



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:		4/13/15			
Department:		City Manager			
Department Head		P. Jarrell - Special Projects			
Agenda Coordinator (include phone #): T. Stuckey - 7156					
CAPTION					
<p>A Resolution of the City of Plano, Texas, approving the terms and conditions of a lease agreement between the City of Plano and SWC Tollway and 121, LLC for the lease of city-owned property located on the north side of Headquarters Drive and east of Leadership Drive, upon which is located a city-owned elevated water tank intended to be removed; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2014-15 to 2034-35	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	10	190	200
BALANCE		0	10	190	200
FUND(S) GENERAL FUND					
<p>COMMENTS: Approval of this item will result in \$10 in new land lease revenues for 2014-15, and \$10 of lease revenue per future fiscal year. This land lease agreement with SWC Tollway and 121, LLC is for the city-owned water tank property located at Lot 2, Block B, Legacy West. Total lease revenue for 2014-15 is \$10. The future annual revenue from this lease agreement is \$10 per year for nineteen additional years, or \$190.</p> <p>STRATEGIC PLAN GOAL: Land Lease Agreements relate to the City's Goal of Financially Strong City with Service Excellence.</p>					
SUMMARY OF ITEM					
Please see attached memos.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Memos					
Resolution					
Lease Agreement					

Date: March 31, 2015

To: Bruce D. Glasscock, City Manager
Frank F. Turner, Deputy City Manager

From: Phyllis M. Jarrell, Special Projects Director

Subject: Lease of Water Tank Property in Legacy West

JC Penney and its development partners have requested the city to consider removal of the water tank located on the north side of Headquarters Drive across from the Penney campus and to allow the property to be included in the overall development plan for the Legacy West project. The tank, which sits on a 1+ acre tract of land owned by the City of Plano, is considered to be a detriment in attracting corporations and other users to the development. A separate memo from Gerald Cosgrove, Director of Public Works, summarizes an engineering consultant's recommendation on removal of the tank and impacts on the water delivery system in the area. The city also has communications antennas mounted on the water tank, and an emergency warning siren sits on the property.

Staff is proposing that the underlying property be leased to the development group to be used as public open space. Unlike an outright sale of the property, a lease insures that the land can be used in a manner compatible with adjacent development and remain under the control of the development partners. The terms of the lease are:

- An initial lease term of 20 years, with the option of 2 additional 10 year terms, for \$10 per year and the lessee's creation and maintenance of an open space accessible to the public.
- The lessee is to remove the water tank and associated infrastructure, including the concrete foundation. The lessee retains any salvage value of the water tank.
- The lessee must reimburse the city for costs associated with relocation of its communications antennas. There are alternative locations for the antennas on city-owned communications towers.
- If required, the lessee must provide a new location for an emergency warning siren in the Legacy West area and reimburse the city for relocation costs.
- The removal of the water tank and the construction of open space improvements on the property must be completed within 12 months of commencement of construction.
- The property must be maintained as mowed open space and may be improved with landscaping, fountains, walkways, etc. No buildings, parking or drives may be constructed on the property. The lessee may use the property for performances, art or other displays, fairs and markets, and other events.

- At a future date, the lessee would have the option to purchase the property if it is to be incorporated into an adjacent development as part of an economic development reinvestment zone approved by City Council.

Please let me know if you have any questions.

XC: Gerald Cosgrove, Director of Public Works



Memorandum

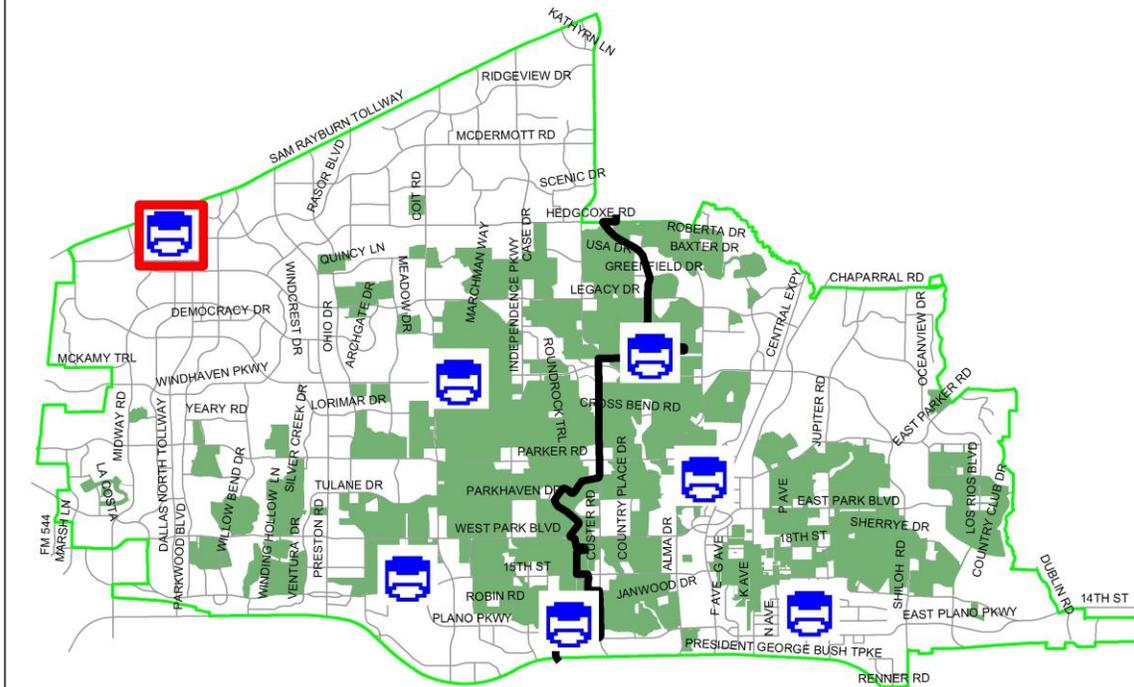
Date: March 26, 2015
To: Bruce D. Glasscock, City Manager
From: Gerald P. Cosgrove, P.E., Director of Public Works
Subject: Abandonment of the White Rock Elevated Tank

The City of Plano hired Birkhoff, Hendricks and Carter LLP to evaluate the impacts of abandoning the White Rock Tank. They concluded that we can abandon the tank without detrimental effect to providing water service to the 875 service area. The 875 service area generally serves Plano west of Custer Road. The 875 service area has sufficient elevated storage to meet TCEQ requirements today. If the area grows significantly, we made need to get an exception from TCEQ. This is allowed under their rules and regulations. We have sufficient ground & elevated storage, emergency generation and pump capacity to meet all future needs. Many cities of our size and larger do not meet the elevated storage capacity requirement and have received an exception. Dallas only has 9 elevated tanks and Fort Worth has 12 tanks and both of them do not meet the 100 gallon per connection elevated storage requirement.

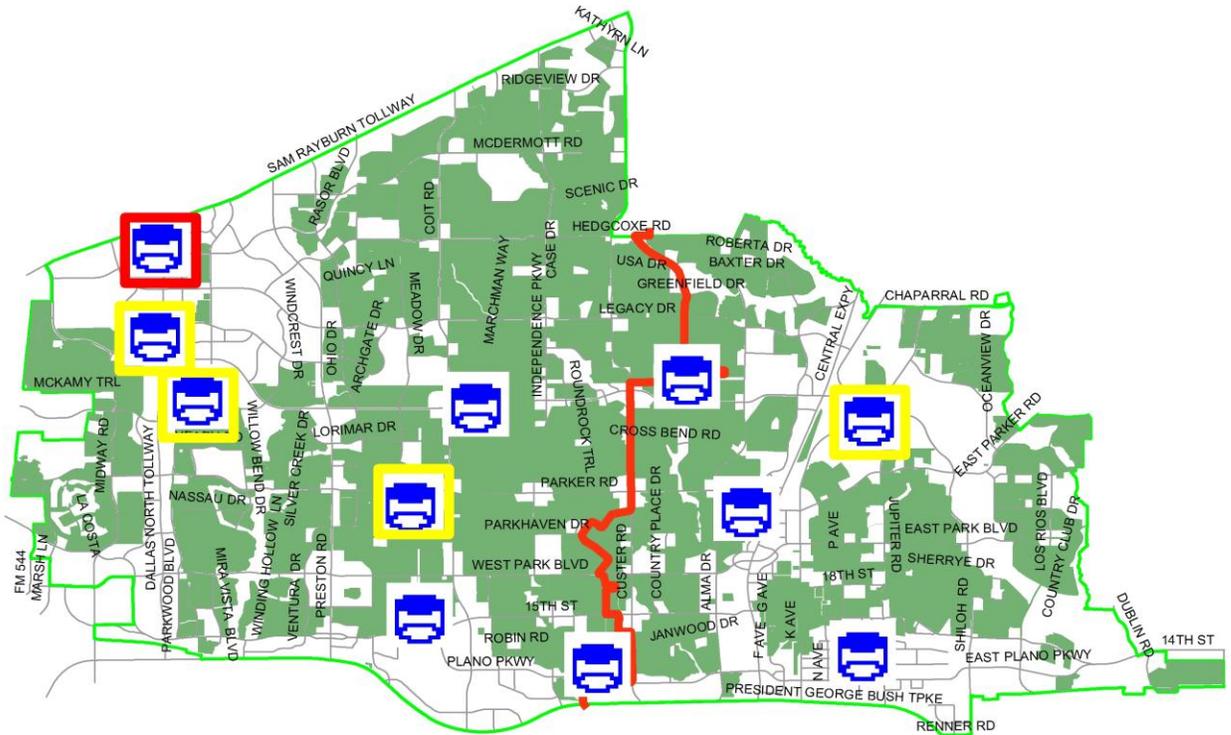
The White Rock Tank was constructed in 1985 when the Legacy development was started. It was located far west of the developed portion of Plano. Attached are maps showing Plano residential developments as of 1980, 1990 and today. When the White Rock Tank was constructed, the nearest elevated tank was the Coit Tank on Spring Creek Parkway, east of Coit Road. Since that time, three elevated tanks have been added to the west side of Plano. The White Rock Tank does not work well with the other tanks on the west side. In fact, the White Rock Tank has not been used since September 19, 2010. If we took a different tank out of service, it would impact our ability to supply water to the west side of Plano.

In conclusion, the removal of the White Rock Elevated Tank will not be detrimental to the City of Plano's ability to supply water to the west side of Plano today and into the future.

Plano Residential Development 1980



Plano Residential Development 2015



A Resolution of the City of Plano, Texas, approving the terms and conditions of a lease agreement between the City of Plano and SWC Tollway and 121, LLC for the lease of city-owned property located on the north side of Headquarters Drive and east of Leadership Drive, upon which is located a city-owned elevated water tank intended to be removed; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed lease agreement by and between the City of Plano and SWC Tollway and 121, LLC for the lease of property located on the north side of Headquarters Drive and east of Leadership Drive and upon which is located a city-owned elevated water tank intended to be removed, a substantial copy of which is attached hereto as Exhibit "A" and is incorporated herein by reference (hereinafter called "Lease Agreement") and;

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

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

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

Section II. The City Manager or his authorized designee is hereby authorized to execute the Lease Agreement between SWC Tollway and 121, LLC and the City 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 Lease Agreement.

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

DULY PASSED AND APPROVED THIS THE 13th DAY OF APRIL, 2015.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

THE STATE OF TEXAS §
 §
PRESENTS:
COUNTY OF COLLIN §

KNOW ALL PERSONS BY THESE

LEASE AGREEMENT

This Lease Agreement (hereinafter referred to as "Lease") is entered into on this the ___ day of _____, 2015, by and between **SWC TOLLWAY & 121, LLC**, a Delaware limited liability company, (hereinafter referred to as "LESSEE"), and the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation located in Collin County, Texas, (hereinafter referred to as "LESSOR") acting by and through its City Manager or his designee.

**I.
GRANT AND TERM**

Section 1.01. GRANT. LESSOR does lease and demise unto LESSEE, and LESSEE leases from LESSOR, a certain area and improvements thereon located at Lot 2, in Block B, of Legacy West, an addition to the City of Plano, Collin County, Texas, containing approximately 47,469 square feet of land (hereinafter referred to as the "Leased Premises"), according to the Map or Plat thereof recorded January 30, 2015 under Instrument No. 20150130010000470, Map/Plat Records, Collin County, Texas, being more particularly shown on the map attached hereto as Exhibit "A".

Section 1.02. EFFECTIVE DATE. This Lease shall be and become effective on the date first entered above (the "Effective Date").

Section 1.03. TERM. The Initial Term of this Lease shall be for twenty (20) years, beginning on the Effective Date as described in Section 1.02 above. At the end of the initial term (hereinafter referred to as "Initial Term"), LESSEE shall have the option to extend this Lease for two (2) additional ten (10) year terms upon the written request of LESSEE presented not later than sixty (60) days prior to the date of termination of the Initial Term or any extended term and, so long as Lessee is not in default beyond applicable cure periods at the time of such exercise, the rental rate and balance of the terms shall remain the same.

Section 1.04. CONDITION OF LEASED PREMISES. LESSOR has not made and does not make and specifically disclaims any representations, guarantees, promises, covenants, agreements or warranties of any kind or character whatsoever unless otherwise provided for herein, whether express or implied, concerning or with respect to the nature, quality or condition of the Leased Premises, the suitability of the Leased Premises for uses allowed under this Lease, or merchantability or fitness for a particular purpose. LESSEE acknowledges it has examined the Leased Premises and accepts such premises in their "AS IS" condition when accepted. Except as may otherwise be provided for herein, LESSOR shall not be required to maintain or to make any improvements, repairs or restorations upon the Leased Premises or to the improvements located thereon. LESSOR shall never have any obligation to repair,

maintain or restore, during the terms of this Lease, any improvements on the Leased Premises.

Section 1.05. EARLY TERMINATION. Either party shall have the right to terminate this Lease in the event that LESSEE has not commenced construction of the Improvements as defined herein on or prior to the twelfth (12th) month following the Effective Date of this Lease, subject to force majeure. At such time as LESSEE commences construction of the Improvements it shall thereafter proceed with diligence and reasonable efforts to cause construction to be completed within twelve (12) months thereafter, force majeure excepted.

II. CONSIDERATION

Section 2.01. CONSIDERATION DURING THE TERM. Consideration for the term of this Lease shall be **TEN DOLLARS (\$10.00)** per year and other good and valuable consideration, including but not limited to the creation of a Public Space (as defined below) for the benefit of Plano citizens and citizens of surrounding municipalities by LESSEE. All monetary amounts due shall be payable to the City of Plano, Attention: Accounting, Post Office Box 860358, Plano, Collin County, Texas, 75086-0358 and shall be due on the Effective Date of this Lease and annually each year thereafter on the anniversary of the Effective Date. At its option, LESSEE may, without further discount, prepay the consideration for the Initial Term, as well as any extended term of this Lease which may subsequently become due under the terms of this Lease. In the event of an early termination of this Lease, LESSOR will reimburse LESSEE the pro rata portion of any prepaid consideration for the remaining Lease term.

III. USAGE OF THE LEASED PREMISES

Section 3.01. USE OF LEASED PREMISES. It is the intent of the parties that this Lease shall be to remove an existing water tower from the Leased Premises and to maintain and operate the Leased Premises as open space, green space, park/amenity space or in another similar manner determined by LESSEE (each such use being a "Public Space") designed to improve the beautification of the Leased Premises (hereinafter referred to as "Improvements"). All Improvements shall be undertaken by, and be the responsibility of, LESSEE, and under no circumstances shall LESSOR have any responsibility to prepare, arrange or construct any Improvements on the Leased Premises. The Leased Premises shall be used only for the following purposes:

- (a) To completely remove the existing water tower and the associated infrastructure thereon by LESSEE, the salvage value of which is to be retained by LESSEE, and
- (b) As mowed open space or space improved in a manner designed to enhance the beautification of the space and make it usable open space for residents or visitors, such as with landscaping, fountains, walkways or pathways, sculptures, other unenclosed structures constituting open space amenities, or other similar uses or basic open space uses determined by LESSEE. In no event shall LESSEE construct buildings

intended for occupancy, parking spaces or parking facilities or drives intended for vehicular use, on the Leased Premises.

Under no circumstance shall LESSEE's Improvements be utilized to derive revenue from the Leased Premises. However, LESSEE may, by separate agreement, recover reimbursements for operating, maintenance or other costs from one or more property owners or users in proximity to the Leased Premises so long as LESSEE does not seek to charge or levy an admission or use fee on members of the general public wishing to enter upon or utilize the Leased Premises.

Section 3.02. STATEMENT OF PUBLIC BENEFIT. A primary purpose of this Lease is to provide an aesthetically pleasing environment for citizens of LESSOR and those who work within its corporate limits. The Leased Premises shall be accessible by the public for passive recreational use; provided, however, Lessee may impose normal and customary rules of conduct and use restrictions as may be appropriate to preserve the Public Space use on the Leased Premises. LESSEE agrees to provide LESSOR, during the term of this Lease, updates, as may be reasonably requested by LESSOR from time to time, on any Improvement on the Leased Premises. In order to accomplish the public benefit identified herein, LESSEE agrees to begin the removal of the water tower present on the Leased Premises and begin other Improvement to the Leased Premises as provided herein.

Section 3.03. USE OF THE IMPROVEMENTS BY LESSOR. After the completion of the Improvements, LESSEE will provide open access to the Leased Premises for LESSOR's citizens and will not restrict access thereto, except as may be required for public safety or to preserve or maintain the use and public benefit of the Leased Premises; provided, however, LESSEE may impose normal and customary operating hours compatible with adjacent uses and restrict access during "closed" hours. Except in cases of emergency, in the event LESSEE deems it necessary to otherwise restrict access to the Leased Premises, LESSEE shall obtain the prior written consent of LESSOR, which consent shall not be unreasonably withheld.

Section 3.04. INGRESS AND EGRESS. LESSEE shall have the right to obtain ingress and egress by means of all existing roadways to be used in common with others that have rights of passage thereon. LESSEE and LESSOR hereby agree that LESSOR is under no obligation to construct any roadways, driveways, or drainage systems to provide ingress or egress to LESSEE.

Section 3.05. SUBLEASE. LESSEE shall have no right to sublease the Leased Premises without obtaining prior written permission from LESSOR. LESSOR shall have no obligation to approve any proposed sublease. LESSEE may grant rights to others to use all or portions of the Leased Premises for purposes consistent with this Lease, including musical or other performances, art or other displays, fairs, markets and other such events.

IV. UTILITIES

Section 4.01. UTILITIES. LESSEE agrees to secure and maintain all utilities required for the operation of the Leased Premises and any Improvements, if any, including but not limited to the telephone, gas (if desired), electricity, and water used in

or on the Leased Premises and for the removal of trash or debris therefrom. LESSEE's obligation to secure and maintain utilities extends to ensuring that any utilities which need be disconnected, temporarily or permanently, during the course of any construction on the Leased Premises, including that of the Improvements, are so disconnected and subsequently reconnected as appropriate. LESSOR shall in no way be responsible for utilities for the Leased Premises, nor shall LESSOR be responsible for utility connections; however, said connections shall in all respects conform to the regulations and ordinances of the City of Plano and the State of Texas. All the utilities to the Leased Premises shall be installed underground (other than above ground elements such as transformers, junction boxes, control apparatus, etc).

V. INSPECTIONS, REPAIRS AND ALTERATIONS

Section 5.01. REPAIRS BY LESSEE. LESSEE agrees, at its own expense, to maintain the Leased Premises and Improvements in a sanitary, safe and clean condition during the term of this Lease and any extension thereof. LESSEE shall be solely responsible for, and shall provide at its own expense, janitorial, landscaping or porter (if any) services for the Leased Premises, as may be required, and maintain in good operating condition and repair the Leased Premises and any and all of the future permanent Improvements, if any, including but not limited to any and all electrical, plumbing and mechanical systems, external walkways, and the lawn and grounds. Upon the expiration or other termination of the term of this Lease, the Leased Premises shall be surrendered to LESSOR, together with all improvements at the end of the term or any extension thereof, in good condition, normal wear and tear and casualty excepted.

Section 5.02. LESSOR'S RIGHT TO INSPECT AND OPTION TO MAKE REPAIRS. LESSEE agrees that LESSOR may enter upon the Leased Premises at any time during the term of this Lease or any extension thereof during business hours and upon reasonable prior notice for the purpose of inspection. LESSOR shall have the right and privilege, through its representatives, agents and officials, to make inspections of the Leased Premises and Improvements and thereafter to make recommendations to LESSEE of any maintenance or repairs that accord with the provisions of Section 5.01 above. However, LESSOR has no duty or obligation to inspect the Leased Premises. LESSEE agrees and covenants that it shall commence such maintenance or repairs within forty-five (45) days) from the date that such recommendations are made unless LESSEE disputes, in good faith, whether or not maintenance or repairs are required. Such maintenance or repairs shall be made in an expeditious and conscientious manner. In the event that LESSEE shall fail to commence such recommended and undisputed maintenance or repairs within the time provided, it is understood and agreed that LESSOR may, within its discretion, after fifteen (15) days prior written notice of its intent to do so, make such maintenance or repairs as it deems necessary for and on behalf of LESSEE; and in such event, the cost of such maintenance or repairs shall be paid by LESSEE within thirty (30) days following its receipt of the billing for said maintenance or repairs. LESSOR has no duty or obligation to maintain or make repairs to the Leased Premises.

Section 5.03 DAMAGES. Should LESSOR undertake any repairs in accordance with Section 5.02, LESSEE hereby waives any claim for damages, consequential or otherwise, as a result therefrom, except to the extent of claims and damages arising from the LESSOR's negligence. The foregoing shall in no way affect or alter the primary

obligations of the LESSEE as set forth in this Lease and shall not impose or be construed to impose upon LESSOR any obligations to maintain the Leased Premises, unless specifically stated otherwise herein.

Section 5.04. ALTERATION AND REMODELING. Any exterior or structural changes to erected Improvements desired by LESSEE shall require the prior written consent of LESSOR, which consent shall not be unreasonably withheld. No consent shall be required for changes to mowed open space, landscaping, lighting, open space amenities or other non-building improvements.

Section 5.05. COMPLIANCE WITH GOVERNMENTAL REGULATIONS. LESSEE shall fully comply with all of the ordinances of the City of Plano applicable to the Leased Premises and any Improvements on the Leased Premises, and in connection therewith promptly fulfill all orders and requirements applicable to LESSEE's occupation of and operation upon the Leased Premises as imposed by the Code Enforcement, Health, Police and other departments for the correction, prevention and abatement of nuisances or hazards which may exist by reason of the condition of the premises or improvements on the Leased Premises. LESSEE covenants also that it will comply with all state and federal laws and regulations in its use and occupation of the Leased Premises.

Section 5.06. DISPUTE RESOLUTION. In the event of a dispute under Section 5.02 above, the LESSOR and LESSEE will, within thirty (30) days of written request by either party, appoint a mutually agreeable licensed architect or engineer to make a final and binding determination as to the issue in dispute. In the event the LESSOR and LESSEE cannot mutually agree on a licensed architect or engineer, each will select a licensed architect or engineer who will together agree upon a third licensed architect. This panel of three architects will, by at least a two-thirds (2/3) vote, make a final and binding decision as to the dispute. None of the architects shall be agents, officers or employees of either the LESSOR or LESSEE. Any costs or fees incurred under this section shall be shared equally by both parties.

VI. IMPROVEMENTS

Section 6.01. INITIAL CONSTRUCTION OF IMPROVEMENTS.

- (a) LESSEE intends to and covenants to commence construction of the Improvements to the Leased Premises including, but not limited to, the complete removal or the water tower and associated above-ground infrastructure on the Leased Premises in accordance to the specifications and plan approval of the City of Plano within the twelve (12) months following the Effective Date of this Lease, which shall be constructed and substantially completed within twelve (12) months following the commencement of construction, subject to force majeure. These Improvements shall include the complete demolition and removal of all existing water-tower improvements, including the foundation and appurtenances, and utilities, save utilities which may be reused or repurposed during this initial term of construction. These Improvements shall also include the grading of the Leased Premises and the

reestablishment of turf except that portions of the Leased Premises may be otherwise improved in accordance with the terms of this Lease.

- (b) For any vertical enclosed building improvements, if any (but not for the demolition work or any landscaping or other open space, green space or amenity work):
 - (i) Plans and specifications for such Improvements shall be prepared by state-licensed architects or engineers and shall comply with all applicable federal, state or municipal laws, ordinances, rules, regulations and requirements;
 - (ii) Plans and specifications for such Improvements shall be submitted to the LESSOR's Director of Engineering (hereinafter referred to as the "Director") or his designee, and no construction shall begin on such Improvements until said plans and specifications are approved by the Director or his designee, which approval shall not be unreasonably withheld or delayed, so long as the design of such improvements are compatible with the useage of the Leased Premises;
 - (iii) Prior to commencement of construction, LESSEE shall furnish to LESSOR a preliminary budget setting forth the estimated construction costs for any Improvements and a statement indicating that LESSEE reasonably anticipates being able to cover such expenses.
- (c) LESSEE shall require its general contractor to furnish a bond by surety companies authorized to do business in the State of Texas, which bond shall be in the amount of the construction contract and shall contain the form as is customarily required by LESSOR in projects constructed on LESSOR's properties on a nature to the Improvements. LESSEE shall secure a payment and performance bond from its general contractor in the full amount of the budgeted costs of construction.
- (d) LESSEE shall require the following language in all construction contracts for any Improvements:

"CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY OF PLANO AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF CONTRACTOR, ITS OFFICERS,

AGENTS, EMPLOYEES, SUBCONTRACTORS, INVITEES OR ANY OTHER PERSON, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT, AND CONTRACTOR WILL AT HIS OR HER OWN COST AND EXPENSE DEFEND AND PROTECT THE CITY OF PLANO FROM ANY AND ALL SUCH CLAIMS AND DEMANDS, SUCH INDEMNITY SHALL APPLY WHETHER THE CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF PLANO, ITS OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY OF PLANO FROM THE CONSEQUENCES OF THE CITY OF PLANO'S OWN NEGLIGENCE, WHERE THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE. IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR OR ANY SUBCONTRACTOR UNDER WORKERS' COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS."

- (e) LESSEE shall require the Contractors who are to perform the Improvements to furnish insurance in such amounts as specified below and include in all construction contracts for the Improvements the following language:

Prior to commencement of any activity permitted on City of Plano's property, Contractor shall purchase and maintain during the term of this Lease, at its own expense, hereinafter stipulated minimum insurance satisfactory to the City of Plano's Risk Manager. Contractor shall not allow any subcontractor to commence work until all similar insurance of the subcontractor has been obtained. All insurance policies provided under this Lease shall be written on an "occurrence" basis.

Workers' Compensation, statutory, as required by law, and Employer's Liability Insurance of not less than **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)** for each accident, **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)** disease for each employee, **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)** disease as policy limit.

Commercial General Liability Insurance, including Independent Contractor's Liability, Products/Completed Operations and Contractual Liability, covering, but not limited to the indemnification provisions of this Lease, fully insuring Contractor's liability for injury to or death of employees of the City of Plano and third parties, extended to include personal injury liability coverage, and for damage to property of third parties, with a combined bodily injury and property damage minimum limit of **ONE MILLION DOLLARS (\$1,000,000.00)** per occurrence.

Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of ONE MILLION DOLLARS (\$1,000,000.00).

"Umbrella" Excess Liability Insurance, insuring the Contractor for an amount not less than **ONE MILLION DOLLARS (\$1,000,000.00)** combined single limit bodily injury and property damage liability insurance, including death, in excess of the primary coverage required herein above.

Builder's Risk. The LESSEE shall purchase a completed value builder's risk policy for the duration of this project.

- (f) For all Improvements, the following shall apply:
- (i) LESSEE shall, at its expense, make arrangements for the installation, disconnection or connection of whatever utilities it may desire or need in connection with the use of Improvements or additions made by the LESSEE to the Leased Premises. LESSEE acknowledges that LESSOR is not responsible for providing utility service to LESSEE. Any construction performed by LESSEE within any utility easement area must meet utility company and City of Plano criteria for design and construction in such easement area. Any and all connections to water and sewer lines must occur at the existing utility connection points, unless otherwise agreed to in writing by LESSOR. LESSOR will allow new easements as required for the Improvements contemplated by this Lease. All costs incurred with any relocation of existing utility lines or facilities or installation of additional utility lines or facilities shall be entirely at LESSEE's expense whether on or off the Leased Premises. LESSEE shall also provide LESSOR legal descriptions for any required utility easements;
 - (ii) LESSEE shall be responsible for any costs LESSOR incurs to relocate or replace any public communications or emergency warning equipment currently located on or adjacent to the Leased Premises as may become necessary for LESSEE to construct the various Improvements contemplated by this Lease. LESSEE agrees and covenants that it shall reimburse LESSOR for any

such costs incurred by LESSOR within forty-five (45) days of receiving documentation from LESSOR that such costs have been incurred, unless LESSEE disputes, in good faith, whether or not such costs are required.

- (g) It is agreed by all parties to this Lease that the insurance required under this Lease, including that required above, shall:
- (i) Be written with the City of Plano as an additional insured on all applicable policies. City of Plano is self-insured and this self-insurance program shall not be deemed or considered "other insurance".
 - (ii) Provide for thirty (30) days notice of cancellation to the City of Plano for nonpayment of premium, material change or any other cause.
 - (iii) Waive subrogation rights for loss or damage so that insurers have no right to recovery or subrogation against the City of Plano, it being the intention that the required insurance policies shall protect all parties to the Lease and be primary coverage for all losses covered by the policies.
 - (iv) Provide a Certificate of Insurance evidencing the required coverages to:

City of Plano
Attention: Risk Manager
Post Office Box 860358
Plano, Texas 75086-0358

Section 6.02. CONSTRUCTION OF ADDITIONAL IMPROVEMENTS. If, after the removal of the water tower, LESSEE maintains the Leased Premises as mowed open space, LESSEE shall construct and install any proposed open space amenities, if any, on the Leased Premises within six (6) months of LESSEE obtaining or receiving a building permit to develop any property within "Legacy West" which is North of Headquarters Drive and is adjacent to or within 200 feet of the Leased Premises. Such construction shall be conducted in compliance with paragraph 6.01(b)-(g).

Section 6.03. COST OF IMPROVEMENTS. The complete cost of developing all necessary plans and specifications and the cost of the construction of any Improvements themselves shall be borne solely by LESSEE and shall be at no expense to LESSOR whatsoever.

Section 6.04. OWNERSHIP OF IMPROVEMENTS. It is expressly agreed and understood that all alterations and Improvements on the Leased Premises at the commencement of the term, or those that may be erected or installed during the term, shall, at the expiration or sooner termination of this Lease, become part of the Leased Premises and the property of the City of Plano.

Section 6.05 LIENS. LESSEE shall discharge all obligations to contractors, subcontractors, materialmen, workmen and/or other persons for all work performed and for materials furnished for or on account of LESSEE as such obligations mature. LESSEE expressly agrees that it will neither give nor grant, nor purport to give or grant any mechanic's or materialmen's lien upon the LESSOR's property or upon any improvements thereupon in the process of construction or repair, nor allow any condition to exist or situation to develop whereby any party should be entitled, as a matter of law, to a mechanic's or materialmen's lien against the LESSOR's property or improvements thereon, and LESSEE will discharge, contest or "bond around" any such lien within thirty (30) days after notice of filing thereof.

Section 6.06. MISCELLANEOUS.

- (a) LESSEE agrees that all work to be performed by it or its contractors, including all workmanship and materials, shall be of first-class quality and shall be performed in full compliance and in accordance with all federal, state and local laws, ordinances, codes and regulations, and such work shall be subject to LESSOR inspection during the performance thereof and after it is completed. However, the LESSOR has no duty to inspect.
- (b) LESSEE shall repair any damage to any offsite improvements of Lessor caused by or resulting from any activities or construction by LESSEE, or LESSEE's agents, employees and contractors.

Section 6.07. ADDITIONAL IMPROVEMENTS; REPAIRS AND MAINTENANCE; ALTERATIONS. LESSEE shall have the right to construct additional or replacement Improvements on the Leased Premises in compliance with paragraph 6.01(b)-(g) so long as the additional or replacement Improvements are of like kind and nature as the Improvements or are consistent with the usage of the Leased Premises. LESSEE shall have the right to alter the Improvements in connection with the repair, maintenance or improvement thereof without the prior written consent of LESSOR, so long as such alterations do not involve structural modifications to the foundation or exterior, if any, of the Improvements.

**VII.
INSURANCE AND INDEMNITY**

Section 7.01. INDEMNITY.

- (a) LESSEE does hereby agree to waive all claims, release, indemnify and hold harmless LESSOR and all of its officers, officials, agents, and employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorney's fees, including all expenses of litigation or settlement, or causes of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property, arising out of or in connection with this Lease, or any and all activity or use pursuant to this Lease, whether on, about or off the Leased Premises, occasioned by error, omission, or negligent act of LESSEE, its officers, agents, employees, invitees, or other person for whom it is legally liable, with regard to the

performance of this Lease, other than claims arising out of the City's gross negligence.

- (b) In addition, LESSEE does hereby agree to waive all claims, release, indemnify, defend and hold harmless LESSOR and all of its officers, officials, agents, and employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorney's fees, including all expenses of litigation or injury to or death of any LESSEE employee or volunteer or for loss of, damage to, or loss of use of any property of any LESSEE employee or volunteer, arising out of or in connection with the performance of this Lease, other than claims arising out of the City's gross negligence. This indemnification by LESSEE shall include, but not be limited to, liability arising from workers' compensation and general liability claims.

Section 7.02. INSURANCE. Prior to the commencement of any activity permitted on the Leased Premises, LESSEE shall purchase and maintain during the term of this Lease and any extensions thereof, at its own expense, the hereinafter stipulated additional minimum insurance satisfactory to the LESSOR's Risk Manager.

- (a) Workers' Compensation: Statutory, as required by law, and Employer's Liability Insurance of not less than **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)** for each accident, **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)** disease for each employee **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)** disease as policy limit.
- (b) General Liability: **ONE MILLION DOLLARS (\$1,000,000.00)** per occurrence for bodily injury, including death, personal injury and property damage, and fully insuring and covering the indemnification provisions of this Lease. The policy shall have no standard coverages removed by exclusion. The policy shall include coverage for premises operation, independent contractors, products/completed operations, personal and advertising injury, contractual liability, fire legal liability and medical payments expense. A **ONE HUNDRED THOUSAND DOLLAR (\$100,000.00)** limit for fire legal liability is required.
- (c) Fire and Extended Coverage Insurance covering the improvements presently existing on, or hereafter created on the Leased Premises or off the Leased Premises in accordance with this Lease, against loss or damage by fire, windstorm, hail, tornado, explosion, water, lightning, rain, sleet, snow, sprinkler leakage, riots, civil commotion, vandalism, malicious mischief and aircraft/vehicle damage. This type of insurance shall be carried with a company of companies satisfactory to LESSOR and in an amount of coverage not less than replacement cost of the property dedicated to or necessary to performance of LESSEE's obligations under this Lease, and the policy or policies of insurance shall be issued to the LESSEE and LESSOR, as their interests may appear.
- (d) The City of Plano shall be named as an additional insured on applicable policies. The City of Plano is self-insured and this self insurance program

shall not be deemed or considered "other insurance". The policy shall contain the appropriate additional insured endorsement signed by a person authorized by that insurer to bind coverage on its behalf.

- (e) The insurance policies shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been provided to LESSOR.
- (f) The insurance policies shall be written on an "occurrence" basis.
- (g) The insurance policies shall waive subrogation rights for loss or damage so that insurers have no right to recovery or subrogation against LESSOR, it being the intention that the required insurance policies shall protect all parties to the Lease and be primary coverage for all losses covered by the policies.
- (h) Certificates of Insurance and endorsements effecting coverage required by this clause shall be forwarded to:

City of Plano
Attention: Risk Manager
Post Office Box 860358
Plano, Texas 75086-0358

- (i) LESSEE shall be responsible for the contents of the Leased Premises and should procure insurance for such as LESSEE desires.
- (j) LESSOR reserves the right to review the insurance requirements of this section during the effective period of the Lease, and any extensions thereof, and to adjust insurance coverages and their limits when required by law or applicable court decisions. LESSOR agrees that in the event such adjustment is required, LESSEE shall be given sixty (60) days to obtain such coverage.

VIII. DESTRUCTION OF LEASED PREMISES

Section 8.01. DAMAGE TO IMPROVEMENTS. In the event of damage to Improvements erected by LESSEE, LESSEE will immediately notify LESSOR of the nature and extent of such damage. In the event of damage or destruction to the Improvements, LESSOR shall have no obligation or duty to repair, rebuild or reconstruct the Improvements or any fixtures, equipment or other personal property installed by LESSEE.

Section 8.02. INSURANCE PROCEEDS. All proceeds of the insurance contemplated by the provisions of this Lease payable by reason of any loss or damage to the Leased Premises, or any portion thereof, or the Improvements shall be paid to LESSEE and utilized for reconstruction or repair, as the case may be, of any damage to

or destruction of the Leased Premises or any portion thereof. Any excess proceeds of insurance remaining after the completion of the restoration or reconstruction of the Leased Premises shall be paid to LESSEE. If LESSEE elects not to repair and restore, and the Lease is terminated as described in Section 8.03, all such insurance proceeds shall be allocated to and retained by LESSEE.

Section 8.03. RECONSTRUCTION OF THE LEASED PREMISES.

- (a) If during the term the Leased Premises is totally or partially destroyed by a risk covered by the insurance described in this Lease (herein called **"An Insured Risk"**) and the Leased Premises thereby is rendered unsuitable in LESSEE's reasonable opinion for its intended use, this Lease shall terminate as of the date of the casualty and neither LESSOR nor LESSEE shall have any further liability hereunder except for any liabilities which have arisen prior to or which survive such termination, and all insurance proceeds shall be allocated to LESSEE. If LESSEE elects to terminate Lease because of partial or total destruction of the Leased Premises, LESSEE, at LESSEE's expense, will clean up and scrape Improvements, including removal of slab if required by LESSOR, and will place the Leased Premises in a condition whereby it constitutes unimproved land.
- (b) If during the Term the Leased Premises is partially destroyed by An Insured Risk, but the Leased Premises is not thereby rendered unsuitable for LESSEE's use, or is totally destroyed by An Insured Risk but LESSEE desires to reconstruct the Leased Premises, LESSEE shall, to the extent of available insurance proceeds, restore the Leased Premises to substantially the same condition as existed immediately before the damage or destruction and otherwise in accordance with the terms of the Lease, except that if the water tower has not yet been removed it shall be removed as part of the restoration, and this Lease shall not terminate as a result of such damage or destruction. LESSEE shall utilize the available insurance proceeds to pay the reasonable costs of such restoration. Any excess proceeds remaining after such restoration shall be allocated to LESSEE.
- (c) If the Leased Premises are to be restored in accordance with the provisions of Section 8.03(b) and if the cost of the repair or restoration exceeds the amount of proceeds received by LESSEE from the insurance required under this Lease, or in the event the Leased Premises is totally or materially damaged or destroyed by a risk not covered by the insurance described in this Lease, LESSEE at its option shall either (a) at LESSEE's sole cost and expense, restore the Leased Premises to substantially the same condition it was in immediately before such damage or destruction and this Lease shall not terminate as a result of such damage or destruction, or (b) terminate the Lease and neither LESSOR nor LESSEE shall have any further liability hereunder except for any liabilities which have arisen or occurred prior to such termination and those which expressly survive termination of this Lease. If LESSEE elects to terminate Lease because of partial or total destruction of the Leased Premises, LESSEE, at LESSEE's expense, will clean up and scrape

Improvements, including removal of slab if required by LESSOR, and will place the Leased Premises in a condition whereby it constitutes unimproved land.

Section 8.04 RELEASE. LESSEE covenants and agrees that it will not hold LESSOR or any of its agents or employees responsible for any loss occasioned by fire, theft, rain, windstorm, hail or any other cause whatsoever, whether said cause be the direct, indirect or merely a contributing factor in producing the loss to any personal property that may be stored on the Leased Premises, whether caused in whole or in part by the negligence of LESSOR or its officials, officers, agents or employees; and LESSEE agrees all personal property is to be stored at LESSEE's risk.

IX. CONDEMNATION

Section 9.01. TOTAL TAKING. If, after the commencement date, the Leased Premises shall be taken in its entirety by right of eminent domain for any public or quasi-public use, then, when possession shall be taken thereunder by the condemnor, or LESSEE is deprived of its practical use of the Leased Premises and other improvements, whichever date is earlier, this Lease and all rights of LESSOR and LESSEE hereunder shall terminate and any rental and all other payments required of LESSEE shall be immediately paid by LESSEE to LESSOR through the date of taking. In no event shall LESSOR exercise its rights of condemnation in order to simply defeat LESSEE's rights hereunder.

Section 9.02. PARTIAL TAKING. In the event of a partial taking of any part of the Leased Premises as a result of which the remaining portion of the Leased Premises cannot be utilized in a manner consistent with the usage of the Leased Premises provided for in this Lease, then this Lease, at LESSEE's option, shall terminate as of the time when possession of the Leased Premises shall be taken by the condemnor or LESSEE is deprived of its practical use thereof, whichever date is earlier. If the Leased Premises can be utilized in a manner consistent with the usage of the Leased Premises provided for in this Lease, then this Lease shall not be affected and LESSEE shall retain the remaining portion thereof; provided, however, that the rent shall be reduced on an equitable basis.

Section 9.03. EMINENT DOMAIN AWARD. If there is a taking by right of eminent domain, the rights and obligations of LESSOR and LESSEE with reference to the award and the distribution thereof shall be allocated between LESSOR and LESSEE on the following basis:

- (a) All proceeds, whether attributable to the Leased Premises or LESSEE's Leasehold Estate shall be allocated first to the expenses incurred by LESSOR or LESSEE in connection with defending the proceedings, then to costs of repair, alteration, renovation or improvement to the Leased Premises, with the balance to be allocated pursuant to subparagraph (b) below.

- (b) The balance of any award for partial taking and the award for a taking of the Leased Premises in its entirety shall be first allocated to LESSEE in an amount equal to costs incurred in connection with the construction of the Improvements contemplated hereby.
- (c) The balance of any award shall be paid to and retained by LESSOR and Lessee in equal parts until LESSEE has received the value of LESSEE's remaining leasehold, with LESSOR receiving any remaining award.

X. DEFAULT

Section 10.01. EVENTS OF DEFAULT. The following events shall be deemed to be events of default by LESSEE under this Lease:

- (a) LESSEE shall fail to pay any monetary consideration when due, and such failure shall continue for a period of fifteen (15) days after notice of such delinquency is delivered to LESSEE.
- (b) LESSEE shall fail to comply with any term, provision, clause, sentence, covenant or any other item of this Lease, other than the payment of consideration as described above, and shall not cure (or commence to cure if a longer period is required under the circumstances) such failure within forty-five (45) days after written notice thereof to LESSEE.
- (c) LESSEE shall cease using the Leased Premises for the purposes intended by this Lease for a period of ninety (90) days or more after receiving written notice of such cessation from Lessor.
- (d) It is recognized that if LESSEE is adjudged a bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate LESSEE's performance of this Lease. Accordingly, it is agreed that upon the occurrence of any such event, LESSOR shall be entitled to request of LESSEE or its successor in interest adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within sixty (60) days of delivery of the request shall entitle LESSOR to terminate this Lease and to the accompanying rights set forth below.

Section 10.02 REMEDIES. Upon the occurrence of any event of default specified above, and in addition to any other remedies LESSOR may be entitled to at law or in equity, LESSOR shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

- (a) Terminate this Lease in which event LESSEE shall immediately surrender the Leased Premises to LESSOR; and if LESSEE fails to do so, LESSOR may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession and expel or remove LESSEE and any other person who may be occupying

said Leased Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefore; and LESSEE agrees to pay to LESSOR on demand the amount of all actual (but not consequential) loss and damages which LESSOR may suffer by reason of such termination, whether through inability to relet the Leased Premises on satisfactory terms or otherwise.

- (b) Enter upon and take possession of the Leased Premises and expel or remove LESSEE and any other person who may be occupying the Leased Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefore; and if LESSOR so elects; relet the Leased Premises on such terms as LESSOR shall deem advisable and receive the rent thereof; and LESSEE agrees to pay to LESSOR on demand any deficiency that may arise by reason of such reletting.
- (c) Enter upon the Leased Premises without being liable for prosecution or any claim of damages therefore and do whatever LESSEE is obligated to do under the terms of this Lease; and LESSEE agrees to reimburse LESSOR on demand for any expenses which LESSOR may incur, thus effecting compliance with LESSEE's obligations under this Lease; and LESSEE further agrees that LESSOR shall not be liable for any damages resulting to LESSEE from such action.

Section 10.03. ELECTION TO TERMINATE IN EVENT OF DEFAULT. No reentry or taking possession of the Leased Premises by LESSOR shall be construed as an election on its part to terminate this Lease unless a written notice of such intention shall be given to LESSEE. Notwithstanding any such re-letting or re-entry or taking possession, LESSOR may at any time thereafter elect to terminate this Lease for a previous default. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall the pursuit of any remedy herein provided constitute a forfeiture or waiver of any payments due to LESSOR hereunder or of any damages accruing to LESSOR by reason of the violation of any of the terms, provisions and covenants herein contained. LESSOR's acceptance of payments following an event of default hereunder shall not be construed as LESSOR's waiver of such event of default. No waiver by LESSOR of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Forbearance by LESSOR to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. The loss or damage that LESSOR may suffer by reason of termination of this Lease or the deficiency from any reletting as provided for above shall include the expense of repossession and any repairs or remodeling undertaken following repossession. Should LESSOR at any time terminate this Lease for any default, in addition to any other remedy LESSOR may have, LESSOR may recover from LESSEE all damages LESSOR may incur by reason of such default, including cost of recovering the Leased Premises and reasonable attorney's fees expended by reason of default.

**XI.
DEVELOPMENT TERMINATION**

Section 11.01. TERMINATION OF LEASE AS PART OF DEVELOPMENT AGREEMENT. In the event that a reinvestment zone, or a similar development area as provided by state or federal law, is designated as provided by law which includes the entire Leased Premises, the LESSOR, at its sole discretion, may terminate the provisions of this Lease upon thirty (30) days written notice to LESSEE. Upon LESSOR providing LESSEE with written notice of its intention to terminate the Lease as provided herein, LESSOR shall, at its sole cost, obtain an appraisal of the fair market value of the fee interest of the Leased Premises as if the Lease was not in effect, and LESSOR shall provide said appraisal to LESSEE.

Section 11.02. LESSEE'S OPTION TO PURCHASE IN EVENT OF TERMINATION. In the event that LESSOR exercises its right to terminate this Lease pursuant to the provisions of Section 11.01, LESSEE shall have the option to purchase all, but not less than all, of the Leased Premises at the fair market value contained in the appraisal provided to it in accordance with Section 11.01. The deadline for LESSEE to exercise its option is the latter of thirty (30) days from the termination of the Lease or thirty (30) days after LESSEE's receipt of the appraisal from LESSOR. In the event LESSEE exercises its option to purchase the Leased Premises, the closing of such purchase shall occur within thirty (30) days after the exercise of the option. In the event LESSEE exercises its option, LESSEE shall bear all closing costs, including title, escrow, and recording fees.

Section 11.03. EXERCISE OF OPTION NOT MANDATORY. Nothing in this Article should be interpreted to imply that LESSEE has any obligation to exercise its option as provided in Section 11.02. LESSEE's decision to exercise its option is in its sole discretion.

Section 11.04. EXPIRATION OF OPTION UNDER CERTAIN CONDITIONS. LESSEE's option to purchase the Leased Premises in the event of LESSOR's termination pursuant to Section 11.01 shall expire and be void *ab initio* in the event of any development in constitutional law, statutory law or case law which would result in LESSEE's purchase in the manner prescribed in Section 11.02 being prohibited by law.

**XII.
SURRENDER**

Section 12.01. SURRENDER. In the event that this Lease is terminated in accordance with its terms, upon such termination, LESSEE shall vacate the property no later than the date of termination and shall leave the property in substantially the same condition it was in on the date this Lease became effective along with the any Improvements, normal wear and tear and damages due to casualty excepted.

**XIII.
TAXES AND IMPOSITIONS**

Section 13.01. PAYMENTS OF IMPOSITIONS. The parties recognize that the Leased Premises and Improvements and LESSEE's leasehold estate created pursuant to the provisions of this Lease are tax exempt, as of the date hereof. To the extent the

tax exempt status for the Leased Premises, improvements or leasehold estate created hereby are hereafter withdrawn or changed, LESSOR and LESSEE shall be responsible for payment of applicable taxes as follows:

- (a) LESSOR will be responsible for all taxes attributable to the Leased Premises exclusive of the LESSEE's Improvements; and
- (b) LESSEE will be responsible for taxes attributable to the Improvements and LESSEE's leasehold estate.

Section 13.02. PAYMENT BEFORE DELINQUENCY. Any and all impositions and installments of impositions required to be paid by LESSEE under this Lease shall be paid by LESSEE at least ten (10) days before each such imposition, or installment thereof, becomes delinquent, and the official and original receipt for the payment of such imposition or installment thereof shall immediately be given to LESSOR.

Section 13.03. INDEMNIFICATION. LESSEE shall indemnify and defend LESSOR and the Leased Premises and any improvements now or hereafter located on the Leased Premises free and harmless from any claims, causes of action, liabilities, losses, damages, expenses, including attorney's fees and costs, resulting from any impositions required by this **Article XIII** to be paid by LESSEE, and from all interest, penalties, and other sums imposed thereon, and from any sale or other proceeding to enforce collection of any such imposition.

XIV. HOLDING OVER

Section 14.01. HOLDING OVER WITH CONSENT. In the event that LESSEE holds over and remains in possession of the Leased Premises with the written consent of the LESSOR, that holding over shall be deemed to be from month to month only, and upon all of the same rents, terms, covenants and conditions as contained in this Lease.

Section 14.02. HOLDING OVER WITHOUT CONSENT. In the event that LESSEE holds over and remains in possession of the Leased Premises without consent of the LESSOR, that holding over shall render LESSEE a trespasser.

XV. NONDISCRIMINATION

Section 15.01. NONDISCRIMINATION. The LESSOR and LESSEE, for itself and its representatives do hereby agree that no persons on the grounds of race, color, sex, religion, age, national origin, genetic information, sexual orientation, gender identity, disability status or United States military/veteran status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises.

XVI. MISCELLANEOUS

Section 16.01 NOTICES. Any notice provided for herein shall be given by written instrument, personally delivered or sent by U.S. mail, postage prepaid, to:

LESSOR: City of Plano
City Manager
Post Office Box 860358
Plano, Texas 75086-0358

with copy to: City Attorney
City of Plano
Post Office Box 860358
Plano, Texas 75086-0358

LESSEE: SWC Tollway & 121, LLC
c/o Team Legacy Land LLC
7200 Bishop Road, Suite 250
Plano, Texas 75024
Fehmi Karahan

with copy to: R.J. Grogan, Jr.
c/o Grogan & Brawner P.C.
2808 Fairmount, Suite 150
Dallas, Texas 75201

and a further copy to: JC Penney Corporation, Inc.
6501 Legacy Drive, M.S. 1104
Plano, Texas 75024
Attn: Real Estate Legal

or such address that LESSOR or LESSEE designates in writing to the other party.

Section 16.02. ENTIRE AGREEMENT. This Lease embodies the complete agreement of the parties hereto superseding all oral or written previous and contemporary agreements between the parties relating to matters herein and, except as otherwise provided herein, cannot be modified without written agreement of the parties.

Section 16.03. APPLICABLE LAWS. This Lease is entered into subject to the charter and ordinances of LESSOR as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal, state and local laws. LESSEE also agrees to obtain, from all governmental authorities having jurisdiction, all licenses, certificates and permits necessary for the conduct of its operations and to keep them current.

Section 16.04. SEVERABILITY. If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this Lease are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this Lease shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 16.05. SUCCESSORS AND ASSIGNS. LESSOR and LESSEE shall bind themselves, their successors, executors, administrators and assigns to the other party to this Lease. Neither LESSOR nor LESSEE will assign, sublet, subcontract or

transfer any interest in this Lease without the written consent of the other party. No assignment, delegation of duties or subcontract under this Lease will be effective without the written consent of LESSOR.

Section 16.06. REMEDIES. No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy by law of equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Lease may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Lease.

Section 16.07. FINANCING. LESSEE may, at any time and from time to time, encumber LESSEE's leasehold interest by deed of trust, mortgage or other security instrument without obtaining the consent of LESSOR, but no such encumbrance shall constitute a lien on the fee title of LESSOR in and to the Leased Premises. Any indebtedness secured by any encumbrance covering LESSEE's leasehold estate shall at all times be and remain inferior and subordinate to all the conditions, covenants and obligations of this Lease and to all the rights of LESSOR under this Lease, including LESSOR's rights upon the termination hereof to receive title to the Improvements free and clear of all liens and encumbrances and any such deed of trust or mortgage shall contain such express subordination language. Any encumbrance created by LESSEE on its leasehold estate shall be without cost or expense to LESSOR and to the extent LESSOR incurs any cost or expense in respect thereto, LESSEE shall promptly reimburse LESSOR for such costs or expenses.

Section 16.08 INDEPENDENT CONTRACTOR. LESSEE covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of LESSOR and that LESSEE shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between LESSOR and LESSEE, its officers, agents, employees, contractors, subcontractors, and consultants, and nothing herein shall be construed as creating a partnership between LESSOR and LESSEE.

Section 16.09. NON-WAIVER. It is further agreed that one (1) or more instances of forbearance by LESSOR in the exercise of its rights herein shall in no way constitute a waiver thereof.

Section 16.10. VENUE. The parties to this Lease agree and covenant that this Lease will be enforceable in Plano, Texas and that if legal action is necessary to enforce this Lease, exclusive venue will lie in Collin County, Texas.

Section 16.11. LESSOR's GOVERNMENTAL POWERS AND IMMUNITIES. It is understood and agreed that LESSOR, through the execution of this Lease, does not waive or surrender any of its governmental powers or immunities.

Section 16.12. HEADINGS. The headings of this Lease are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

Section 16.13. ATTORNEY'S FEES. In the event that either party hereto brings any action or files any proceeding in connection with the enforcement of its respective

rights under this Lease as a consequence of any breach by the other party of its obligations under this Lease, the prevailing party in such action or proceeding shall be entitled to have its reasonable attorney's fees and out-of-pocket expenditures paid by the losing party. All such fees shall be deemed to have accrued upon the commencement of such action.

Section 16.14. AMENDMENTS IN WRITING. This Lease cannot be orally amended or modified. Any modification or amendment hereof must be in writing and signed by the party to be charged.

Section 16.15. MUTUAL ASSISTANCE; GOOD FAITH. During the term of this Lease, to the extent practicable, the parties agree to cooperate fully, to work in good faith, and to mutually assist each other in the performance of this Lease. In this connection, the parties shall, from time to time, meet upon the reasonable request of each other and shall confer in good faith, amicably and in a businesslike manner, with respect to the current and future operation of the Leased Premises and with a view toward resolving any problems which may arise. Except as otherwise provided herein, a party shall not unreasonably withhold its approval of any act or request of the other as to which its approval is necessary or desirable.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the day and year written above.

CITY OF PLANO, TEXAS, a home-rule
municipal corporation

By _____
Name _____
Title _____

SWC TOLLWAY & 121 LLC,
a Delaware limited liability company

By: Team Legacy Land, LLC
a Texas limited liability company
its Manager

By: _____
Fehmi Karahan, President

REPLAT
 LEGACY WEST
 LOT 1 AND LOT 2, BLOCK B
 LOT 1, BLOCK C
 LOT 1R, BLOCK D
 LOT 1 AND LOT 2, BLOCK E
 BEING A REPLAT OF LOT 1 AND LOT 2, BLOCK B; J.C. PENNEY
 HEADQUARTERS
 LOT 1, BLOCK D, J.C. PENNEY HOME OFFICE
 LOT 1, BLOCK D, LEGACY WEST
 258.356 ACRES SITUATED IN THE
 COLLIN COUNTY SCHOOL LAND SURVEY NO. 5 ABSTRACT NO. 150
 COLLIN COUNTY SCHOOL LAND SURVEY NO. 5 ABSTRACT NO. 149
 J.C. BARROW SURVEY ABSTRACT NO. 90
 H.N. THOMPSON SURVEY ABSTRACT NO. 896
 GARLAND R. MARTIN SURVEY ABSTRACT NO. 622
 HENRY COOK SURVEY ABSTRACT NO. 183
 CITY OF PLANO, COLLIN COUNTY, TEXAS

Kimley»»Horn

12750 Merit Drive, Suite 1000
 Dallas, Texas 75251

FIRM # 10115500

Tel. No. (972) 770-1300
 Fax No. (972) 239-3820

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 100'	SRD	DAB	DEC. 2014	068111009	4 OF 7

DWG NAME: K10DAL_SURVEY068111009-LEGACY WEST PLANO.DWG PLOTTED BY: DUNN, STACY 1/22/2015 3:05 PM LAST SAVED 1/2