



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		09-24-12		
Department:		Development Services		
Department Head		Frank Turner		
Agenda Coordinator (include phone #): Cindy Pierce, ext. 7121				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, ratifying the terms and conditions of a Consent to Assignment Agreement by and between the City of Plano, Texas, 15th and I, LLC, and Comerica Bank to authorize assignment of the Development Agreement between Southern Land Company, LLC and the City of Plano as security for financing of the development project at the southeast corner of 15th Street and I Avenue; ratifying its execution by the City Manager; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2011-12	Prior Year (CIP Only)	Current Year	Future Years
		0	0	0
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	0	0
BALANCE		0	0	0
FUND(S): N/A				
COMMENTS: This item has no fiscal impact. STRATEGIC PLAN GOAL: Passage of this Resolution relates to the City's Goal of Partnering for Community Benefit.				
SUMMARY OF ITEM				
This item is to ratify the terms and conditions of a Consent to Assignment of Development Agreement by and between the City of Plano and Comerica Bank to authorize assignment of the Development Agreement between Southern Land Company, LLC and the City as security for financing the development project at the corner of 15 th Street and I Avenue.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution Consent to Assignment of Development Agreement				

A Resolution of the City Council of the City of Plano, Texas, ratifying the terms and conditions of a Consent to Assignment Agreement by and between the City of Plano, Texas, 15th and I, LLC, and Comerica Bank to authorize assignment of the Development Agreement between Southern Land Company, LLC and the City of Plano as security for financing of the development project at the southeast corner of 15th Street and I Avenue; ratifying its execution by the City Manager; and providing an effective date.

WHEREAS, The City and Southern Land Company, LLC entered into a Restated and Amended Development Agreement approved by City of Plano, City Council Resolution No. 2011-11-22(R) and executed on December 28, 2011("Development Agreement"); and

WHEREAS, On, June 7, 2012, the Development Agreement was assigned by Southern Land Company, LLC to 15th and I, LLC, a joint venture partner, pursuant to Section 21(B) of the Development Agreement; and

WHEREAS, On September 14, 2012, the City of Plano, 15th and I, LLC and Comerica Bank, entered into a Consent to Assignment Agreement ("Assignment") authorizing 15th and I, LLC to assign the Development Agreement to Comerica Bank as security for financing the development project at the southeast corner of 15th Street and I Avenue subject to City Council ratification of the Assignment; and

WHEREAS, upon full review and consideration of the Assignment, and all matters attendant and related thereto, the City Council is of the opinion that execution by the City Manager of the terms and conditions thereof should be ratified.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The execution of the terms and conditions of the Assignment by the City Manager, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things ratified.

Section II. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 24TH day of September, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

CONSENT OF ASSIGNMENT OF DEVELOPMENT AGREEMENT BETWEEN
SOUTHERN LAND COMPANY, LLC AND CITY OF PLANO AS SECURITY FOR
FINANCING

This consent agreement ("Consent Agreement") is by and between the CITY OF PLANO, TEXAS ("City"), a home rule municipal corporation, organized under the laws of the State of Texas, 15th & I, LLC, a Delaware limited liability company ("Borrower"), and COMERICA BANK, a Texas banking association ("Lender"), in connection with the Collateral Assignment of Contract Rights between Borrower and Lender ("Collateral Assignment").

1. Background. The City and Southern Land Company, LLC entered into a Restated and Amended Development Agreement approved by City of Plano, City Council Resolution No. 2011-11-22(R) and executed on December 28, 2011, attached hereto as Exhibit "1", ("Development Agreement"). On, June 7, 2012, the Development Agreement was assigned by Southern Land Company, LLC to Borrower, a joint venture partner, pursuant to Section 21(B) of the Development Agreement.

2. Definitions. Capitalized terms used herein and not defined herein shall have the meaning ascribed to them in the Development Agreement.

3. Consent to Assignment. Borrower represents to the City that it will execute the Collateral Assignment for the benefit of Lender for which it needs the City's consent pursuant to Section 21(A) of the Development Agreement. The City hereby consents to the assignment of the Development Agreement by Borrower to the Lender pursuant to the Collateral Assignment as security for a loan for financing related to the project at the Property. The City is not a party to the Collateral Assignment. The City's execution of this Consent Agreement does not signify that the City has reviewed, approved or agreed to the terms of any financing or refinancing or to any terms of the Collateral Assignment or loan documents between Borrower and Lender. This Consent Agreement does not change, modify or alter the terms of the Development Agreement in any way, except as specifically provided for herein, and does not change the rights or obligations of the Borrower or the City under the Development Agreement. In the event of any inconsistency between this Consent Agreement and the Development Agreement pertaining to the rights of the City to enforce its remedies or terminate the Development Agreement, the terms and provisions of the Development Agreement shall control.

4. Conditions to Consent to Assignment. Subject to the terms and conditions of Section 3 and Section 4 of this Consent Agreement, City hereby consents to assignment of the Development Agreement to the Lender, including any successor subject to Section 7 below. The Lender, including any successor, may exercise all rights or remedies against the City under the Development Agreement, and shall have the right to receive any funds payable to the Borrower under the Development Agreement, upon the Lender's, or any successor's satisfaction of the following:

- (a) Delivery of thirty (30) days notification to the City, with a copy to Borrower, in writing of its election (in Lender's sole discretion) to assume the Development Agreement pursuant to its Collateral Agreement with Borrower, followed by the delivery

to the City of a letter agreement executed by the Lender and incorporating the terms of Section 4(b) below, and

(b) Delivery to City of an agreement by Lender, or such successor, in a form reasonably acceptable to City and Lender, or such successor, to accept and be bound by all the terms and conditions of the Development Agreement, and to assume all obligations, covenants, agreements, rights, liabilities and responsibilities of Borrower under the Development Agreement, subject to the terms of this Consent Agreement.

Borrower agrees that upon City's receipt of notice from Lender of its intent to exercise any rights or receive payments under the Development Agreement, it shall be deemed to be conclusive evidence of Borrower's default under the Collateral Assignment, and City shall have the unconditional right to rely on any such notice from Lender, without any obligation to inquire as to the existence of any actual or potential default by Borrower and without liability to the City for reliance on same. **BORROWER AGREES TO HOLD HARMLESS, RELEASE, AND INDEMNIFY CITY FOR ANY ACTION OR FAILURE TO ACT ARISING OUT OF CITY'S RELIANCE ON LENDER'S NOTICE OF ASSUMPTION OF THE DEVELOPMENT AGREEMENT.**

5. Representations. City hereby makes the following representations:

(a) That the Development Agreement attached hereto as Exhibit "1" is a true, correct and complete copy of same, and that it has not been amended, modified, restated, or supplemented, and that the Development Agreement affects the real property described on Exhibit "A" to the Development Agreement.

(b) In addition to all other obligations of the City pursuant to the Development Agreement, and subject to the terms and conditions thereof, the City has agreed to reimburse Borrower for One Hundred Percent (100%) of eligible expenses for Projects Costs for any public improvements or such other work in an amount not to exceed One Million Seven Hundred Thousand Dollars (\$1,700,00.00), as further described in the Development Agreement.

(c) As of the date hereof, the City has not given any notice of a breach or default under the terms and provisions of the Development Agreement and has no knowledge of any default by any party under the Development Agreement. Furthermore, as of the date hereof, the City has no defense, right of set-off, counterclaim or other defense to any of the obligations of City under and pursuant to the Development Agreement.

6. Covenants and Agreements. City hereby agrees as follows:

(a) Southern Land Company, LLC, has executed an assignment of the Development Agreement to and for the benefit of Borrower, in a form acceptable to the City of Plano pursuant to Section 21(B) of the Development Agreement.

(b) City will notify the Lender at the address specified for Lender in this Consent Agreement prior to any modification of the Development Agreement.

(c) City will notify the Lender at the address specified for Lender in this Consent Agreement at the same time and in the same manner that it provides notice to the Borrower of an Event of Default under the Development Agreement and provide the Lender the same right to cure that is available to the Borrower prior to the exercise of any right or remedy by the City, including, but not limited to, termination of the Development Agreement.

(d) Upon notification by Lender to City of the occurrence of an Event of Default (as such term is defined in that certain Construction Loan Agreement between Borrower and Lender dated September 14, 2012), City agrees to refrain from delivering any cash remittance in payment of or related to the Collateral (as defined in the Development Agreement) until such time as (i) Lender has notified City that such Event of Default has been cured, or (ii) Lender (or its assignee or successor) has assumed the obligations of Borrower under the Development Agreement pursuant to Section 4(b) of this Consent Agreement.

7. Successors and Assigns: Notice to City. This Consent Agreement may not be assigned, in whole or in part, by Borrower without the express written consent of the City, except that Borrower may assign this Consent Agreement without obtaining the City's consent (a) to one of its wholly owned affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety (90) percent of the assets of Borrower as long as Borrower gives sixty (60) days prior written notice to the City and the assignee executes an agreement with the City to be bound to all the terms and conditions of the Development Agreement. The provisions of this Consent Agreement shall be binding upon and inure to the benefit of the successors and assigns of Lender, provided, however, that Lender agrees to provide written notice to the City within thirty (30) days of the (x) sale or assignment (but not a participation) of Lender's interest in the loan evidenced by the Loan Documents (as defined in the Development Agreement), or (y) sale of Lender's interest in the Property if it becomes the record owner thereof following a foreclosure.

8. Limitation on Lender's Liability. The City agrees to look solely to Lender's interest in the Property and the rents, income or proceeds derived therefrom for the recovery of any judgment against Lender, and in no event shall Lender or any of its affiliates, officers, directors, shareholders, partners, agents, representatives or employees ever be personally liable for any such obligation, liability or judgment.

9. Address for Notices. The address of the parties for any and all notices and written instructions under and pursuant to the Development Agreement and this Consent is as set forth below the signature of each party below.

10. Venue and governing law. This Agreement is performable in Collin County, Texas and venue of any action arising out of this Agreement shall be exclusively in Collin County, Texas. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

11. Legal construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held 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 considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

13. Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

14. Authority to Sign. The parties below represent that they have the authority to sign this Agreement on behalf of their respective entities except that the City's execution of this Agreement is subject to City Council approval.

[Signature page follows]

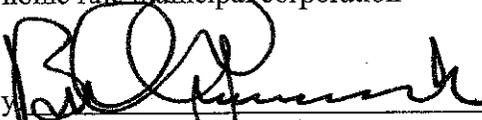
EXECUTED as of the date of the acknowledgements below, but to be effective as of the last date of signatory to the agreement subject to subsequent City of Plano City Council approval.

Address for notices:

City of Plano, Texas
Attn: City Manager
1520 Avenue K
P.O. Box 860358
Plano, Texas 75086-0358

CITY OF PLANO:

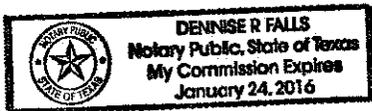
CITY OF PLANO,
a home rule municipal corporation

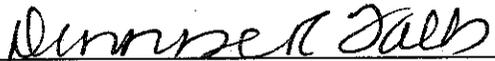
By: 
Name: Bruce Glascock
Title: City Manager

STATE OF TEXAS §
 §
COUNTY OF Collin §

This instrument was ACKNOWLEDGED before me on Sept 14, 2012 by Bruce Glascock, the City Manager of the City of Plano, a home rule municipal corporation organized under the laws of the State Texas, on behalf of said City.

[SEAL]




Notary Public - State of Texas

APPROVED AS TO FORM:

BY: 
Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENT OF BORROWER

The Borrower joins herein to evidence his acknowledgment and agreement to the provisions of this Consent Agreement.

Address for notices:

15th and I, LLC
1550 W. McEwen Avenue, Suite 200
Franklin, Tennessee 37067

BORROWER:

15th and I, LLC,
a Delaware limited liability company

By: Southern Land Company, LLC,
a Tennessee limited liability company

Its: Manager

By: [Signature]
Name: Jim Downey
Title: CEO

THE STATE OF TENNESSEE §
 §
COUNTY OF WILLIAMSON §

This instrument was ACKNOWLEDGED before me on September 10th, 2012, by Jim Downey, CEO of Southern Land Company, LLC, a Tennessee limited liability company, as Manager of 15th & I, LLC, a Delaware limited liability company, on behalf of said limited liability companies.

[SEAL]



Kelly Schooley
Notary Public - State of Tennessee

My commission expires
May 23, 2016

ACKNOWLEDGMENT OF LENDER

The Lender joins herein to evidence his acknowledgment and agreement to the provisions of this Consent Agreement.

Address for notices:

Comerica Bank
1717 Main Street, 4th Floor
Dallas, Texas 75265-0282

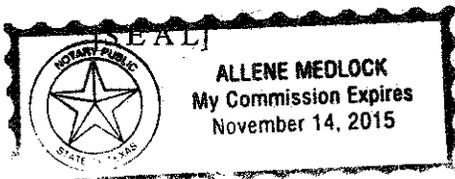
LENDER:

COMERICA BANK,
a Texas banking association

By: [Signature]
Name: Jeff LaBauve
Title: VP

STATE OF TEXAS §
 §
COUNTY OF Dallas §

This instrument was ACKNOWLEDGED before me on 09-06, 2012 by Jeffrey LaBauve, the Vice President of Comerica Bank, a Texas banking association, on behalf of said banking association.



Allene Medlock
Notary Public - State of Texas

EXHIBIT "1"

Development Agreement

A true, complete and correct copy of the Development Agreement is available for review in the City Attorney's office located at 1520 Avenue K, Suite 340, Plano, Texas.