



**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:	2/8/10
Department:	Parks and Recreation
Department Head	Amy Fortenberry
Agenda Coordinator (include phone #): Susan Berger (7255)	

CAPTION

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Real Estate Contract by and between the Trammel Crow Company No. 43, LTD., and the City of Plano for the purchase of approximately 7.005 acres of land located west of Midway Road and south of McKamy Trail immediately adjacent to the existing Sunset Park in Plano, Collin County, Texas; authorizing the City Manager or designee to execute such contract; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	985,000	0	985,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-813,439	0	-813,439
BALANCE	0	171,561	0	171,561

FUND(S): PARK FEE PROGRAM

COMMENTS: Funds are included in the 2009-10 Park Fee Program. This item, in the amount of \$813,439, will leave a current year balance of \$171,561, for the Sunset Park project.

STRATEGIC PLAN GOAL: Park land purchases relate to the City's Goal of Premier City in Which to Live.

SUMMARY OF ITEM

Approval of an expenditure of \$5.25 per square foot for approximately 3.194 acres of property not encumbered by a power line easement (\$730,435.86) and \$0.50 per square foot for the approximately 3.811 acres of the property within the power line easement (\$83,003.58) for total a expenditure of \$813,439.44. The final amount of encumbered and unencumbered square footage will be determined by the final survey prepared before closing.

The purpose of the acquisition is for an addition to the existing 8.21 acre Sunset Park. If this acquisition is approved the total acreage of the park will be 15.215 acres. Parking at Sunset Park is limited to on-street parking along McKamy Trail which causes congestion on the street and limits access to the park. Ideally most neighborhood parks will have streets available for parking on at least 2 sides. This addition to the park will provide space for off-street parking as well as an additional practice soccer/baseball field area. This acquisition will also provide a link for a future trail connection under the power lines to The Colony.



CITY OF PLANO COUNCIL AGENDA ITEM

This acquisition is identified in the Comprehensive Plan as part of the Park Master Plan. Funding for this acquisition is available through the Park Fee Program and does not require a General Fund expenditure or a bond sale. This acquisition will not require any additional maintenance resources until it is developed. The development schedule will depend on budget conditions.

List of Supporting Documents:

Location Map

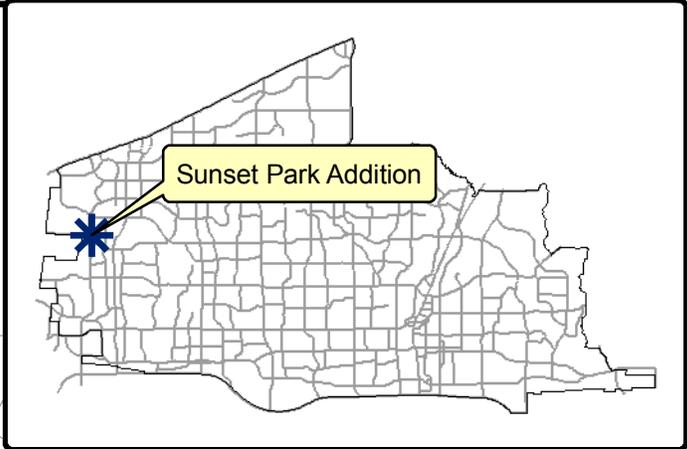
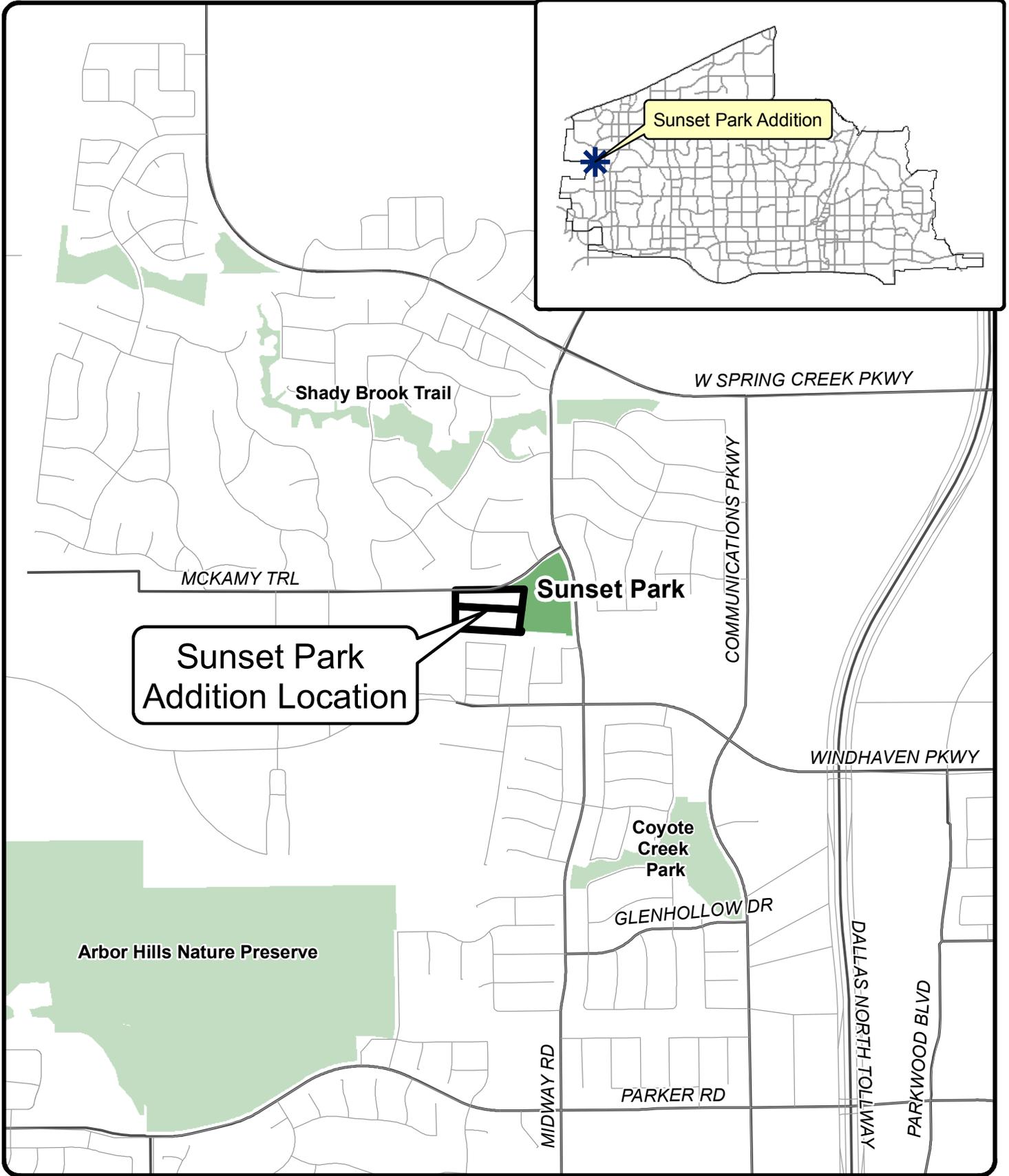
Contract

Other Departments, Boards, Commissions or Agencies



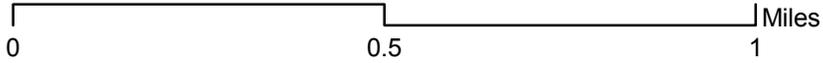
Location Map

Sunset Park Addition



Sunset Park
Addition Location

Sunset Park Addition



A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Real Estate Contract by and between the Trammel Crow Company No. 43, LTD., and the City of Plano for the purchase of approximately 7.005 acres of land located west of Midway Road and south of McKamy Trail immediately adjacent to the existing Sunset Park in Plano, Collin County, Texas; authorizing the City Manager or designee to execute such contract; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Real Estate Contract by and between the City of Plano and the Trammel Crow Company No. 43, LTD. for the purchase of property located west of Midway Road and south of McKamy Trail immediately adjacent to the existing Sunset Park in Plano, Collin County, Texas, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Real Estate Contract"); and

WHEREAS, upon full review and consideration of the Real Estate Contract, 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 authorized 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 Real Estate Contract, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interest 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 Real Estate Contract 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 Real Estate Contract.

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

DULY PASSED AND APPROVED this the 8th day of February, 2010.

Phil Dyer, MAYOR

ATTEST:

DIANE ZUCCO, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

REAL ESTATE CONTRACT

THIS REAL ESTATE CONTRACT ("Contract") is made and entered into by and between the **TRAMMEL CROW COMPANY NO. 43, LTD.**, a Texas limited partnership and **BILLINGSLEY TRUST JV**, a Texas general partnership ("Sellers") and **THE CITY OF PLANO, TEXAS**, a home rule municipality ("Purchaser").

ARTICLE 1

Sale and Purchase

Section 1.1 Subject to the terms and provisions hereof, the Seller agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Seller, that certain real property containing approximately 7.005 acres or 305,137.8 square feet of land, shown as Parcels A and B on Exhibit "A" attached hereto and incorporated herein for all purposes together with, all and singular, all of Seller's right, title and interest in and to all improvements thereon and all rights and appurtenances pertaining thereto, such interest in real estate, improvements, rights and appurtenances being herein referred to individually and collectively as the "Property." The Property is located within the city limits of the City of Plano and is out of a larger 7.5409 acre tract described in the Collin County Appraisal District Records as Account Number 2620762. Purchaser is a Texas home rule municipality with the power of condemnation. By agreement of Purchaser and Seller, the Property will be conveyed to Purchaser hereunder in lieu of condemnation.

ARTICLE 2

Consideration for Conveyance

Section 2.1 The purchase price ("Purchase Price") for the Property shall be payable in cash at closing and shall be based on a price of \$5.25 per square foot for the approximately 3.194 acres of the Property not encumbered by a power line easement and \$0.50 per square foot for the approximately 3.811 acres of the Property within the power line easement. The final amount of encumbered and unencumbered square footage shall be determined by the Survey to be prepared in accordance with Section 4.1 below.

ARTICLE 3

Earnest Money

Section 3.1

(a) As a condition precedent to sustaining this Contract, Purchaser shall have ten (10) business days after execution of this Contract by the parties to deliver a check in the amount of **ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00)** to the Title Company (hereinafter defined) as earnest money ("Earnest Money").

(b) In the event this Contract is closed, the Earnest Money shall be applied to the Purchase Price at Closing. In the event this Contract is not closed, then the Title Company shall disburse the Earnest Money in the manner provided for elsewhere herein.

ARTICLE 4

Survey and Title Policy

Section 4.1 Within fifteen (15) days from the Effective Date of this Contract, the Seller, at Seller's sole cost and expense, shall deliver or cause to be delivered to Purchaser a current boundary survey ("Survey") of the Property, containing a metes and bounds description of the Property. The Survey shall be sufficient to permit the Title Company, at Purchaser's sole cost and expense to modify the standard printed exception in the Owner Policy of Title Insurance pertaining to discrepancies in area or boundary lines, encroachments, overlapping of improvements, or similar matters (herein called the "Survey Exception"). The Survey shall indicate the location of all improvements on the Property, if any. Further, the Survey shall indicate the location of all title exceptions which can be located thereon. The Survey shall be performed by Michael Cummings with C&P Engineering, Ltd. In the event Purchaser elects to have such Survey performed prior to execution of this Contract, or at any time before delivery of such Survey is required by Seller, then Purchaser shall be entitled to receive reimbursement for the amount of such Survey at Closing. The survey shall also show the total number of square feet within the power line easement. Notwithstanding anything to the contrary contained herein, if Seller provides the Survey to Purchaser and Purchaser fails to consummate the Closing of the transaction contemplated hereby for any reason (other than a Seller default), Purchaser shall reimburse Seller for all reasonable costs incurred by Seller in connection with the survey.

Section 4.2 Within fifteen (15) days from the Effective Date of this Contract, the Seller, at the Seller's sole cost and expense, shall furnish to the

Purchaser a current commitment ("Title Commitment") for the issuance of an Owner's Policy of Title Insurance to the Purchaser from Republic Title of Texas, Inc., 2626 Howell Street, 10th Floor, Dallas, Texas 75204-4064, Attn: Mr. Mel Morgan ("Title Company"), together with legible copies of all documents constituting exceptions to Seller's title as reflected in the Title Commitment. Purchaser shall have a period of twenty (20) days from the delivery of the last of the Survey or the Title Commitment and the documents referred to therein as conditions or exceptions to title to the Property, in which to review such items and to deliver to Seller in writing such reasonable objections as Purchaser may have to anything contained or set forth in the Title Commitment or title exception documents. Any items to which Purchaser does not object within such period shall be deemed to be permitted exceptions ("Permitted Exceptions"). In the event Purchaser timely objects to any matter contained in the Survey or the Title Commitment and/or title exception documents as hereinabove provided, Seller shall have a reasonable period of time, not to exceed forty-five (45) days, after receipt of Purchaser's objections within which Seller may attempt to cure such objections specified as aforesaid by Purchaser and the Closing Date shall be extended, if necessary, provided, however, Seller shall be under no obligation to incur any costs whatsoever in connection with such cure. In the event Seller has been unable or unwilling to cure any such objections as aforesaid within such reasonable period of time, not to exceed forty-five (45) days, then, and in such event, Purchaser may, at its option, either terminate this Contract (whereupon the Earnest Money shall be immediately returned to the Purchaser by the Title Company) or Purchaser may waive any such objection and the transaction contemplated hereby shall be consummated as provided herein, in which case all such objections shall become additional "Permitted Exceptions" for all purposes hereunder.

Section 4.3 At Closing, the Seller shall furnish the Purchaser, at the Seller's sole cost and expense with an Owner Policy of Title Insurance issued by the Title Company on the standard form in use in the State of Texas, insuring good and indefeasible title to the Property in the Purchaser in the amount of the Purchase Price, subject only to the Permitted Exceptions and the standard printed exceptions, except:

(a) The exception relating to restrictions against the Property shall be endorsed by the Title Company to read "none of record", except for such restrictions as may be included in the Permitted Exceptions;

(b) The exception relating to ad valorem taxes shall except only to taxes owing for the current and subsequent years and subsequent assessments for prior years due to change in land use or ownership;

(c) There shall be no general exception for "parties in possession";
and

(d) There shall be no exception for any lien, for service, labor or material heretofore or hereafter provided imposed by law and not shown by the public records.

Section 4.4. Any and all endorsements or modifications (including, without limitation, modification of the Survey Exception) to the Owner Policy of Title Insurance shall be at Purchaser's sole cost and expense.

ARTICLE 5

Condemnation, Assessments and Risk of Loss

Section 5.1 In the event that prior to the date of Closing condemnation procedures are commenced by any governmental entity or authority other than Purchaser or other entity acting by, through or under Purchaser, against a portion or all of the Property or Seller receives any verbal or written notice of a threat or intent of condemnation of a portion or all of the Property by any governmental entity or authority other than Purchaser or other entity acting by, through or under Purchaser, Seller shall immediately notify Purchaser and Purchaser may, at its election, terminate this Contract by written notice to Seller within ten (10) business days after receipt of Seller's notice. Neither party shall have any further rights or obligations hereunder and the Title Company shall return the Earnest Money to the Purchaser, and neither Purchaser nor Seller shall have any further right or obligation hereunder except as set forth herein. Should Purchaser elect not to exercise its option as provided hereunder, then the Contract shall remain in full force and effect and Seller shall assign or pay to Purchaser at Closing Seller's interest in and to all condemnation awards or proceeds from any such proceedings or actions in lieu thereof. Prior to Closing, all risks of loss shall be upon the Seller.

ARTICLE 6

Closing

Section 6.1 The Closing hereunder shall take place at the offices of the Title Company. The date of Closing ("Closing Date") shall be on or before sixty (60) days after the Effective Date of this Contract or on such earlier date as may be mutually agreed.

Section 6.2 At the Closing, Seller shall deliver or cause to be delivered to Purchaser each of the following items:

(a) A Special Warranty Deed (the "Deed") duly executed and acknowledged by Seller, and in form for recording, conveying good, indefeasible title in the Property to Purchaser, subject only to the Permitted Exceptions.

(b) At Seller's expense, the Owner's Title Policy (or a Pro Forma Owner's Title Policy) in the form specified in Section 4.3 hereof.

(c) All additional documents and instruments as in the opinion of the Seller's and Purchaser's counsel are reasonably necessary to the proper consummation of this transaction.

Section 6.3 At the Closing, Purchaser, at Purchaser's sole cost and expense shall deliver to Seller the following items:

(a) The Purchase Price in cash as required by Article 2 hereof;

(b) Such evidence or documents as may reasonably be required by the Seller or the Title Company evidencing the status and capacity of Purchaser and the authority of the person or persons who are executing the various documents on behalf of the Purchaser in connection with the sale of the Property; and

(c) All additional documents and instruments as in the opinion of the Seller's and Purchaser's counsel are reasonably necessary to the proper consummation of this transaction.

Section 6.4 All ad valorem taxes shall be pro-rated to date of closing. Purchaser shall be responsible for all ad valorem taxes, if any, affecting the Property after the date of Closing.

Section 6.5 Possession of the Property shall be delivered to Purchaser by Seller at the Closing, subject only to the Permitted Exceptions and such rights of others as have been expressly disclosed herein.

Section 6.6 Except as otherwise provided herein, all costs and expenses in connection with the transaction contemplated by this Contract shall be borne by Purchaser, except each party will pay its own legal fees.

ARTICLE 7

Real Estate Commission

Each party hereto represents and warrants to the other party that it has not employed any broker or finder in connection with the transaction contemplated by this Contract. Each party hereto agrees to reimburse the other party for any loss, liability, damage, cost, or expense (including, but not limited

P. O. Box 860358
Plano, TX 75086-0358

With copy to: City of Plano, Texas
Attention: City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If to the Purchaser: Trammell Crow Company #43 Et Al
Attention: Henry Billingsley
4100 International Pkwy Suite 1100
Carrollton, TX 75007

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or certified or registered mail, as of the date of deposit or delivery to the United States Mail or expedited delivery service in the manner provided herein, or in the case of telegram or telex, upon receipt. Any notice required by this Contract or in any way related to the transaction contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this Article 9. Either party hereto may change the address for notice specified above by giving the other party ten (10) days advance written notice of such change of address.

Section 9.2 For purposes of determining the time for performance of various obligations under this Contract, the Effective Date of this Contract shall be the later of the dates this Contract is executed by Seller or Purchaser.

Section 9.3 Except as otherwise provided herein, any representation, warranty, covenant or agreement of either party to this Contract whether to be performed before or after the time of Closing shall not survive the Closing, but rather shall be deemed to be merged into and waived by the instruments of Closing.

Section 9.4 This Contract shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, and permitted successors and assigns. The rights of Purchaser under this Contract are not assignable without the prior written consent of Seller, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the rights of Purchaser hereunder shall be assignable by Purchaser to any entity which is owned or controlled by Purchaser without the necessity of obtaining Seller's prior written

consent, so long as such assignee assumes all of Purchaser's obligations hereunder.

Section 9.5 The obligations of the parties hereto are and shall be performable in Collin County, Texas. This Contract shall be construed and interpreted in accordance with the laws of the State of Texas. Where required for proper interpretation, words in the singular shall include the plural; the masculine gender shall include the neuter and the feminine, and vice versa. The terms "heirs, executors, administrators and assigns" shall include "successors, legal representatives and assigns."

Section 9.6 This Contract may not be modified or amended, except by an agreement in writing signed by the Seller and the Purchaser. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, except as elsewhere provided for herein, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

Section 9.7 Each person executing this Contract warrants and represents that he is fully authorized to do so.

Section 9.8 Time is of the essence of this Contract.

Section 9.9 In the event it becomes necessary for either party hereto to file a suit to enforce this Contract or any provisions contained herein, the party prevailing in such action shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees incurred in such suit.

Section 9.10 The descriptive headings of the several Articles, Sections and Paragraphs contained in this Contract are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 9.11 This Contract, including the Exhibits hereto, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenant, agreement or condition not expressed in this Contract shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Contract.

Section 9.12 Should the calculation of any of the various time periods provided for herein result in an obligation becoming due on a Saturday, Sunday or legal holiday, then the due date of such obligation or scheduled time of occurrence of such event shall be delayed until the next business day.

Section 9.13 Seller and Purchaser hereby acknowledge that neither this Contract nor any memorandum or affidavit thereof shall be recorded of public record in Collin County, Texas or any other county in Texas. Should Purchaser ever record or attempt to record this Contract, or a memorandum or affidavit thereof, or any other similar document, then, notwithstanding anything herein to the contrary, said recordation or attempt at recordation shall constitute a default by Purchaser hereunder, and, in addition to the other remedies provided for herein, Seller shall have the express right to terminate this Contract by filing a notice of said termination in the proper place for said filing.

Section 9.14 Numerous copies of this Contract have been executed by the parties hereto. Each such executed copy shall have the full force and effect of an original executed instrument.

Section 9.15 AS A MATERIAL PART OF THE CONSIDERATION FOR THIS CONTRACT, SELLER AND PURCHASER AGREE THAT PURCHASER IS TAKING THE PROPERTY "AS IS", "WHERE IS" AND "WITH ALL FAULTS" AND WITH ANY AND ALL LATENT AND PATENT DEFECTS (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL CONDITONS, AND DEFECTS) AND THAT THERE IS NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OF AN KIND OR NATURE (INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO HABITABILITY, MARKETABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ENVIRONMENTAL OR ANY OTHER CONDITION OF THE PROPERTY) MADE BY SELLER WITH RESPECT TO THE PROPERTY. ALL REPRESENTATIONS AND WARRANTIES, BOTH EXPRESS AND IMPLIED, ARE HEREBY EXPRESSLY DISCLAIMED AND DENIED. SELLER AND PURCHASER ACKNOWLEDGE THAT PURCHASER HAS BEEN OR WILL BE GIVEN ADEQUATE TIME TO CONDUCT WHATEVER EXAMINATION, EVALUATIONS, INSPECTIONS, REVIEWS, STUDIES OR TESTS OF THE PROPERTY AND ITS CONDITION (INCLUDING ENVIRONMENTAL CONDITION) AS PURCHASER MAY DESIRE OR DETERMINE WARRANTED, AND THAT PURCHASER IS NOT RELYING ON ANY REPRESENTATION, WARRANTY, STATEMENT OR OTHER ASSERTION WITH RESPECT TO THE PROPERTY OR ITS CONDITION (INCLUDING ENVIRONMENTAL CONDITIONS) BY SELLER OR ANY OF ITS AGENTS, BUT IS RELYING SOLELY ON ITS OWN EXAMINATION, EVALUATIONS, INSPECTIONS, REVIEWS, STUDIES OR TEST OF THE PROPERTY. PURCHASER TAKES THE PROPERTY UNDER THE EXPRESS UNDERSTANDING THAT THERE ARE NO EXPRESS OR IMPLIED

WARRANTIES INCLUDING BUT NOT LIMITED TO THOSE OF HABITABILITY, MERCHANTABILITY, MARKETABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ENVIRONMENTAL OR ANY OTHER CONDITION. The provisions of this Section 9.15 shall survive the Closing and the delivery of the deed and any other instruments of Closing.

EXECUTED on this the _____ day of _____, 2010, by Seller.

CITY OF PLANO, TEXAS

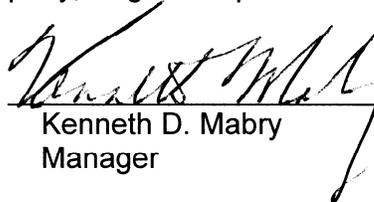
BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

TRAMMELL CROW COMPANY No. 43 LTD.,
a Texas limited partnership

BY: Henry GP, LLC., a Texas limited liability company, its general partner

BY:  _____
Kenneth D. Mabry
Manager

BILLINGSLEY TRUST JV, a Texas general partnership

BY: 
Kenneth D. Mabry
Assistant Partnership Manager

This Contract, together with the Purchaser's Earnest Money, has been received by the Title Company this the ____ day of _____, 2010, and by execution hereof the Title Company hereby covenants and agrees to be bound by the terms of this Contract.

REPUBLIC TITLE COMPANY

By: _____

EXHBIIT "A"

The Property

Park Planning Division
City of Plano, Texas

SUNSET PARK VICINITY

A + B = 7.005 Acres



200 100 0 200 Feet

