



**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:	9/27/10
Department:	Parks and Recreation
Department Head	Amy Fortenberry
Agenda Coordinator (include phone #): <b>Susan Berger (7255)</b>	

**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 Emajejan Haggard Hall and the City of Plano for the purchase and lease of approximately 58.91 acres of land located at the intersection of Park Boulevard and Alma Drive, Plano, Collin County, Texas; authorizing the City Manager or his authorized designee to execute such contract; and providing an effective date.

**FINANCIAL SUMMARY**

NOT APPLICABLE       OPERATING EXPENSE       REVENUE       CIP

FISCAL YEAR: <b>2009-10 thru 2013-14</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	4,000,000	11,250,000	<b>15,250,000</b>
Encumbered/Expended Amount	0	-243,658	0	<b>-243,658</b>
This Item	0	-1,000,000	-7,064,000	<b>-8,064,000</b>
<b>BALANCE</b>	0	2,756,342	4,186,000	<b>6,942,342</b>

**FUND(S):      PARK IMPROVEMENT CIP**

**COMMENTS:** Funds for the current year portion are included in the 2009-10 Park Improvement CIP in the '09 Land Acquisitions project. The total purchase price of the land is \$8,640,000; this will be spread out over four payments: \$1,000,000 in 2009-10, \$1,000,000 in 2010-11, \$3,320,000 in 2011-12 and \$3,320,000 in 2012-13. In addition, the assessment lien payments will be deducted from the land purchase payments at a rate of \$208,000 each year for 2010-11, 2011-12 and 2012-13 for a total of \$624,000.

STRATEGIC PLAN GOAL: Land purchases for parks relate to the City's Goal of Great Neighborhoods -1st Choice to Live.

**SUMMARY OF ITEM**

This item is for approval of a total expenditure of \$8,640,000 for acquisition of approximately 58.91 acres of land located at the intersection of Park Boulevard and Alma Drive. The property is for a community park in central Plano. The property is identified for acquisition on the current City of Plano Park Master Plan which is a part of the overall Comprehensive Plan for the City. The park will provide much needed open space in that area of the City. The site will also provide an additional link in the Chisholm Trail that runs along Spring Creek from Collin Creek Mall to Legacy Drive and is part of a regional trail network.

The real estate contract includes a lease agreement that will allow the existing property owner to lease the property for a minimum of five years. The homestead area of the property will be leased to Seller until Emajejan



## CITY OF PLANO COUNCIL AGENDA ITEM

Haggard Hall no longer resides in the home; after which Mike Hall may lease that portion of the property until design for the development of the site commences. The lease allows the City to postpone maintenance of the property for at least five years. This will defer any additional operating expenditures in the General Fund until after the development of the site. The City will take immediate possession of the area along the creek to be able to make the trail connection at anytime following the acquisition.

The schedule to award the consideration is spread over three years and includes a \$1,000,000 down payment at closing, with installments of a \$1,000,000 in 2011 and \$3,320,000 in 2012 and 2013. All payments are solely principal payments with no interest. There is also a \$624,000 road assessment lien due the City associated with the property. The City will collect the amount owed by the Seller by deducting \$208,000 from each of the three installments (after the down payment) made to the Seller. The net payments made to the Seller after the road assessment deductions are \$1,000,000 down, \$792,000 in 2011, and \$3,112,000 in 2012 and 2013.

Bond funds were approved by voters for this acquisition. Funding for the down payment and first installment in 2011 are included in the FY 2010-11 Community Investment Program (CIP) budget. Funding for the subsequent installments is allocated in the five year CIP budget.

List of Supporting Documents:

Location Map

Debt and O&M Impact Schedule

Resolution

Contract

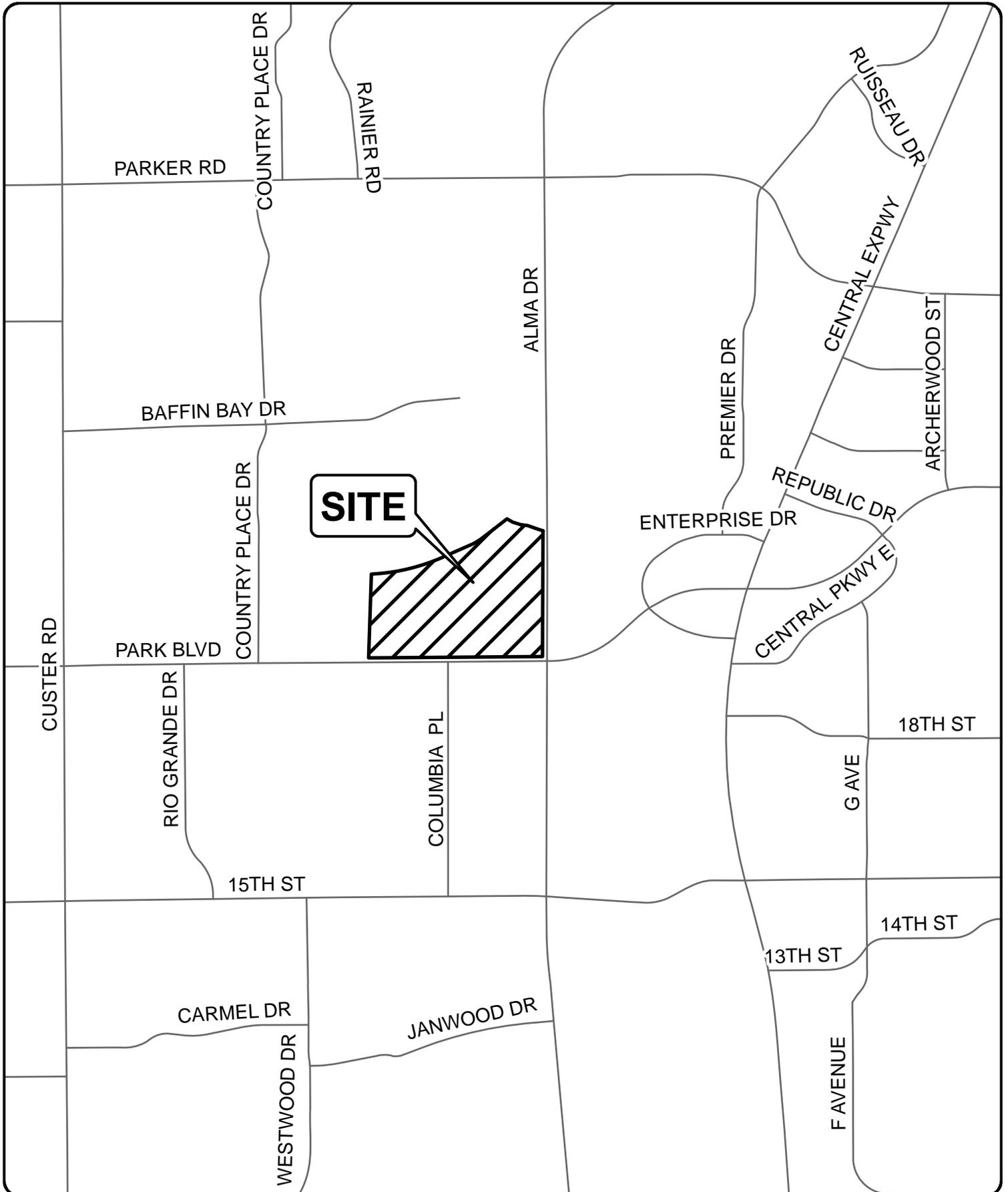
Other Departments, Boards, Commissions or Agencies



# Location Map



0 1,000 2,000 Feet



**Hall Tract Debt Payments Added**  
**Total Purchase Price**

8/31/2010

	Bonds	Bond Payments				
		2009-10	2010-11	2011-12	2012-13	2013-14
<b>2009-10 Debt</b>	<b>1,000,000</b>					
Interest		23,250	46,500	45,041	43,514	41,916
Principal			31,379	32,838	31,365	35,963
<b>2010-11 Debt</b>	<b>1,000,000</b>					
Interest			23,250	46,500	45,041	43,514
Principal				31,379	32,838	31,365
<b>2011-12 Debt</b>	<b>3,320,000</b>					
Interest				77,190	154,380	149,536
Principal					104,177	109,021
<b>2012-13 Debt</b>	<b>3,320,000</b>					
Interest					77,190	154,380
Principal						104,177
<b>Combined</b>	<b><u>8,640,000</u></b>					
Interest		23,250	69,750	168,731	320,125	389,346
Principal		<u>0</u>	<u>31,379</u>	<u>64,217</u>	<u>168,380</u>	<u>280,526</u>
<b>Total</b>		<b><u>23,250</u></b>	<b><u>101,129</u></b>	<b><u>232,948</u></b>	<b><u>488,505</u></b>	<b><u>669,872</u></b>
Annual Tax Rate Impact		0.01	0.04	0.10	0.20	0.27

Estimated debt payment using level debt and 4.65% interest rate.  
O&M costs are expected to increase but are not scheduled during this time period.  
Total Purchase Price \$8,640,000 less Assessments \$624,000 Net Price \$8,016,000.  
Uses the Assessed Property Value of 24,680,898,705 each year.

**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 Emajeon Haggard Hall and the City of Plano for the purchase and lease of approximately 58.91 acres of land located at the intersection of Park Boulevard and Alma Drive, Plano, Collin County, Texas; authorizing the City Manager or his authorized 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 Emajeon Haggard Hall for the purchase of property located at the intersection of Park Boulevard and Alma Drive, Plano, 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 27<sup>th</sup> day of September, 2010.

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

ATTEST:

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

APPROVED AS TO FORM:

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

**REAL ESTATE CONTRACT**

**THE STATE OF TEXAS        §**  
**§**        **KNOW ALL MEN BY THESE PRESENTS:**  
**COUNTY OF COLLIN        §**

**THIS CONTRACT OF SALE** is made by and between **EMAJEAN HAGGARD HALL** (hereinafter referred to as "Seller") and **THE CITY OF PLANO, TEXAS** (hereinafter referred to as "Purchaser") upon the terms and conditions set forth herein.

**WHEREAS**, Seller is the owner of a tract of land, containing approximately 58.91 acres of land described in **Exhibit "A"** attached hereto (the "Property"); and

**WHEREAS**, Seller and Purchaser have agreed upon the terms and conditions under which Seller will sell the Property to Purchaser, and Purchaser will acquire the same from Seller.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Purchase and Sale. Seller hereby sells and agrees to convey to Purchaser, and the Purchaser hereby purchases and agrees to pay for the Property, together with all and singular the rights and appurtenances pertaining thereto, including mineral rights.
  
2. Purchase Price. Purchaser shall pay to Seller, Eight Million Six Hundred and Forty Thousand Dollars (\$8,640,000.00).
  
3. Payment Schedule. The purchase price shall be payable as follows:
  - A. One Million Dollars (\$1,000,000.00) shall be payable in cash at Closing.
  
  - B. There currently exists an outstanding street assessment lien against the Property in the amount of Six Hundred and Twenty Four Thousand Dollars (\$624,000.00). The street assessment lien shall be offset against the balance due to Purchaser under this agreement. The resulting balance of Seven Million Sixteen Thousand Dollars (\$7,016,000.00) shall be paid to Purchaser in three installments as follows: Seven Hundred Ninety Two Thousand Dollars (\$792,000.00) on March 1, 2011; Three Million One Hundred Twelve Thousand Dollars (\$3,112,000.00) on March 1, 2012; and Three Million One Hundred Twelve Thousand Dollars (\$3,112,000.00) on March 1, 2013. Purchaser shall execute a Promissory Note (**Exhibit "B"**) evidencing this installment agreement.
  
  - C. The unpaid principal balance from time to time owing on said Promissory Note shall be interest free.
  
  - D. Purchaser shall have the right to prepay any of the principal on the Promissory Note at times other than when stated to be due.
  
4. Earnest Money. As a condition precedent to this Contract, Purchaser shall:
  - A. 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.

5. Deed of Trust. The Promissory Note shall be secured by a vendor's lien reserved in the Special Warranty Deed (**Exhibit "C"**) and by a Deed of Trust (**Exhibit "D"**) covering the Property, with a power of sale. The Deed of Trust shall also contain the following terms and conditions:

- A. The Deed of Trust securing Purchaser's Promissory Note shall be fully released when the Promissory Note is paid in full.
- B. After receipt of notice by certified mail from Seller, Purchaser shall have thirty (30) calendar days to cure any default (other than a default in the payment of principal on its Promissory Note, for which Purchaser shall have a period of ten (10) business days after notice of cure), under Purchaser's Deed of Trust securing its Promissory Note before Seller may exercise any rights or remedies there under.

6. Survey. Purchaser shall cause an actual Field Survey of the entire (approximately) 58.91 acre tract of land to be prepared by Roome Land Surveying, 2000 Ave. G, Plano, Texas 75074, at Purchaser's sole expense. Once the survey is completed, the parties agree that the legal description as shown in the survey shall be inserted at Exhibit A of this Agreement prior to closing. Such survey shall:

- A. Establish the boundaries of and provide a metes and bounds description of the Property (approximately 58.91 acres as detailed in **Exhibit "A"**) to be purchased as well as surveys of the Property divided into three tracts as shown in **Exhibit "A"**.
- B. Locate and identify by Volume and Page all easements, roads, rights-of-way, and special features, and show any encroachments upon the property to be purchased.
- C. Contain the surveyor's certification as to the number of acres contained inside and outside the 100-year Floodplain for the property to be purchased.
- D. A copy of the survey and any reports or inspections ordered by Purchaser with respect to the Property shall be delivered to Seller at no cost to Seller.

7. Inspection

A. Purchaser, at Purchaser's sole cost and expense, shall have through and until forty (40) days from the Effective Date of this Contract ("Inspection Period") within which to conduct any and all engineering and economic feasibility studies of the Property which Purchaser may, at Purchaser's sole discretion, deem necessary to determine whether or not the Property is suitable for Purchaser's intended use. A check in the amount of **ONE HUNDRED AND 00/100 DOLLARS (\$100.00)** ("Inspection Fee") has been delivered to Seller as independent consideration for the Inspection Period. Purchaser's representatives

may enter upon the Property for the purpose of conducting any studies or tests, including, but without limitation, soil tests, obtaining topographical information, conducting engineering and economic feasibility studies and for all other similar preliminary work; provided, however, Purchaser shall and does hereby, to the extent allowed by law and without waiving any rights, defenses or immunities that may be available to it under state or federal law, indemnify and hold harmless Seller from and against any claims, costs, expenses or damage that Seller may suffer or incur as a result of such inspection, including, without limitation, (i) any and all attorneys' fees or court costs incurred by Seller in connection with any such claims or activities and (ii) mechanic's liens or claims that may be filed on or asserted against the Property by contractors, subcontractors or materialmen performing such work for Purchaser. In making any inspection hereunder, Purchaser will treat, and will cause any representative of Purchaser to treat, all information obtained by Purchaser pursuant to the terms of this Contract as strictly confidential. Further, in the event that Purchaser refuses or is unable to close under this Contract, for any reason whatsoever, any and all studies or tests, including, but without limitation, soil tests, topographical information, engineering and economic feasibility studies, or other similar preliminary work, shall immediately be delivered to Seller and thereafter become the sole property of Seller. The provisions of this Section shall survive closing.

B. In the event Purchaser shall notify Seller on or before the expiration of the Inspection Period, that Purchaser, for any reason whatsoever, does not desire to consummate this Contract, then, and in such event, this Contract shall terminate and the parties hereto shall have no further obligations to the other hereunder except as provided herein. Absent Purchaser's timely written notice to Seller of Purchaser's election to so terminate this contract, Purchaser shall waive any and all claim to terminate this Contract pursuant to this Section 7, and shall proceed to a Closing hereunder.

8. Good and Marketable Title. At Closing, Seller shall convey to Purchaser by Special Warranty Deed with vendor's lien in a form as shown in **Exhibit "C"** together with good and marketable title in fee simple to all of the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions except for the following:

- A. General real estate taxes for the year of Closing and subsequent years not yet due and payable;
- B. Public roads, streets and alleys, if any; and
- C. Such utility easements or other conditions as will in the opinion of Purchaser not adversely affect construction of improvements on the Property.

9. Title Commitment. Purchaser shall, at its sole expense, acquire a current title commitment for an Owner's Title Insurance Policy issued through Republic Title Company setting forth the state of title of the Property and all exceptions, including easements, restrictions, rights-of-way, covenants, reservations and other conditions, if any, affecting the Property which would appear in an Owner's Title Policy if issued. In the event any exceptions appear in such commitment, other than the standard printed exceptions (which shall be modified in the Owner's Title Policy as specified in Paragraph 8 hereof), that are unacceptable to Purchaser, then Purchaser shall, within ten (10) days after receipt thereof, notify Seller in writing of such fact. If the Purchaser fails to notify Seller of any objections to title within such ten (10) day period, Purchaser shall be deemed to have approved all exceptions appearing on the title commitment. Seller may then promptly undertake to eliminate or modify such unacceptable exceptions to the reasonable satisfaction of Purchaser. In the event Seller is

unable to do so within ten (10) days thereafter, or chooses not to do so, Purchaser may terminate this Contract by notice in writing to Seller, or may accept such title as Seller can deliver.

10. Owner's Title Policy. Purchaser shall acquire, at Purchaser's sole expense, the usual form of Texas Owner's Title Policy, issued by Republic Title Company in the full amount of the Purchase Price, insuring Purchaser's fee simple title to the Property subject only to those title exceptions listed in Paragraph 5 hereof, and such other exceptions as may be approved in writing by Purchaser, and the standard printed exceptions contained in the usual form of Texas Owner's Title Policy provided however:

- A. The boundary and survey exceptions may be deleted at Purchaser's expense; and
- B. The exception as to the lien for taxes shall be limited to the year of Closing and shall be endorsed "Not Yet Due and Payable" if they be, in fact, not yet due and payable.

11. Closing. The Closing shall be held in the office of Republic Title Company, on or before the date which is 60 days after the execution of this contract, or at such other time, date and place as Seller and Purchaser may, in writing, agree upon (which date is herein referred to as the "Closing Date"). At the Closing:

- A. Seller shall deliver to Purchaser a duly executed and acknowledged Special Warranty Deed with Vendor's Lien, in the form shown attached, to convey the Property to Purchaser; and
- B. Purchaser shall pay to Seller the cash portion of the purchase price of the Property and execute the Note and Deed of Trust herein provided for;
- C. General real estate taxes for the year 2010 relating to the Property shall be prorated to the date of closing. All special taxes or assessments (other than the street assessment described in Section 3 B above), if any, to the Closing Date, and all delinquent taxes of any nature on the Property, including penalty and interest, shall be paid by Seller. All Closing Costs not mentioned specifically herein, including, without limitation, recording and escrow fees, shall be assessed to both parties equally.
- D. Possession of the Property shall be delivered subject to the Lease. Purchaser shall take possession of Tract 1 at closing.

12. Seller's Right to Lease the Property. As part of the consideration for the purchase of the Property, Seller and/or Mike Hall shall have the right to lease Tracts 2 and 3 of the Property from Purchaser at a yearly rental of ONE AND 00/100 DOLLAR (\$1.00) for a period of five (5) years from the date of Closing and for additional periods as may be mutually agreed upon by the parties but in no event shall the lease terminate on Tract 3 for as long as Emajeane Haggard Hall physically resides on Tract 3. The Property shall be leased to Seller and/or Mr. Mike Hall, currently residing at 1329 West Park Blvd, Plano, Texas, as a personal single family residence and/or for agricultural purposes only.

Purchaser shall prepare the Lease, in a form as shown in **Exhibit "E"**, at its expense and it shall be executed by Purchaser and Seller at the Closing. The Lease Agreement shall provide, along with the standard provisions of an agricultural lease, that Purchaser shall have, after the fifth anniversary date following the Closing Date, the right to terminate the Lease Agreement as to Tract 2

and to use the released acreage for park purposes. Upon Emajeon Haggard Hall ceasing to physically reside on Tract 3 for a period greater than ninety (90) days, Mike Hall shall have the option to reside on Tract 3 until such time as the Purchaser has awarded a contract to begin the planning and design process for development of the entire property; at which time, Purchaser shall give not less than one full year's notice of its intent to terminate the lease as to Tract 3 and to use the released acreage for park purposes. After the expiration of the Lease or any extension thereof, all real improvements to the Property made during the lease period shall become the property of Purchaser.

13. Real Estate Commission. Seller and Purchaser acknowledge to each other that no real estate commissions have been occasioned by the execution and/or consummation of this Contract by either party's actions.

14. Miscellaneous.

- A. This Contract embodies the entire agreement between the parties and cannot be varied except by the written agreement of the parties;
- B. Time is of the essence of this Contract;
- C. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Seller or Purchaser, as the case may be, at the address set forth opposite the signatures of such party hereto;
- D. All the terms and conditions of this Contract are hereby made binding on the executors, heirs, administrators, successors and assigns of all of the parties hereto;
- E. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise;
- F. The captions used in connection with paragraphs of this Contract are for convenience only and shall not be deemed to construe or limit the meaning of the language of this Contract; and
- G. This Contract shall not be considered fully executed or binding on Purchaser until the same shall be executed by Seller and the City Manager of the City of Plano and approved and accepted by the City Council of the City of Plano by Resolution in open meeting as required by law. After such approval and acceptance, Purchaser shall deliver to Seller a certified copy of the Resolution as evidence of the authority of the signatories hereto to bind Purchaser on this Contract and to perform same in accordance with its terms.

15. Assignment of Contract. This Contract may not be assigned by Purchaser or Seller.

16. Termination and Remedies. In the event that any of the Seller's representations or warranties contained herein are untrue on the Closing Date, or Seller shall have failed on the Closing Date to have performed the covenants and agreements contained herein which are to be performed by Seller on or before the Closing Date, Purchaser may terminate this Contract by giving written notice of termination to Seller on or before the Closing Date. If this Contract is terminated by Purchaser

pursuant to the express provisions hereof pursuant to the mutual agreement of the parties hereto, Seller and Purchaser shall have no further obligation or liabilities to the other hereunder. If Seller defaults in performing its obligations hereunder for any reason, other than Purchaser's default, Purchaser may terminate this Contract, or at its option, sue for specific performance. If Purchaser shall fail to consummate the Contract for any reason, other than Seller's default or the termination of this Contract pursuant to the provisions hereof, Seller may terminate this Contract or, at its option, sue for specific performance.

17. Survival of Closing. Purchaser and Seller agree that the provisions of any paragraph of this Contract, the terms of which are not satisfied completely at the Closing, shall survive the Closing of this Real Estate Contract.

18. NO REPRESENTATIONS OR WARRANTIES; AS-IS. **SUBJECT TO THE INSPECTION RIGHTS AS SET FORTH IN SECTION 7 ABOVE, PURCHASER HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES THAT PURCHASER HAS THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY PURCHASER IN ORDER TO ENABLE PURCHASER TO EVALUATE THE PURCHASE OF THE PROPERTY. PURCHASER HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT PURCHASER IS RELYING SOLELY UPON THE INSPECTION, EXAMINATION AND EVALUATION OF THE PROPERTY BY PURCHASER AND THAT PURCHASER IS PURCHASING THE PROPERTY ON AN "AS-IS, WHERE-IS, AND WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATIONS, WARRANTIES AND COVENANTS, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE. PURCHASER HEREBY ASSUMES THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INSPECTIONS AND INVESTIGATIONS. THE EXPRESS INTENTION OF PURCHASER AND SELLER IS THAT PURCHASER SHALL PURCHASE THE PROPERTY FROM SELLER WITHOUT ANY REPRESENTATIONS, WARRANTIES, OR COVENANTS, EXPRESS OR IMPLIED, FROM OR OF SELLER, OTHER THAN THE SPECIAL WARRANTY OF TITLE AS PROVIDED HEREIN. THIS PARAGRAPH 18 SHALL SURVIVE THE CLOSING.**

19. All notices required to be furnished hereunder shall be furnished to (1) Seller and (2) Purchaser as follows:

FOR PURCHASER: Director of Parks and Recreation  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

FOR SELLER : Mike Hall  
1329 West Park  
Plano, Texas 75075

or such other address as Seller or Purchaser shall specify in a notice satisfying this Section.

DATED AS OF THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.

SELLER:

**EMAJEAN HAGGARD HALL**

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PURCHASER:

**CITY OF PLANO, TEXAS**

By:

\_\_\_\_\_  
Thomas H. Muehlenbeck  
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 \_\_\_\_\_, 2010 by **EMAJEAN HAGGARD HALL.**

\_\_\_\_\_  
Notary Public, State of Texas

**STATE OF TEXAS**           §  
  §  
**COUNTY OF COLLIN**       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2010 by **THOMAS H. MUEHLENBECK**, 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"**

**THE PROPERTY**

**METES AND BOUNDS DESCRIPTION**  
(To Be Inserted Upon Completion of Survey)



**EXHIBIT "B"**  
**PROMISSORY NOTE**

Date:

Borrower: City of Plano, Collin County, Texas

Borrower's Mailing Address: City of Plano  
1520 Avenue K  
Plano, Texas 75074

Lender: Emajeon Haggard Hall

Place of Payment:

Principle Amount: Seven Million Sixteen Thousand Dollars (\$7,016,000.00)

Annual Interest Rate: 0.00 percent

Maturity Date: March 1, 2013

Annual Interest Rate on Matured, Unpaid Amounts: 0.00 percent

Terms of Payment: The Principal Amount is due and payable in annual installments as follows:

Seven Hundred and Ninety Two Thousand Dollars (\$792,000.00) due on March 1, 2011;

Three Million One Hundred and Twelve Thousand Dollars (\$3,112,000.00) due on March 1, 2012; and

Three Million One Hundred and Twelve Thousand Dollars (\$3,112,000.00) due on March 1, 2013.

Borrower may prepay this note in any amount at any time before the Maturity Date without penalty or premium.

Security for Payment: This note is secured by a deed of trust dated \_\_\_\_\_ from Borrower to \_\_\_\_\_, trustee, which covers the following real property:

Other Security for Payment: Borrower promises to pay to the order of Lender the Principal Amount. This note is payable at the Place for Payment and according to the Terms of Payment. All unpaid amounts are due by the Maturity Date.

Notice to Cure Default: Notwithstanding any other provisions of this note, in the event of a default, before exercising any of Lender's remedies under this note or any deed of trust securing it, Lender will first give Borrower written notice of default and Borrower will have ten days after notice is given in which to cure the default.

Borrower is responsible for all obligations represented by this note.

---

Borrower

EXHIBIT "C"

FORM OF SPECIAL WARRANTY DEED WITH VENDOR'S LIEN

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED WITH VENDOR'S LIEN

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN §

THAT EMAJEAN HAGGARD HALL, an individual ("Grantor"), for and in consideration of (a) the sum of Ten and No/100 Dollars cash, (b) the execution and delivery by Grantee of that certain Note dated of even date herewith (the "Note") executed by Grantee, payable to the order of Grantor, said Note being secured by a first and superior vendor's lien and superior title retained in this deed in favor of Grantor, and by a first-lien Deed of Trust of even date herewith from Grantee to \_\_\_\_\_, Trustee for the benefit of Grantor, and (c) other good and valuable consideration paid in hand, the receipt and sufficiency of which is hereby acknowledged, by CITY OF PLANO, TEXAS (the "Grantee"), whose address is \_\_\_\_\_, HAS GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents DO GRANT, BARGAIN, SELL and CONVEY unto Grantee: (i) the real property described in Exhibit A attached hereto and made a part hereof (the "Real Property"), (ii) Grantor's interest in all rights, privileges and easements appurtenant to the Real Property, including, without limitation, all oil gas and other minerals and all hydrocarbon substances of every nature, as well as all development rights, air rights, water, water rights (and water stock, if any) relating to the Real Property and any easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Real Property, and (iii) all improvements and fixtures located on the Real Property (the Real Property, together with clause (ii) and (iii) above being hereinafter sometimes collectively referred to as the "Property").

This conveyance and the warranties of title herein are expressly made subject only to the liens, encumbrances, easements and other exceptions set forth on Exhibit "B" attached hereto and incorporated herein by this reference for all purposes to the extent the same are valid and subsisting and affect the Property (the "Encumbrances").

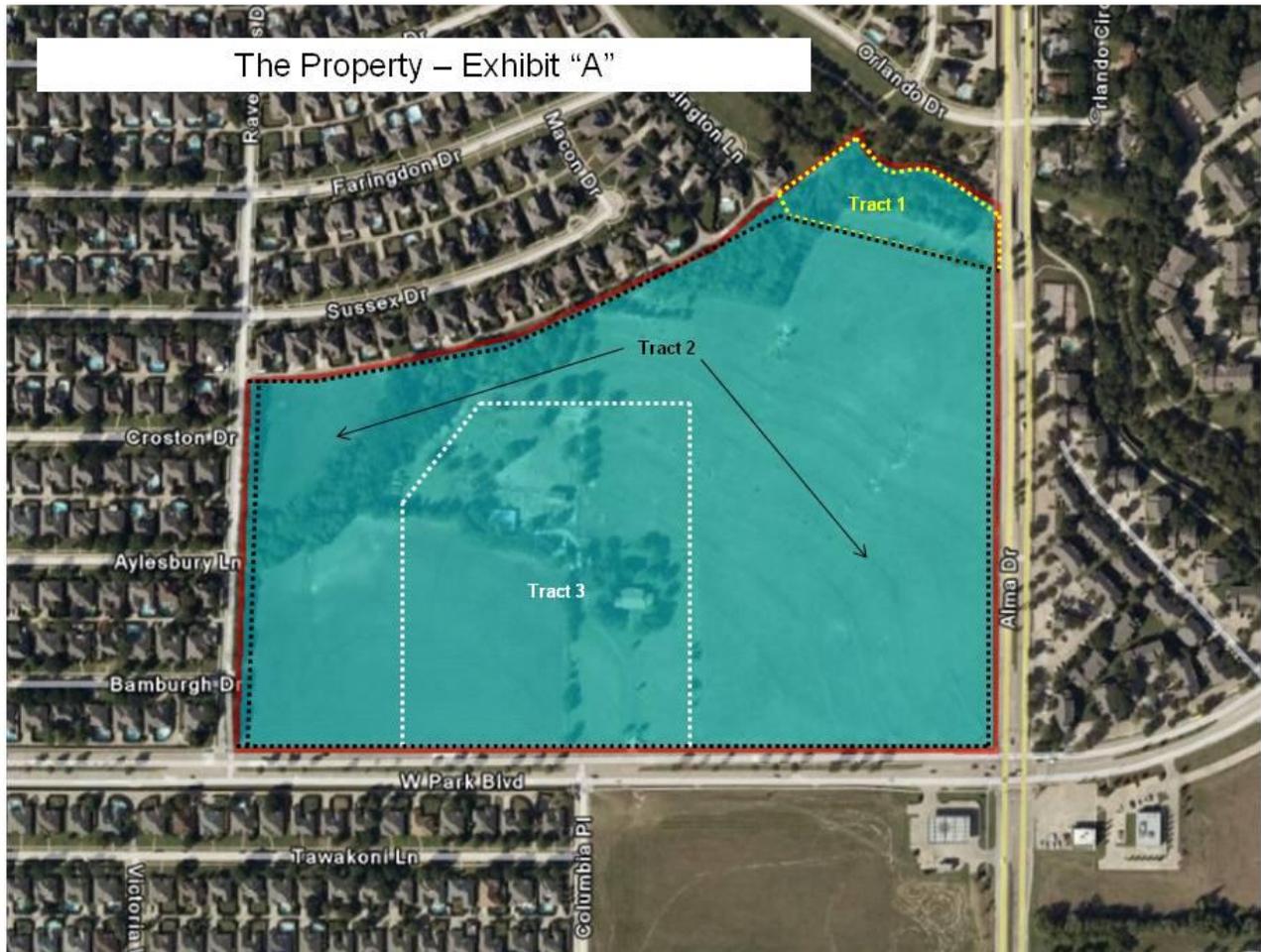
TO HAVE AND TO HOLD the Property unto Grantee, and Grantee's successors and assigns forever, and Grantor does hereby bind Grantor, and Grantor's successors, to WARRANT and FOREVER DEFEND, all and singular the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise, but subject to the Encumbrances.

The vendor's lien against and superior title to the Property is hereby retained in favor of Grantor, its successors and assigns, until the Note, together with all interest and other sums to accrue or to become payable



**EXHIBIT "A" (to Warranty Deed)  
The Property**

**METES AND BOUNDS DESCRIPTION**  
(To Be Inserted Upon Completion of Survey)



**EXHIBIT "B" (to Warranty Deed)  
ENCUMBRANCES**

EXHIBIT "D"

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**DEED OF TRUST**

**Date:** \_\_\_\_\_, 2010

**Grantor:** CITY OF PLANO, TEXAS

**Grantor's Mailing Address (including county):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Trustee:** \_\_\_\_\_

**Trustee's Mailing Address (including county):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Beneficiary:** EMAJEAN HAGGARD HALL

**Beneficiary's Mailing Address (including county):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Note:**

**Date:** \_\_\_\_\_, 2010

**Amount:** \$7,016,000.00

**Maker:** The City of Plano, Texas

**Payee:** Emajeon Haggard Hall

**Final Maturity Date:** March 1, 2013

**Terms of Payment (optional):** As therein provided.

**Property (including any improvements):**

See attached Exhibit A.

**Prior Lien(s) (including recording information):**

None.

**Other Exceptions to Conveyance and Warranty:**

None.

For value received and to secure payment of the note, Grantor conveys the property to Trustee in trust. Grantor warrants and agrees to defend the title to the property. If Grantor performs all the covenants and pays the note according to its terms, this deed of trust shall have no further effect, and Beneficiary shall release it at Beneficiary's expense.

**Grantor's Obligations**

Grantor agrees to:

1. keep the property in good repair and condition;
2. pay all taxes and assessments on the property when due;
3. preserve the lien's priority as it is established in this deed of trust; and
5. if this is not a first lien, pay all prior lien notes that Grantor is personally liable to pay and abide by all prior lien instruments.

**Beneficiary Rights**

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.
2. If the proceeds of the note are used to pay any debt secured by prior liens, Beneficiary is subrogated to all of the rights and liens of the holders of any debt so paid.
3. Beneficiary may apply any proceeds received under the insurance policy either to reduce the note or to repair or replace damaged or destroyed improvements covered by the policy.
4. If Grantor fails to perform any of Grantor's obligations, Beneficiary may perform those obligations and be reimbursed by Grantor on demand at the place where the note is payable for any sums so paid, including attorney's fees, plus interest on those sums from the dates of payment at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this deed of trust.
5. If Grantor defaults on the note or fails to perform any of Grantor's obligations or if default occurs on a prior lien note or other instrument, and the default continues after Beneficiary gives Grantor notice of the default and 30 days to cure any non-monetary default or 10 days to cure any monetary default, the Beneficiary may:
  - a. declare the unpaid principal balance and earned interest on the note immediately due;
  - b. request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and
  - c. purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited on the note.

## **Trustee's Duties**

If requested by Beneficiary to foreclose this lien, Trustee shall:

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;
2. sell and convey all or part of the property to the highest bidder for cash with a general warranty binding Grantor, subject to prior liens and to other exceptions to conveyance and warranty; and
3. from the proceeds of the sale, pay, in this order:
  - a. expenses of foreclosure;
  - b. to Beneficiary, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
  - c. any amounts required by law to be paid before payment to Grantor; and
  - d. to Grantor, any balance.

## **General Provisions**

1. If any of the property is sold under this deed of trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
2. Recitals in any Trustee's deed conveying the property will be presumed to be true.
3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
4. This lien shall remain superior to liens later created even if the time of payment of all or part of the note is extended or part of the property is released.
5. If any portion of the note cannot be lawfully secured by this deed of trust, payments shall be applied first to discharge that portion.
6. Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the property. After deducting any expenses incurred, including attorney's fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the note. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting any such sums.
7. Grantor assigns to Beneficiary absolutely, not only as collateral, all present and future rental and other income and receipts from the property. Leases are not assigned. Grantor warrants the validity and enforceability of the assignment. Grantor may as Beneficiary's licensee collect rent and other income and receipts as long as Grantor is not in default under the note or this deed of trust. Grantor will apply all rent and other income and receipts to payment of the note and performance of this deed of trust, but if the rent and other income and receipts exceed the amount due under the note and deed of trust, Grantor may retain the excess. If Grantor defaults in payment of the note or performance of this deed of trust, Beneficiary may terminate Grantor's license to collect and then as Grantor's agent may rent the property if it is vacant and collect all rent and other income and receipts. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the property. Beneficiary may exercise Beneficiary's rights and remedies under this paragraph without taking possession

of the property. Beneficiary shall apply all rent and other income and receipts collected under this paragraph first to expenses incurred in exercising Beneficiary's rights and remedies and then to Grantor's obligations under the note and this deed of trust in the order determined by Beneficiary. Beneficiary is not required to act under this paragraph, and acting under this paragraph does not waive any of Beneficiary's other rights or remedies. If Grantor becomes a voluntary or involuntary bankrupt, Beneficiary's filing a proof of claim in bankruptcy will be tantamount to the appointment of a receiver under Texas law.

8. When the context requires, singular nouns and pronouns include the plural.

9. The term note includes all sums secured by this deed of trust.

10. This deed of trust shall bind, inure to the benefit of, and be exercised by successors in interest of all parties.

11. If Grantor and Maker are not the same person, the term Grantor shall include Maker.

12. Grantor may prepay the note at any time without penalty. Upon the payment in full of the note, this deed of trust shall be released.

13. Grantor represents that this deed of trust and the note are given for the following purposes:

The indebtedness, the payment of which is hereby secured, is in part payment of the purchase price of the real property herein described, and is also secured by a vendor's lien thereon retained in deed of even date herewith to the undersigned, and this Deed of Trust is given as additional security for the payment of said indebtedness.

THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

EXECUTED as of the date first set forth above.

CITY OF PLANO, TEXAS

By: \_\_\_\_\_  
Thomas H. Muehlenbeck  
City Manager

STATE OF TEXAS           §  
COUNTY OF COLLIN       §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2010 by Thomas H. Muehlenbeck, City Manager of the City of Plano, Texas, a home-rule municipal corporation, on behalf of said corporation.

---

Notary Public, State of Texas

**AFTER RECORDING RETURN TO:**

Ginger M. Webber  
Jackson Walker L.L.P.  
777 Main Street, Suite 2100  
Fort Worth, Texas 76102

**Exhibit A (to Deed of Trust)**

**Legal Description**

(To Be Inserted Upon Completion of Survey)

**EXHIBIT "E"**

**LEASE AGREEMENT**

**STATE OF TEXAS           §**  
**§**           **KNOW ALL MEN BY THESE PRESENTS:**  
**COUNTY OF COLLIN       §**

**THIS LEASE AGREEMENT** ("Lease Agreement") entered into as of the date recited at the conclusion of this Lease Agreement, is by and between **THE CITY OF PLANO, TEXAS** (a Texas home-rule municipal corporation, acting hereby through its duly authorized City Manager (hereinafter referred to as "Lessor") and Emajeane Haggard Hall and Mike Hall, being of Collin County, Texas (hereinafter collectively called "Lessees");

**WITNESSETH**

**I.**

Lessor hereby leases to Lessees and Lessees hereby take from Lessor, the property situated within the City of Plano, County of Collin, State of Texas, as described on Exhibit "A" attached hereto and made a part hereof for all purposes, together with all improvements, rights, privileges, easements and appurtenances belonging to or in any way pertaining to the said premises (all leased premises herein called the "Property").

**II.**

The term of this Lease Agreement shall commence on the date hereof and shall continue for a period of five (5) years. The Lessees may, with Lessor's consent, renew the lease for additional periods as may be mutually agreed upon by the parties following the initial five (5) year lease period, subject to the same terms and conditions herein stated. Lessees' notice to extend the lease and Lessor's consent must be given to each other in writing at least ninety days before the end of the initial lease period. Failure to give timely notice or Lessor's failure to give consent will result in termination of this Lease Agreement. Notwithstanding the above, the lease for Tract 3 as shown in Exhibit "A" shall not terminate for as long as Emajeane Haggard Hall physically resides on Tract 3. Also, her son, Mr. Mike Hall, shall have the option to reside on Tract 3 until such time as the Purchaser has awarded a contract to begin the planning and design process for development of the entire property; at which time, Purchaser shall give not less than one full year's notice of its intent to terminate the lease as to Tract 3 and to use the released acreage for park purposes. The Property shall be leased to Lessees as a personal single family residence and/or for agricultural purposes only.

**III.**

Lessees agree to pay to Lessor an annual rental of ONE AND 00/100 DOLLARS (\$1.00). The first such payment shall be due on the date of execution hereof by Lessor; and each subsequent payment shall be due on the 10<sup>th</sup> day following the anniversary date of this Lease Agreement. All such payments shall be mailed or delivered to Lessor

at its address, and to the attention of the person hereinafter stated in this Lease Agreement. If any ad valorem taxes accrue on the Property as a result of the use or occupancy of the Property by Lessees, Lessees shall be responsible for payment of those taxes.

#### **IV.**

Lessees shall have the right to reside on and/or use the Property for agricultural purposes only, including the growing of crops and raising of livestock or other uses expressly approved by the Lessor, which approval shall not be unreasonably withheld. Lessees shall have the use and privilege of occupancy of barns and other outbuildings presently situated on the Property. Lessees shall not put the Property to any use not related to those set out in this Section. No drilling of any kind shall occur on the property without the express consent of Lessor. In the event the Lessees request and receive permission to drill on the property, the Lessees shall comply with all city rules, regulations, policies, procedures and ordinances.

#### **V.**

Lessor shall have the right to come upon the leased premises or any part thereof at all reasonable times for the purpose of inspection of the Property or any portion of it, other than the residence, which may be inspected with prior written notice and by appointment. Lessor shall further have the right-of-way over the Property for the purposes of making such inspections after notifying the Lessees at least 24 hours in advance.

#### **VI.**

The Lessees shall not sub-lease, assign or otherwise transfer any of their rights, titles or interests to any portion of the Property during the term of this Lease Agreement without the prior written consent of Lessor.

#### **VII.**

Lessees shall be responsible for maintenance of all fences and improvements existing or to be placed on the Property by Lessees during the entire term of the Lease Agreement. Lessees have responsibility to keep the land mowed.

#### **VIII.**

Lessees shall be responsible for repairing and/or replacing any real property improvements on the Property which is abused, damaged, or destroyed by the negligence or intentional misconduct of Lessees.

Lessees shall immediately inform Lessor in writing of any damage to or destruction of real property improvements on the Property. Upon receipt of such written notice Lessor shall investigate the circumstances surrounding the destruction or damage involved. If the damage or destruction was not caused by Lessees's negligence, carelessness or abuse, or the negligence, carelessness or abuse of Lessees's invitees, guests or employees, Lessor may, but is not required to, replace or repair the damaged or destroyed improvements.

**LESSEES SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD LESSOR, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL CLAIMS, DAMAGES, INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING ATTORNEY'S FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO, OR RESULTING FROM THIS LEASE OR CAUSED BY THE NEGLIGENT ACT OR OMISSION OR THE INTENTIONAL ACT OR OMISSION OF LESSEES, THEIR OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES WHO MAY ENTER THE PROPERTY DURING THE TERM OF THIS LEASE, EXCEPT TO THE EXTENT CAUSED BY THE LESSOR'S AGENTS, EMPLOYEES, OR CONTRACTORS. LESSEES ARE EXPRESSLY REQUIRED TO DEFEND LESSOR AGAINST ALL SUCH CLAIMS.**

**IX.**

(a) Lessees shall have the right to use surface and/or storm waters flowing across the Property in natural tributaries or otherwise, for such uses as they may desire during this Lease Agreement, without any payment being made therefore to Lessor.

(b) Lessees shall be solely responsible for furnishing any water to the Property for their use during this Lease Agreement, which water is transported through pipes or mains from external sources.

(c) Lessees shall be solely responsible for providing and paying for any and all utility services to the Property they desire during the Lease Agreement, including but not limited to electricity, gas, and telephone services.

**X.**

**LESSOR SHALL NOT BE LIABLE FOR ANY DAMAGE TO THE PROPERTY, CROPS OR LIVESTOCK OF LESSEES OR OF OTHERS LOCATED ON THE PROPERTY, NOR FOR THE LOSS OR DAMAGE TO ANY PROPERTY OR LIVESTOCK OF LESSEES BY THEFT OR OTHERWISE. LESSOR SHALL NOT BE LIABLE FOR ANY INJURY OR DAMAGE TO PERSONS OR PROPERTY RESULTING FROM LESSEES OCCUPANCY AND USE OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIRE, EXPLOSION, STEAM, GAS, ELECTRICITY, WATER, RAIN, OR SNOW, OR BY ANY CAUSE OF WHATSOEVER NATURE.**

**LESSEES HAVE INSPECTED THE PROPERTY AND ACCEPT IT IN "AS IS" CONDITION. ALL PROPERTY AND LIVESTOCK OF LESSEES KEPT OR STORED ON THE PROPERTY SHALL BE SO KEPT OR STORED AT THE RISK OF LESSEES ONLY, AND LESSEES SHALL HOLD LESSOR HARMLESS FROM ANY CLAIM ARISING OUT OF DAMAGE TO THE SAME.**

**XI.**

Lessees shall take good care of the Property and its fixtures and suffer no waste; and shall maintain the Property in a clean and sanitary condition, free of debris and trash, during the term of this Lease Agreement. At the expiration or end of the term of this Lease Agreement, Lessees shall deliver up the Property in good order and condition. All improvements put in at the expense of Lessees during the term of this Lease Agreement may be removed at the time of the expiration of the Lease Agreement. If not removed, they shall become the property of Lessor.

**XII.**

Lessees shall provide to Lessor and maintain during the full term of this Lease proof of insurance in the amounts shown in Exhibit "B".

**XIII.**

The terms, conditions and covenants contained in this Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and/or heirs.

**XIV.**

Lessees may terminate this lease at any time by giving ninety days advance written notice.

**XV.**

All notices required to be furnished hereunder shall be furnished to (1) Lessor and (2) Lessees as follows:

FOR LESSOR:                      Director of Parks and Recreation  
   City of Plano  
   P.O. Box 860358  
   Plano, Texas 75086-0358

FOR LESSEES:                      Mike Hall  
   1329 West Park  
   Plano, Texas 75075

or such other address as Lessor or Lessees shall specify in a notice satisfying this Section.

[remainder of page intentionally left blank]

**EXECUTED THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**PURCHASER:**

**CITY OF PLANO, TEXAS**

By: \_\_\_\_\_  
Thomas H. Muehlenbeck  
CITY MANAGER

APPROVED AS TO FORM

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

**TENANT:**

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

**TENANT:**

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

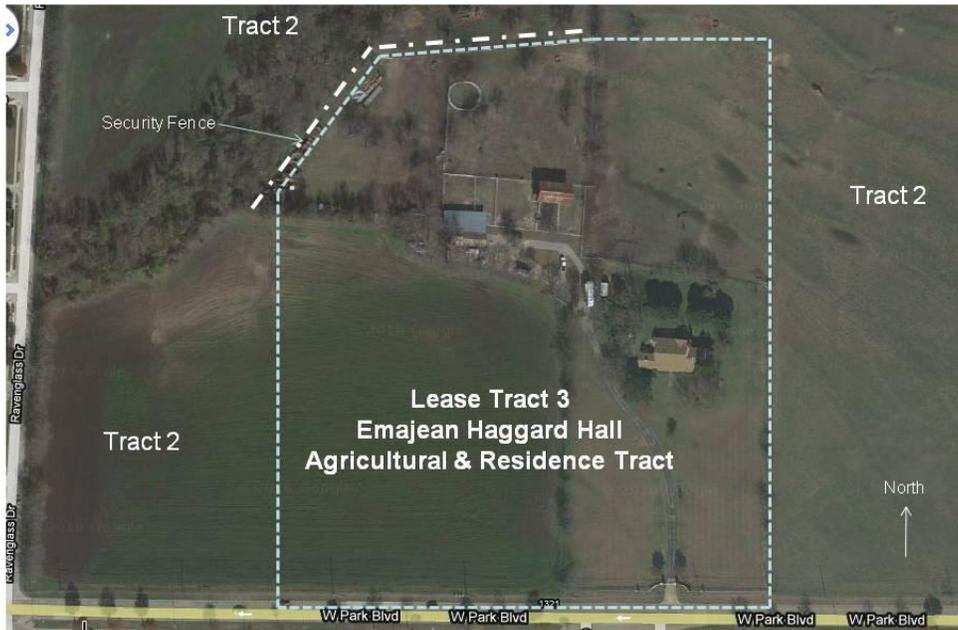
# EXHIBIT "A"

## DESCRIPTION OF LEASE PROPERTY



### Exhibit "A" to Lease Agreement - Tract 3

Any illustrated boundary line that does not currently follow an existing fence line will be Lessor's responsibility to establish a new fence. New fences will only be required if Tract 2 is no longer leased to Lessor per terms of the Lease Agreement. Should City open Tract 2 to the public before design and development of entire property, City will erect a security fence along northwest boundary line.



**EXHIBIT "B"**

**INSURANCE REQUIREMENTS**

**City of Plano  
Insurance Requirements**

<b>Type of Insurance</b>	<b>Amount of Insurance</b>	<b>Provisions</b>
1. Commercial General a)	\$1,000,000 per occurrence bodily injury & property damage. The <i>Damage to Premises Rented To You</i> limit should be increased to \$50,000.	Lease of City of Plano owned remises require tenants to provide Commercial General Liability. City of Plano must be named as an additional insured.
2. Business Auto Liability	As required by State of Texas	Required where a vehicle will be used on the premises. Coverage must include: All owned, leased, hired, non-owned and employee non-owned vehicles.
3. Commercial Property	Value of tenant's property	A waiver of subrogation must be in favor of the City of Plano.