



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		5/23/11		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): <b>Katherine Crumbley - 7479</b>				
<b>CAPTION</b>				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a First Amendment to Development Agreement by and between the City of Plano, Texas, and Tenth Street Plano, L.P.; authorizing its execution by the City Manager or his designee; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>2010-2011</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>
		<b>TOTALS</b>		
Budget		0		0
Encumbered/Expended Amount		0		0
This Item		0	6,000	6,000
BALANCE		0	6,000	6,000
<b>FUND(S):    GENERAL FUND</b>				
<b>COMMENTS:</b> Approval of this Resolution will result in a fee in the amount of \$6,000 to be paid to the City of Plano, TX from Tenth Street Plano, L.P. by May 31, 2011, and also a fee payment in the amount of \$6,000 in FY 2011-12.				
<b>STRATEGIC PLAN GOAL:</b> Approval of this First Amendment relates to the City's Goals of Exciting Urban Centers - Designation for Residents and Guests and Great Neighborhoods - 1st Choice to Live.				
<b>SUMMARY OF ITEM</b>				
This item is a First Amendment to the Development Agreement between the City of Plano and Tenth Street Plano, L.P. (TSP), to allow Tenth Street Plano, L.P. (TSP) additional time to meet its obligations which in part were not met due to economic conditions. TSP has performed a majority of improvements and it is considered in the best interest of the City to approve the terms and conditions of this First Amendment.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution; First Amendment Agreement, Original Agreement dated November 5, 2008				

**A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a First Amendment to Development Agreement by and between the City of Plano, Texas, and Tenth Street Plano, L.P.; authorizing its execution by the City Manager or his designee; and providing an effective date.**

**WHEREAS**, the City Council has been presented a proposed First Amendment to Development Agreement By and Between the City of Plano, Texas and Tenth Street Plano, L.P., a Texas limited partnership (“TSP”), a substantial copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (hereinafter called “First Amendment”); and

**WHEREAS**, City and TSP entered into a Development Agreement on November 5, 2008, for TSP to perform certain renovations and improvements to public property as well as improvements to the property at 910 10<sup>th</sup> Street in Plano; and

**WHEREAS**, City and TSP desire to amend said Development Agreement to allow additional time for TSP to meet its obligations and, in consideration, TSP agrees to pay City a fee as adequate consideration for such additional time; and

**WHEREAS**, upon full review and consideration of the First Amendment, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his designee shall be authorized to execute it on behalf of the City of Plano.

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

**Section I.** The terms and conditions of the First Amendment, 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 approved.

**Section II.** The City Manager, or his designee, is hereby authorized to execute the First Amendment and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the First Amendment.

**Section III.** This Resolution shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED** this the 23<sup>rd</sup> day of May, 2011.

\_\_\_\_\_  
Phil Dyer, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**First Amendment to the Development Agreement between the City of Plano  
and Tenth Street Plano, L.P.**

This First Amendment to the Development Agreement (hereinafter "First Amendment") is made and entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **TENTH STREET PLANO, L.P.**, a Texas limited partnership (hereinafter "TSP") and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation (hereinafter "City").

**WITNESSETH:**

**WHEREAS**, City and TSP entered into a Development Agreement on or about November 5, 2008, a copy of which is attached as Exhibit A wherein the parties agreed to have TSP perform certain renovations and improvements to public property as well as improvements to the property at 910 10<sup>th</sup> Street in Plano; and

**WHEREAS**, the parties agree that TSP has substantially performed a majority of the improvements but TSP has not met all conditions of the Development Agreement including meeting the occupancy requirement and appraised value of the improvements as required, and such was due to economic conditions and other factors; and

**WHEREAS**, the parties wish to amend the Development Agreement to allow additional time for TSP to meet its obligations and, in consideration, TSP agrees to pay City a fee as adequate consideration for such additional time.

**NOW THEREFORE**, in consideration of the recitals set forth above and the terms and conditions set forth below, the parties agree as follows:

**I.**

The parties agree that the Development Agreement is hereby amended in the sections described below and shall be effective May 1, 2011. All other terms and conditions of the original Agreement shall remain in full force and effect. In the event there is a conflict with the terms of this First Amendment and the original Development Agreement, this First Amendment shall control.

In consideration of and conditioned upon TSP's payment of Six Thousand Dollars (\$6,000.00) to the City by May 31, 2011, Subsections C, D, and E of Section 5. "Payment" are amended to read as follows:

"C. The remaining 3/8<sup>th</sup> of the reimbursement shall be deemed a grant not subject to recovery by the City if TSP is able to satisfy the following conditions by May 1, 2012:

1. At least eight-five percent (85%) of the Property's rentable square footage is leased and a certificate(s) of occupancy is issued and TSP meets one of the following:

a) TSP provides documentation to the satisfaction of the City that the cost of Initial Renovation Improvements to the Property, any landlord and

tenant finish work, and any fees for design and engineering services shall total at least Five Million Dollars (\$5,000,000.00); or

b) The Collin County Appraisal District appraises the value of the real property improvements at not less than Nine Million Dollars (\$9,000,000.00)

If TSP fails to meet the terms of this Subsection C by May 1, 2012, TSP may purchase a second extension to meet such terms by May 1, 2013 by paying an additional fee to the City of Twelve Thousand Dollars (\$12,000.00) no later than May 31, 2012. This fee shall be in addition to the original extension fee paid above.

Any extension provided under this Subsection C is not transferable or assignable by TSP. Further, TSP may not sell the Property prior to meeting the Terms of Section 5 or reimbursing the City the Three Hundred Thousand Dollars (\$300,000.00) as provided in E. below.

D. In the event an extension(s) is granted under C. above, TSP shall have to the end of that extension to satisfy the conditions described in Subsection C. If TSP satisfies the conditions described in Subsection C at anytime during an extension, the funds previously provided by the City shall be deemed a grant and not subject to any recovery by the City nor any longer owed the City.

E. If TSP fails to satisfy the conditions in C above, it shall reimburse the City Three Hundred Thousand Dollars (\$300,000.00) not later than forty five (45) days following the expiration of the last paid extension or by June 30, 2011 if no extension occurs. TSP agrees to pay all of City's legal fees and expenses in the event that TSP fails to make timely reimbursement."

**IN WITNESS WHEREOF**, this Amendment is effective upon the last date of execution by all parties.

ATTEST:

CITY OF PLANO, TEXAS, a home rule municipal corporation

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

By: \_\_\_\_\_  
Bruce D. Glasscock, CITY MANAGER

APPROVED AS TO FORM

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

Date: \_\_\_\_\_

ATTEST:

Tenth Street Plano, L.P., a Texas limited partnership

\_\_\_\_\_

By: Tenth Street Plano GP, LLC, a Texas limited liability company, its general partner

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

RESOLUTION NO. 2008-10-12(R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A DEVELOPMENT AGREEMENT BY AND BETWEEN TENTH STREET PLANO, L.P. AND THE CITY OF PLANO, TEXAS FOR RENOVATION OF EXISTING IMPROVEMENTS LOCATED AT 910 10<sup>TH</sup> STREET, PLANO, TEXAS; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed development agreement for renovation of existing improvements located at 910 10<sup>th</sup> Street, Plano, Texas, between Tenth Street Plano, L.P. ("TSP") and the City of Plano, Texas, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, TSP's proposed renovations are located in Tax Increment Financing District No. 2 and is in keeping with the intent of that reinvestment zone to promote sound growth; and

WHEREAS, a portion of the proposed "Public Improvements" (as defined in Exhibit "A") that are to be dedicated to the public are to be funded through the revenue derived by Tax Increment Financing District No. 2; and

WHEREAS, the renovation of the Property in accordance with the Plan by TSP will contribute important direct and indirect economic and social benefits to the City including, but not limited to, the creation of an enhanced ad valorem real and business personalty improvements and new jobs, and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or, in his absence, an Executive Director, shall be authorized to execute it on behalf of the City of Plano.

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

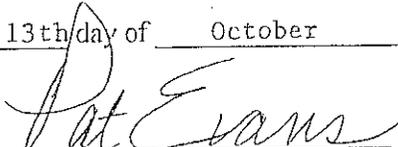
Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager, or in his absence, an Executive Director, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

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



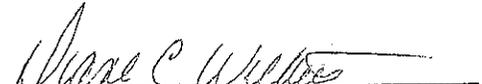
DULY PASSED AND APPROVED this the 13th day of October, 2008.

  
Pat Evans, MAYOR

ATTEST:

  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

  
Diane C. Wetherbee, CITY ATTORNEY



STATE OF TEXAS           §  
                                      §  
COUNTY OF COLLIN       §

**DEVELOPMENT AGREEMENT BETWEEN  
THE CITY OF PLANO, TEXAS AND TENTH STREET PLANO, L.P.**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the City of Plano, a Texas municipal corporation of Collin County, Texas (the "City"), acting by and through its duly authorized officers, and Tenth Street Plano, L.P., a Texas limited partnership, ("TSP");

**RECITALS:**

WHEREAS, the City is authorized pursuant to the laws of Texas and its Home Rule Charter to enter into agreements with persons or entities intending to undertake any development on real property for the purposes of providing public facilities and services; and

WHEREAS, TSP desires to renovate the existing improvements situated on approximately 18 acres located at 910 10<sup>th</sup> Street, Plano, Texas and as shown in Exhibit "A" attached hereto ("the Property"); and

WHEREAS, TSP has proposed renovations on the Property in substantial compliance with a preliminary project design and concept plan prepared by TSP attached hereto as Exhibit "B" (which design and concept plan, together with all additions, changes and amendments thereto approved by TSP and the City, is referred to in this Agreement as the "Plan") and which renovations are hereafter referred to as the "Initial Renovation Improvements"; and

WHEREAS, TSP's proposed renovations are located in Tax Increment Financing District No. 2 and is in keeping with the intent of that reinvestment zone to promote sound growth; and

WHEREAS, a portion of the proposed "Public Improvements" (as hereinafter defined) that are to be dedicated to the public are to be funded through the revenue derived by Tax Increment Financing District No. 2; and

WHEREAS, the construction of the "Public Improvements" and other improvements on the Property are within Tax Increment Financing District No. 2 and are being reimbursed from TIF funds, the competitive bidding requirements and reimbursement limits established by the Texas Local Government Code do not apply; and

WHEREAS, the renovation of the Property in accordance with the Plan by TSP will contribute important direct and indirect economic and social benefits to the City including, but

not limited to, the creation of an enhanced ad valorem real and business personalty improvements and new jobs, and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to TSP in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

WHEREAS, it is essential to the City's public health, safety and general welfare to assure that the Property is supported by adequate levels of public facilities and services; and

WHEREAS, the City Council has adopted Resolution No. 2008-10-12(R) on October 13, 2008, approving this Agreement with TSP and authorizing the City Manager to execute same by affixing their hand and the City Seal;

NOW THEREFORE, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

#### **SECTION 1. CONDITION PRECEDENT**

The parties recognize and agree that this Agreement is conditioned on the City obtaining approval and availability of funds from Tax Increment Financing District No. 2 to fund the Construction Allowance described in SECTION 3 below. Inclusion of reimbursement incentives within the Tax Increment Financing District No. 2 shall be determined no later than January 1, 2009.

#### **SECTION 2. TSP'S OBLIGATIONS**

As a condition to the obligations to be performed by the City as enumerated in SECTION 3 of this Agreement, TSP agrees to the following:

1. TSP will complete and obtain necessary regulatory approvals;
2. TSP will provide to the reasonable satisfaction of the City an economic overview letter from any of TSP's bankers, lenders or such other qualified person or entity attesting, to their knowledge, TSP's financial ability to complete its obligations under this Agreement;
3. TSP will provide the Plan to renovate the Property, which consists of approximately 400,000 square feet of industrial space.

4. TSP will complete the Initial Renovation Improvements twelve (12) months from the execution of this Agreement but not later than December 31, 2009, subject to the provisions of SECTION 6, herein;

5. TSP shall make real property improvements to the Property in accordance with the Plan that have a taxable value (as determined by the Collin County Appraisal District) of not less than Nine Million Dollars (\$9,000,000.00);

6. TSP will obtain all necessary permits from the City, which shall not be unreasonably withheld, conditioned or delayed by the City and begin construction of the renovations no later than sixty (60) days following receipt of permit. Construction shall be deemed to have begun when TSP actually commences site work, as depicted on the Plan, (i.e., demolition, grading or clearing) on the Property;

7. TSP shall be responsible for the construction of all Public Improvements in substantial conformity to the Plan as prepared by the architect of record (the "Architect") or civil engineer of record (the "Civil Engineer"), subject to all necessary City regulatory approvals which shall not be unreasonably withheld, conditioned or delayed, and for supervision and management of construction of the Public Improvements. The "Public Improvements" (as that term is used in this Agreement) shall mean the "Storm Drain", the "Water Line", and the "Paving". All Public Improvements, as the same are described or referred to in Exhibit "C" attached to this Agreement, shall be located in public right-of-way or easements. All "Landscape and Screening" shall be located within or adjacent to the Dallas Area Rapid Transit ("DART") right-of-way; and

8. TSP shall be responsible for all maintenance and operation expenses associated with the Property; however, the City shall be responsible for the maintenance and operation expenses associated with the Storm Drain and Water Line.

### SECTION 3. CITY'S OBLIGATIONS

As consideration for the obligations to be performed by TSP as enumerated in SECTION 2 of this Agreement, the City agrees to the following:

1. The City agrees, subject to the conditions contained herein, to pay for the Public Improvements, as shown in Exhibit "C", in an amount not to exceed Eight Hundred Thousand Dollars (\$800,000.00) (also called "Construction Allowance") as more fully described in SECTION 5 below. TSP will pay actual costs of completion of Public Improvements to the extent each line-item cost exceeds the amount for that item as shown in SECTION 5 below. The Construction Allowance will be available to TSP on a "line-item cost" basis as each line item is

completed and inspected by the City, such that cost savings realized with respect to discreet line-item allocations will be retained by the City. In no event will the aggregate of funds advanced by the City exceed the Construction Allowance. The Construction Allowance will be used toward the payment of all costs set forth in SECTION 5 below, including both "hard" and "soft" costs (including, but not limited to tests and architectural and engineering services).

2. TSP shall negotiate and obtain any required third party approvals and/or easements (including as to adjoining property owners) as may be reasonably necessary for the construction and installation of the Initial Renovation Improvements and Public Improvements (the "Off-Site Requirements"). The City agrees to cooperate with TSP in TSP's efforts to obtain the Off-Site Requirements.

3. The City may seek reimbursement of any Public Improvement costs from Tax Increment Financing Funds. The source of funding (including grants) for all Public Improvements paid for by the City is at the discretion of the City and may include reimbursement of costs from Tax Increment Financing District 2 Funds.

4. The City and TSP will coordinate and jointly approve the design of the Public Improvements;

5. The City agrees to grant to TSP the right to use easements and land owned or controlled by the City as may be reasonably necessary for the construction and installation of the Initial Renovation Improvements and Public Improvements (including, without limitation, fire lane access).

#### **SECTION 4. DESIGN AND CONSTRUCTION PROCUREMENT**

A. Design management for the Public Improvements and the renovations will be provided by the Architect or Civil Engineer for the renovations or such other party as shall be mutually agreed to by the parties to this Agreement. Architects and Engineers retained by TSP for the design and engineering services required for the successful completion of this Project shall meet all state licensing requirements.

B. Procurement of construction for the Public Improvements must be in accordance with the following provisions:

1. All Plans for the Public Improvements shall be submitted to the City Engineer for review and approval, which shall not be unreasonably withheld, conditioned or delayed. All Plans shall comply with the standards and requirements for similar developments located in the City, unless otherwise approved by the City in its reasonable discretion for the Plan. Nothing in this Agreement shall be construed to waive any review or permitting process or to diminish the City's regulatory authority.

2. TSP shall use reasonable efforts to insure that the Public Improvements are completed in a timely manner in accordance with the construction contract documents, plans and specifications.

3. Any construction contract for the construction of the Public Improvements shall specify that the contractor shall look solely to TSP concerning any claim under the contract. For each such construction contract TSP shall acquire and maintain or require its general contractor to acquire and maintain, during any period for which the renovations of the Property is under construction, comprehensive general liability insurance in the amount of the construction contract or \$1,000,000, whichever is greater. Such insurance shall cover any and all claims which might arise out of the construction contract, whether by the contractor, a subcontractor, materialman or otherwise. All such insurance shall: (a) be issued by a carrier which is rated "B+" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas, and (b) name TSP and City as an additional insured. Certified copies of all of such policies shall be delivered to the City upon the execution of a construction contract; provided, however, that the City, in its sole discretion and in lieu of certified copies of such policies, may permit the delivery of certificates of insurance together with the declaration page of such policies, along with the endorsement naming the City as an additional insured. Each such policy shall provide that, at least 30 days prior to the cancellation, non-renewal or modification of the same, TSP and City shall receive written notice of such cancellation, non-renewal or modification.

4. The contract shall require for the construction of all Public Improvements, that the contractor provide performance and payment bonds and 10% maintenance bonds or other lawful surety in a form acceptable to the City.

5. All project designs, drawings, site plans and other documents produced by TSP in connection with the renovations and the Public Improvements, including those attached to this Agreement, shall remain the property of TSP. However, in exchange for TSP's acceptance of the above-described reimbursement from the City, the City will retain all necessary rights to use such portion of the Plans created for public facilities and infrastructure, and all assignable rights in the boundary survey and environmental site assessment of the Property obtained by TSP.

## SECTION 5. PAYMENT

A. The total amount of reimbursement from the City to TSP for construction of Public Improvements and Demolition and Abatement costs shall not exceed Eight Hundred Thousand Dollars (\$800,000.00) and the maximum reimbursement within each category of improvement shall be capped as follows:

\$225,000 for Storm Drain Water Line

\$200,000 for Water Line  
\$250,000 for Demolition and Abatement  
\$215,000 for Paving within public right-of-ways or easements  
\$ 60,000 for Landscape and Screening

B. Upon completion and acceptance of the items eligible for reimbursement as described in Exhibit "C" and in this SECTION, 5/8ths of the reimbursement paid to TSP shall be declared a grant and will not be subject to recovery by the City.

C. The remaining 3/8ths of the reimbursement shall be deemed a grant not subject to recovery by the City if TSP is able to satisfy the following conditions by May 1, 2011:

1. At least eighty-five percent (85%) of the Property's rentable square footage is leased and certificate(s) of occupancy are issued and meets one of the two following:
2. TSP provides documentation that the cost of Initial Renovation Improvements to the Property, any landlord and tenant finish work, and any fees for design and engineering services shall total at least Five Million Dollars (\$5,000,000.00); or
3. The Collin County Appraisal District appraises the value of the real property improvements at not less than Nine Million Dollars (\$9,000,000.00).

D. If TSP is unable to satisfy the conditions described in Subsection C above, TSP shall repay to the City (as the City's sole remedy) One Hundred Thousand Dollars (\$100,000.00) in a lump sum within thirty (30) days of written demand and the balance of the recoverable funds (that being, \$200,000.00) shall be paid to the City in two equal annual payments (on May 1, 2012 and May 1, 2013, unless the amount owed is cancelled under Subsection E below) together with interest at six percent (6%) compounded annually.

E. If at anytime before May 1, 2012, TSP satisfies the conditions described in Subsection C above, the remaining balance of the Two Hundred Thousand Dollars (\$200,000.00) owed to the City under Subsection D above (together with all accrued interest thereon) shall be cancelled, declared a grant and not subject to recovery by the City nor any longer owed to the City.

## SECTION 6. FORCE MAJEURE

It is expressly understood and agreed by the parties to this Agreement that if the obligations of the parties as contemplated hereunder is delayed by reason by war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, or acts of the other party, its affiliates/related entities and/or their contractors, the party so obligated or permitted shall be excused from doing or

performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

#### **SECTION 7. TERM**

The term of this Agreement shall begin on the date of execution, and end upon the complete performance of all obligations and conditions precedent by parties to this Agreement.

#### **SECTION 8. AUTHORITY OF TSP**

TSP represents and warrants to the City that TSP is duly formed, validly existing and in good standing under the laws of the State of Texas. TSP has full power, authority and legal right to execute and deliver this Agreement. This Agreement constitutes a legal, valid, and binding obligation of TSP and the City, enforceable in accordance with its terms.

#### **SECTION 9. EVENTS OF DEFAULT**

A default shall exist if either party fails to perform or observe any material covenant contained in this Agreement and such failure is not cured within thirty (30) days following written notice thereof from the non-defaulting party to the defaulting party (which cure period shall be extended if the default is not susceptible to cure within said 30 day period so long as the cure is commenced within said 30 day period and thereafter diligently pursued), or if the representation provided for in SECTION 8 is not true or correct in any material respect. A party shall immediately notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event which would constitute a default by the defaulting party, or, with the giving of notice or passage of time, or both, would constitute a default by the defaulting party under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the notifying party requires or proposes to require with respect to curing the default.

#### **SECTION 10. NOTICES**

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mails by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

If intended for City, to:

City of Plano, Texas  
Attention: City Manager  
1520 Avenue K  
P. O. Box 860358

If intended for TSP, to:

Tenth Street Plano, L.P.  
c/o: Holt Lunsford Commercial  
Attention: David Cartwright  
5055 Keller Springs Road, Suite 300

Plano, Texas 75086-0358

Addison, Texas 75001

With copy to:

Andrews Barth & Harrison, PC  
Attention: Stan Barth  
8235 Douglas Avenue, Suite 1120  
Dallas, Texas 75225

#### **SECTION 11. GIFT TO PUBLIC SERVANT**

A. City may terminate this Agreement immediately if TSP has knowingly offered, conferred, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

B. For purposes of this SECTION, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.

C. Notwithstanding any other legal remedies, City may require TSP to remove any employee, affiliate or contractor of TSP from the renovations and the Public Improvements on the Property who has violated the restrictions of this SECTION or any similar state or federal law, and obtain reimbursement for any expenditures made to TSP as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

#### **SECTION 12. APPLICABLE LAWS**

This Agreement is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable State and federal laws.

#### **SECTION 13. 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.

#### **SECTION 14. 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.

## SECTION 15. 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.

## SECTION 16. 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.

## SECTION 17. SUCCESSORS AND ASSIGNS

A. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. Provided, however, this Agreement shall not be assigned without the prior consent of TSP and the Plano City Council, which approvals shall not be unreasonably withheld; provided, further, however, TSP may assign this Agreement to TSP's lender as collateral.

B. An assignment or delegation of this Agreement to an Affiliate of TSP shall not require City Council approval and shall not result in a breach of the Agreement if the Affiliate of TSP expressly assumes all of the obligations of TSP under this Agreement for the balance of the term of this Agreement and provides evidence establishing the relationship between TSP and an Affiliate. TSP shall notify the City in writing, however, within 30 days of such assignment. "Affiliates", as used herein, includes any parent, sister, partner, joint venturer, equity investor or subsidiary entity of TSP; any entity in which either of TSP, a major shareholder, owns an equity interest or is a joint venturer or partner (whether general or limited).

## SECTION 18. ENTIRE AGREEMENT

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

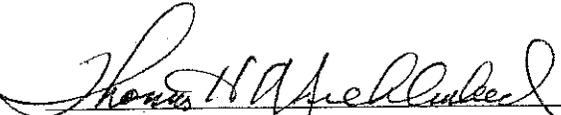
## SECTION 19. INCORPORATION OF RECITALS

The recitals set forth herein are intended, and are hereby deemed to be a part of this Agreement.

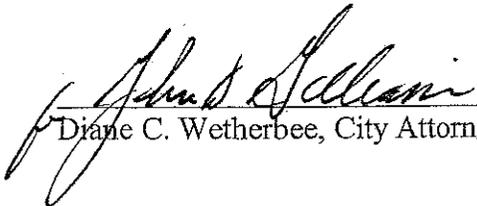
*[Signatures on following page]*

EXECUTED on the 13th day of October, 2008, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 2008-10-12(R) approved by the City Council on October 13, 2008, acting through its duly authorized officials.

CITY OF PLANO, TEXAS, a home rule municipal corporation

By:   
Thomas H. Muehlenbeck, City Manager

APPROVED AS TO FORM:

  
Diane C. Wetherbee, City Attorney

Tenth Street Plano, L.P., a Texas limited partnership

By: Tenth Street Plano GP, LLC, a Texas limited liability company, its general partner

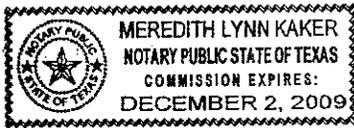
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF TEXAS        )  
                                  )  
COUNTY OF DALLAS    )

This instrument was acknowledged before me on the 5 day of November, 2008, by R. Holt hunsford, President of Tenth Street Plano GP, LLC, a Texas limited liability company, general partner of Tenth Street Plano, L.P., a Texas limited partnership, on behalf of said partnership.

Meredith Lynn Kaker  
Notary Public, State of Texas



LIST OF EXHIBITS

EXHIBIT A	Property Legal Description
EXHIBIT B	Design and Concept Plan
EXHIBIT C	Public Improvements and Demolition

## EXHIBIT A

DESCRIPTION, of a 17.867 acre tract of land situated in the Joseph Klepper Survey, Abstract No. 213 and the Samuel Klepper Survey, Abstract No. 216, Collin County, Texas; said tract being all of the Capital Wire and Cable Co., an addition to the City of Plano, Texas recorded in Cabinet G, Page 293 of the Map Records of Collin County, Texas; said tract also being all of that certain tract of land described as Tract 2, in Exhibit "A" in Special Warranty Deed to Tenth Street BSF, LLC recorded in Instrument No. 20070219000227850 of the Official Public Records of Collin County, Texas; said 17.867 acre tract being more particularly described as follows (bearing basis for this survey based on a bearing of South 89 degrees, 21 minutes, 00 seconds East for the south right-of-way line of 10th Street according to the said plat of Capital Wire and Cable Co.):

BEGINNING, at a "+" cut in concrete found for corner at the intersection of the said south line of 10th Street (a variable width right-of-way) and the west right-of-way line of the Dallas Area Rapid Transit (a 100-foot wide right-of-way, formerly the Houston & Texas Central Railroad); said point being the northeast corner of said Capital Wire and Cable Co.;

THENCE, South 01 degrees, 03 minutes, 00 seconds West, departing the said south line of 10th Street and along the said west line of the Dallas Area Rapid Transit, a distance of 983.90 feet to a 1/2-inch iron rod with "R-Delta Engineers" cap found for corner; said point being the northeast corner of that certain tract of land described in Exhibit "A" in Deed Without Warranty to the City of Richardson, Texas recorded in Volume 5004, Page 1618 of the Deed Records of Collin County, Texas;

THENCE, North 87 degrees, 24 minutes, 00 seconds West, departing the said west line of the Dallas Area Rapid Transit and along the north line of said City of Richardson tract, a distance of 454.93 feet to a 1/2-inch iron rod with "RPLS 4813" cap found for corner; said point being the southeast corner of Lot 1, Block 1, Parkway Business Center II, an addition to the City of Plano, Texas recorded in Cabinet E, Page 66 of said Map Records;

THENCE, North 01 degrees, 09 minutes, 19 seconds East, departing the said north line of the City of Richardson tract and along the east line of said Lot 1, Block 1, a distance of 322.50 feet to a "+" cut in concrete found for corner; said point being the northeast corner of said Lot 1, Block 1;

THENCE, North 88 degrees, 50 minutes, 41 seconds West, along the north line of said Lot 1, Block 1, a distance of 700.00 feet to a "+" cut in concrete set for corner; said point being the northwest corner of said Lot 1, Block 1;

THENCE, South 36 degrees, 28 minutes, 32 seconds West, along the northwest line of said Lot 1, Block 1, a distance of 204.08 feet to a "+" cut in concrete found for corner in the northeast right-of-way line of Avenue "F" (a 60-foot wide Street Easement recorded in Volume 963, Page 311 and Volume 964, Page 675, both of said Deed Records); said point being the southwest corner of said Lot 1, Block 1 and in a non-tangent curve to the right;

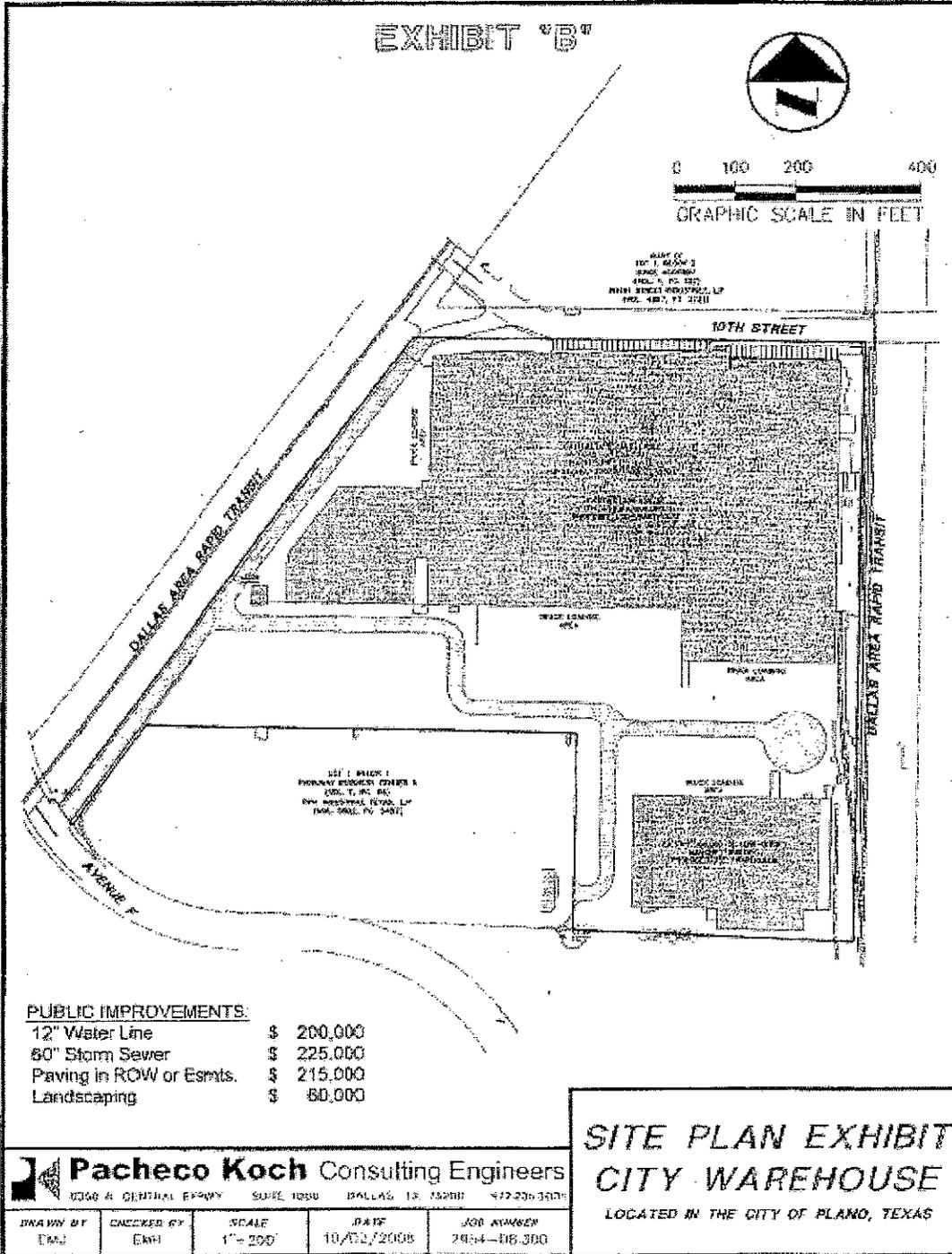
THENCE, in a northwesterly direction, along the said northeast line of Avenue "F" and said curve to the right, having a central angle of 06 degrees, 02 minutes, 41 seconds, a radius of 360.00 feet, a chord bearing and distance of North 33 degrees, 51 minutes, 57 seconds West, 37.96 feet, an arc distance of 37.98 feet to a point for corner (nothing found or set) in the southeast right-of-way line of the Dallas Area Rapid Transit (a 100-foot wide right-of-way, formerly the St. Louis & Southwestern Railroad); from said point a "+" cut in concrete found bears North 72 degrees, 08 minutes West, 0.4 feet;

THENCE, North 36 degrees, 56 minutes, 00 seconds East, along the said southeast line of the second referenced Dallas Area Rapid Transit, a distance of 960.09 feet to a 1/2-inch iron rod with "Pacheco Koch" cap set for corner at the intersection of said southeast line of the second referenced Dallas Area Rapid Transit and the said south line of 10th Street;

THENCE, South 89 degrees, 21 minutes, 00 seconds East, departing the said southeast line of the second referenced Dallas Area Rapid Transit and along the said south line of 10th Street, a distance of 731.48 feet to the POINT OF BEGINNING;

CONTAINING, 778,307 square feet or 17.867 acres of land, more or less.

**EXHIBIT B**



## Exhibit C

### Public Improvements

Add one (1) sixty inch (60") RCP storm drain connecting existing pipe in DART ROW to outfall at same location as existing sixty inch (60") pipe (the "Storm Drain")

Construct new twelve inch (12") water line and connect to existing City lines (the "Water Line")

Repair and replace fire lane paving as needed (the "Paving")

### **Landscape and Screening**

Provide landscape and screening (the "Landscape and Screening") within or adjacent to the DART right-of-way.

### **Demolition and Abatement**

Demolition of existing improvements on the Property and the abatement or environmental hazards