and plats) and development standards (including but not limited to architectural and site standards requirements, parking standards and landscaping standards) set forth by the ordinances of the City (including but not limited to the Comprehensive Zoning Ordinance and the Subdivision Regulations), as they presently exist or may be amended. Prior to annexation, the Property shall be developed as if it has been designated with agricultural zoning. The City states and specifically reserves its authority pursuant to Chapter 251 of the Texas Local Government Code to exercise eminent domain over property that is subject to a Chapter 43 and/or Chapter 212 development agreement.

5. Annexation and Zoning. The City will not annex the Property, unless requested to do so by Owner, during the term of this Agreement, provided that Owner complies with the terms and conditions of this Agreement. The parties agree that the City, in its sole discretion, shall determine whether Owner is in compliance with the Agreement and whether it will approve annexation of the Property. Simultaneously with

the termination of this Agreement, the City and Owner agree that the City may, in its sole discretion, initiate annexation proceedings for the Property (the "Annexation").

6. Term. This Agreement is an agreement authorized by Section 212.172 of the Texas Local Government Code. This Agreement is effective as of the date that both the City and the Owner have duly approved, executed and delivered this Agreement. The initial term of this Agreement (the "Initial Term") is ten (10) years from the effective date. The "Full Term" of this Agreement is defined as the period beginning on the effective date and ending on the date that this Agreement terminates. The term of this Agreement shall not be affected by the fact that some or all of the Property is annexed into the corporate limits of the City.

The Owner, and all of the Owner's heirs, successors and assigns, shall be deemed to have filed a petition for voluntary annexation far enough in advance of the end of the Full Term, to allow for annexation of the Property, or any portion thereof, to be completed on or after the end of the Term. The Owner agrees that any such annexation shall be conclusively presumed to have been adopted with the consent of all appropriate and necessary persons and entities as though a petition for annexation had been duly tendered by all of the owners of the Property. The City may initiate procedures in preparation for such an annexation of all or a portion of the Property under this Section 6 before the expiration of this Agreement, provided, however, that the City may not annex any part of the Property under this Section 6 before the expiration of this Agreement. Further, as an express condition to City's right to annex the Property or any portion thereof under this Section 6, the City must first approve a service plan to provide full municipal services to any portion of the Property annexed in the manner set forth in Section 43.056(b), (c), (e), (f), and (g) of the Texas Local Government Code, as such provisions exist as of the effective date of this Agreement.

If annexation proceedings begin pursuant to this Section 6, the Owner acknowledges that this Agreement serves as an exception to Local Government Code Section 43.052, requiring a municipality to use certain statutory procedures under an annexation plan and the Owner further agrees that the Owner will not in any manner contest any annexation of the Property or any portion thereof initiated by the City under this Section 6 or any annexation of the Property or any portion thereof otherwise completed by the City after the Full Term. In connection with annexation pursuant to this section, the Owner hereby waives any vested rights they may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any plat or construction any of the owners may initiate during the time between the expiration of this Agreement and the institution of annexation proceedings by the City.

7. Default. If any party breaches any of the terms of this Agreement, then that party shall be in default ("Defaulting Party") of this Agreement ("Event of Default"). If an Event of Default occurs, the non-defaulting party shall give the Defaulting Party written notice of such Event of Default, and if the Defaulting Party has not cured such

Event of Default within thirty (30) days of said written notice, this Agreement is breached. Each party is entitled to all remedies available to it at law or in equity.

The Owner acknowledges that if any plat or related development document is filed in violation of this Agreement or if the Owner commences development of the Property in violation of this Agreement, then any provision of this Agreement that restricts or otherwise limits the City's ability to annex the Property or any portion thereof is void. Upon such an occurrence, in addition to the City's other remedies, such act shall constitute a petition for voluntary annexation by the Owner and the Property will be subject to annexation at the discretion of the City Council. The Owner, and all of the Owner's heirs, successors and assigns, agrees that such annexation shall be conclusively presumed voluntary and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered by the Owner with the consent of all appropriate and necessary persons and entities. If annexation proceedings begin pursuant to this Section, the Owner acknowledges that this Agreement serves as an exception to Local Government Code Section 43.052, requiring a municipality to use certain statutory procedures under an annexation plan. However, as an express condition to City's right to annex the Property, the City must approve a service plan to provide full municipal services to any portion of the Property annexed in the manner set forth in Section 43.056(b), (c), (e), (f), and (g) of the Texas Local Government Code, as such provisions exist as of the effective date of this Agreement. The Owner further agrees that the Owner will not in any manner contest any annexation of the Property or any portion thereof initiated by the City under this Section 7 or any annexation of the Property or any portion thereof completed by the City after the conclusion of the full term of this Agreement. Furthermore, the Owner hereby waives any and all vested rights and claims that they may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any actions Owner has taken in violation of Section 3 herein and this Section 7.

8. Notice. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Mail, postage pre-paid, certified mail, return receipt requested, addressed to either party, as the case may be, at the addresses contained below:

City: City of McKinney  
P.O. Box 517  
222 N. Tennessee Street  
McKinney, Texas 75069  
Attn: City Manager

With copy to: Mark S. Houser, City Attorney  
Brown & Hofmeister, L.L.P.  
740 E. Campbell Road, Suite 800  
Richardson, Texas 75081

Owner: Mr. Michael & Liese Gross  
3048 COUNTY ROAD 324  
MCKINNEY, TX 75069-1147

9. Miscellaneous.

(a) Agreement Runs With the Property. This Agreement shall run with the Property and shall be binding on and inure to the benefit of the Owner's successors and assigns.

(b) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the mutual written agreement of the parties hereto.

(c) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas. Exclusive venue shall be in Collin County, Texas.

(d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

(e) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid illegal or unenforceable provision had never been contained herein.

(f) Subsequent Statutory Changes. Unless specifically citing its retroactive effect, no subsequent change in the law regarding annexation shall affect the enforceability of this Agreement or the City's ability to annex the properties covered herein pursuant to the terms of this Agreement.

(g) No Chapter 245 Permit. Pursuant to Section 43.035(e) of the Texas Local Government Code this Agreement, and any requirement contained in this Agreement, shall not constitute a "permit" as defined in Chapter 245 of the Texas Local Government Code. **THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

**CITY OF MCKINNEY**

By: *Thomas H. Muehlenbeck*  
TOM MUEHLENBECK  
Interim City Manager

Date Signed: 3/7/16



ATTEST:

*Denise Vice*  
SANDY HART, TRMC, MMC  
City Secretary  
DENISE VICE, TRMC  
Assistant City Secretary

**OWNERS:**

By: *Michael Gross*  
MICHAEL GROSS

Date Signed: February 15, 2016

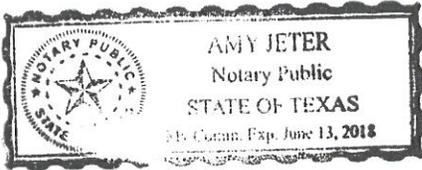
By: *Liese Gross*  
LIESE GROSS

Date Signed: 2/15/2016

THE STATE OF TEXAS §  
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared **TOM MUEHLENBECK**, Interim City Manager of the City of McKinney, a Texas Municipal Corporation, known to me to be the person who's 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 7<sup>th</sup>  
DAY OF March, 2016.

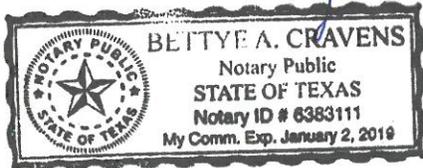


Amy Jeter  
Notary Public Collin County, Texas  
My commission expires 2018

THE STATE OF TEXAS,  
COUNTY OF Collin

This instrument was acknowledged before me on this day by **MICHAEL GROSS**, 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 set forth therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 15<sup>th</sup>  
DAY OF February, 2016.

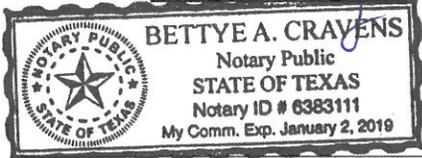


Bettye A. Cravens  
Notary Public Collin County, Texas  
My commission expires 01/02/19

THE STATE OF TEXAS,  
COUNTY OF Collin

This instrument was acknowledged before me on this day by **LIESE GROSS**, 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 set forth therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 15<sup>th</sup>  
DAY OF February, 2016.



Bettye A. Cravens  
Notary Public Collin County, Texas  
My commission expires 01/02/19

**Exhibit "A"**  
**Description and Depiction of Property**

BEING situated in Collin County, Texas, a part of the R.H. Locke Survey, Abstract No. 517, and being a part of a 39.28 acre tract as described in a deed from Edd Hopes to Roy J. Wilson, dated April 12, 1941 and recorded in Volume 332, Page 103 of the Collin County Deed Records and being more particularly described by metes and bounds as follows:

BEGINNING at a corner post in the Southwest corner of the said tract;

THENCE South 89 degrees 36 minutes 17 seconds East with an established fence along the South line of said tract, a distance of 419.4 feet to a post;

THENCE South 88 degrees 10 minutes East with an established fence along the South line of said tract, a distance of 148.2 feet to a stake;

THENCE North a distance of 105.0 feet to a stake;

THENCE North 75 degrees 47 minutes East, a distance of 222.0 feet to an iron stake in the West right of way line of F.M. # 546;

THENCE North 26 degrees 26 minutes West with said Right of Way a distance of 57.7 feet to a concrete marker;

THENCE North 20 degrees 26 minutes West, a distance of 149.1 feet to an iron pipe;

THENCE North 89 degrees 56 minutes West with an established fence line, a distance of 705.0 feet to an iron stake in the West line of the said tract;

THENCE South with the West line of said tract a distance of 344.1 feet to the Place of beginning containing 5.442 acres of land, more or less.

SAVE AND EXCEPT THE FOLLOWING:

BEING situated in Collin County, Texas, a part of the R.H. Locke Survey, Abstract No. 517, and being a part of a 39.28 acre tract as described in a deed from Edd Honea to Roy J. Wilson, dated April 12, 1941 and recorded in Volume 332, Page 103 of the Collin County Deed Records and being more particularly described by metes and bounds as follows:

BEGINNING at stake in the Northeast corner of said 5.442 acres;

THENCE North 89 degrees 56 minutes West, with the North line thereof, 144.5 feet to a point for corner;

THENCE South 9 degrees 42 minutes 11 seconds East 167.2 feet to a point for a corner;

THENCE North 73 degrees 47 minutes 48 seconds East 167.0 feet to a point in the East line of said 5.442 acres and the West line of F.M. # 546;

THENCE North 20 degrees 26 minutes West with said lines 149 feet to the place of beginning.

Filed and Recorded  
Official Public Records  
Stacey Kemp, County Clerk  
Collin County, TEXAS  
03/11/2016 01:46:43 PM  
\$62.00 DFOSTER  
20160311000293530



*Stacey Kemp*