



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		12/8/14		
Department:		Parks and Recreation		
Department Head		Amy Fortenberry		
Agenda Coordinator (include phone #): Susan Berger (7255)				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Real Estate Contract by and between Clearhaven Properties, LLC, a Texas limited liability company, and the City of Plano for the purchase of approximately .2557 acres of land located at 10301 Custer Road in Plano, Collin County, Texas, for the Three Cities Trail Connection project; and authorizing the City Manager or his authorized designee to execute such contract and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2014-15	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	350,000	0	350,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-55,680	0	-55,680
BALANCE	0	294,320	0	294,320
FUND(S): PARK FEE PROGRAM CIP				
<p>COMMENTS: Funds are available in the 2014-15 Park Fee Program CIP. This item, in the amount of \$55,680, will leave a current year balance of \$294,320 available for further land acquisitions or expenditures related to the Three Cities Trail Connection project.</p> <p>STRATEGIC PLAN GOAL: Acquiring land to further develop Plano's trail system relates to the City's Goal of Great Neighborhoods - 1st Choice to Live.</p>				
SUMMARY OF ITEM				
Approval of an expenditure of \$55,680 for the purchase of approximately .2557 acres of land on Rowlett Creek located at 10301 Custer Road in Plano, Texas. The property is being acquired as a critical link in the regional Rowlett Creek greenbelt corridor as identified in the Six Cities Trail Plan. This acquisition will facilitate future development of a trail planned to go through Frisco, Plano and Allen.				
Project Location Map: http://goo.gl/wx8Jwj				

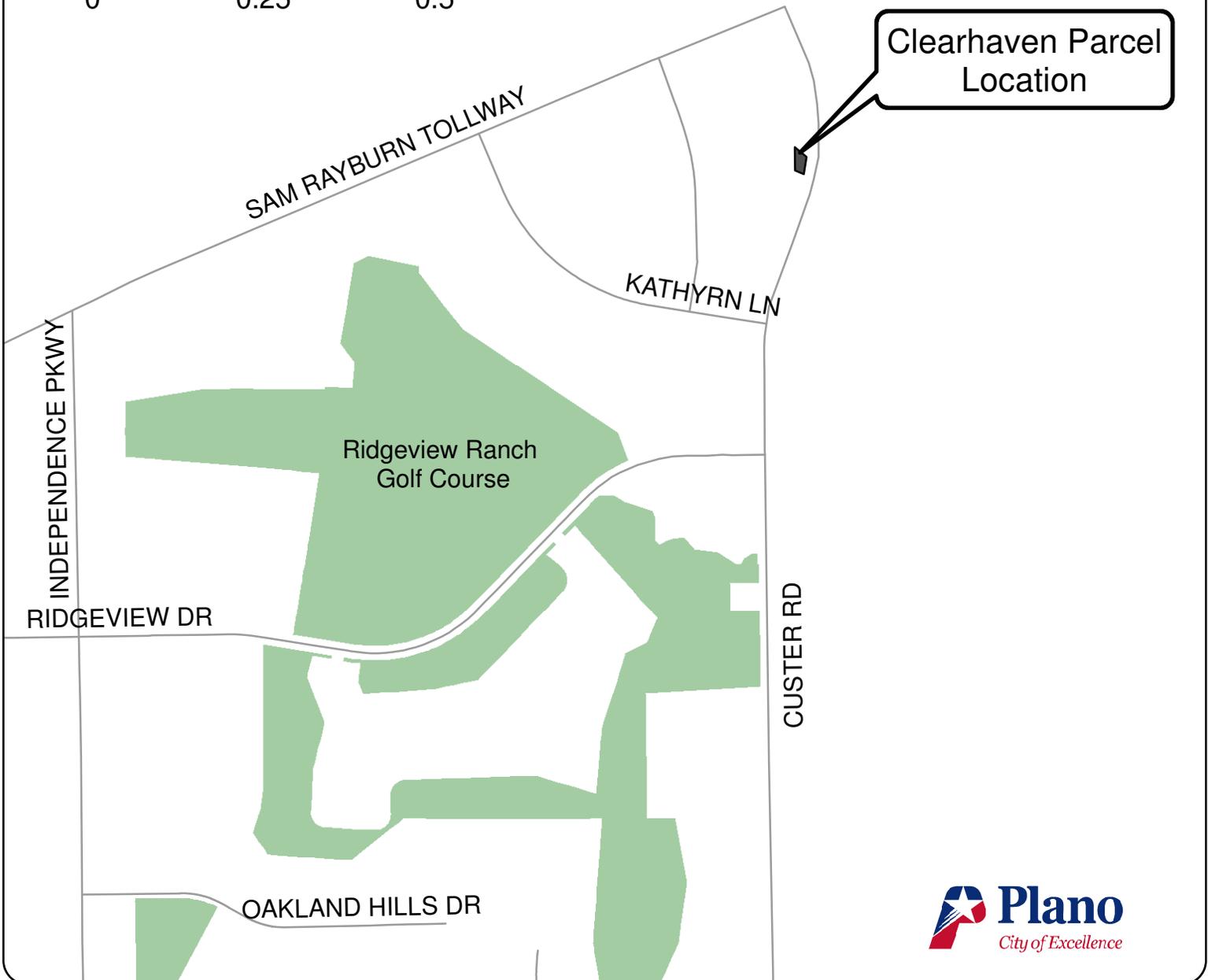
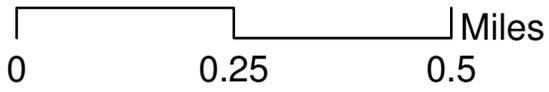
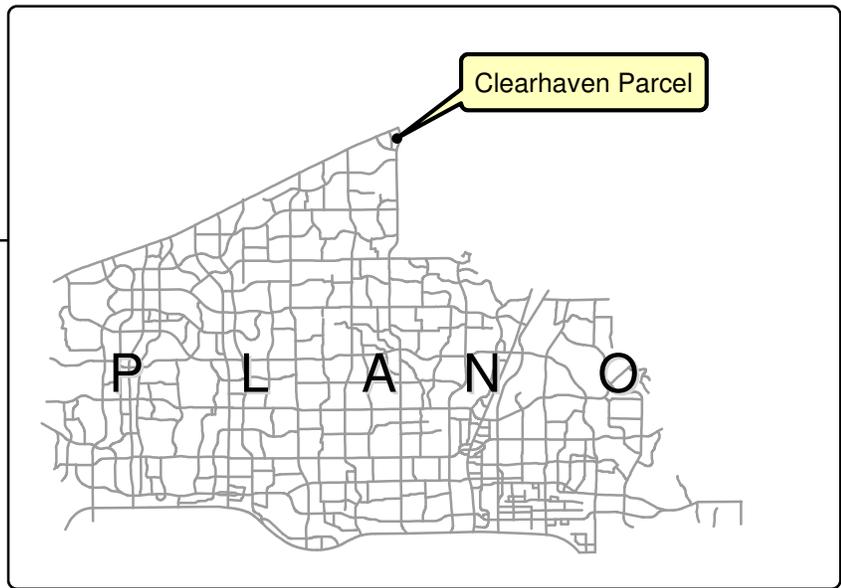


CITY OF PLANO COUNCIL AGENDA ITEM

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

Location Map

Six Cities Trail Connection- Clearhaven Parcel



A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Real Estate Contract by and between Clearhaven Properties, LLC, a Texas limited liability company, and the City of Plano for the purchase of approximately .2557 acres of land located at 10301 Custer Road in Plano, Collin County, Texas, for the Three Cities Trail Connection project; and 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 Clearhaven Properties, LLC, a Texas limited liability company, for the purchase of property located at 10301 Custer Road in Plano, Collin County, Texas a substantial copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (hereinafter called “Real Estate Contract”); and

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

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF 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 authorized 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 for in the Real Estate Contract.

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

DULY PASSED AND APPROVED this the 8th day of December, 2014.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

REAL ESTATE CONTRACT

This contract is entered into as of the Effective Date (as hereinafter defined) by and between **CLEARHAVEN PROPERTIES LLC**, a Texas Limited Liability Company ("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 .2557 acre tract of land in fee simple in 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.

2. Purchase Price and Escrow

The purchase price ("Purchase Price") to be paid for the Property shall be **FIFTY-FIVE THOUSAND SIX HUNDRED EIGHTY DOLLARS (\$55,680.00)** 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 Stewart 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. Review Period

City shall have ninety (90) days from the Effective Date of this Contract (the "Review Period") to conduct any or all of the following: engineering, planning, appraisal, environmental assessment, and any other studies deemed appropriate by City for the Property. Seller grants the City a right of entry to the property to conduct the studies. These studies must be satisfactory to City. If the studies are not satisfactory to City (in City's sole opinion) the City may terminate the Contract by written notice to Seller.

Any entry made on the Property by City or its representatives shall be upon reasonable notice to Seller, at reasonable times and at the sole risk of City. City hereby holds harmless Seller from all losses, claims, liabilities, actions, and demands, arising out of City's inspection of the Property. City shall pay for all such work and inspections performed on or in connection with the Property and shall not permit the creation of any lien in favor of any contractor, materialman, mechanic, surveyor, architect, or laborer engaged by City.

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 within one hundred twenty (120) days of the Effective date of this Contract or at such time, date and place that the parties may otherwise agree upon in writing (such date, the "Closing Date"). 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 only to 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.

At the Closing, City agrees to deliver to Seller the Purchase Price.

6. Closing Costs and Proration of Taxes

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, 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 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. Representations and Warranties of City.

City represents and warrants to Seller that this Contract is duly and validly authorized and executed by City.

9. Disclosures of Seller

On or before the Closing, Seller shall disclose to the 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 environmental hazards or conditions affecting the Property that would violate applicable laws;

- (b) Any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
- (c) Any wetlands as defined by federal or state law or regulation, affecting the Property; or
- (d) Any threatened or endangered species or their habitat affecting the property.

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 during the Review Period in Section 4 and any other times as mutually agreed by the parties.

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

(c) 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, 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, Condemnation, Assessments

11.1. Condemnation. In the event that prior to the date of Closing condemnation procedures are commenced by any governmental entity or authority other than City or other entity acting by, through or under City, against a portion or all of the Property or Seller receives any verbal or written notice of a threat or intent of condemnation of a portion or all of the Property by any governmental entity or authority other than City or other entity acting by, through or under City, Seller shall immediately notify City and City may, at its election, terminate this Contract by written notice to Seller within ten (10) business days after receipt of Seller's notice. Upon termination, neither party shall have any further rights or obligations hereunder. Should City elect not to exercise its option as provided hereunder, then the Contract shall remain in full force and effect and Seller shall assign or pay to City at Closing Seller's interest in and to all condemnation awards or proceeds from any such proceedings or actions in lieu thereof.

11.2. 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; or
- (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.

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 a reason set out in Section 3 or 4 herein or except for 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 for a period of 180 days. If any representation in this Contract is untrue on the Closing date, the party making such representation 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) The "Effective Date" of this Contract shall be the last date of signature of any party set forth below.

(j) 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.

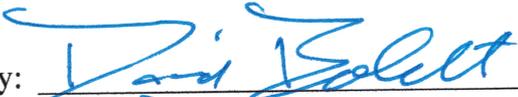
(k) Time is of the essence of this Contract.

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

SELLER:

**CLEARHAVEN PROPERTIES LLC, a Texas
Limited Liability Company**

Date: 10/6/14

By: 

Name: David Boldt

Title: President

Address: 3312 Springs Grove Dr.
Plano 75025

CITY:

**CITY OF PLANO, TEXAS, a Home Rule
Municipal Corporation**

Date: _____

By: _____

Robin Reeves
Chief Park Planner
1409 K Avenue
Plano, Texas 75074

ACKNOWLEDGMENTS

STATE OF TEXAS §

COUNTY OF Collin §

This instrument was acknowledged before me on the 6 day of October, 2014 by David Boldt (Authorized representative), President (Title) of **CLEARHAVEN PROPERTIES LLC, a Texas Limited Liability Company**, on behalf of said Company.



Alyssa Noonan
Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2014 by **ROBIN REEVES**, Chief Park Planner of the **CITY OF PLANO, TEXAS, a home rule municipal corporation**, on behalf of said corporation.

Notary Public, State of Texas

EXHIBIT "A"
HIKE AND BIKE TRAIL
PARCEL TAKE
CLEARHAVEN PROPERTIES, L.L.C.

BEING a 11,136 square foot tract of land situated in the Shadrick Jackson Survey, Abstract No. 489 in the City of Plano, Collin County, Texas and being a part of that called 1.7253 acre tract of land described in Special Warranty Deed with Vendor's Lien to Clearhaven Properties, L.L.C., as recorded in County Clerk's Document No. 20070118000073320 in the Official Public Records of Collin County, Texas (O.P.R.C.C.T.), being a part of Lot 1, Block A, Dance Studio On North Custer, an addition to the City of Plano, Collin County, Texas, as recorded in County Clerk's Document No. 20070823010002870 O.P.R.C.C.T. and being more particularly described as follows:

COMMENCING at a 10 foot jog in the common west right-of-way line of Custer Road (F.M. 2478, variable width right-of-way, 130 foot wide at this point) and the east line of said Lot 1, also being on a circular curve to the left, having a radius of 1,572.02 feet, whose chord bears North 12 degrees 58 minutes 12 seconds East, a distance of 133.25 feet from which a 1/2-inch found iron rod with cap stamped "VOTEX" bears North 56 degrees 58 minutes 11 seconds West, a distance of 0.23 feet;

THENCE Northeasterly, along said common line and along said circular curve to the left, through a central angle of 04 degrees 51 minutes 29 seconds, an arc length of 133.29 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALFF ASSOC INC' for the POINT OF BEGINNING;

THENCE North 77 degrees 28 minutes 08 seconds West, departing said common line, a distance of 73.34 feet to a 1/2-inch found iron rod with yellow plastic cap stamped "HALFF ASSOC INC' for corner on the common line between the west line of said Lot 1 and the east line of those tracts of land described in Deed to Rowlett Creek Cemetery Association, as recorded in Volume 584, Page 392 in the Deed Records of Collin County, Texas;

THENCE North 00 degrees 41 minutes 26 seconds West, along said common line, a distance of 163.69 feet to a point for corner;

THENCE South 49 degrees 40 minutes 54 seconds East, departing said common line and along the on the common line between the north line of said Lot 1 and the south line of that certain tract of land described in Warranty Deed to MC Custer 121, L.P., as recorded in County Clerk's Document No. 20080616000729040 O.P.R.C.C.T., a distance of 117.13 feet to a point on said west right-of-way line and being on a circular curve to the right, not being tangent to the preceding course, having a radius of 1,572.02 feet, whose chord bears South 08 degrees 37 minutes 38 seconds West, a distance of 104.99 feet;

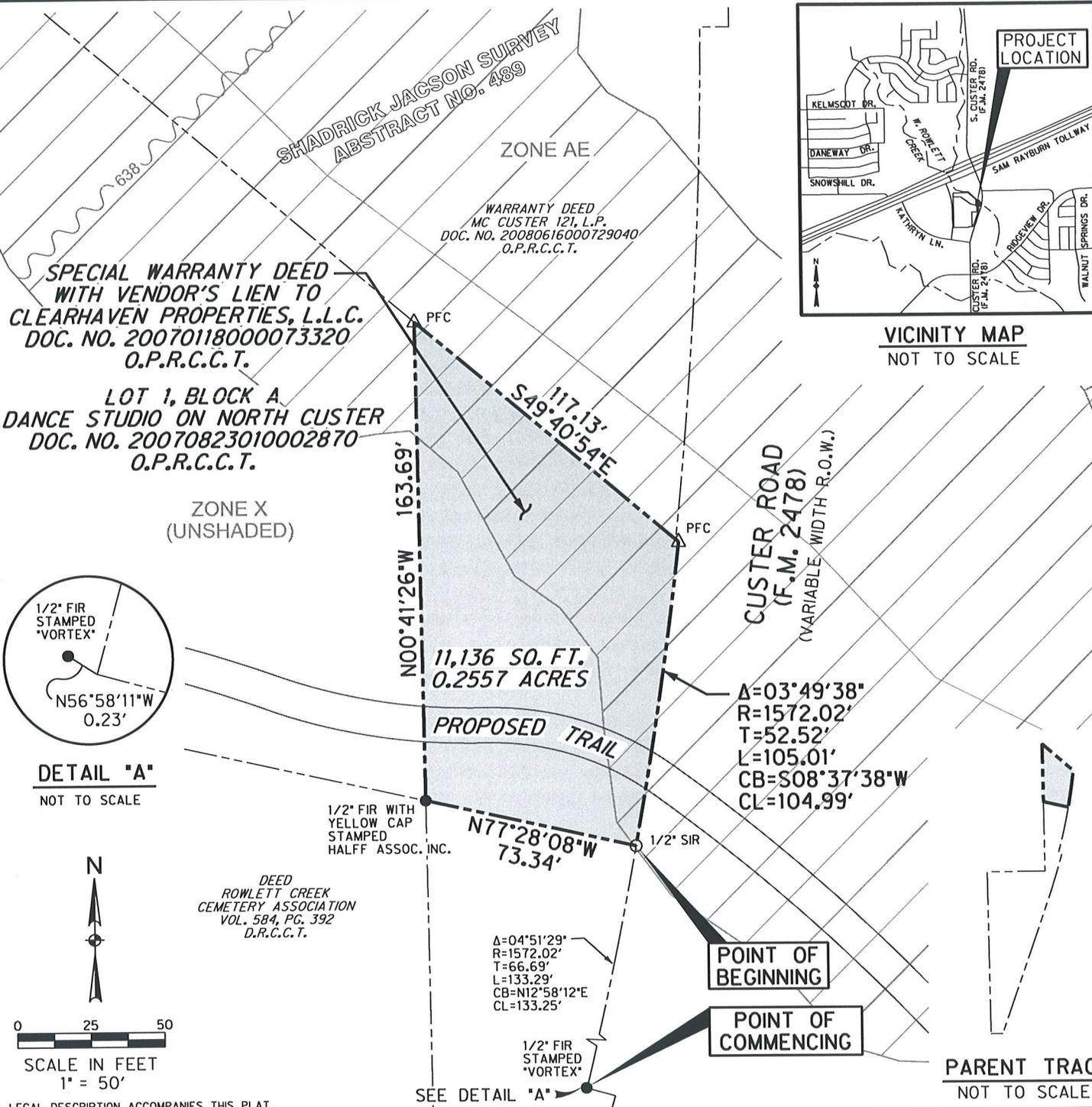
THENCE Southwesterly, departing said common line, along said west right-of-way line and along said circular curve to the right, through a central angle of 03 degrees 49 minutes 38 seconds, an arc length of 105.01 feet to the POINT OF BEGINNING AND CONTAINING 11,136 square feet or 0.2557 acres of land, more or less.

A plat accompanies this legal description.

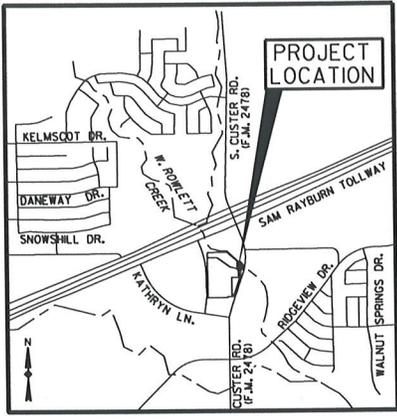
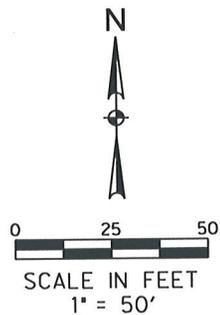
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Sheet

8/28/2014 9:58:14 AM ah402 HALFF I:\29000s\29409\CADD\Sheets\EXH-PARCEL TAKE-29409.DGN



DETAIL "A"
NOT TO SCALE



VICINITY MAP
NOT TO SCALE

PARENT TRACT
NOT TO SCALE

EXHIBIT "A"

**HIKE AND BIKE TRAIL
PARCEL TAKE
CLEARHAVEN PROPERTIES, L.L.C.**

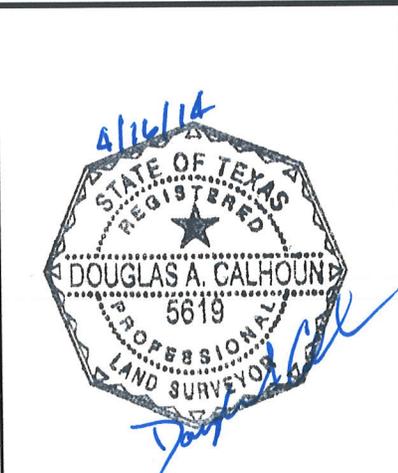
OUT OF THE

SHADRICK JACKSON SURVEY, ABSTRACT NO. 489
CITY OF PLANO
COLLIN COUNTY, TEXAS

LEGEND

	PROPOSED PARCEL AREA
	EXISTING EASEMENT LINE
	EXISTING PROPERTY LINE
(CM)	CONTROL MONUMENT
FIR ●	FOUND IRON ROD (UNLESS NOTED OTHERWISE)
1/2" SIR ○	1/2" SET IRON ROD WITH YELLOW CAP STAMPED "HALFF ASSOC., INC."
PFC △	POINT FOR A CORNER

BASIS OF BEARING IS THE TEXAS COORDINATE SYSTEM NAD 83, NORTH CENTRAL ZONE (4202), OBSERVED BY GPS USING CITY OF FRISCO MONUMENTS 3, 12, 15, 19 AND 31 ON MARCH 28, 2013 BROUGHT TO SURFACE USING SCALE FACTOR OF 1.000158178.



I, Douglas A. Calhoun, Registered Professional Land Surveyor, do hereby certify that this parcel was prepared from a survey made on the ground under my supervision and direction.

TBPLS FIRM NO. 10029605
4000 FOSSIL CREEK BLVD
FORT WORTH, TEXAS 76137-2797
TEL (817) 847-1422
FAX (817) 232-9784

THREE CITIES HIKE AND BIKE TRAIL

FILE: EXH-PARCEL TAKE-29409.DGN

DATE: MARCH 2014 AVO: 29409 PAGE 2 of 2