CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY	
☐ Consent ☐ Regular ☐ Statutory	
Council Meeting Date:	6/11/12
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 and Lease by and between City House, Inc., a Texas non-profit organization, and the City of Plano for the purchase and lease back to seller of approximately 0.95 acres of land including a house and associated structures located at 902 E. 16th Street adjacent to Haggard Park in Plano, Collin County, Texas; and authorizing the City Manager or his authorized designee to execute such contract and lease agreement and providing an effective date.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☒ CIP

FISCAL YEAR: **2011-12**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	0	600,000	0	**600,000**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-465,000	0	**-465,000**
BALANCE	0	135,000	0	**135,000**

FUND(S): CAPITAL RESERVE CIP

COMMENTS: Funds are included in the FY 2011-12 Capital Reserve CIP. This item, in the amount of $465,000, will leave a current year balance of $135,000 for the City House project.

STRATEGIC PLAN GOAL: Approving the terms and condition of a real estate contract to purchase land from City House, Inc. relate to the City's Goal of Great Neighborhoods - 1st Choice to Live.

SUMMARY OF ITEM

Approval of an expenditure of $465,000 for the purchase of the City House property located adjacent to Haggard Park which includes an approximately 4,400 square foot house with associated structures located on approximately 0.95 acres of land for the price of $465,000.

The contract includes a lease agreement allowing City House, Inc. to lease the house back from the City for a period not to exceed three years at a cost of $1.00 per year. This will benefit the City by allowing the house to be occupied until the ultimate use of the property is determined.

Funding is available through the current Capital Reserve Fund Budget. The Capital Reserve Fund will be

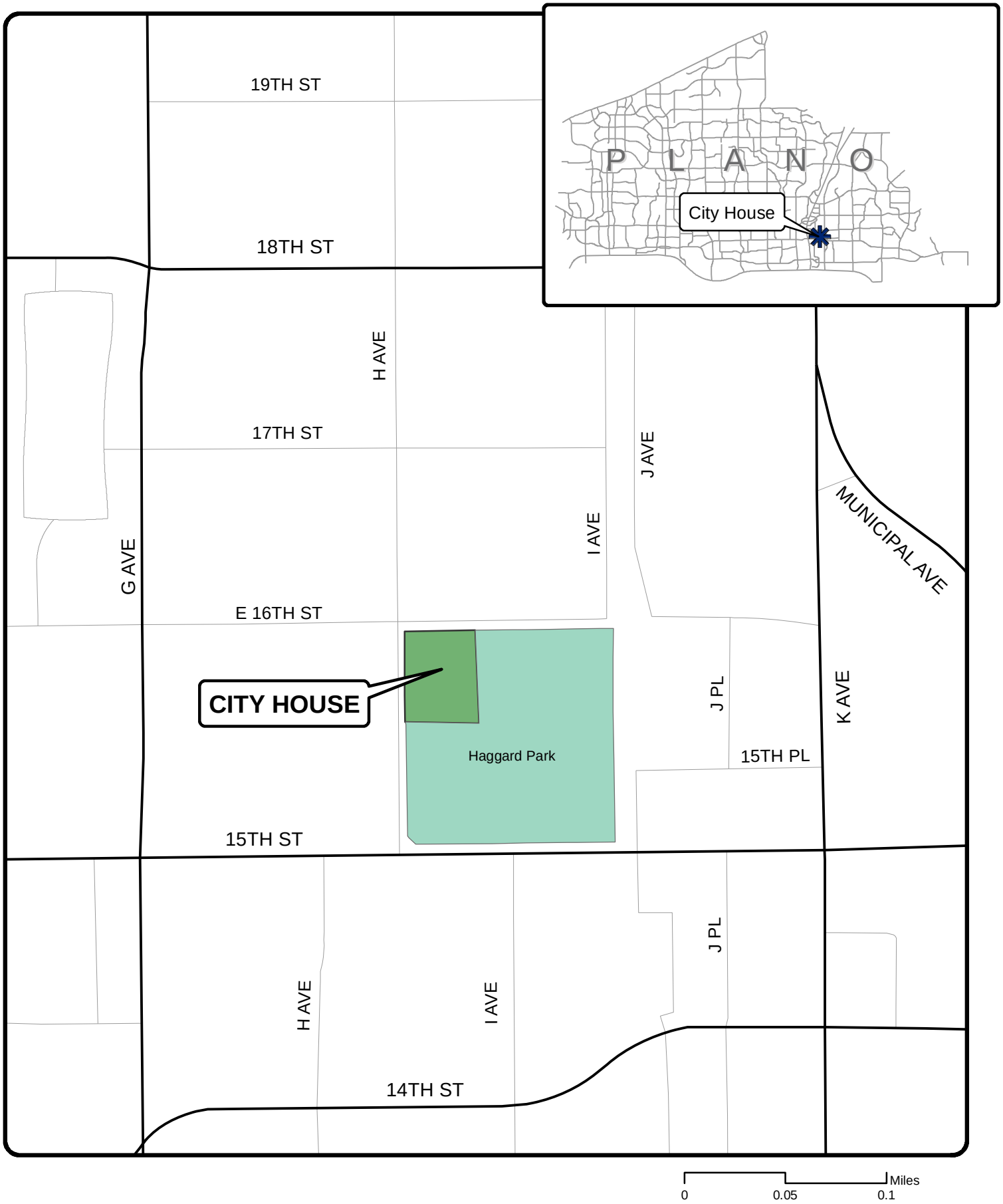
CITY OF PLANO
COUNCIL AGENDA ITEM

reimbursed from the appropriate bond fund account once the ultimate use of the property is determined.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Location Map Resolution	

Location Map

CITY HOUSE



A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Real Estate Contract and Lease by and between City House, Inc., a Texas non-profit organization, and the City of Plano for the purchase and lease back to seller of approximately 0.95 acres of land including a house and associated structures located at 902 E. 16th Street adjacent to Haggard Park in Plano, Collin County, Texas; and authorizing the City Manager or his authorized designee to execute such contract and lease agreement and providing an effective date.

WHEREAS, the City Council has been presented a proposed Real Estate Contract and Lease by and between the City of Plano and City House, Inc., a Texas non-profit organization, for the purchase of property located at 902 E. 16th Street 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 Lease, 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 and Lease, 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 authorized designee is hereby authorized to execute the Real Estate Contract and Lease 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 11th day of June, 2012.

_____
Phil Dyer, MAYOR

ATTEST:

_____
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

REAL ESTATE CONTRACT

This contract is entered into as of the effective date as hereinafter defined by and between **CITY HOUSE, INC.**, a Texas non-profit organization ("Seller"), and the **CITY OF PLANO, TEXAS,** a home rule municipal corporation ("City").

WHEREAS, City desires to purchase and Seller desires to sell to City a tract of land in fee simple known as 902 E. 16th Street, Plano, Collin County, Texas and more particularly described in Exhibit "A" attached hereto and made a part hereof by reference and being herein referred to as the "Property".

WHEREAS, Seller and City have entered into this Real Estate Contract (the "Contract") to provide for the terms and conditions of the sale and purchase of the Property.

NOW, THEREFORE, in consideration of the premises and for further consideration of the terms, provisions, and condition hereinafter set forth, Seller and the City have agreed as follows:

1. Agreement to Convey

For the consideration and upon and subject to the terms, provisions, and conditions hereinafter set forth, Seller has agreed and does hereby agree to sell, grant and convey the Property to City and City has agreed and does hereby agree to purchase the Property from the Seller. The Property shall be conveyed to City together with all and singular the rights and appurtenances pertaining to such Property including, but not limited to, any right, title and interest of Seller in and to easements, adjacent streets, alleys and rights-of-way and together with all improvements, fixtures and buildings located, constructed, or placed thereon. Encompassed in the conveyance shall be permanently installed built in items including but not limited to the following: all appliances, valances, screens, shutters, ceiling fans, awnings, carpeting, attic fans, mail boxes, fencing, heating and air-conditioning units, shrubbery, and landscaping. All references in this Contract to the term "Property" shall include all right, title and interest of Seller to easements, streets, alleys, rights-of-way, improvements, fixtures, and buildings as set forth above.

2. Purchase Price

The purchase price ("Purchase Price") to be paid for the Property shall be **FOUR HUNDRED AND SIXTY FIVE THOUSAND DOLLARS ($465,000.00)** to be paid by City in a lump sum payment to Seller on the date of Closing as set out in Section 5 below**.**

3. Title Commitment and Title Insurance

City, at its sole cost and expense, shall obtain a title commitment and title insurance covering the Property to be issued by a title company (the "Title Company") selected by City. In the event the title has defects, City will notify Seller in writing specifying the defects and Seller shall have thirty (30) days to cure said defects or City may cancel this Contract. City, at its sole option, may waive any defects in writing.

4. Lease to Seller

Upon taking possession of the Property pursuant to the terms of this Contract, City shall convey a thirty six (36) month lease to Seller for use of the Property by separate lease agreement in the form attached hereto as Exhibit "B". The parties shall execute the lease agreement on or before the closing date (the "Closing") pursuant to Section 5 below. Failure of the parties to execute the lease agreement or early termination of the lease agreement shall not affect title to the Property conveyed pursuant to this Contract.

5. The Closing

The closing of this Contract pertaining to the Property shall be consummated at a Closing to be held at the office of the Title Company at such time, date and place that the parties may agree upon. At the Closing, Seller agrees to deliver to City:

(a) An executed Special Warranty Deed (the "Deed") conveying good and indefeasible title in fee simple absolute to the Property and containing covenants of special warranty; said Deed being subject to no mortgages, conditions, restrictions, liens, charges, encumbrances, judgments, exceptions or other matters affecting title except easements, licenses or rights-of-way for public or private utilities or gas lines noted in the Permitted Exceptions.

(b) All releases or other documents or instruments (all in recordable form) necessary to convey title to the Property as required by this Contract.

(c) Such other documents and instruments as may be necessary to evidence the authority of Seller to convey title to the Property.

(d) Possession of the Property upon Closing subject to any leasehold rights of Seller pursuant to an agreement executed by the parties pursuant to Section 4 herein.

6. Closing Costs and Proration

Closing costs shall be paid by City. All other expenses incurred by Seller and City with respect to the Closing, including, but not limited to, attorneys' fees incurred in connection with this Contract, shall be borne and paid exclusively by the party incurring same. Ad valorem taxes for the year of closing shall be prorated as of the Closing in

accordance with the Texas Tax Code. All delinquent ad valorem taxes, if any, shall be paid by Seller.

7. Representations and Warranties of Seller

Seller makes the following representations and warranties to City regarding the Property:

(a) At Closing, there shall be no parties in possession of any portion of the Property as lessees, other than as provided in this Contract, tenants at sufferance or trespassers, and no prescriptive rights will have been acquired in, or have commenced to run against the Property or any portion thereof.

(b) There is no litigation, including pending or threatened claims, or similar proceeding pending against the Property that would affect the Property or any portion thereof.

(c) At Closing, no person, firm, partnership, corporation or other entity, other than as provided in this Contract, shall have any right or option to purchase, lease, occupy or use the Property or any part thereof.

(d) At Closing, the consummation of the transactions contemplated herein will not violate or constitute a default under any provision of any contract, agreement, regulation, court order, judgment, decree, law or other document or instrument to which Seller is subject or bound and will not violate any other restrictions or prohibition of any kind or character to which Seller is subject.

(e) Seller is duly authorized and empowered to enter into this Contract and to consummate the transactions contemplated hereunder, and any person executing this Contract on behalf of Seller is duly authorized and empowered to do so.

8. Disclosures of Seller

On or before the Closing, Seller shall disclose to City in writing any known defects, damage or hazards on or at the Property. Except as otherwise disclosed as required by this Contract, Seller has no knowledge of the following:

(a) Any flooding of the Property;
(b) Any environmental hazards or conditions affecting the Property;
(c) Any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
(d) Any wetlands as defined by federal or state law or regulation, affecting the Property;
(e) Any threatened or endangered species or their habitat affecting the property; or
(f) Any lead based paint or lead based paint hazards on or at the Property.

9. Completion or Repairs

Unless otherwise agreed in writing, Seller shall complete all repairs agreed upon by the parties in writing prior to the Closing date. All required permits must be obtained, and repairs must be performed by persons who are licensed or otherwise permitted by law to provide such repairs. At City's election, any transferrable warranties received by Seller with respect to the repairs will be transferred to City at City's expense. If Seller fails to complete any agreed repairs prior to the Closing to the satisfaction of City, City may exercise remedies pursuant to Section 12 herein.

10. Acknowledgments, Covenants and Agreements of Parties

Seller acknowledges, covenants and agrees with City as follows:

(a) City and its agents and representatives shall have full access to the Property at all times prior to Closing.

(b) No new or additional improvements will be constructed, located or placed on the Property without the prior written consent of City.

(c) The Property does not include any personal property not specifically itemized in this Contract.

(d) During the pendency of this Contract, Seller shall not, without the prior written consent of the City, create, impose or agree to any mortgages, liens, encumbrances, leases (other than as provided in this Contract), tenancies, licenses, security interests, covenants, conditions, restrictions, rights-of-way, easements, judgments or other matters affecting title to the Property.

(e) This Contract constitutes a full and final settlement for all compensation due Seller for the Property by the City.

11. Casualty Loss

If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this Contract and before the Closing date, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing date. If Seller fails to do so due to factors beyond Seller's control, City may do the following:

(a) Terminate this Contract.
(b) Extend the time for performance and extend the Closing date.
(c) Accept the Property in its damaged condition with an assignment of the insurance proceeds and receive credit from Seller at Closing in the amount of the deductible under the insurance policy.

Seller’s obligations under this section are independent of any other obligations of Seller under this Contract.

12. Default

(a) Seller's Default. In the event Seller should fail to consummate this Contract for any reason except City's default, City may, at its option, either enforce specific performance of this Contract or terminate this Contract as its sole and exclusive remedy hereunder. If Seller is unable to deliver title as required by this Contract, City shall have the right, but not the obligation, to take the Property with whatever title Seller can deliver. Nothing herein shall be construed to limit the City's right and power of eminent domain.

(b) City's Default. In the event City shall fail to consummate this Contract for any reason except Seller's default, Seller may, at its option and as its sole and exclusive remedy, terminate this Contract by giving written notice thereof to City.

13. Non-waiver

No waiver by either party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the party against which enforcement is sought. No delay or omission in the exercise of any right or remedy accruing to either party upon any breach of this Contract by the other party shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by either party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other or subsequent breach of the same or any other term, covenant or condition herein contained.

14. Representations Survive Closing

All covenants, representations, and warranties in this Contract survive Closing. If any representation of Seller in this Contract is untrue on the Closing date, Seller will be in default.

15. Miscellaneous Provisions

(a) All median cuts and curb cuts providing access to the Property which exist at the time of execution of this Contract shall continue in full force and effect.

(b) This Contract embodies the complete and entire agreement between the parties hereto relative to the Property and supersedes all prior negotiations, agreements and understanding relating thereto and may not be varied except by written agreement of such parties.

(c) This Contract shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors, heirs, representatives, administrators and assigns.

(d) This Contract shall be construed under and in accordance with the laws of the State of Texas and is fully performable in Collin County, Texas. Venue for any dispute arising out of this agreement shall be Collin County, Texas.

(e) In case any one or more of the provisions contained in this Contract shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(f) All notices from one party to the other must be in writing and are effective when received by Certified Mail, U.S. Postal Service to the addresses indicated under the signatures for each party to the Contract below. Changes in address for notice purposes can be provided in writing to the opposite party.

(g) This Contract may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(h) The headings used throughout this Contract have been used for administrative convenience only and do not constitute matter to be considered in interpreting this Contract.

(i) City represents and warrants unto Seller that City has full power and authority to enter into and consummate this Contract.

(j) The effective date of this Contract shall be the last date of signature of any party set forth below.

(k) Seller and City each represent to the other that there have been no brokers or real estate commission incurred as a result of this transaction.

IN WITNESS WHEREOF, the parties have executed this Contract as of the dates shown below their respective signatures.

SELLER:

CITY HOUSE, INC., a Texas Non-Profit Organization

Date: _____

By: _____
Name: _____
Title: _____
Address: _____
_____
_____

CITY:

CITY OF PLANO, TEXAS, a Home Rule Municipal Corporation

Date: _____

By:_____
BRUCE D. GLASSCOCK
City Manager
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 20____ by_____ (*Authorized representative),* _____ (*Title)* of **CITY HOUSE, INC., a Texas non-profit organization,** on behalf of said Texas non-profit organization.

_____
Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 20____ by **BRUCE D. GLASSCOCK,** City Manager of the **CITY OF PLANO, TEXAS, a home rule municipal corporation,** on behalf of said corporation.

_____
Notary Public, State of Texas

EXHIBIT "A"

BEING a tract of land situated in the Joseph Klepper Survey, Abstract No. 213, City of Plano, Collin County, Texas and being part of Lot 1, Block 21 of the original donation of the City of Plano (unrecorded), Collin County, Texas, said tract being part of a tract of land described in a deed to Collin Intervention to Youth, Inc. of record in Instrument No. 92-0001881, Deed Records, Collin County, Texas, and being more particularly described as follows:

BEGINNING at a ½ inch iron rod set for corner at the intersection of the East right-of-way line of Avenue "H" (variable width R.O.W.) with the South right-of-way line of E. 16th Street (40 foot R.O.W.) at the Northwest corner of said Collin Intervention tract;

THENCE North 89 degrees 33 minutes 13 seconds East, along the South right-of-line of said E. 16th Street, a distance of 185.83 feet to a ½ inch iron rod found for corner at the Northwest corner of a tract of land described in a deed to the City of Plano of Record in Volume 5000, Page 4435, Deed Records of said county;

THENCE South 05 degrees 29 minutes 34 seconds West, along the West line of said City of Plano tract, at 193.32 feet passing the Southwest corner thereof and the Northwest corner of a tract of land described in a deed to the City of Plano of record in Volume 5247, page 3695, Deed Records of said county, and continuing along the West line of last mentioned tract for a total distance of 244.73 feet to a ½ inch iron rod set for corner in the North line of Lot 1, Block 1, of Haggard Park Addition, an addition to the City of Plano, Collin County, Texas, according to the Plat thereof recorded in Volume G, Page 153, Map Records of said county;

THENCE North88 degrees 34 minutes 42 seconds West, along the North line of said Haggard park Addition, a distance of 160.45 feet to a ½ inch iron rod set for corner at the Northwest corner thereof and being in the East right-of-way line of said Avenue "H" for which a 2" iron pipe found for reference bears South 82 degrees 48 minutes 13 seconds East, a distance of 2.35 feet;

THENCE North 00 degrees 28 minutes 44 seconds West, along the said East right-of-way line of Avenue "H", a distance of 238.19 to the PLACE OF BEGINNING and CONTAINING 0.958 of an acre of land.

EXHIBIT "B"

TEMPORARY LEASE
BETWEEN CITY HOUSE, INC.
AND CITY OF PLANO, TEXAS

1. **PARTIES:** The parties to this Lease are **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as ("City") the Landlord, and **CITY HOUSE, INC.,** a Texas non-profit corporation, hereinafter referred to as ("Tenant").

2. **LEASE:** City leases to Tenant the Property described in the Real Estate Sales Contract, hereinafter referred to as ("Contract") between City and Tenant and more fully described in Exhibit "1" attached hereto, known as 902 East 16th Street, Plano, Texas.

3. **TERM:** The term of this Lease is for three (3) years and commences on the closing date of the sale covered by the Contract and terminates thirty six (36) months thereafter, unless terminated earlier by reason of other provisions.

4. **RENTAL:** Tenant shall pay to City as rental $1.00 per year with the full amount of rental for the term of the Lease to be paid upon the Closing date of the sale covered by the Contract.

5. **UTILITIES:** Tenant shall pay all utility charges for the Property during the term of the Lease.

6. **USE OF PROPERTY:** Tenant may use the Property only for general, professional, or administrative office use as defined by the City of Plano Zoning Ordinance. Tenant may not use the Property for a residence, household care institution or boarding/rooming house as defined by the City of Plano Zoning Ordinance. Tenant may not assign this Lease or sublet any part of the Property.

7. **SIGNS:** Tenant shall not place, or allow to be placed, any signs on or at the Property with the exception of signs containing the name, logo, or other identifying information directly related to City House, Inc. and/or their business operations and in conformance with the City Code of Ordinances and the City Zoning Code. Signs containing commercial advertising and marketing, political and/or religious messages are prohibited without the express written consent of the City Manager or his designee.

8. **CONDITION OF PROPERTY:** Tenant accepts the Property in its present condition and state of repair at the commencement of the Lease. Upon termination, Tenant shall surrender the Property to City in the condition required under the Contract, except normal wear and tear and any casualty loss.

9. **ALTERATIONS:** Tenant may not alter the Property or install improvements or fixtures without the prior written consent of the City. Any improvements or fixtures placed on the Property during the Lease become the Property of City.

10. **RIGHT OF ENTRY:** City and its agents shall have a right of entry to access the Property at reasonable times, as determined in the City's sole discretion, to do the following:

(a) Inspect the Property. Tenant shall provide City door keys and access codes to allow access to the Property during the term of Lease.

(b) Perform repair and maintenance as required by Section 11 herein.

(c) Perform removal of the pool, fencing and outbuildings at the discretion of the City.

11. **LAWS:** Tenant shall comply with all applicable laws, restrictions, ordinances, rules and regulations with respect to the Property.

12. **REPAIRS AND MAINTENANCE:**

Tenant's Responsibility: Except as otherwise provided in this Lease, Tenant shall be responsible, at its own expense, for the following repairs and maintenance on the Property:

(a) the interior of the Property, excluding mechanical, electrical, and plumbing items; and

(b) any damage to the Property caused directly or indirectly by any act or omission of the Tenant or any person other than the City, City's agents or invitees.

City's Responsibility: Except as otherwise provided in this Lease, City shall be responsible, at its own expense, for the following repairs and maintenance on the Property:

(a) the exterior grounds of the Property including, but not limited to, the yard, trees and shrubs;

(b) the exterior of the building, including but not limited to, the roof;

(c) the mechanical, electrical and plumbing on the Property; and

(d) any damage to the Property caused directly or indirectly by any act or omission of the City and its agents performing work at the Property.

13. **CASUALTY LOSS/LOSS OF USE:** If any part of the Property is damaged or destroyed by fire or other casualty during the effective date of this Lease, City shall have the option, in its sole discretion, to restore or repair any structures on the Property to their previous condition or to decline to rebuild or repair any damaged or destroyed structures. In the event of casualty, loss, or other event of force majeure rendering the property unusable, even temporarily, the lease shall be subject to termination upon thirty (30) days written notice at no liability or further obligation to or by either party to this Lease. An event of force majeure shall include conditions beyond a parties control such as, but not limited to, war, fires, floods, acts of God, governmental restrictions, or power failures.

14. **INDEMNITY: THE TENANT AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS,**

FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY TENANT'S OCCUPANCY AND LEASE OF THE PROPERTY OR ARISING OUT OF TENANTS RIGHTS AND RESPONSIBILITES UNDER THIS LEASE, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE TENANT, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE TENANT IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

TENANT AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF TENANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF TENANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. TENANT SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF TENANT FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND TENANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

15. **INSURANCE:** Tenant shall acquire and maintain for the duration of the lease insurance coverage as set forth in Exhibit "2". Tenant shall provide a signed insurance certificate verifying that they have obtained the required insurance coverage prior to the effective date of this Contract and naming the City as additional insured. Tenant shall be responsible for insuring its personal property and any contents of the building on the Property.

16. **DEFAULT:** If either party fails to perform or observe any provision of this Lease, the non-defaulting party shall immediately notify the defaulting party in writing of the event or existence of any condition which would constitute a default. Such notice shall specify the nature and period of existence thereof and what action, if any, the notifying party proposes to require with respect to curing the default.

17. **REMEDIES TO DEFAULT:** The defaulting party shall have thirty (30) days to cure after receiving written notice of default from the non-defaulting party. If a default shall continue after thirty (30) days notice to cure the default, the non-defaulting party, may, at its option, terminate the Lease and/or pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law, without the necessity of further notice to or demand upon the defaulting party. However, the non-defaulting party may, at its option, provide a written extension for additional time to cure if the defaulting party proceeds in good faith and with due diligence to remedy and correct the default, provided that the defaulting party has commenced to cure such default within thirty (30) days following notice.

18. **TERMINATION:** This Lease terminates upon the expiration of the term specified in Section 3 herein, upon termination for casualty or loss of use as specified in Section 12 herein, or upon Tenant's default and failure to cure under this Lease pursuant to Sections 15 and 16 herein.

19. **HOLDING OVER:** Tenant shall surrender possession of the Property upon termination of this Lease. Any possession by Tenant after termination creates a tenancy at sufferance and will not operate to renew or extend this Lease. Tenant shall pay $100 per day during the period of any possession after termination as damages, in addition to any other remedies to which City is entitled.

20. **SMOKE ALARMS:** The Texas Property Code requires City to install smoke alarms in certain locations within the Property at City's expense. Tenant expressly waives City's duty to inspect and repair smoke alarms.

21. **NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand delivered at, or transmitted by facsimile or electronic transmission as follows:

City of Plano	City House, Inc.
Attn: Amy Fortenberry	_____
P. O. Box 860358	_____
Plano, Texas 75086-0358	_____
	_____
w/copy to City Attorney's Office	_____
Attn: Diane Wetherbee	_____
P. O. Box 860358	
Plano, Texas 75086-0358	

22. **MISCELLANEOUS PROVISIONS:**

(a) This Lease embodies the complete and entire agreement between the parties hereto and may not be varied except by written agreement of such parties.

(b) This Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors, heirs, representatives, and administrators.

(c) This Lease shall be construed under and in accordance with the laws of the State of Texas and is fully performable in Collin County, Texas. Venue for any dispute arising out of this agreement shall be Collin County, Texas.

(d) In case any one or more of the provisions contained in this Lease shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(e) This Lease may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(f) The headings used throughout this Lease have been used for administrative convenience only and do not constitute matter to be considered in interpreting this Lease.

(g) Each party to this Lease represents and warrants that it has full power and authority to enter into and consummate this Contract.

CITY HOUSE, INC.

By: _____
Name: _____
Title: _____

Date: _____

CITY OF PLANO, TEXAS

Date: _____

By: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM

_____
Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ___ day of _____, 2012 by _____, *(Authorized representative)* _____ *(Title)* of **CITY HOUSE, INC.**, a Texas non-profit corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ___ day of _____, 2012 by **BRUCE D. GLASSCOCK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

EXHIBIT “1”

BEING a tract of land situated in the Joseph Klepper Survey, Abstract No. 213, City of Plano, Collin County, Texas and being part of Lot 1, Block 21 of the original donation of the City of Plano (unrecorded), Collin County, Texas, said tract being part of a tract of land described in a deed to Collin Intervention to Youth, Inc. of record in Instrument No. 92-0001881, Deed Records, Collin County, Texas, and being more particularly described as follows:

BEGINNING at a ½ inch iron rod set for corner at the intersection of the East right-of-way line of Avenue "H" (variable width R.O.W.) with the South right-of-way line of E. 16th Street (40 foot R.O.W.) at the Northwest corner of said Collin Intervention tract;

THENCE North 89 degrees 33 minutes 13 seconds East, along the South right-of-line of said E. 16th Street, a distance of 185.83 feet to a ½ inch iron rod found for corner at the Northwest corner of a tract of land described in a deed to the City of Plano of Record in Volume 5000, Page 4435, Deed Records of said county;

THENCE South 05 degrees 29 minutes 34 seconds West, along the West line of said City of Plano tract, at 193.32 feet passing the Southwest corner thereof and the Northwest corner of a tract of land described in a deed to the City of Plano of record in Volume 5247, page 3695, Deed Records of said county, and continuing along the West line of last mentioned tract for a total distance of 244.73 feet to a ½ inch iron rod set for corner in the North line of Lot 1, Block 1, of Haggard Park Addition, an addition to the City of Plano, Collin County, Texas, according to the Plat thereof recorded in Volume G, Page 153, Map Records of said county;

THENCE North88 degrees 34 minutes 42 seconds West, along the North line of said Haggard park Addition, a distance of 160.45 feet to a ½ inch iron rod set for corner at the Northwest corner thereof and being in the East right-of-way line of said Avenue "H" for which a 2" iron pipe found for reference bears South 82 degrees 48 minutes 13 seconds East, a distance of 2.35 feet;

THENCE North 00 degrees 28 minutes 44 seconds West, along the said East right-of-way line of Avenue "H", a distance of 238.19 to the PLACE OF BEGINNING and CONTAINING 0.958 of an acre of land.

EXHIBIT "2"

INSURANCE REQUIREMENTS

1.0 General Provisions

1.1 The Contractor shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Contractor. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.

1.2 Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.

1.3 The Contractor agrees that the insurance requirements specified in this section do not reduce the liability Contractor has assumed in any indemnification/hold harmless section of this contract.

1.4 City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Contractor to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.

1.5 Insurance coverage required by this section shall:

1.5.1 Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City

1.5.2 Be with an insurer possessing an A-VII. A. M. Best Rating

1.6 **Subcontractor Insurance.** If the contractor utilizes the services of another company or subcontractor, affiliate or non-affiliate, in order to fulfill the requirements covered under this Agreement, then those other companies or subcontractors must comply with the insurance provisions within this Agreement.

2.0 Minimum Insurance Coverage & Limits

2.1 Commercial General Liability. Contractor shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.

2.1.1 Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2.1.2 City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the commercial general liability using **ISO additional insured endorsement CG 20 10** or the equivalent.

2.1.3 Limits of Insurance

2.1.3.1 $1,000,000 Per Occurrence
2.1.3.2 $25,000 Damage to Rented Premises-Each Occurrence

3.0 Evidence of Insurance

3.1 Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, including for subcontractors cited in Section 1.6, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of all endorsement to insurance policies as required by each section herein to the City.**

3.2 Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

3.3 City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

3.4 Failure to maintain required insurance may result in termination of this contract at sole option of the City.

3.5 The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:

3.5.1 List each insurers' NAIC Number or FEIN

3.5.2 List **contract number**, **project name**/number, name of event, location (building name, building address, etc.), date(s) of event or service being performed

3.5.3 State insurance is on a primary basis and non-contributory with any insurance/or self-insurance carried by City

3.5.4 Specifically list reference to all endorsements required herein

3.5.5 List the specific number of days cancellation provided pursuant to policy language for notice of cancellation on certificate

3.5.6 List City of Plano, Risk Management Division, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section