FILED
16-0408
11/14/2016 4:03:50 PM
tex-13781145
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. 16-0408

In the
SUPREME COURT OF TEXAS

Eldorado Land Company, L.P.,

Petitioner,

v.

City of McKinney,

Respondent.

Petition from the Court of Appeals, Fifth District of Texas
Dallas, Texas

RESPONDENT'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Rules

Other Authorities

STATEMENT OF THE CASE

Nature of the Case:	This is an inverse condemnation suit arising from a provision in a special warranty deed by which Eldorado Land Company, L.P. ("Eldorado") conveyed land to the City of McKinney ("the City"). The deed restricted the City from using the land for any purpose other than a Community Park (defined broadly as a "park and recreational facility"), and gave Eldorado an option to repurchase the land if the City violated the deed restriction. Eldorado alleged that the City violated the deed restriction by building a community library on a portion of the land and failed to either reconvey the land to Eldorado or condemn Eldorado's reversionary interest. (CR 17)
Trial Court:	380th Judicial District Court of Collin County, Texas; Honorable Benjamin N. Smith, presiding judge.
Trial Court's Disposition:	Granted Eldorado's motion for partial summary judgment and denied the City's motion for summary judgment, holding that the City violated the deed restriction by building a library on a portion of the land. (CR 378, 380) After a jury trial to determine the value of the land with and without "the park-use restriction," judgment was rendered awarding Eldorado actual damages of $7,195,500 and prejudgment interest of $1,821,536.64, for a total award of $9,017,036.64. (CR 877, 883-86)
Court of Appeals:	Fifth District Court of Appeals in Dallas, Texas. Memorandum opinion by Justice Douglas Lang, joined by Justices Ada Brown and Bill Whitehill. *City of McKinney v. Eldorado Land Co., L.P.*, No. 05-15-00067-CV, 2016 WL 2349371 (Tex. App. -- Dallas May 3, 2016, pet. filed) (mem. op.).
Court of Appeals' Disposition:	Reversed and rendered, holding that the City did not violate the deed restriction by building a community library on a portion of the land.

RESPONSE TO STATEMENT OF JURISDICTION: LACK OF IMPORTANCE

There are at least four reasons for denying review in this case.

First, as discussed below in the Summary of the Argument and the Arguments in Response, the court of appeals decided this case correctly. There is no error to review.

Second, the issues Eldorado presents do not have an impact beyond the specific facts of this specific case. The deed restriction at issue has unique language not found in any other deed, and Eldorado's arguments turn on the one-of-a-kind language requiring the City to use the Property only as a "Community Park" -- defined broadly in the deed as "a park and recreational facility" operated by the City for its citizens. The questions of how this particular deed restriction should be construed, and whether the specific community library that was built on the Property fits within the scope of what the deed restriction permits, are not important to the jurisprudence of this state. The answers affect only these two parties and no one else. Indeed, in the eight months since the court of appeals issued its memorandum opinion in this case, not a single court has cited to it.

Third, although Eldorado attacks the court of appeals for "failing to consider the surrounding circumstances" of the deed restriction at the time it was executed (Br. at 1), Eldorado did not ask the court of appeals to consider surrounding circumstances; in fact, it urged the court *not* to consider the City's evidence of

surrounding circumstances. The court of appeals' opinion, consequently, is silent on this issue. Thus, this is not the right case to examine the surrounding-circumstances rule, even assuming it needs any further examination. Moreover, the evidence of surrounding circumstances in this case would only reinforce the court of appeals' holding that the City did not violate the deed restriction by building a community library on the Property. This evidence shows that Eldorado did not require the City to build a water park or any other specific type of recreational facility on the Property, as long as whatever facility the City chose to build did not create lighting, noise, or security disturbances that could adversely affect the residents of Eldorado's adjacent development. Indisputably, the library presents no such disturbances.

Fourth, Eldorado is unable to demonstrate that there is any "inconsistency among this Court's decisions" on when "surrounding circumstances" may be considered in construing unambiguous contracts (Br. at 2) -- because there is no "inconsistency." There is also no reason to consider Eldorado's argument about the maxim known as *noscitur a sociis* (Br. at 1, 21), not only because Eldorado is raising this argument for the first time, but also because it is misusing the maxim to improperly equate the phrase "recreational facility" with the different word "park."

Each of these four reasons is an independent basis for denying review of the court of appeals' memorandum opinion.

ISSUES IN RESPONSE

Compliance with Deed Restriction

The determination of liability in this case turns on whether the City violated the deed restriction requiring "that the Property shall be used only as a Community Park" -- *i.e.*, "a park and recreational facility operated by [the City] for the citizens of the City" -- when it built a community library on a portion of the Property. Did the court of appeals correctly hold that the building of the library did not violate the deed restriction, when:

- Eldorado acknowledged at oral argument that the deed restriction did not require that every portion of the Property must be both a park and a recreational facility, but rather "part of it can be park and part can be recreational facility" (Mem. Op. at 12);

- the library is a recreational facility because it provides recreational activities, functions, and physical spaces for preschoolers, school-aged children, and adults, and it is operated by the City for its citizens;

- the remainder of the Property is part of a City park;

- Eldorado never asked the court of appeals to consider the "surrounding circumstances" of the deed restriction, which in any event favor the City because they show that Eldorado did not require any specific type of recreational facility to be built on the Property;

- Eldorado's argument that a recreational facility must be "something akin to a park" (Br. at 3) is based on a misapplication of the rules of contract construction and makes no sense; and

- the evidence conclusively establishes, in any event, that public libraries are commonly and appropriately built on and as part of community parks, and thus the library here (which serves a variety of recreational purposes for the City's citizens) fits squarely within the description of what the deed restriction permits?

Unbriefed Cross-Issue: Damages Arguments Not Reached by the Court of Appeals

Eldorado measured its claimed damages by instructing its appraisal expert to disregard the existing park-use zoning restriction on the Property and instead to assume that it was zoned for office and retail use. The trial court similarly instructed the jury to value the Property "without the park-use restriction." Does the expert's opinion violate this Court's precedent by:

- assuming that the Property is zoned for office and retail use even though the evidence is undisputed that the Property has been zoned exclusively for park use since 1999;

- assuming that the Property's highest and best use is for office and retail development, despite the law that the *existing use* of land is the highest and best use; and

- making these assumptions without any evidence that the existing park-use zoning restriction will ever be eliminated or changed in the future to permit a different use?

And relatedly, did the trial court's jury instruction submit an incorrect measure of damages by impermissibly requiring the jury to disregard the existing park-use zoning restriction?

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Property at issue is a 32.652-acre tract located on the south side of Eldorado Parkway, several miles west of U.S. Highway 75, in McKinney, Texas. (PX 14; DX 1) It was originally part of a larger assemblage of over 200 acres owned by a developer named JNC Enterprises. (PX 9, 14; DX 1, 4) In 1986, McKinney's City Council approved an ordinance that zoned the entire acreage, including the Property, as a "Planned Development District" for single-family, multi-family, office, and retail use. (6 RR 97-98; DX 4) Although the Property was zoned for office and retail use under the ordinance (5 RR 39), it was vacant and being used for agricultural purposes at the time (6 RR 102-03; PX 14 at Ex. F).

In 1998, JNC Enterprises contemplated selling 101 acres out of its larger tract, including the Property, to an investment group led by Richard Myers and Paul Cheng (who later became the principal partners in Eldorado). (5 RR 38-39, 69, 72-73) With the involvement of Cheng, JNC Enterprises had a series of discussions with the City about rezoning the 101 acres, along with the remaining acres that JNC Enterprises would continue to own. (5 RR 67-69, 72-73) The City told JNC Enterprises and Cheng that any rezoning would require the conveyance of land to the City for a community park. (5 RR 40, 69-70, 74, 84; 6 RR 91-93, 118) This requirement was based on a City regulation enacted in 1989 to ensure that new residential developments would include adequate recreational areas. (6 RR 92-93; DX 3)

These discussions led to the City Council's approval on November 3, 1998 of another ordinance, which rezoned approximately 220 acres that had been part of the Planned Development District created in 1986 under the previous ordinance. (5 RR 42, 72; 6 RR 98-99, 102; PX 18; DX 5) The new ordinance delineated the specific zoning for various tracts within the 220 acres. (DX 5) Importantly, the ordinance gave the Property a "park designation," which committed the parties to a park-use zoning after the City acquired the Property. (6 RR 100; DX 5 at Section III; PX 13, 12/21/98 letter agreement at ¶ D) The Property thus became part of the existing Gabe Nesbitt Community Park, which grew to over 175 acres with the addition of the Property. (6 RR 96-97) To this day, the Property is zoned exclusively for park use. (5 RR 66, 76-77; 6 RR 99-100)

On November 5, 1998 -- two days after the enactment of the new ordinance -- JNC Enterprises contracted to sell the 101-acre tract (including the Property) to Realty Capital, a company owned by Myers. (5 RR 42-43; PX 9) The purchase price for the 101 acres was $2,490,000. (PX 9) Several weeks later, Realty Capital assigned the sales contract to Eldorado, for whom it served as general partner. (5 RR 44; PX 11, 12) Myers and Cheng are two of Eldorado's approximately 25 limited partners. (5 RR 38, 57-58)

In accordance with a letter agreement previously negotiated between JNC Enterprises and the City, Eldorado conveyed the Property to the City in April 1999

for its intended use as a park. (5 RR 45-47; 6 RR 119-20; PX 13, 14) Although the sales contract attached a drawing showing a proposed aquatic center or water park on the Property, the drawing was marked as a "concept plan" and the sales contract (as well as a subsequent amendment to the contract) did not require the City to build an aquatic center, a water park, or any other specific type of recreational facility on the Property. (PX 17; DX 1, First Amendment at ¶ 11 [App. 1]) Instead, the contract allowed the City to build whatever facility it chose, as long as the facility did not present "lighting, noise or security" disturbances that "could adversely impact" the residents of Eldorado's adjacent property. (*Id*.)

On May 28, 1999, Eldorado signed and recorded a Special Warranty Deed conveying the Property to the City for a price of $243,000. (PX 8 [App. 2]; DX 1, 2, 10) The deed provided that the conveyance was "subject to the requirement and restriction that the Property shall be used only as a Community Park," which was expressly defined "as a park and recreational facility operated by [the City] and serving the citizens of the City of McKinney." (PX 8; DX 2) If the City violated this restriction or decided not to develop the Property as a Community Park, the deed gave Eldorado the right to repurchase the Property. (*Id*.) The deed labeled this right as an "Option," and set the option price at the lesser of the Property's current fair market value or the price the City paid for the Property. (*Id*.; DX 1, 10) As Cheng later explained, the purpose of this restriction was to prevent the City from building

facilities such as a "sewage plant" or a "fire station" on the Property -- either of which "would be very annoying to the residents next door" -- and to ensure that the Property would be "a quiet park … that would be closed at night." (5 RR 75)

As the residential areas near the Property began to grow, the City decided in 2006 to build a new community library on a portion of the Property. (DX 6, 7) Construction began in 2008, and in late 2009, the City opened the John and Judy Gay Library on a two-acre tract located on the Property's northeast corner. (DX 7, 11) An aerial view of the relevant area, including the Gabe Nesbitt Community Park (outlined in yellow), the Property (outlined in red), and the John and Judy Gay Library and its parking lots (outlined in green) looks like this:

(DX 11 [App. 3])

At some point in 2009, Myers went by the Property and saw that the City was building a library on a portion of it. (5 RR 51-52) Eldorado hired a lawyer, who sent a letter to the City on September 15, 2009 claiming that the construction of the library violated the deed restriction and informing the City that Eldorado "inten[ded] to exercise the Option to purchase the Property" for the original price paid by the City to Eldorado. (5 RR 53; PX 15) Eldorado's letter gave the City ten days to respond whether it would "honor the Deed and convey the Property back" to Eldorado. (PX 15) The City did not respond to the letter. (5 RR 53-54)

On September 29, 2009, Eldorado sued the City for "inverse condemnation," alleging that the City had committed a "taking" by failing to "convey the Property back to ELC or condemn ELC's reversionary interest and option right." (CR 17) The trial court sustained the City's plea to the jurisdiction based on governmental immunity, and the Dallas court of appeals affirmed the dismissal of the suit. (CR 70) But this Court reversed, concluding "that the reversionary interest retained by El Dorado in its deed to the City is a property interest capable of being taken by condemnation." *El Dorado Land Co., L.P. v. City of McKinney*, 395 S.W.3d 798, 804 (Tex. 2013).[1] The Court -- "express[ing] no opinion … on whether a taking has

[1] After the Court issued its opinion, the caption of the case was modified to change the spelling of "El Dorado" to "Eldorado."

occurred" -- remanded for a determination of "whether the City violated its deed restrictions by building a public library on a part of the land dedicated for use as a community park and, if so, to what extent the City has taken Eldorado's interest in the restricted property." *Id*.

Following the remand, both parties moved for summary judgment on the issue of whether the City had violated the deed restriction by building a community library on a portion of the Property. In its amended motion for partial summary judgment, Eldorado argued that "[a] library is not a park" and that, as evidenced by the City's official webpage, the John and Judy Gay Library is "operated by the City's Library Department" and not by its "completely separate Parks & Recreation Department," meaning that the library cannot "be considered a park and recreational facility." (CR 65, 73)

The City, in turn, filed a no-evidence and traditional motion for summary judgment, arguing (among other points) that the City did not violate the deed restriction because the library is a "park and recreational facility" within the meaning of the deed. (CR 122, 126, 131-34) The City supported its summary-judgment motion with evidence that the library provided multiple recreational activities and facilities, including:

- a glassed-in playroom for children;
- computer terminals;

- children's story time and a designated story-time area;
- children's music classes;
- evening computer classes;
- DVD and audio book collections;
- comfortable lounge chairs; and
- a public meeting room for community groups.

(CR 195, 205) The City also offered the opinion of Galen Cranz, an expert on urban parks, that the City's "placement, design, construction, management, and use of the Library . . . did not and does not alter the character of the Property as a Community Park as that term is defined in the Deed, and … the Property, including the Library, is being used as a park and recreational facility operated by the City and serving the citizens of the City of McKinney." (CR 134, 207 [App. 4])

In its response to Eldorado's motion for partial summary judgment, the City reoffered the opinion of its urban parks expert and included additional evidence showing that: (1) the library system and the parks and recreation function are not "City departments"; (2) the two have overlapping responsibilities; (3) the recreational activities and facilities offered at the library substantially overlap with those of the City's senior recreational center, which is inarguably a recreational facility; and (4) the Property on which the library sits is part of the Gabe Nesbitt Community Park and is an integral part of the City's hike-and-bike trail system. (CR 301, 337-60) Eldorado, in turn, responded to the City's motion by repeating its

previous argument that a "library is not a park," and asserting that the affidavit testimony of the City's urban parks expert "is irrelevant." (CR 215, 224-27) Eldorado did not rely on the circumstances surrounding the execution of the deed restriction in any of its summary-judgment pleadings.

The trial court held a hearing on both parties' motions. (2 RR 4-37) At the end of the hearing, the court stated:

> If the deed restriction said the property was to be used as a community park, if the restriction said property was to be used primarily as a community park, I think that Plaintiff's motion fails, but the restriction does not say that. It says that it is to be used only as a community park, and I fail to see that there's any genuine issue of disputed fact that the property is not being used as a community park if there is a library situated on the property. Therefore, the Court will grant Plaintiff's Motion for Partial Summary Judgment.

(2 RR 35-36) That same day, the court signed an order finding the City "to be liable to Eldorado Land Company for inverse condemnation … as a matter of law," and ordering "that the only matter that shall be determined at trial is the amount of damages suffered by Eldorado Land Company as to its inverse condemnation claim." (CR 378) The court later signed an order denying the City's motion for summary judgment. (CR 380)

In the ensuing trial on damages, the court instructed the jury (over the City's objection) to award the difference between the value of the Property with and without "the park-use restriction." (7 RR 4-6, CR 877) This instruction tracked Eldorado's directive to its appraisal expert (whom the City had moved to strike) to

disregard the existing park-use zoning restriction and instead to value the Property as if it were zoned for office and retail use. (CR 877; 5 RR 91, 104-106; 6 RR 39, 43, 45, 69) The jury returned a verdict awarding Eldorado damages of $7,438,500. (7 RR 49; CR 874, 877) Based on the jury's verdict, the trial court rendered judgment for Eldorado of over $9 million. (CR 877, 883-86)

The City appealed, challenging the summary-judgment rulings on liability, the sufficiency of Eldorado's evidence on damages, and the trial court's instruction to the jury regarding the measure of damages. The Dallas court of appeals reversed and rendered, holding that the City did not violate the deed restriction because the evidence conclusively established that the part of the Property where the library sits "is being used as a 'recreational facility'" and the remainder of the Property "is part of a City park." (Mem. Op. at 19) Based on this disposition, the court did not reach the City's alternative arguments challenging the award of damages.

SUMMARY OF THE ARGUMENT: REVIEW IS UNWARRANTED

In reversing the trial court's judgment and holding that the City did not violate the deed restriction by building a community library on a portion of the Property, the court of appeals' memorandum opinion turns on little more than the unremarkable determination that the library in this case is a "recreational facility" within the scope of what the deed restriction permits. There is nothing important to the jurisprudence of this state about that fact-specific holding, which merely applies

settled principles of contract construction to the uncontroverted evidence about the recreational features of this particular library. Indeed, in light of Eldorado's acknowledgment at oral argument that the deed restriction did not require that every portion of the Property must be both a park and a recreational facility, but rather "part of it can be park and part can be recreational facility" (Mem. Op. at 12), the court of appeals could not have reached any other result.

Eldorado cannot now manufacture an issue of "importance" by claiming a purported "inconsistency" in this Court's decisions on the role of "surrounding circumstances" in interpreting contracts. To begin with, there is no inconsistency -- this Court has uniformly held that surrounding circumstances may be considered in determining what the parties to an unambiguous contract intended its language to mean. Moreover, nothing in the court of appeals' opinion creates any confusion about the role of surrounding circumstances. As Eldorado is well aware, the court of appeals' opinion is entirely silent about surrounding circumstances because Eldorado never asked the court to consider them. Instead, Eldorado insisted that the court confine its examination to the "four corners" of the deed.

Overlooking its own failure to raise surrounding circumstances, Eldorado now baselessly speculates that the court of appeals intentionally ignored surrounding circumstances, including the parties' discussion about a proposed "acquatic center" or "water park" before the deed was executed, because the court was supposedly

misled or confused about the law. (Br. at 19) Eldorado's speculation does not translate into jurisprudential importance, because nothing on the face of the court's opinion does any harm to the rule of law in this state. But, in the end, Eldorado's argument is of no consequence. The City urged the lower courts to consider the surrounding circumstances, because they showed that the water park was only a "concept plan" and that Eldorado agreed in the sales contract to let the City build whatever recreational facility it chose, as long as the facility did not present lighting, noise, or security disturbances to the residents of Eldorado's adjacent development. Indisputably, the library presents no such disturbances.

Finally, in asking this Court to apply the maxim of *noscitur a socii* -- a request it admittedly is making for the first time -- Eldorado misapplies the maxim to arrive at a nonsensical reading of the deed restriction: that the City's recreational facility must be "something similar" to a park. *Noscitur a socii* does not apply because the terms "park" and "recreational facility" are neither unclear nor similar. But even if this maxim did apply, Eldorado's self-defining interpretation impermissibly violates other rules of construction by trying to equate "recreational facility" with "park." And if Eldorado is trying to suggest that a recreational facility must be something that is "traditionally" found in a park to be permissible under the deed restriction, a community library like the one here indisputably meets even that erroneous test.

For any of these reasons, further review is unnecessary and unwarranted.

ARGUMENTS IN RESPONSE

I. The Court of Appeals' Holding that the City Did Not Violate the Deed Restriction by Building a Community Library on a Portion of the Property Is Correct and of No Jurisprudential Importance.

The issue of liability in this case turns on one fact-specific and straightforward question: Did the City's construction of a community library on a portion of the Property violate the deed restriction requiring "that the Property shall be used only as a Community Park," which was defined as a "park and recreational facility operated by [the City] for the citizens of the City"? In holding that the City did not violate the deed restriction, the court of appeals addressed and rejected all the arguments Eldorado raised, applied well-established principles of contract interpretation, and reached an unremarkable result that is both correct and of no jurisprudential importance.

In fact, making the court's analysis even easier, Eldorado conceded at oral argument that "the deed restriction does not require that every portion of the Property must be both a 'park' and a 'recreational facility,' but rather, 'part of it can be park and part can be recreational facility.'" (Mem. Op. at 12) Thus, to decide the issue before it, the court of appeals noted that it did not need to decide "whether the Library itself is a 'park' or a 'park and recreational facility'"; it only had to determine "whether the Library is a 'recreational facility operated by [the City] and serving the citizens of the City' pursuant to the deed restriction." (*Id.*, brackets in original)

Indisputably, the community library here fits precisely within that description.

Initially, there can be no question that the City's community library is a "facility" because it is "[s]omething created to serve a particular function." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE at 633 (4th ed. 2006). It is also a "recreational facility" because it relates to and fosters "recreation" -- *i.e.*, something one does for "[r]efreshment of one's mind or body after work through activity that amuses or stimulates." *Id*. at 1462; *see also Univ. of Tex. at Arlington v. Williams*, 459 S.W.3d 48, 52 (Tex. 2015) ("recreation's ordinary meaning" is "refreshment from work or a diversion … something done to relax or have fun") (citation omitted). The dictionary definition of "library" underscores that it is a place for recreation. *Id*. at 1009 ("library" is a "place in which literary and artistic materials, such as books, periodicals, newspapers, pamphlets, prints, records, and tapes are kept for reading, reference, or lending"). That is even more true of *this* particular library, which has a glassed-in playroom for children and a large meeting room for community use, and offers story time and music classes for children and evening computer classes for adults. (CR 195, 205) And as a "recreational facility" located on a portion of the Property, the library indisputably is "operated by [the City] and serving the citizens of the City," as the deed restriction requires.

Based on these uncontroverted facts, coupled with Eldorado's concession that "part of [the Property] can be park and part can be recreational facility" (Mem. Op.

at 12), the court below could correctly reach only one conclusion -- that "the Property is being 'used only as a Community Park,' *i.e.*, 'a park and recreational facility operated by [the City] and serving the citizens of the City of McKinney'" because "part of the Property is being used as a 'recreational facility' operated by the City and the remainder is part of a City park." (Mem. Op. at 19, brackets in original) There is no error in this fact-specific conclusion, much less an error of any importance to the jurisprudence of this state.

Indeed, the court of appeals' conclusion that the library fits within the scope of what the deed restriction permits is not only correct, it was actually *compelled* by the rules governing the construction of deed restrictions. It is well-established that deed restrictions, including those with reverter clauses, "must be construed most strongly against the grantor, and forfeitures of an estate are not favored." *Pitts v. Camp County*, 39 S.W.2d 608, 616-17 (Tex. 1931) (holding that property should not revert to grantor's heirs because the only condition to conveyance that would defeat grantees' title had not occurred); *see also Lindig v. Pleasant Hill Rocky Community Club*, No. 03-15-00051-CV, 2015 WL 5096847, at *2 (Tex. App. -- Austin Aug. 28, 2015, pet. denied) (mem. op.) (same, citing *Pitts*). Only by violating these rules could the court of appeals have accepted Eldorado's ever-changing concept of the phrase "park and recreational facility" and required the City to forfeit the Property or its monetary equivalent -- merely because the City had chosen to serve its citizens'

recreational needs by building a community library on a portion of the Property. The court below properly concluded that this action did not violate the deed restriction.

Finally, the court of appeals was manifestly correct in rejecting two other interpretive arguments that Eldorado only cursorily mentions in its present brief. *First*, in response to Eldorado's argument that some Texas statutes treat libraries "as separate" from recreational facilities (Br. at 21, 24), the court below correctly held that the deed does not mention any of the statutes cited by Eldorado, much less use them as a guide for defining what the parties meant by a "recreational facility." (Mem. Op. at 17) Nor do the statutes themselves show that they were intended to establish the "plain, ordinary, and generally accepted meaning" of the term "recreation." (*Id*.)[2] *Second*, in rejecting Eldorado's reliance on two decades-old cases for the proposition that "a library is not anything like a park" (Br. at 22), the court below correctly held that both cases are inapposite because the language of the deeds in question is materially different from and more limiting than the deed language here. (Mem. Op. at 13-15, discussing *City of Fort Worth v. Burnett*, 114 S.W.2d 220 (Tex. 1938), and *City of Hopkinsville v. Jarrett*, 162 S.W. 85 (Ky. 1914)). And, of course, libraries from the distant era of *Burnett* and *Jarrett* are very

[2] In support of this proposition, the court of appeals cited to *Williams*, where this Court held that the Texas Recreational Use Statute gives the term "recreation" a meaning that is different from and more specific than its "ordinary" usage. 459 S.W.3d at 52-54.

different from modern community libraries like the one here.

In short, the court of appeals reached the right result in concluding that the City has complied with the deed restriction by operating a part of the Property as a "recreational facility" and the remainder as a "park." Further review of this fact-specific conclusion is neither necessary nor warranted.

II. This Is the Wrong Case to Examine the Surrounding-Circumstances Rule Because Eldorado Did Not Assert It in the Courts Below, It Does Not Support Eldorado's Position, and Courts Have No Difficulty Applying It.

In an argument that is both misleading and contrived, Eldorado criticizes the court of appeals for "refusing to consider surrounding circumstances" about the parties' discussion of a water park before they entered into the deed restriction (Br. at 12) -- an omission Eldorado attributes to the court's "mistaken impression" resulting from a purported "inconsistency among this Court's decisions" about the role of "surrounding circumstances" in interpreting unambiguous contracts (*id*. at 12, 19). But the court of appeals did not "refuse" to consider surrounding circumstances. More accurately, the opinion is entirely silent about surrounding circumstances because Eldorado never asked the court of appeals (or the trial court) to consider them in interpreting the deed restriction. And the reason Eldorado never made that request is obvious: the surrounding circumstances actually support the City's position that the deed restriction permitted it to build any type of recreational facility on the Property as long as it did not create lighting, noise, or security

disturbances to the neighboring development. Given the position Eldorado took in the courts below, its new argument is exposed for what it is -- a contrivance calculated to claim an "inconsistency" in the law that simply does not exist.

A. Eldorado Did Not Ask the Trial Court or Court of Appeals to Consider the "Surrounding Circumstances" of the Deed Restriction, and Thus the Opinion Is Silent on that Issue.

Eldorado repeatedly asserts that the court of appeals "failed" or "refused" to consider the circumstances surrounding the language used in the deed restriction (Br. at 1, 12), but no one would ever get that impression from reading the court of appeals' memorandum opinion. Nowhere does the opinion even mention the surrounding-circumstances rule, let alone misstate it, misapply it, or express confusion about how it operates. Thus, the opinion is no different from hundreds of others in which courts have construed the language of unambiguous contracts without discussion of the circumstances surrounding their execution. If this Court had any inclination to write further about the role of surrounding circumstances -- which it should not for the reasons discussed below -- it would be better served by awaiting a case in which an appellate court actually addressed the surrounding-circumstances rule and either misstated or misapplied it in a way that could harm the jurisprudence of the state. The opinion in this case, by contrast, has no such jurisdictional importance because it merely interprets the specific language of this particular deed restriction, and applies that unremarkable interpretation to the

uncontroverted facts.

Nor can Eldorado manufacture an issue of importance by speculating that the court below must have intentionally failed to consider surrounding circumstances because it was somehow confused or misled by this Court's purportedly "inconsistent" jurisprudence on the role of surrounding circumstances in interpreting unambiguous contracts. (Br. at 12-13, 19) Eldorado's speculation is baseless because that is not the explanation for why the court of appeals did not mention surrounding circumstances in its memorandum opinion. The real explanation is that Eldorado did not rely on surrounding circumstances in its summary-judgment motion and response in the trial court (CR 65-78, 215-27); it did not ask the court of appeals to affirm the trial court's summary judgment based on surrounding circumstances (Appellee's Br. at 9-21); and it never filed a motion for rehearing to give the court of appeals an opportunity to consider the surrounding-circumstances argument Eldorado is now making. In fact, it was the *City* who asked the court below to consider the surrounding circumstances because they illuminated the purpose of the deed restriction (Appellant's Br. at 18-20), and in response, Eldorado urged the court to consider *only* "[t]he unambiguous language of the Deed" in accordance with the so-called "Four Corners Rule" (Appellee's Br. at 17). The court of appeals did precisely what Eldorado asked it to do; Eldorado simply does not like the result.

None of this is to suggest that Eldorado has technically "waived" its new surrounding-circumstances argument -- a position that the City has not taken and that Eldorado unnecessarily tries to refute. (Br. at 24-26) But given Eldorado's arguments in the courts below, the criticism it now levels at the court of appeals is nothing short of sandbagging. Eldorado does not deserve further review of an opinion that, by Eldorado's own strategic choice, contains nothing on its face concerning the role of surrounding circumstances in interpreting contracts.

B. The Circumstances Surrounding the Execution of the Deed Restriction Support the City's Position, Not Eldorado's.

There is yet another reason why this case is the wrong one to examine, discuss, or apply the surrounding-circumstances rule -- it would not change the outcome reached by the court below. That explains, of course, why the City argued in detail why the circumstances surrounding the execution of the deed restriction confirmed that it was permitted to build a library facility on a portion of the Property. (Appellant's Br. at 18-20) In contrast, although the preliminary sections of Eldorado's appellate brief mentioned the parties' discussion about a proposed water park (Appellee's Br. at 2, 4, 7, 8), Eldorado never claimed that this evidence had any relevance to its sole argument -- that the City's library was not a park or a recreational facility within the meaning of the deed restriction (*id*. at 9-21). Based on Eldorado's own "four-corners" argument, the water-park evidence simply had no legal significance.

Now, however, Eldorado asserts that the City's plans, drawings, and discussions about a proposed "aquatic center" or "water park" for the Property meant that the City was allowed under the deed restriction to build only a water park or some similar "form of recreational facility that more closely resembles a water park or other traditional recreational facility." (Br. at 1, 12, 21) But the water-park drawing that was attached to the parties' sales contract was conspicuously marked as a "concept plan" for the entire Gabe Nesbitt Community Park (PX 14, 17; DX 1), and neither the sales contract, the first amendment to the sales contract, nor the deed restriction itself required the City to build a water park, an aquatic center, or any other specific (or so-called "traditional") type of recreational facility on the Property. (PX 8, 14; DX 1)[3] Instead, the words chosen by the parties in the deed restriction referred more generally and broadly to a "park and recreational facility," thus giving the City the flexibility it needed to change its plans over time to best serve the needs of its citizens. As it turned out, a community library was what its citizens needed the most (DX 7), and the City's effort to serve those needs in no way violated the agreement it struck with Eldorado.

[3] Eldorado's suggestion that the parties' discussions about a water park amounted to a "representation" by the City (Br. at 1) also runs afoul of the merger clause in the sales contract, which provided that "all prior or contemporaneous agreements, understandings, representations and statements (oral or written) are merged into this Contract," and that "this Contract … may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreement of the parties.…" (DX 1, Contract of Sale at ¶ 13(c)) (capitalization omitted)

If anything, the circumstances surrounding the execution of the deed restriction *bolster* the conclusion that the Property, even with the library, has been and is being "used only as a Community Park" within the meaning of the deed restriction. In the first amendment to the sales contract -- signed the same day as the deed -- the parties deleted a paragraph in the sales contract referring to a "park/recreation complex" and replaced it with the following provision:

> Noise and Security Control. The Purchaser acknowledges that the development and operation of the Property as a community park, including, *lighting, noise and security associated therewith could adversely impact the Eldorado Property*. (The "Eldorado Property" is defined as property owned by Seller that adjoins the Property). The Purchaser agrees to use its best efforts to insure that the community park and *associated recreation complexes and facilities to be located on the Property* shall be designed in a manner so as not to disturb the residents or tenants of the Eldorado Property. … The Purchaser agrees to pay all costs and expenses associated with the development of the Property, including, but not limited to, the design, engineering and construction of the community park and *recreational and other facilities located thereon*.…

(DX 1, First Amendment at ¶ 11 [App. 1], emphasis added)

This provision demonstrates that: (1) Eldorado was well aware that the City was going to build "facilities" on the Property; (2) Eldorado did not require the City to build any particular type of facility; and (3) Eldorado's only condition was that the City's facility not create "lighting, noise and security" disturbances that "could adversely impact" the residents of Eldorado's adjacent property. These facts were also confirmed at trial, where one of Eldorado's principals explained that the purpose

of the deed restriction was to prevent the City from building facilities such as a "sewage plant" or a "fire station" on the Property -- either of which "would be very annoying to the residents next door" -- and to ensure that the Property would be "a quiet park … that would be closed at night." (5 RR 75)

In light of these "objectively determinable factors that give context to the parties' transaction," *Kachina Pipeline Co., Inc. v. Lillis*, 471 S.W.3d 445, 450 (Tex. 2015), there can be no dispute that the City honored the provisions of the deed when it later decided to build a community library on a portion of the Property. If anything, a library facility has even *less* of an impact on an adjacent neighborhood -- in terms of lighting, noise, or security disturbances -- than would a water park or an aquatic center.

In short, an analysis of surrounding circumstances in this case -- something Eldorado did not request from the courts below -- would only *reinforce* the court of appeals' conclusion that the City did not violate the deed restriction when it built a community library on a portion of the Property. Because the analysis Eldorado now requests would merely lead to the exact same conclusion, further review of the court of appeals' memorandum opinion is not necessary or warranted.

C. This Court Has Been Consistent About When Surrounding Circumstances May be Considered in Construing the Terms of an Unambiguous Contract.

Even overlooking these threshold problems with Eldorado's surrounding-

circumstances argument, Eldorado still cannot deliver on its own premise -- that a purported "inconsistency" in this Court's decisions on the role of surrounding circumstances in construing unambiguous contracts has somehow stripped the rule of "vitality" by creating a "mistaken impression" that surrounding circumstances are the same as inadmissible extrinsic evidence. (Br. at 2, 12-13, 19) To the contrary: this Court has been entirely consistent about when surrounding circumstances may be considered in construing unambiguous contracts, and the rule's vitality is as strong today as it was decades ago. *See, e.g., North Shore Energy, L.L.C. v. Harkins*, ___ S.W.3d ___, 2016 WL 6311285 (Tex. Oct. 28, 2016) (per curiam) (looking to "the circumstances surrounding [the contract's] execution to determine whether an ambiguity exists"). Only by misstating the case law, and exaggerating the existence of inconsistencies, can Eldorado claim otherwise.

Early on, this Court made clear that a contract may be construed in light of the facts and circumstances surrounding its execution, *either* to aid in determining what the parties intended the language to mean (if no one contended it is ambiguous) *or* to determine whether an ambiguity exists (if one party contended it is ambiguous), *subject to* the limit that parol or extrinsic evidence of the parties' intent is not admissible to vary the contract or create an ambiguity. *See, e.g., City of Pinehurst v. Spooner Addition Water Co.*, 432 S.W.2d 515, 518-19 (1968); *Sun Oil Co. (Delaware) v. Madeley*, 626 S.W.2d 726, 731-32 (Tex. 1981). Later decisions from

the 1980s and 1990s espoused these same principles; contrary to Eldorado's characterization, they do *not* hold that surrounding circumstances "may *only* be considered to determine whether a term is ambiguous." (Br. at 13, emphasis added) *See, e.g.*, *Aetna Life & Cas. Co. v. Gunn*, 628 S.W.2d 758, 760 (Tex. 1982); *Nat'l Union Fire Ins. Co. v. CBI Industries, Inc.*, 907 S.W.2d 517, 520-21 (Tex. 1995) (per curiam); *Columbia Gas Transmission Corp. v. New Ulm Gas, Ltd.*, 940 S.W.2d 587, 591 (Tex. 1996).

Further, whatever lack of clarity two commentators thought might have existed in 2007 or 2008 (*see* Br. at 13, citations omitted) no longer exists (if it ever did), because cases over the last decade have been very clear about the role of surrounding circumstances in interpreting unambiguous contracts. Just last year, for example, in a decision the City cited in both of its briefs below, this Court reiterated that "the facts and circumstances surrounding a contract" -- including "the commercial or other setting in which the contract was negotiated and other objectively determinable factors that give content to the parties' transaction" -- may be considered in "ascertain[ing] the true intentions of the parties as expressed in the writing itself." *Kachina Pipeline Co., Inc. v. Lillis*, 471 S.W.3d at 450. In so holding, *Kachina* cited to another case included in the list appearing in Eldorado's brief (Br. at 15, citing *Americo Life, Inc. v. Myer*, 440 S.W.3d 18, 22 (Tex. 2014)), and it did *not* state or even suggest, as Eldorado now claims, that "surrounding

circumstances are extrinsic evidence that can be considered *only* to interpret an ambiguous writing" (Br. at 2, emphasis added).[4]

Tellingly, federal courts sitting in diversity are also having no difficulty correctly applying Texas's surrounding circumstances rule to the interpretation of unambiguous contracts -- further confirming that the rule does not "need[ ] clarification." (Br. at 16) Most recently, in *Hoffman v. L&M Arts*, the United States Court of Appeals for the Fifth Circuit determined whether a clause in a contract for the sale of a Rothko painting, which obligated the parties "to keep all aspects of this transaction confidential," required secrecy as to the fact of the sale itself. ___ F.3d ___, 2016 WL 5431818, at *9 (5th Cir. Sept. 28, 2016). Citing to this Court's decisions in *Americo Life* and *Houston Exploration Co. v. Wellington Underwriting Agencies, Ltd.*, 352 S.W.3d 462, 469 (Tex. 2011), the Fifth Circuit examined the language used in the sales contract and "the facts and circumstances surrounding the [Agreement's] execution" -- including "the parties' prior dealings" in executing an earlier version of the contract and "evidence of industry norms" concerning the resale of artwork -- and held that the confidentiality clause did not cover the fact of

[4] The two other cases that Eldorado includes in its list to purportedly illustrate that proposition (Br. at 14) do not involve contracts negotiated between two parties. Instead, one involved the interpretation of a court order, *see Kourosh Hemyari v. Stephens*, 355 S.W.3d 623, 626 (Tex. 2011) (per curiam), while the other involved the interpretation of a will. *See Hysaw v. Dawkins*, 483 S.W.3d 1, 8 (Tex. 2016).

the sale itself. *Id.* at *9-10 (brackets in original). The court also properly distinguished between evidence of surrounding circumstances and "extrinsic evidence," which is "subject to the limitations of the parol-evidence rule." *Id*. at *9 (quoting *Americo Life*, 440 S.W.3d at 22).[5]

The *Hoffman* opinion underscores what is now obvious -- that courts are fully able to apply the surrounding-circumstances rule correctly, straightforwardly, and without confusion. Even if this case were one in which the court of appeals had expressly considered and erroneously applied the surrounding-circumstances rule, there is no need for this Court to provide further clarification or guidance.

III. Eldorado's Latest Argument, Based on the Inapposite Maxim of *Noscitur a Sociis*, Does Not Support Its Position that the Building of the Community Library Violated the Deed Restriction.

In its briefing, Eldorado essentially concedes that the library at issue is a recreational facility, arguing instead that it is not a "traditional" recreational facility (Br. at 12, 21) -- a term that is neither contained in the deed nor required by its plain

[5] Like *Hoffman*, other federal court decisions have accurately articulated and applied Texas's rule regarding surrounding circumstances. *See, e.g., Al Rushaid v. Nat'l Oilwell Varco, Inc.*, 757 F.3d 416, 419-20 (5th Cir. 2014) (construing written contract to give effect to parties' intent "in light of the facts and circumstances surrounding the contract's execution") (citation omitted); *Semi-Materials Co. v. MEMC Electronic Materials, Inc.*, 655 F.3d 829, 833 (8th Cir. 2011) (under Texas law, courts "examine all parts of the contract and the circumstances surrounding the formulation of the contract" in order to ascertain the parties' intent) (citation omitted); *Hollomon v. O. Mustad & Sons (USA), Inc.*, 196 F. Supp. 2d 450, 454 (E.D. Tex. 2002) (distinguishing between "evidence of the circumstances surrounding the execution of a contract," which "is always admissible," and "extrinsic evidence," which "is only admissible to interpret a contract after the court decides that the contract is ambiguous").

language. To support its request that this Court effectively rewrite the deed -- a course prohibited by Texas law[6] -- Eldorado must resort to Latin. Having admitted that it invoked the doctrine of *ejusdem generis* for the first time at oral argument below, Eldorado now backtracks from that argument and claims, again for the first time, that it actually meant to rely on the maxim of *noscitur a sociis*. (Br. at 21-22) But like *ejusdem generis*, which the court of appeals correctly held to be inapplicable in interpreting the phrase "park and recreational facility" (Mem. Op. at 12-13), *noscitur a sociis* is inapplicable as well. And even if it were applicable, the manner in which Eldorado tries to apply it makes no sense. In fact, if Eldorado is actually trying to suggest that the type of "recreational facility" allowed by the deed restriction is one that is "traditionally" found in a "park" (Br. at 21, 24), the community library built on the Property indisputably meets even that erroneous test.

Putting aside the problem that *noscitur a sociis* is almost universally used to construe statutes, not contracts, it does not apply in any event to the interpretation of the phrase "park and recreational facility" in the deed restriction. *Noscitur a sociis* -- literally translated as "it is known by its associates" -- provides that "the

[6] *See Pitts*, 39 S.W.2d at 617 (refusing to expand conditions of reverter because the "law will not imply an intention upon the part of the grantor to impose upon the grantee and his successors in office any greater condition to be attached to the estate conveyed, or any other condition, than the one expressly stated"); *see also American Mfrs. Mut. Ins. Co. v. Schaefer*, 124 S.W.3d 154, 162 (Tex. 2003) (Texas courts "may neither rewrite the parties' contract nor add to its language").

meaning of an unclear word or phrase, esp[ecially] one in a list, should be determined by the words immediately surrounding it." BLACK'S LAW DICTIONARY 1224 (10th ed. 2014). In this case, however, there is nothing "unclear" about either the word "park" or the phrase "recreational facility," and no other words surround either of them. Moreover, *noscitur a sociis* "directs that similar terms be interpreted in a similar manner," *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 441 (Tex. 2011), but there is no similarity between the word "park" and the phrase "recreational facility." Instead, they are distinct terms with different meanings, and they "do not share any comparable core of meaning" so as to warrant the application of *noscitur a sociis*. *Graham County Soil and Water Conserv. Dist. v. United States*, 559 U.S. 280, 288-89 & n.7 (2010) (rejecting application of rule to three disparate statutory terms).

Moreover, even if *noscitur a sociis* were applicable, the manner in which Eldorado tries to apply it is both improper and nonsensical. According to Eldorado, "a recreational facility must be something similar to a 'park.'" (Br. at 24) But what is that supposed to mean? Eldorado says that "tennis courts" would be permissible under the deed restriction (Br. at 3), but tennis courts -- especially courts in an indoor facility -- are not "similar to a park." In fact, the only recreational facility "similar to a park" is a park itself, thus calling into question why an aquatic center, a softball complex, a recreational center for seniors, or even a "water park" would be permitted

under Eldorado's self-defining interpretation of the deed restriction. Ultimately, Eldorado is using *noscitur a sociis* to equate "recreational facility" with "park," but that impermissibly "contravene[s] the more important rule of construction that all words are to be given effect." *Greater Houston P'ship v. Paxton*, 468 S.W.3d 51, 83 (Tex. 2015) (Boyd, J., dissenting) (quoting *Shipp v. State*, 331 S.W.3d 433, 437 (Tex. Crim. App. 2011) (citation omitted)). And Eldorado is also contradicting its own acknowledgment that "part of [the Property] can be park and part can be recreational facility." (Mem. Op. at 12)

Finally, to the extent Eldorado is trying to suggest that the type of "recreational facility" permitted by the deed restriction is one that is "traditionally" found in a park (*see* Br. at 12, 21), the community library here indisputably meets even that erroneous test. Based on a summary-judgment affidavit from Dr. Galen Cranz, a renowned expert in the history, design, development, and use of urban parks in the United States, the City conclusively established that: (1) "libraries have been incorporated into community parks since the early twentieth century"; (2) community parks have evolved from a "naturalistic aesthetic" to "a new, reform park ideal … that include[s] elements, such as field houses, libraries and reading rooms, meeting rooms and small theaters, children's playgrounds, swimming pools, and interior gymnasiums"; (3) "libraries can be found in and as part of many community parks throughout the United States"; and (4) the community library in

this case "does not alter the character of the Property as a Community Park" because "the Property, including the Library, is being used as a park and recreational facility operated by the City and serving the citizens of the City of McKinney." (CR 206-07 [App. 4]) Notably, Eldorado has not controverted any of these opinions or conclusions; nor did it offer any contrary summary-judgment evidence.

Because Eldorado's *noscitur a sociis* argument misapplies the law to an erroneous view of the uncontroverted evidence, its petition does not merit further review.

PRAYER

The court of appeals heard, considered, and correctly rejected all of Eldorado's arguments about the interpretation of the deed restriction. Because further review of its memorandum opinion is not necessary or warranted, the City of McKinney respectfully prays that Eldorado's petition for review be denied. Alternatively, the court of appeals' judgment should be affirmed or, in the further alternative, the case should be remanded to the court of appeals for consideration of the City's as-yet-unaddressed challenges to the damages award and the jury instructions. *See* TEX. R. APP. P. 55.3(c)(3).

Respectfully submitted,

/s/ Jeffrey S. Levinger

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City of McKinney

CERTIFICATE OF COMPLIANCE

1. This response complies with the type-volume limitation of TEX. R. APP. P. 9.4(i)(2)(B) because it contains 7,706 words, excluding the parts of the response exempted by TEX. R. APP. P. 9.4(i)(1).

2. This response complies with the typeface requirements of TEX. R. APP. P. 9.4(e) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point Times New Roman font (and 12 point for footnotes).

/s/ Jeffrey S. Levinger

Jeffrey S. Levinger

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Respondent's Brief on the Merits was served on all counsel of record via the Court's electronic filing system on this 14th day of November, 2016.

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/s/ Jeffrey S. Levinger

Jeffrey S. Levinger

APPENDIX

TAB 1

McKINNEY™
TEXAS
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CERTIFICATION

I, Sandy Hart, City Secretary of the City of McKinney, Texas, hereby certify that the attached document is a true and correct copy of the Contract for Sale between Eldorado Land Company, L.P. and the City of McKinney for purchase of the 32 acre West Eldorado Community Park site dated April 15, 1999.

To certify which, witness my hand and seal of office this 19th day of February, 2014.

Sandy Hart, TRMC, MMC
City Secretary

CITY OF McKINNEY TEXAS COLLIN COUNTY, TEXAS

DEFENDANT'S EXHIBIT 1

CITY OF McKINNEY, 222 N. Tennessee, P.O. Box 517, McKinney, Texas 75069 (214) 542-2675

April 23, 1999

Ms. Kennis Ketchum
Development Director
Capstone American Properties, LLC
10670 North Central Expressway, Suite 160
Dallas, Texas 75231

Re: Executed Contract for Sale of
32-Acre West Eldorado Community Park Site

Dear Kennis:

Enclosed please find two (2) original copies of the executed *Contract for Sale* on the 32-acre West Eldorado Community Park site.

The next step in this acquisition process is the processing of the first payment of $81,000 which will require approximately 10-14 days.

It is our desire to set up a meeting to take press pictures of a check presentation between the City of McKinney and Eldorado Land Company next week. I'll call you to schedule a date and time.

Please extend my appreciation and thanks to everyone at Capstone who assisted in the successful completion of this land acquisition.

Sincerely,

Larry Offerdahl
Director of Parks and Recreation

LO:sl

Encls. 2

CONTRACT OF SALE

THIS CONTRACT OF SALE (this "Contract") is made by and between the undersigned Seller and Purchaser.

WHEREAS, Seller desires to sell and convey, and Purchaser desires to purchase and pay for, the Property (hereinafter defined) upon the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the premises, and the covenants, conditions and agreements hereinafter contained, the parties hereto agree as follows:

1. (a) Certain Definitions. As used herein, the following terms shall have the following definitions:

(i)	Seller:	**Eldorado Land Company, L.P.**
(ii)	Seller's Address:	920 South Main Street Suite 170 Grapevine, TX 76051 Attention: Richard A. Myers Phone No. (817) 488-4200 Fax No. (817) 488-5257
	With a Copy to:	**Eldorado Land Company, L.P.** 10670 North Central Expressway Suite 160 Dallas, TX 75231 Attention: Kennis Ketchum Phone No. (214) 373-8800 Fax No. (214) 373-1429
	With a Copy to:	J. Andrew Rogers, Esquire **Kelly, Hart & Hallman** 201 Main Street Suite 2500 Fort Worth, TX 76102-3194 Phone No. (817) 878-3546 Fax No. (817) 878-9242
(iii)	Purchaser:	**The City of McKinney**
(iv)	Purchaser's Address:	308 North Tennessee McKinney, TX 75070 Attention: Mr. Larry Offerdahl Director of Parks and Recreation Phone No. (972) 562-6080, ext 652 Fax No. (972) 542-2506
(v)	Land:	Approximately 15.318 acres of land ("Tract I") located in the City of McKinney, Collin County, Texas. Tract I is comprised of two components: first, 14.500 acres calculated by the Parks and Recreation Department as that amount of land required by City ordinance to be dedicated in relationship to residential zoned property; and, second, a "gateway" open space corridor, 0.818 acres in size, connecting the Park Site with what is identified on the City Council approved zoning plan as New Street A, as depicted on Exhibit "A" attached hereto and incorporated herein by reference for all purposes; and Approximately 17.334 acres of land ("Tract II") located in the City of McKinney, Collin County, Texas, as depicted on Exhibit "B" attached hereto and incorporated herein by reference for all purposes. Tract I and Tract II, jointly, are more particularly described on Exhibit "C" attached hereto and incorporated herein by reference for all purposes. The description contained on Exhibit "C" is for the reasonable identification of the Land, and may be supplemented by the metes and bounds or other legal description of the Land to the extent provided for in Paragraph 5(b) hereinbelow. The term "Land" as used herein shall mean both Tract I and Tract II, jointly.
(vi)	Park Site:	A tract of land which is depicted on Exhibit "D" attached hereto and incorporated herein by reference for all purposes of which Tract I and Tract II will be a part.

(vii)	Seller's Adjacent Property:	A 68-acre site, approximately, which site is depicted on Exhibit "E" attached hereto and incorporated herein by reference for all purposes.
(viii)	Purchase Price:	Tract I: $0.00 Tract II: $14.000 per gross acre, for a total rounded purchase price of $243,000.
(ix)	Review Period:	Within fifteen (15) days after the date of this Contract, Purchaser shall obtain and review an owner's policy of title insurance for the Property. Thereafter, the Purchaser shall have seven (7) days to notify Seller that the condition of title to the Property, including Permitted Exceptions, is not acceptable to the Purchaser. Then Seller shall have fifteen (15) days after receipt of this notice to cure items to which the Purchaser objects. Purchaser may object to any condition of title, including a Permitted Exception, which Purchaser believes, makes the Property unsuitable for park use. If an objection to title cannot be cured by Seller or Seller elects not to cure such objections within the required time, then Purchaser may terminate this Contract within five (5) business days of receipt of Seller's notice and thereafter, Purchaser shall have no further obligation to Seller hereunder.
(x)	Feasibility Period:	Within thirty (30) days after the date of this Contract, Purchaser may, at its own expense, inspect and conduct non-destructive testing on the Property to determine whether the Property should be accepted in "as is" condition and to verify that the Property is suitable for park use. If within this thirty-day period, Purchaser determines, in its sole discretion, either that the Property should not be accepted in "as is" condition or that the Property is not suitable for park use, then Seller shall have fifteen days after receipt of notice from Purchaser to cure items to which the Purchaser objects. If an objection cannot be cured by Seller or Seller elects not to cure such objections within the required time, then Purchaser may terminate this Contract within five (5) business days of receipt of Seller's notice and thereafter, Purchaser shall have no further obligation to Seller hereunder.
(xi)	Earnest Money Deposit:	$0.00
(xii)	Title Commitment Deadline:	Intentionally deleted. See paragraph 5(a) below.
(xiii)	Survey Deadline:	Intentionally deleted.
(xiv)	Initial Purchase Price Payment Due:	On Closing Date.
(xv)	Balance of the Purchase Price Due:	No later than thirty-six (36) months following the effective date of this Contract, or within thirty (30) days after the date upon which the construction of the park site improvements commences on Tract II, whichever occurs first in time.
(xvi)	Title Company:	Intentionally Deleted.
(xvii)	Brokers:	N/A
(xviii)	Offer Termination Date:	N/A
(xix)	Closing Date:	The Closing Date shall be scheduled within five (5) business days after the latest expiration date of the cure periods described in Sections 1(a)(ix) and 1(a)(x).

2. Purchase and Sale.

Upon and subject to the terms and conditions set forth herein, Seller hereby agrees to convey to the Purchaser at no cost, and Purchaser hereby agrees to accept the conveyance of Tract I, and Seller hereby agrees to sell and convey, and Purchaser hereby agrees to purchase and pay for, Tract II, together with any and all plants, trees and shrubbery now or hereafter located on said Land and together with all and singular all of the rights and appurtenances pertaining to such Land, including any right, title and interest of Seller in and to adjacent roads, streets, alleys, easements or rights-of-way (with the Land, together with all such rights and appurtenances being collectively referred to herein as the "Real Property"), and attached hereto as Exhibit "F" is a copy of a Lease Agreement between JNC Enterprises, Ltd., as lessor, and Tommy Allen, as lessee, dated November 1, 1995, as referred to in document recorded under File Number 98-0000671 in the Official Public Records of Collin County, Texas and other related document (the "Lease"), (all of the foregoing rights, properties and appurtenances, together with the Real Property, being hereinafter collectively referred to as the "Property").

3. Earnest Money/Deposit. Intentionally Deleted.

4. Payment of Option Fee and Purchase Price.

The Purchase Price shall be paid as follows:

(a) **Initial Purchase Price Payment:** Eighty-one Thousand and no/100 Dollars ($81,000) will be paid at the Closing by certified check or by wire transfer of federal funds or other evidence of current funds. The Initial Purchase Price shall be paid directly to Seller and Purchaser agrees that all such Initial Purchase Price shall be deemed earned by Seller and non-refundable to Purchaser or any other party for any reason, shall be the sole property of Seller for all purposes and shall be retained by Seller, provided that in the event the closing of this transaction is completed in accordance with the terms of the Contract, all such Initial Purchase Price shall be applied to the Purchase Price.

(b) **Balance of the Purchase Price:** One hundred sixty two Thousand and no/100 Dollars ($162,000) will be paid as specified in Section 1(a)(xv) by certified check or by wire transfer of federal funds or other evidence of current funds. In consideration of Purchaser's agreement that the Balance of the Purchase Price not accrue interest until paid, the Purchaser agrees to use its best efforts to pay off this indebtedness as soon as may be reasonably possible, either at one time or in several installments.

The Purchaser shall receive some or all of the funds to pay the Purchase Price from the McKinney Community Facilities Development Corporation.

5. Title and Survey.

(a) Purchaser if Purchaser elects, at its sole cost and expense, shall obtain a current Commitment for Owner Policy of Title Insurance for the Property in favor of Purchaser (hereinafter referred to as the "Title Commitment") issued by the Title Company of its choice.

(b) Attached hereto as Exhibit "G" is a copy of a current survey ("Survey") of the Real Property, which Survey includes a legal description of the Land by metes and bounds. In the event the legal description of the Land shall be modified by any up date of the Survey, such modified legal description shall be incorporated into this Contract as Exhibit "C-1 " and shall constitute the legal description for purposes of the closing documents.

6. Intentionally Deleted.

7. Intentionally Deleted.

8. Closing.

(a) The consummation of the transaction contemplated by this Contract shall be held on or before the Closing Date, at a location mutually acceptable to all parties.

(b) At the Closing, Seller shall furnish and deliver to Title Company for delivery to Purchaser: (i) a Special Warranty Deed (the "Deed") dated as of the Closing Date, conveying the Property, including the Land, according to the legal description attached hereto as Exhibit "C", or if such legal description has been modified by the Survey in a manner satisfactory to Purchaser in accordance with Paragraph 5 hereof, then the Property shall be conveyed by such modified legal description, the Deed being subject covenants, conditions, restrictions and easements of record. ("Permitted Exceptions"); (ii) a Blanket Conveyance, Bill of Sale and Assignment (the "Assignment") dated as of the Closing Date, conveying the Lease, subject only to the Permitted Exceptions; (iii) possession of the Property subject only to the Permitted Exceptions; (vii) the original Leases, and all amendments thereto, if any; and (ix) such other items, instruments and documents as are reasonably appropriate, necessary and/or required for Purchaser to consummate the transaction contemplated hereby or to evidence the authority of Seller to consummate the transaction contemplated hereby and to execute and deliver the closing documents or to complete and evidence the transaction contemplated hereby. The Deed shall include a restriction stating that the Property shall be used by the Purchaser only as a community park.

(c) At Closing, Purchaser shall deliver to the Title Company for delivery to Seller: (i) the cash payment due in accordance with Paragraph 4 hereof and the other terms and provisions of this Contract, and (ii) such other instruments and documents as are reasonably appropriate, necessary and/or required to consummate the transaction contemplated hereby or to evidence the authority of Purchaser to consummate the transaction contemplated hereby and to execute and deliver the closing documents or to complete and evidence the transaction contemplated hereby.

(d) Except as otherwise set forth herein, each party hereto shall pay its share of the closing costs which are normally assessed against a seller or purchaser in other transactions similar to the transaction contemplated hereby in the county in which the Property is located. Seller has paid the costs of the Survey. In the event that Purchaser chooses to secure an Owner Policy of Title Insurance, Purchaser shall pay the cost of same, along with any modifications or endorsements it may request. Seller shall pay all recording costs relative to the recordation of the Deed. Each party shall pay its own attorneys' fees; provided, however, in the event of any litigation arising hereunder, the prevailing party shall be entitled to recover, as part of any judgment rendered, reasonable attorneys' fees and costs of suit.

(e) Real property, ad valorem and personal property (if any) taxes, and other state, county and municipal taxes (special or otherwise), whether actually then due and payable as of the Closing Date, shall be prorated at Closing effective as of the Closing Date; provided, however, that Seller shall, at the Closing, pay any and all taxes for prior years and assessments then existing with respect to the Property, even though same are properly payable in installments in whole or in part after the Closing Date. If Closing shall occur before the tax rate is fixed for the then current tax year the apportionment of the taxes shall be upon the basis of the tax rate for the preceding year and/or month, as applicable. Any difference in actual and estimated taxes and assessments shall be adjusted in cash between the parties following receipt of information confirming the actual amounts thereof, and upon written request between the parties hereto. The terms and provisions of this paragraph shall expressly survive the Closing and shall not be merged therein.

9. Representations, Warranties and Covenants.

(a) Purchaser represents, warrants and covenants to Seller that Purchaser has full right, power and authority to enter into this Contract and, at Closing, will have full right, power and authority to consummate the transaction provided for herein, all required corporate, partnership or other action necessary to authorize Purchaser to enter into and to consummate the transaction provided for herein has been, or upon the Closing will have been, taken, and the joinder of no

person or entity other than Purchaser will be necessary to execute and deliver such documents and instruments at Closing and to perform all of the obligations of Purchaser hereunder.

(b) Seller represents and warrants to, and covenants with, Purchaser that to the Seller's current actual knowledge, without inquiry or investigation:

(i) Seller now has and will have at the Closing Date good and indefeasible title in fee simple to the Property, and no party, except as herein set forth, has any rights in the Property;

(ii) Seller has full right, power and authority to execute, deliver and perform this Contract without obtaining any consents or approvals from, or the taking of any other actions with respect to any third parties, except as set forth herein;

All of the foregoing representations and warranties made by Seller shall be continuing and shall be true and correct for the period from the date hereof through and as of the Closing Date with the same force and effect as if made each day throughout such period.

10. Right of Assignment.

Purchaser may not assign this Contract without the prior written consent of Seller.

11. Termination.

If this Contract is terminated by Purchaser in accordance with any provisions hereof, the parties hereto shall have no further obligations or liabilities one to the other.

12. Defaults and Remedies.

(a) Seller's Defaults, Purchaser's Remedies.

(i) Seller's Defaults. Seller shall be deemed to be in default hereunder in the event that Seller shall fail to meet, comply with, or perform any covenant, agreement or obligation on its part required within the time limits and in the manner required in this Contract for any reason other than a default by Purchaser hereunder or termination of this Contract by Purchaser pursuant to the terms and provisions hereof.

(ii) Purchaser's Remedies. In the event Seller shall be deemed to be in default hereunder, Purchaser may, at Purchaser's sole and exclusive remedy for such default, terminate this Contract by written notice delivered to Seller on or before the Closing Date, whereupon the parties hereto shall have no further liabilities or obligations to the other hereunder. It is expressly provided also, however, that if Seller is in default and Purchaser terminates the Contract, then Purchaser shall be entitled to a refund of any portion of the Purchase Price that it has paid to Seller.

(b) Purchaser's Default; Seller's Remedies.

(i) Purchaser's Default. Purchaser shall be in default hereunder in the event that Purchaser shall fail to close and consummate the transaction contemplated hereby as required in this Contract for any reason other than a default by Seller hereunder, a breach of any representation or warranty of Seller set forth herein, a failure of any condition to Purchaser's obligations, or termination of this Contract by Purchaser pursuant to the terms and provisions hereof.

(ii) Seller's Remedies. In the event Purchaser shall be in default hereunder, Seller may, as Seller's sole and exclusive remedy for such default, terminate this Contract by written notice delivered to Purchaser whereupon the parties hereto shall have no further liabilities or obligations to the other hereunder.

13. Miscellaneous.

(a) Notices. Any notices, consents or other communications required or permitted to be given pursuant to this Contract must be in writing and must be given by overnight courier, hand delivery, registered or certified mail or facsimile transmission (with printed confirmation) and shall (except to the extent otherwise expressly provided herein) be deemed to have been given and received (whether actually received or not) when a letter containing such notice, consent or other communication, properly addressed with delivery charges prepaid is received, if delivered by hand delivery or via facsimile, or one business day after deposit with a reputable overnight courier service, if delivered by overnight courier, or upon deposit in a regularly maintained receptacle for the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to the parties hereto at the respective addresses or facsimile telephone numbers set forth in paragraph 1 (a) hereof, or to such other substitute address and/or addressee as any party hereto shall designate by written notice to the other party in accordance with the terms of this Paragraph 13(a); provided, however, that no such notice of change of address and/or addressee shall be effective unless and until actually received by the party to whom such notice is sent.

(b) Disclaimer/Property Condition. Except as provided in Paragraph 9 hereof, Seller hereby specifically disclaims any warranty, guaranty, or representation, oral or written past, present or future, of, as to, or concerning (i) the nature and condition of the Property, including but not by way of limiation, the water, soil, geology and the suitability thereof, and of the Property, for any and all activities and uses which Purchaser may elect to conduct thereon or any improvements Purchaser may elect to construct thereon or any improvements Purchaser may elect to construct thereon, income to be derived therefrom or expenses to be incurred with respect thereto, or any obligations or any other matter or thing relating to or affecting the same; (ii) the manner of construction and condition and state of repair or lack of repair of any improvements located thereon; (iii) the nature and extent of any easement, right-of-way, lease, possession, lien, license, encumbrance or reservation or other condition; and (iv) the compliance of the Property or the operation of the Property with any laws, rules, ordinances, or regulations of any government other body. IN CONNECTION WITH THE CONVEYANCE OF THE PROPERTY AS PROVIDED FOR HEREIN, SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY OR CONDITION OF THE PROPERTY, THE SUITABILITY OF THE PROPERTY

FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON, COMPLIANCE BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SPECIFICALLY, SELLER DOES NOT MAKE ANY REPRESENTATIONS REGARDING HAZARDOUS WASTE, AS DEFINED BY THE LAWS OF THE STATE OF TEXAS, AND ANY REGULATIONS ADOPTED PURSUANT THERETO OR THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OF ANY HAZARDOUS WASTE OR ANY OTHER HAZARDOUS OR TOXIC SUBSTANCES IN OR ON THE PROPERTY. Purchaser agrees to accept the Property at Closing with the Property being in its present AS IS condition WITH ALL FAULTS.

PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASE IS EXPERIENCED IN THE OWNERSHIP AND OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT PURCHASER, PRIOR TO THE CLOSING, WILL HAVE INSPECTED THE PROPERTY TO ITS SATISFACTION AND IS QUALIFIED TO MAKE SUCH INSPECTION. PURCHASER ACKNOWLEDGES THAT IT IS FULLY RELYING ON PURCHASER'S (OR PURCHASER'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND, NOT UPON ANY STATEMENT (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY SELLER OR ANY OF ITS REPRESENTATIVES. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS (OR PURCHASER'S REPRESENTATIVES HAVE), OR PRIOR TO THE CLOSING WILL HAVE, THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY PURCHASER IN ORDER TO ENABLE PURCHASER TO EVALUATE THE CONDITION OF THE PROPERTY AND ALL OTHER ASPECTS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED, THE ENVIRONMENTAL CONDITION OF THE PROPERTY), AND PURCHASER ACKNOWLEDGES THAT PURCHASER IS RELYING SOLELY UPON ITS OWN (OR ITS REPRESENTATIVES') INSPECTION, EXAMINATION AND EVALUATION OF THE PROPERTY. PURCHASER HEREBY EXPRESSLY ASSUMES ALL RISKS, LIABILITIES, CLAIMS, DAMAGES AND COSTS (AND AGREES THAT SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, OR OTHER DAMAGES) RESULTING OR ARISING FROM OR RELATED TO THE CITY'S OWNERSHIP, USE, MAINTENANCE, REPAIR OR OPERATION OF THE PROPERTY FROM AND AFTER THE EFFECTIVE DATE. PURCHASER ACKNOWLEDGES THAT ANY CONDITION OF THE PROPERTY THAT PURCHASER DISCOVERS OR DESIRES TO CORRECT OR IMPROVE PRIOR TO OR AFTER THE CLOSING SHALL BE AT PURCHASER'S SOLE EXPENSE. PURCHASER EXPRESSLY WAIVES (TO THE EXTENT ALLOWED BY APPLICABLE LAW) ANY CLAIMS UNDER FEDERAL, STATE OR OTHER LAW THAT PURCHASER MIGHT OTHERWISE HAVE AGAINST SELLER RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PROPERTY. ANY REPAIRS PAID FOR BY SELLER PURSUANT TO THIS CONTRACT, IF ANY, SHALL BE DONE WITHOUT WARRANTY OR REPRESENTATION BY SELLER, AND SELLER HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER IN CONNECTION WITH SUCH REPAIRS.

The terms and provisions of this subparagraph 13 (b) shall survive Closing.

(c) Entire Agreement; Modifications. This Contract embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements (oral or written) are merged into this Contract. Neither this Contract nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument. THIS CONTRACT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(d) Applicable Law. **THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THIS CONTRACT IS PERFORMABLE AND VENUE FOR ANY ACTION HEREUNDER SHALL BE IN THE COUNTY IN WHICH THE LAND IS LOCATED.**

(e) Captions. The captions in this Contract are inserted for convenience of reference only and in no way define, describe, or limit the scope or intent of this Contract or any of the provisions hereof.

(f) Binding Effect. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

(g) Intentionally Deleted.

(h) Dates. If the final date of any period set forth herein (including, but not limited to, the Closing Date) falls on a Saturday, Sunday or legal holiday under the laws of the State of Texas or the United States of America, the final date of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday. The term "days" as used herein shall mean calendar days, with the exception of "business days, " which term shall mean each day except for any Saturday, Sunday or legal holiday under the laws of the State of Texas or United States of America.

(i) Date of Contract. All references to the "date of this Contract" or the "effective date hereof" or similar references as used herein shall be deemed to mean the later of the two dates on which this Contract is signed by the Seller or Purchaser, as indicated by their signatures below, which later date shall be the date of final execution and agreement by the parties hereto.

(j) Attorneys' Fees. If either party shall employ an attorney to enforce or define the rights of such party hereunder, the prevailing party in any suit or proceeding shall be entitled to recover reasonable attorneys' fees and costs of suit.

(k) Partial Invalidity. If any term, provision, condition or covenant of this Contract or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law, and said invalid or unenforceable term, provision, condition or covenant shall be substituted by a term, provision, condition or covenant as near in substance as may be valid and enforceable.

(l) Real Estate Commissions. Intentionally Deleted.

(m) Counterparts. This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute one and the same instrument.

(n) Survival of Terms. All warranties, representations, covenants and agreements of Purchaser and Seller shall expressly survive the Closing and shall not be merged therein.

(o) Offer and Acceptance. If this Contract is executed first by the Purchaser and then delivered to Seller, it shall be construed as an offer to purchase the Property from Seller by Purchaser on the terms and conditions and for the Purchase Price stated herein. If executed first by Seller and then delivered to Purchaser, it shall constitute an offer to sell the Property to Purchaser by Seller on the terms and conditions and for the Purchase Price stated herein. In either event, the offer made herein, unless sooner terminated or withdrawn by notice in writing by the party making such offer, shall automatically lapse and terminate at 5:00 p.m., local Dallas, Texas time, on the Offer Termination Date, unless, prior to such time, the party receiving the offer has returned to the party making the offer three (3) fully executed counterparts of this Contract. Any modification(s) of the original offer made herein shall constitute a counter offer by the party initiating such modification(s).

(p) Confidentiality. Purchaser and Seller hereby acknowledge and agree that neither party hereto shall make any public announcement or press release relative to the transaction contemplated hereby without the prior written consent of the other party.

(q) Additional Provisions.

(i) Seller and Purchaser shall agree upon the specific area within the overall Park Site to be delineated as Tract II. The specific site delineation will be necessary, as it is expected the "Office" zoning designation granted by the City Council for Tract II will be changed to another more park appropriate zoning classification after completion of the transaction contemplated by this Contract, including payment in full by the Purchaser of the Purchase Price.

(ii) Seller and Purchaser will work closely and cooperatively in preparing and implementing a utility servicing plan for the Park Site and Seller's Adjacent Property. Purchaser agrees that whenever or wherever water or sewer lines can be built or aligned such that the lines can benefit both Purchaser and Seller's Adjacent Property then Purchaser will utilize such alignment to mitigate costs for the Seller's Adjacent Property. The Purchaser shall grant Seller a sanitary sewer easement on the Park Site, where such site abuts Seller's Adjacent Property. The width of such easement shall be determined at the time of the construction of the sanitary sewer line. The Purchaser and Seller shall share the cost of such construction, with the pro-ration being determined at the time of construction of the sanitary sewer line.

(iii) Purchaser acknowledge that the development of the Park Site, including but not limited to lighting, noise and security, could adversely impact Seller's Adjacent Property. Therefore, Purchaser agree that it will use its best efforts to ensure that the park / recreation complex will be designed in such a way as to not disturb the residents or tenants on Seller's Adjacent Property. In connection therewith, the Purchaser and Seller agree to work together to design a mutually acceptable acoustical and noise abatement engineering plan and lighting plan for any portion of the Property and the balance of the Park Site that borders Seller's Adjacent Property, which will benefit the Park Site and alleviate disturbance to the Seller's Adjacent Property. Purchaser shall pay all costs and expenses associated with the development of the Park Site, including but not limited to design, engineering and construction of the Park Site. Purchaser will not look to Seller for any compensation for its input in the Park Site designing and engineering process. This Contract is not intended to benefit any third parties. No third-party beneficiary rights of any kind shall be created by the Contract and Purchaser and Seller agree that this disclaimer concerning third-party beneficiary rights shall constitute a covenant running with the Property.

(iv) As additional consideration for the Property, Purchaser shall be obligated to pay its pro-rata share of any and all costs, expenses, fees, assessments or taxes that a landowner maybe required to pay, including but not limited to "roll-back" taxes, utility improvements, the widening of Eldorado Parkway and any other City, County or State improvements, as they become due and payable against the Property from the Effective Date. Purchaser's obligation for such costs, expenses, fees, assessments or taxes shall be in effect whether or not all payments have been made under this Contract.

(v) Purchaser's obligation to perform this Contract is expressly conditioned upon the City Council approval of this Contract.

The terms and agreements set forth in this subparagraph 13. (p) shall survive the Closing.

(r) Conditions to Purchaser's Obligations. Notwithstanding anything to the contrary contained or implied elsewhere herein, it is expressly agreed and understood that Purchaser's obligations hereunder are expressly subject to and conditioned upon:

(i) All of the representations and warranties of Seller set forth herein being true and correct as of the Closing Date;

(ii) Seller not being in default hereunder; and

(iii) There being no violation of or with respect to the Property of any applicable law, regulation or restriction as of the Closing Date.

(s) Repurchase Option. In the event the Land is not developed by the Purchaser for park use, for any reason, prior to the marketing of the Land for sale by the Purchaser, Seller shall have the option to repurchase the Land for the lesser of the fair market value of the Land or the same Purchase Price set forth herein. Purchaser shall notify Seller in writing of its intent to market the Land and Seller shall have thirty (30) days after the receipt of the notice to deliver written notice of its intent to pursue this repurchase option. In the event Seller does choose to pursue this repurchase option, Seller shall have a period of thirty (30) days to perform any investigations or studies it deems necessary to determine whether or not it shall exercise this repurchase option. Seller shall notify Purchaser in writing prior to the expiration of the investigation and study period whether it will exercise its repurchase option. In the event Seller does not respond within such periods of time as set forth above, it shall be deemed that Seller has elected not to pursue and/or exercise its option. In the event Seller does choose to exercise this repurchase option, the closing of the repurchase shall take place within 30 days of the delivery of notice of intent to repurchase. The parties hereto agree that the Repurchase

Option Period shall be a period of 90 days, which includes a 30 day period to determine if Seller will pursue option, a 30 day investigation and study period and 30 day period to close).

The terms of the repurchase option shall be set forth in Deed delivered at closing.

(f) Application of Purchase Price Except as provided in Section 12(a)(ii), Seller and Purchaser agree that the Initial Purchase Price payment and any installment payments are not refundable in the event that the Balance of the Purchase Price is not paid.

IN WITNESS WHEREOF, each of the parties hereto has signed and executed this Contract or has caused the same to be signed and executed by its authorized representatives

SELLER:

ELDORADO LAND COMPANY, L.P.,
a Texas limited partnership

By: Realty Capital Corporation,
a Texas corporation,
its General Partner

By: _____
Richard A. Myers, President

Signed and delivered this 15th day of April, 1999.

PURCHASER:

City of McKinney

By: _____
Isaac D. Turner, City Manager

Attest:

_____
Jennifer Smith, City Secretary

Signed and delivered this 22nd day of April, 1999.

EXHIBIT "A"

DRAWING OF TRACT I

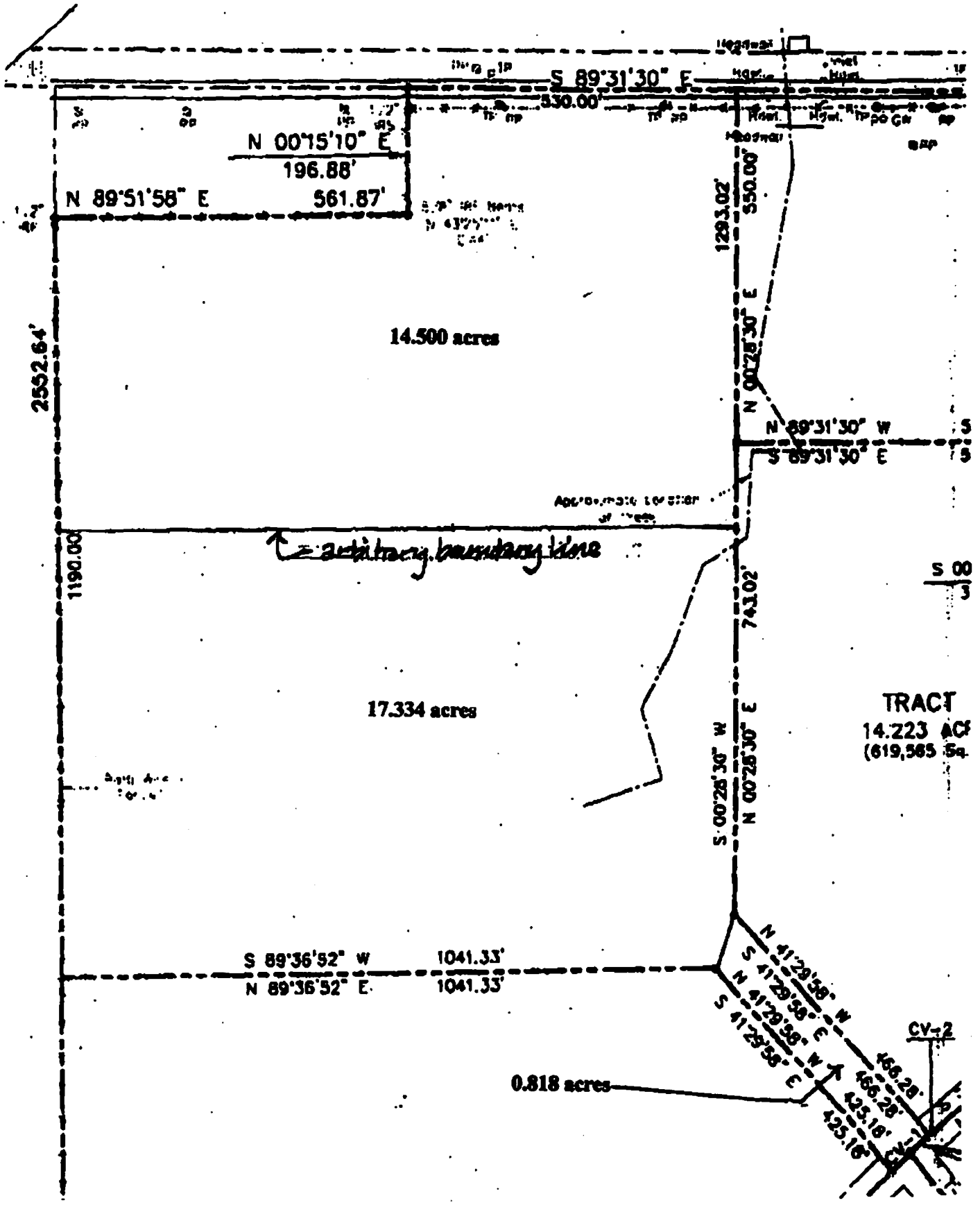


EXHIBIT "B"

DRAWING OF TRACT II

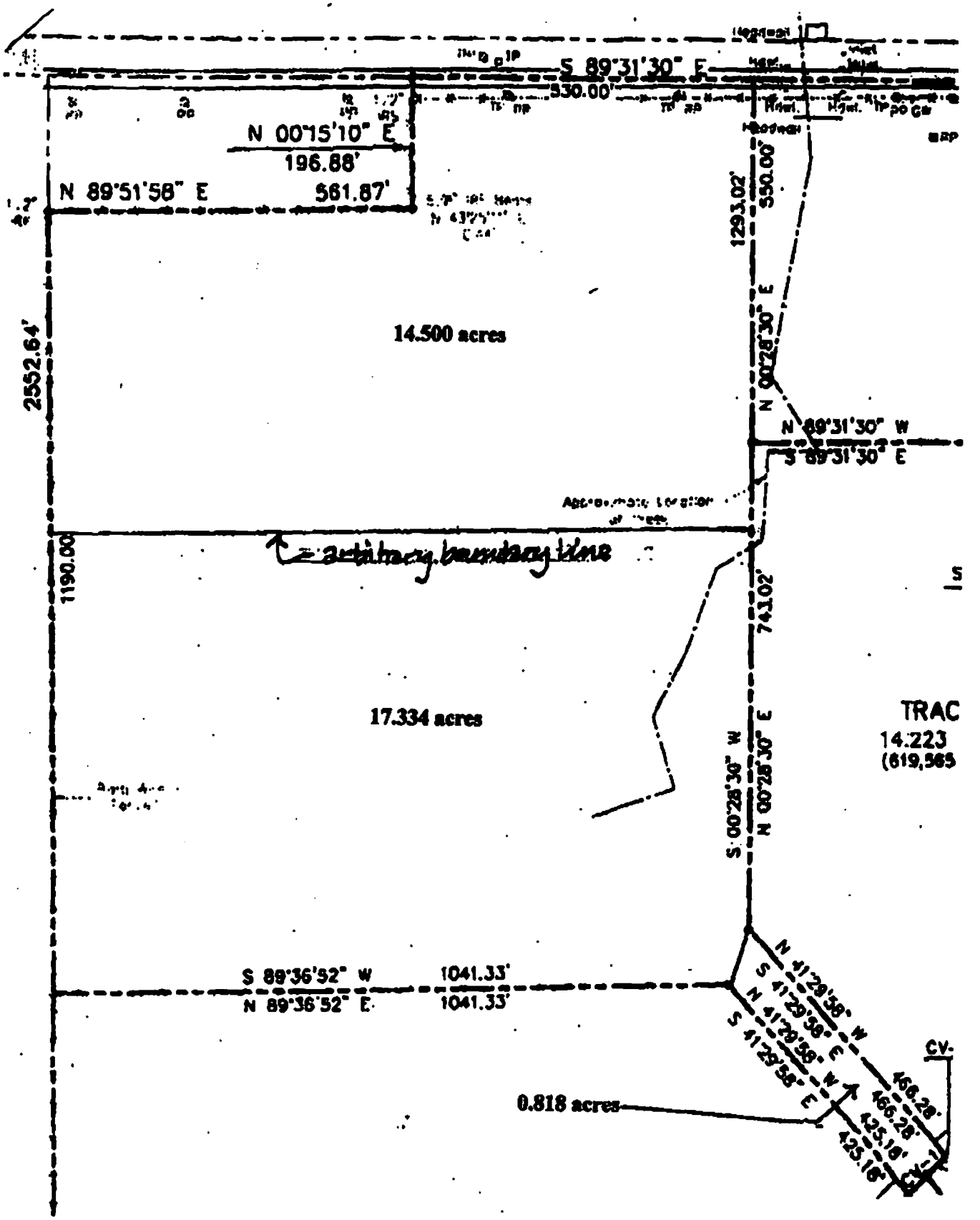


EXHIBIT "C"

LEGAL DESCRIPTION OF THE PROPERTY

STATE OF TEXAS
COUNTY OF COLLIN

BEING a tract of land situated in the G. HERNDON SURVEY, ABSTRACT NO. 396, Collin County, Texas and being a portion of a 101.03 acre tract of land described in a deed to JNC Enterprises as recorded in County Clerk's File No. CC# 94-0058017 of the Land Records of Collin County, Texas (LRCCT) and being more particularly described as follows:

BEGINNING at a point for in the northeasterly corner of said 101.03 acre tract and in the southerly right-of-way line of ELDORADO PARKWAY (80 feet right-of-way);

THENCE along the southerly right-of-way line of ELDORADO PARKWAY South 89°31'30" East, a distance of 530.00 feet to a point for corner;

THENCE departing the southerly right-of-way line of ELDORADO PARKWAY South 00°28'30" West, a distance of 1293.02 feet to a point for corner;

THENCE South 41°29'58" East, a distance of 466.28 feet to a point for the beginning of a curve to the left having a radius of 1000.00 feet, a chord bearing of South 48°30'02" West and a chord bearing of 80.00 feet;

THENCE continuing along said curve to the left through a central angle of 04°35'06" for an arc length of 80.02 feet to a point for corner;

THENCE North 41°29'58" West, a distance of 425.18 feet to a point for corner;

THENCE South 89°36'52" West, a distance of 1041.33 feet to a point for corner;

THENCE North 00°23'08" West, a distance of 1041.33 feet to a point for corner;

THENCE North 00°23'08" West, a distance of 1190.00 feet to a 1/2 inch iron rod found for corner;

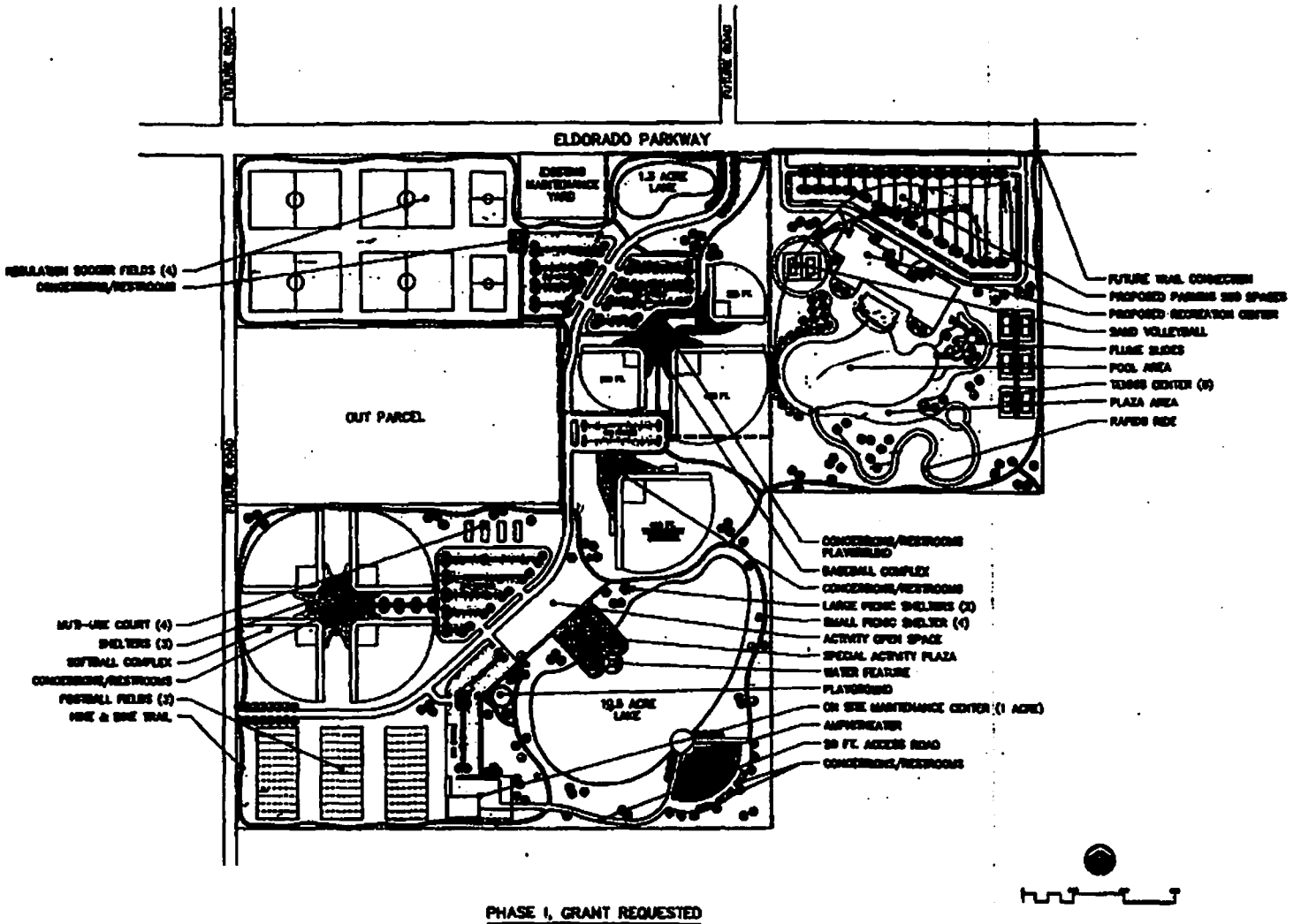
THENCE North 89°51'58" East, a distance of 561.87 feet to a 5/8 inch iron rod found for corner that bears North 43°25'11" East, a distance of 0.44 feet;

THENCE North 00°15'10" East, a distance of 196.88 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 32.652 acres or 1,422,338 square feet of land more or less.

EXHIBIT "D"

DRAWING OF PARK SITE



PHASE I, GRANT REQUESTED

- 1 -- 330 FT. DIAMOND FIELD
- 1 -- 300 FT. DIAMOND FIELDS
- 1 -- 200 FT. DIAMOND FIELDS
- 1 -- CONCESSIONS/RESTROOM BUILDING
- 1 -- POND SHELTER
- 1 -- PLAYGROUND
- 1.3 ACRE LAKE DEVELOPMENT
- 2500 L.F. HIKE AND BIKE TRAIL

DUNKIN SAAB STOFFELS, INC.
Landscape Architects/Planners

CONCEPT PLAN

NEW COMMUNITY PARK ON ELDORADO PARKWAY

CITY OF McKINNEY, TEXAS

EXHIBIT "E"

DRAWING OF SELLER'S ADJACENT PROPERTY

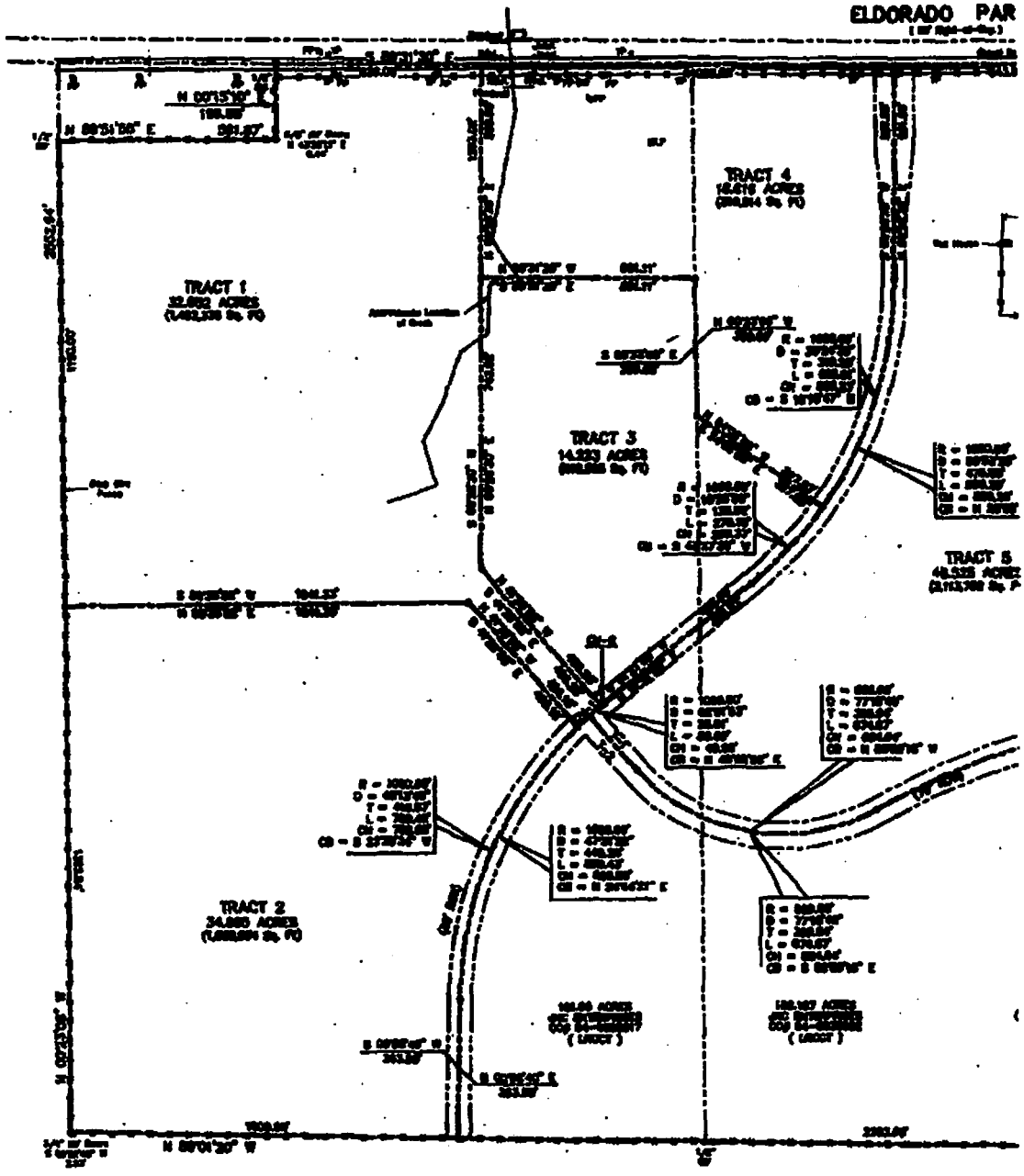


EXHIBIT "F"

THE LEASE

ASSIGNMENT OF AGRICULTURAL LEASE

This Assignment of Agricultural Lease ("Assignment") is entered into to this 15th day of January, 1999, by JNC Enterprises, Ltd., a Texas limited partnership ("Assignor"), and Eldorado Land Company, L.P., a Texas limited partnership ("Assignee").

WHEREAS, on November 1, 1995, Assignor entered into that certain Agricultural Lease ("Lease") with Tommy Allen ("Lessee") regarding that certain parcel of land located in Collin County, Texas, of approximately 390 acres and more particularly described in said Lease (the "Property"); and

WHEREAS, on even date herewith, Assignee has purchased from Assignor approximately 100 acres of the Property ("Tract") as more particularly described on Schedule 1 attached hereto; and

WHEREAS, Assignor desires to assign its rights in the Lease to Assignee as to the Tract, and Assignee desires to accept such assignment and assume all of Assignor's rights, privileges, duties and obligations thereunder;

NOW, THEREFORE, for and in consideration of the sum of $10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignor hereby assigns all of its rights, privileges, duties and obligations in and to the Lease (as to the Tract) to Assignee, and Assignee assumes all of such rights, privileges, duties and obligations thereunder from and after the date hereof.

2. Assignor hereby agrees to save, defend and indemnify Assignee from any and all claims, expenses, costs, and lawsuits (including reasonable attorneys' fees) resulting from any action or inaction of Assignor in connection with the Lease (as to the Tract) arising prior to the date hereof. Assignee hereby agrees to save, defend and indemnify Assignor from any and all claims, expenses, costs, and lawsuits (including reasonable attorneys' fees) resulting from any action or inaction of Assignee in connection with the Lease (as to the Tract) which occurs from and after the date hereof.

3. Assignor represents to Assignee that a true and correct copy of the Lease is attached to this Assignment as Schedule 2, and it has not been amended by any oral or written agreements. To the best knowledge of Assignor, the Lease is in full force and effect as of the date hereof, and neither Assignor nor Lessee is in default thereunder.

ASSIGNOR:

JNC Enterprises, Ltd.,
a Texas limited partnership

By: _____
John Lau, Managing General Partner

ASSIGNEE:

Eldorado Land Company, L.P.,
a Texas limited partnership

By: Realty Capital Corporation,
a Texas corporation, its general partner

By: _____
Richard A. Myers, President

Schedule 1
Legal Description

TRACT I:

BEING a tract of land situated in the G. HERNDON SURVEY, Abstract No. 390 and being all of a 101.00 acre tract of land conveyed to JNC ENTERPRISES as recorded in CC# 94-0058017 of the Land Records of Collin County, Texas (LRCCT) and being more particularly described as follows;

BEGINNING at the most northeasterly corner of said 101.00 acre tract, said point being in the centerline of ELDORADO PARKWAY;

THENCE departing the centerline of said ELDORADO PARKWAY and along the easterly line of said 101.00 acre tract South 00 degrees 23 minutes 08 seconds East a distance of 2769.88 feet to a 1/2 inch iron rod found for corner, said point being the most southeasterly corner of said 101.00 acre tract;

THENCE departing the easterly line of said 101.00 acre tract and along the southerly line of said 101.00 acre tract North 89 degrees 01 minutes 20 seconds West a distance of 1637.25 feet to a point for corner, said point being the most southwesterly corner of said 101.00 acre tract which a 3/4 inch iron rod found bears South 09 degrees 52 minutes 40 seconds West a distance of 2.93 feet;

THENCE departing the southerly line of said 101.00 acre tract and along the westerly line of said 101.00 acre tract as follows;

North 00 degrees 23 minutes 08 seconds West a distance of 2552.64 feet to a 1/2 inch iron rod found for corner;

North 89 degrees 51 minutes 58 seconds East a distance of 561.87 feet to a point for corner which a 5/8 inch iron rod found bears North 43 degrees 25 minutes 11 seconds East a distance of 0.44 feet;

North 00 degrees 15 minutes 10 seconds East a distance of 196.88 feet to a 1/2 inch iron rod set for corner in the centerline of said ELDORADO PARKWAY;

THENCE departing the westerly line of said 101.00 acre tract and along the centerline of said ELDORADO PARKWAY South 89 degrees 31 minutes 30 seconds East a distance of 1072.85 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 101.226 acres or 4,409,419 square feet of land, more or less.

SAVE AND EXCEPT THE FOLLOWING:

BEING a tract of land situated in the G. HERNDON SURVEY, Abstract No. 390 and being a portion of a 101.00 acre tract of land conveyed to JNC ENTERPRISES as recorded in CC# 94-0058017 of the Land Records of Collin County, Texas (LRCCT) and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found for the most southeasterly corner of said 101.00 acre tract;

THENCE departing A easterly line of said 1. 00 acre tract and along the southerly line of said 101.00 acre tract North 89 degrees 01' 20" West a distance of 637.25 feet to a point for corner;

THENCE departing the southerly line of said 101.00 acre tract North 00 degrees 58' 40" East a distance of 363.50 feet to the beginning of a curve to the right having radius of 1000.00 feet and having a chord bearing North 26 degrees 10' 18" East and a chord length of 851.36 feet;

THENCE continuing along said curve to the right through a central angle of 50 degrees 23' 15" and an arc length of 879.43 feet to the point of tangency;

THENCE North 51 degrees 21' 55" East a distance of 315.52 feet to a point for corner in the easterly line of said 101.00 acre tract;

THENCE along the easterly line of said 101.00 acre tract South 00 degrees 23' 08" East a distance of 1335.42 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 14.856 acres or 647,126 square feet of land more or less.

TRACT II:

BEING a tract of land situated in the G. Herndon Survey, Abstract No. 390 and being a portion of a 182.187 acre tract of land conveyed to JNC Enterprises as recorded in CC# 94-0030802 of the Land Records of Collin County, Texas (LRCCT) and being more particularly described as follows:

BEGINNING at the most northwesterly corner of said 182.187 acre tract, said point being in the centerline of Eldorado Parkway;

THENCE departing the westerly line of said 182.187 acre tract and along the centerline of said Eldorado Parkway South 89 degrees 31 minutes 30 seconds East a distance of 522.73 feet to a point for corner;

THENCE departing the centerline of said Eldorado Parkway South 00 degrees 28 minutes 30 seconds West a distance of 551.05 feet to the beginning of a curve to the right having a radius of 1000.00 feet and having a chord bearing of South 25 degrees 55 minutes 13 seconds West and a chord length of 888.29 feet;

THENCE continuing along said curve to the right through a central angle of 50 degrees 53 minutes 25 seconds and an arc length of 888.20 feet to the point of tangency;

THENCE South 51 degrees 21 minutes 55 seconds West a distance of 170.11 feet to a point for corner in the westerly line of said 182.187 acre tract;

THENCE along the westerly line of said 182.187 acre tract North 00 degrees 23 minutes 08 seconds West a distance of 1434.46 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 13.786 acres or 600,501 square feet of land, more or less.

Schedule 2

AGRICULTURAL LEASE

This Agricultural and/or Grazing Lease (the "Lease") is entered into to be effective as of November 1, 1995 by JNC Enterprises, Ltd., ("Lessor"), and Tommy Allen, ("Lessee").

1. Property. Lessor does hereby lease to Lessee, and Lessee does hereby lease from Lessor the property situated in Collin County, Texas described in the attached Exhibit "A", consisting of approximately 390 acres (the "Property"). Lessee accepts the property in its "AS IS" condition and subject to the terms and provisions of this Lease.

2. Terms. Subject to the provisions of Paragraph 3 below, the term of this Lease shall begin on this date above and shall expire on October 31, 1998. This Lease may be renewed provided Lessee shall give Lessor notice of its desire to renew this Lease on or before August 31, 1998, and both parties mutually agree to renew the Lease.

3. Termination. Notwithstanding any other provision of this Lease, Lessor, or its assigns, may terminate this Lease on written notice to Lessee, at any time. In such event, Lessor shall refund to Lessee any prepaid rent for the portion of the Property affected by the termination for the unexpired portion of the term for which such rent was paid. In addition, Lessor shall pay Lessee for any reasonable loss of costs and improvements from such terminated portion, such amounts to be determined in a fair manner. This Lease shall terminate with respect to any portion of the Property that is condemned, and Lessor shall be entitled to receive all condemnation proceeds.

4. Rental:

Agricultural @ 390 acres @ $10.00 per acre per year

5. Purpose. Lessee shall occupy and use the Property continuously during the term of this Lease only for grazing, farming and agricultural purposes and for no other use or purpose whatsoever. Lessee shall surrender possession and occupancy of the Property to Lessor peaceably at the end of the term of this Lease. Lessor reserves the right for itself, and its successors, assigns and guests to use the Property for any and all hunting, fishing or other sporting activities and to grant such easements or other rights that will not materially interfere with Lessee's operations under this Lease. Lessor shall indemnify, and hold Lessee harmless from any damage, liability or cause of action arising directly or indirectly out of or in connection with the activities of Lessor, its successors, assigns and guests on the Property. For the indemnity in the preceding sentence to be effective, Lessee must promptly give Lessor written notice of such damage, liability or cause of action after Lessee learns thereof, and Lessee must reasonably cooperate with Lessor in the defense of any such matter, but at no expense to Lessee.

6. Costs. Lessee shall be solely responsible for all costs incurred in connection with its operations on the Property. Lessee shall at all times comply with all applicable laws in connection with its use of the Property. Lessee shall not place, introduce, fill, store or dispose of any hazardous or toxic materials on any portion of the Property at any time. Lessee shall be allowed to apply only such fertilizers and pesticides as would normally be applied in a prudent farming operation.

7. Operation. Lessee shall conduct its operations on the Property in a prudent and efficient manner and will not collect waste or damage to any portion of the Property. Lessee shall occupy the Property at its own risk, and Lessor shall not be liable to anyone for any negligence of Lessee or its agents, employees and invitees. Lessee shall indemnify and hold Lessor harmless from and against any damage, liability or cause of action arising, directly or indirectly, out of or in connection with Lessee's operations ,including but not limited to livestock, on the Property.

For the indemnity in the preceding sentence to be effective, Lessee must promptly give Lessee written notice of such damage liability or cause of action after Lessor learns thereof and lessor must reasonably cooperate with Lessee in the defense of any such matter, but at no expense to Lessor.

8. Agreement. This Lease constitutes the entire agreement between the parties and may not be amended except by a written document signed by both parties. This Lease is binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns. If Lessee shall commit any breach or default under this Lease and such remains uncured for 20 days after Lessor gives Lessee written notice of such breach or default (at the address specified below), Lessor, at its election, and in addition to and not as a waiver of all other rights and remedies, may declare this Lease terminated, in which event, Lessee shall immediately surrender peaceable possession of the property to Lessor.

EXECUTED effective as of the date first above written.

LESSOR:

JNC Enterprises, Ltd.

By: _____
John Lau
Managing General Partner
2050 N. Plano Rd., Suite 300
Richardson, TX 75082
(214) 690-0028

LESSEE:

Tommy Allen
~~9288 Highway 2478~~
~~Celina, TX 75009~~
Mobile (214) 802-1328
P.O. Box 637
Prosper, TX 75078

EXHIBIT 'A'

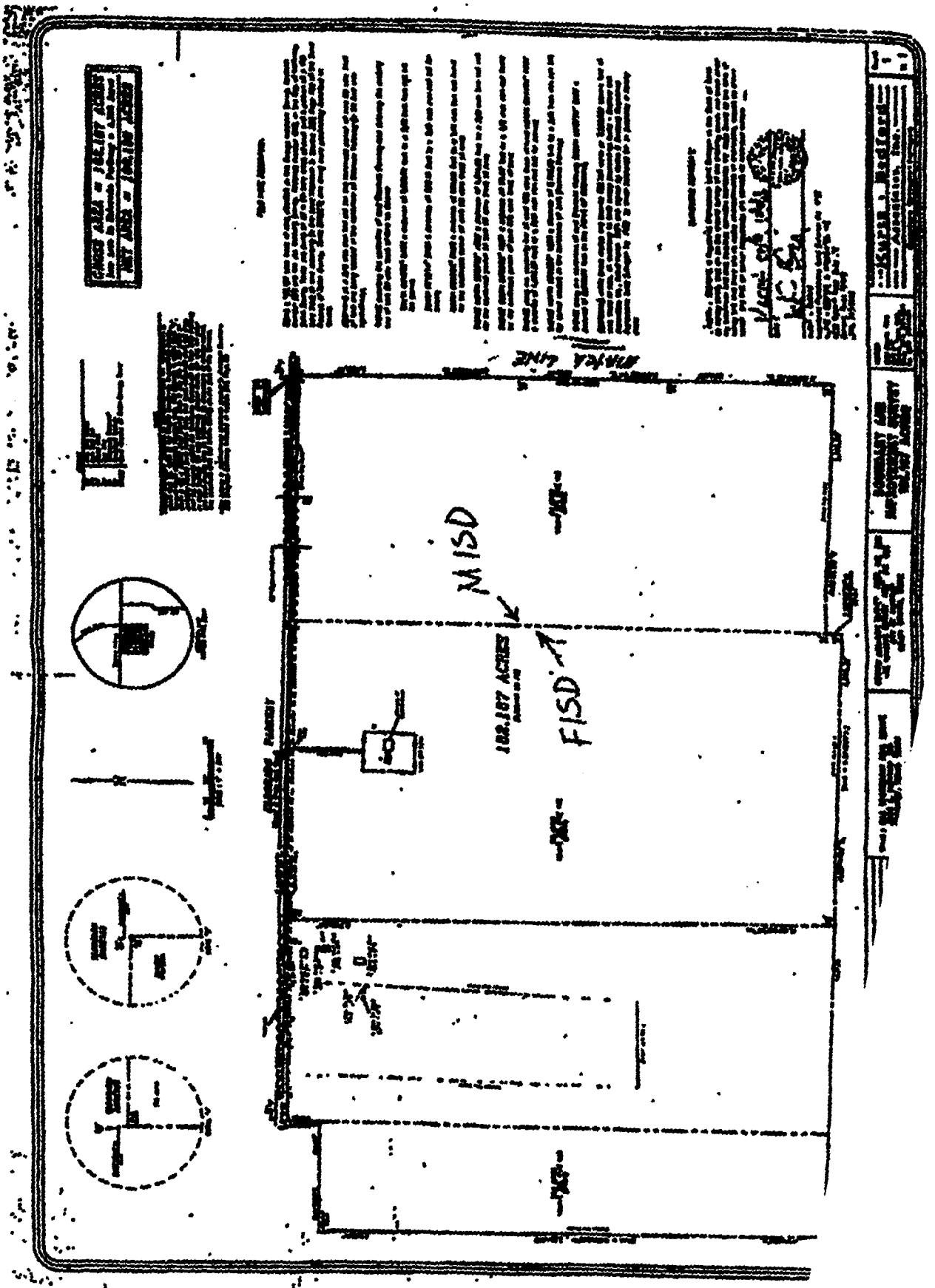
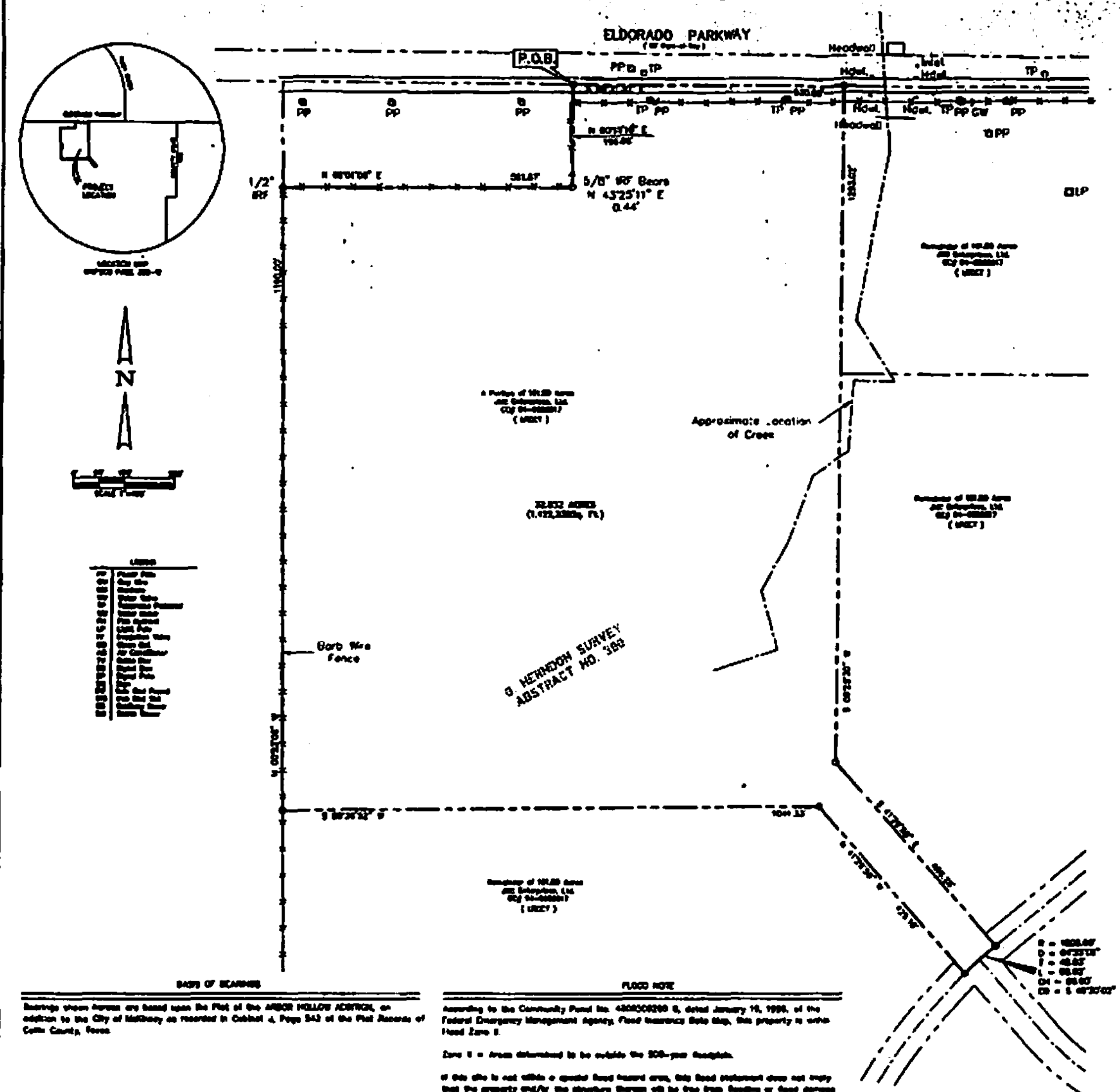


Exhibit "G"



FIELD NOTE DESCRIPTION

STATE OF TEXAS
COUNTY OF COLLIN

[illegible]

SURVEYORS CERTIFICATE

[illegible]

BASIS OF BEARINGS

[illegible]

FLOOD NOTE

[illegible]

BOUNDARY SURVEY
32.652 ACRES

Winkelmann & Associates, Inc.

SHEET 1 OF 1

COLLIN CAD Property Information

COLLIN Short Account Number: 2098067 Long Account Number: R-6390-000-0190-1

Owner's Name and Mailing Address	MCKINNEY CITY OF PO BOX 517 MC KINNEY, TX 75070-0517
Location	MCKINNEY,
Legal Description	A0390 HERNDON, GEORGE, TRACT 19, ACRES 32.652, COMMUNITY PARK, EXEMPT AS OF 5/28/99.

Taxing Entities	Code	Name	2002 Tax Rate
	CMC	MCKINNEY CITY	0.598000000
	GCN	COLLIN COUNTY	0.250000000
	JCN	COLLIN CO COM COLLEGE	0.091946000
	SFR	FRISCO ISD	1.497500000

Data up to date as of 2003-04-22.

PROPERTY		VALUE INFORMATION '2002 Certified'	
Exemptions	(See Below)	Improvement Value SUBJ To HS	$0.00
		Other Improvement Value	$0.00
Freeze Amount	0.00		
		Total Improvment Value	$0.00
Improvements			
Land Acres	0.0032652	Land Market Value	$979,560.00
		AG Productivity Value Land	$0.00
Deed Date			
Deed Volume	CONS	Total Market Value	$979,560.00
Deed Page			
Agent Code			

If 2002 Total Values are 0 or all blank, this is possibly a new property for 2003 and values have not yet been set.

EXEMPTION INFORMATION

Exemption Code	Exemption Description
EX	TOTAL EXEMPTION

[redacted]

IMPROVEMENT INFORMATION

Imp. ID	State Category	Descr

SEGMENT INFORMATION

Imp ID	Seg ID	Description	Area	Actual Year Blt
		Total Living Area	0	

LAND INFORMATION

Land ID	State Category	Size-Acres	Size-Sqft
147767	EXEMPT (CITY)	32.652	0

DEED HISTORY

Deed ID	Seller Name	Buyer Name	Deed Date	Deed Vol	Deed Page
629323	MCKINNEY CITY OF	MCKINNEY CITY OF		CONS	
608990	ELDORADO LAND COMPANY LP	MCKINNEY CITY OF	05/28/99	99-0069816	4429-4375

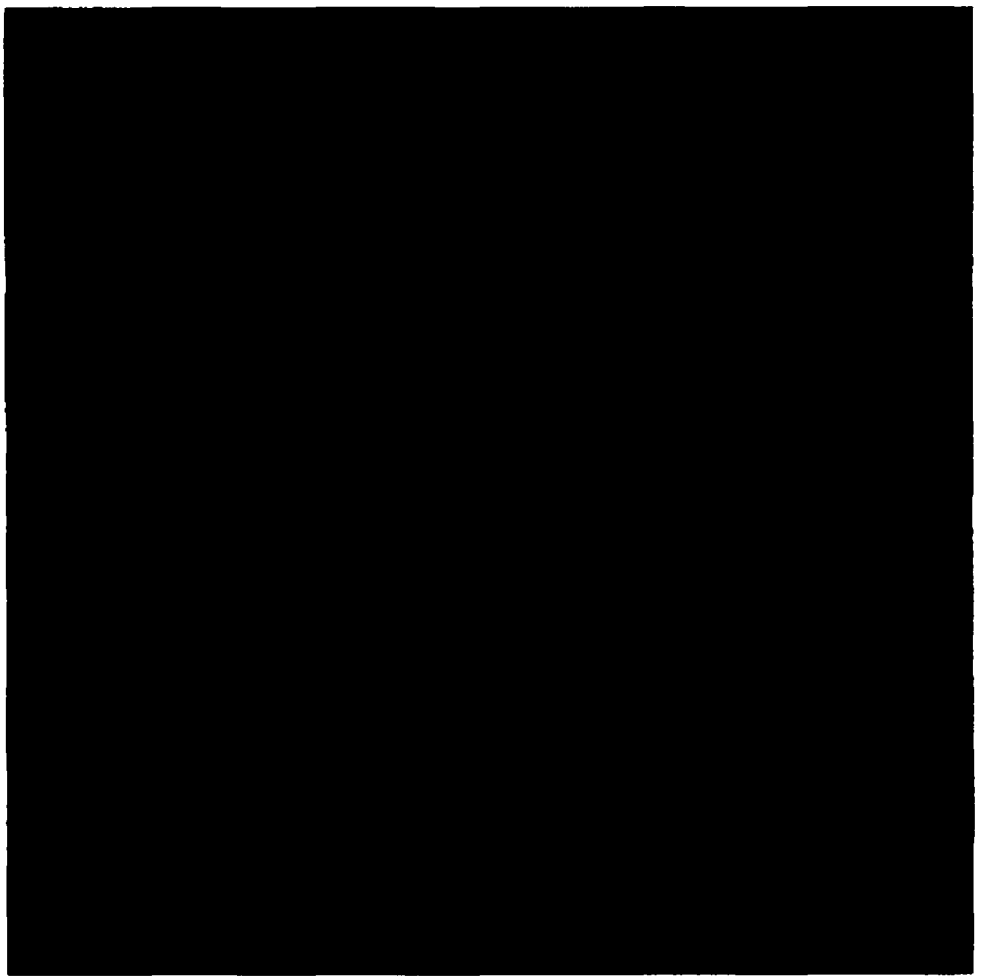
CERTIFIED VALUE HISTORY

Tax Year	2001	2000	1999	1998	1997	1996	1995	1994
Improvements								
Land Market								
Ag. Land Market	$979,560	$979,560	$815,027					
TOTAL MARKET	$979,560	$979,560	$815,027					

Land Ag. Use	$5,583	$5,551	$5,649					
10% Limited Adjustment								
TOTAL MARKET	$979,560	$979,560	$815,027					
Exemptions	EX	EX	PRO					
Special Exemptions								
Over-65 Freeze Year								
Over-65 Freeze Amount								

Improvement Sketch

In order to view and print the sketches, you must use a Java enabled browser that supports printing of Java applets, such as Internet Explorer 4.01 OR Netscape 4.03-4.04 with the JDK 1.1 patch OR Netscape 4.05 with JDK built in. Earlier releases of browsers may be able to view but not print the sketches. See FAQs for more details.



TRANSMITTAL

GF NO.: 99-05-13

DATE: June 24, 1999

TO: City of McKinney
Attn: Isaac Turner, City Mgr
308 N. Tennessee
McKinney, TX 75069

RE: SALE FROM ELDORADO LAND COMPANY, L. To CITY OF MCKINNEY

You will find enclosed Owner's Title Policy No. 44-0313-100-7985, in the amount of $457,738.

You should keep this policy with your other valuable papers for future reference.

WILSON TITLE COMPANY
2411 W. Virginia Parkway, Suite 3
P.O. BOX 617
MCKINNEY, TEXAS 75070
PHONE: 972-542-3349 METRO 972-562-0889
FAX: 972-562-7904 (METRO)

BY: Kaye Graf
Kaye Graf

OWNER POLICY OF TITLE INSURANCE

44 0313 100 7985

CHICAGO TITLE INSURANCE COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, Chicago Title Insurance Company, a Missouri corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Any statutory or constitutional mechanic's, contractor's, or materialman's lien for labor or material having its inception on or before Date of Policy;
4. Lack of a right of access to and from the land;
5. Lack of a good and indefeasible title.

The Company also will pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

In Witness Hereof, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be executed by its President under the seal of the Company, but this policy is to be valid only when it bears an authorized countersignature, as of the date set forth in Schedule A.

ISSUED BY:

Wilson Title Company
2411 Virginia Parkway, Suite 3
McKinney, Texas 75070
(972) 542-3422 or Metro (972) 562-0889
Fax (972) 562-7904 or 562-8304

Charles M. Jordan
Authorized Signatory

CHICAGO TITLE INSURANCE COMPANY

John Rau
President

Thomas J Adams
Secretary.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking that has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:

(a) created, suffered, assumed or agreed to by the insured claimant;

(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

(c) resulting in no loss or damage to the insured claimant;

(d) attaching or created subsequent to Date of Policy;

(e) resulting in loss or damage that would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

4. The refusal of any person to purchase, lease or lend money on the estate or interest covered hereby in the land described in Schedule A because of unmarketability of the title.

5. Any claim which arises out of the transaction vesting in the person named in paragraph 3 of Schedule A the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or other state or federal creditors' rights laws that is based on either (i) the transaction creating the estate or interest of the insured by this Policy being deemed a fraudulent conveyance or fraudulent transfer or a voidable distribution or voidable dividend, (ii) the subordination or recharacterization of the estate or interest being insured by this Policy as a result of the application of the doctrine of equitable subordination or (iii) the transaction creating the estate or interest insured by this Policy being deemed a preferential transfer except where the preferential transfer results from the failure of the Company or its issuing agent to timely file for record the instrument of transfer to the Insured after delivery or the failure of such recordation to impart notice to a purchaser for value or a judgement or lien creditor.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devices, survivors, personal representatives, next of kin, or corporate, partnership or fiduciary successors, and specifically, without limitation, the following:

(i) the successors in interest to a corporation resulting from merger or consolidation or the distribution of the assets of the corporation upon partial or complete liquidation;

(ii) the partnership successors in interest to a general or limited partnership which dissolves but does not terminate;

(iii) the successors in interest to a general or limited partnership resulting from the distribution of the assets of the general or limited partnership upon partial or complete liquidation;

(iv) the successors in interest to a joint venture resulting from the distribution of the assets of the joint venture upon partial or complete liquidation;

(v) the successor or substitute trustee(s) of a trustee named in a written trust instrument; or

(vi) the successors in interest to a trustee or trust resulting from the distribution of all or part of the assets of the trust to the beneficiaries thereof.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice that may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto that by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" also shall include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "access": legal right of access to the land and not the physical condition of access. The coverage provided as to access does not assure the adequacy of access for the use intended.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, or (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest that is adverse to the title to the estate or interest, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

When, after the date of the policy, the insured notifies the Company as required herein of a lien, encumbrance, adverse claim or other defect in title to the estate or interest in the land insured by this policy that is not excluded or excepted from the coverage of this policy, the Company shall promptly investigate the charge to determine whether the lien, encumbrance, adverse claim or defect is valid and not barred by law or statute. The Company shall notify the insured in writing, within a reasonable time, of its determination as to the validity or invalidity of the insured's claim or charge under the policy. If the Company concludes that the lien, encumbrance, adverse claim or defect is not covered by this policy, or was otherwise addressed in the closing of the transaction in connection with which this policy was issued, the Company shall specifically advise the insured of the reasons for its determination. If

the Company concludes that the lien, encumbrance, adverse claim or defect is valid, the Company shall take one of the following actions: (i) institute the necessary proceedings to clear the lien, encumbrance, adverse claim or defect from the title to the estate as insured; (ii) indemnify the insured as provided in this policy; (iii) upon payment of appropriate premium and charges therefor, issue to the insured claimant or to a subsequent owner, mortgagee or holder of the estate or interest in the land insured by this policy, a policy of title insurance without exception for the lien, encumbrance, adverse claim or defect, said policy to be in an amount equal to the current value of the property or, if a mortgagee policy, the amount of the loan; (iv) indemnify another title insurance company in connection with its issuance of a policy(ies) of title insurance without exception for the lien, encumbrance, adverse claim or defect; (v) secure a release or other document discharging the lien, encumbrance, adverse claim or defect; or (vi) undertake a combination of (i) through (v) herein.

4. DEFENSE AND PROSECUTION OF ACTIONS: DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgement or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 91 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgement of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) To pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company up to the time of payment and which the Company is obligated to pay. Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy at the date the insured Claimant is required to furnish to Company a proof of loss or damage in accordance with Section 5 of these Conditions and Stipulations.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT

If the land described in Schedule A consists of two or more parcels that are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, all is insured, or takes action in accordance with Section 3 or Section 6, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE:
REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies that the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-Insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments that provide for subrogation rights by reason of this policy.

14. ARBITRATION

Unless prohibited by applicable law or unless this arbitration section is deleted by specific provision in Schedule B of this policy, either the Company or the insured may demand arbitration pursuant to the Title Arbitration Rules or the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service of the Company in connection with the issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is $1,000,000 or less SHALL BE arbitrated at the request of either the Company or the Insured, unless the Insured is an individual person (as distinguished from a corporation, trust, partnership, association or other legal entity). All arbitrable matters when the Amount of Insurance is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgement upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY:
POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at Chicago Title Insurance Company, Claims Department, 171 North Clark, Chicago, Illinois 60601.

COMPLAINT NOTICE

Should any dispute arise about your premium or about a claim that you have filed, contact the agent or write to the Compahy that issued the policy. If the problem is not resolved, you also may write the Texas Department of Insurance, P.O. Box 149091, Austin, TX 78714-9091, Fax No. (512) 475-1771. This notice of complaint procedure is for information only and does not become a part or condition of this policy.

FOR INFORMATION, OR TO MAKE A COMPLAINT, CALL: 1-800-442-4303

OWNER
POLICY
SERIAL
NUMBER 4403131007985

GF NO. 99-05-13

PREMIUM(S) $3,726.67

POLICY DATE June 3, 1999

RATE RULE(S) 1000

AT 3:25 p.m.

PROPERTY TYPE: T-4

ISSUED WITH NO.

AMOUNT $457,738.00

SCHEDULE A

1. NAME OF INSURED:

   CITY OF McKINNEY

2. THE ESTATE OR INTEREST IN THE LAND THAT IS COVERED BY THIS POLICY IS:

   FEE SIMPLE

3. TITLE TO THE ESTATE OR INTEREST IN THE LAND IS INSURED VESTED IN:

   CITY OF McKINNEY

4. LEGAL DESCRIPTION OF THE LAND

   (Continued)

WILSON
TITLE COMPANY
ESTABLISHED · 1865

MOLLIE WELLS
VICE PRESIDENT

2411 W. VIRGINIA PKWY., SUITE 3
McKINNEY, TEXAS 75070
(972) 542-3422 • METRO 562-0889 • FAX 562-7904

WILSON TITLE COMPANY

By: Charles M. Gordan

COUNTERSIGNED
on and as of the date hereof.

This policy not valid unless duly countersigned by Agent

LEGAL DESCRIPTION

TRACT ONE:

BEING a tract of land situated in the G. Herndon Survey, Abstract No. 390, Collin County, Texas and being a portion of a 101.00 acre tract of land described in a deed to JNC Enterprises as recorded in County Clerk's File No. 94-0058017 of the Land Records of Collin County, Texas, (LRCCT) and being more particularly described as follows:

BEGINNING at a point in the Northwesterly corner of said 101.00 acre tract and in the Southerly right-of-way line of Eldorado Parkway (60 feet right-of-way);

THENCE along the Southerly right-of-way line of Eldorado Parkway South 89 deg. 31 min. 30 sec. East, a distance of 530.00 feet to a point for corner;

THENCE departing the Southerly right-of-way line of Eldorado Parkway South 00 deg. 28 min. 30 sec. West, a distance of 708.10 feet to a point for corner;

THENCE South 89 deg. 36 min. 52 sec. West, a distance of 1083.36 feet to a point for corner;

THENCE North 00 deg. 23 min. 08 sec. West, a distance of 521.58 feet to a 1/2 inch iron rod found for corner;

THENCE North 89 deg. 51 min. 58 sec. East, a distance of 561.87 feet to a 5/8 inch iron rod found for corner that bears North 43 deg. 25 min. 11 sec. East, 0.44 feet;

THENCE North 00 deg. 15 min. 10 sec. East, a distance of 196.88 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 15.318 acres or 667,269 square feet of land, more or less.

TRACT TWO:

BEING a tract of land situated in the G. Herndon Survey, Abstract No. 390, Collin County, Texas and being a portion of a 101.00 acre tract of land described in a deed to JNC Enterprises as recorded in County Clerk's File No. 94-0058017 of the Land Records of Collin County, Texas (LRCCT) and being more particularly described as follows:

COMMENCING at a point in the Northwesterly corner of said 101.00 acre tract and in the Southerly right-of-way line of Eldorado

(Continued)

LEGAL DESCRIPTION

Parkway (60 feet right-of-way);

THENCE along the Southerly right-of-way line of Eldorado Parkway South 89 deg. 31 min. 30 sec. East, a distance of 530.00 feet to a point for corner;

THENCE departing the Southerly right-of-way line of Eldorado Parkway South 00 deg. 28 min. 30 sec. West, a distance of 708.10 feet to a 1/2 inch iron rod set for the Point of Beginning;

THENCE South 00 deg. 28 min. 30 sec. West, a distance of 584.92 feet to a 1/2 inch iron rod set for corner;

THENCE South 41 deg. 29 min. 58 sec. East, a distance of 466.28 feet to a 1/2 inch iron rod set for the beginning of a curve to the left having a radius of 1000.00 feet, a chord bearing of South 48 deg. 30 min. 02 sec. West and a chord length of 80.00 feet;

THENCE continuing along said curve to the left through a central angle of 04 deg. 35 min. 06 sec. for an arc length of 80.02 feet to a point for corner;

THENCE North 41 deg. 29 min. 58 sec. West, a distance of 425.18 feet to a 1/2 inch iron rod set for corner;

THENCE South 89 deg. 38 min. 52 sec. West, a distance of 1041.33 feet to a 1/2 inch iron rod set for corner;

THENCE North 00 deg. 23 min. 08 sec. West, a distance of 668.42 feet to a 1/2 inch iron rod set for corner;

THENCE North 89 deg. 36 min. 52 sec. East, a distance of 1083.36 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 17.334 acres or 755,069 square feet of land, more or less.

NOTE: The Company does not represent that the above acreage or square footage calculations are correct.

OWNER POLICY 4403131007985 ISSUED WITH MORTGAGE POLICY

SCHEDULE B
EXCEPTIONS FROM COVERAGE

THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE (AND THE COMPANY WILL NO PAY COSTS, ATTORNEY'S FEES OR EXPENSES) THAT ARISE BY REASON OF THE TERMS AND CONDITIONS OF THE LEASES OR EASEMENTS INSURED, IF ANY, SHOWN IN SCHEDULE A, AND THE FOLLOWING MATTERS:

1. THE FOLLOWING RESTRICTIVE COVENANTS OF RECORD ITEMIZED BELOW (BUT OMITTING ANY CONVENANT OR RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN)

   ITEM 1 IS HEREBY DELETED. Cmj

2. ANY DISCREPANCIES, CONFLICTS, OR SHORTAGES IN AREA OR BOUNDARY LINES, OR ANY ENCROACHMENTS OR PROTRUSIONS, OR ANY OVERLAPPING OF IMPROVEMENTS.

3. HOMESTEAD OR COMMUNITY PROPERTY OR SURVIVORSHIP RIGHTS, IF ANY, OF ANY SPOUSE OF ANY INSURED.

4. ANY TITLES OR RIGHTS ASSERTED BY ANYONE, INCLUDING, BUT NOT LIMITED TO, PERSONS, THE PUBLIC, CORPORATIONS, GOVERNMENTS OR OTHER ENTITIES,

   A. TO TIDELINES, OR LANDS COMPRISING THE SHORES OR BEDS OF NAVIGABLE OR PERENNIAL RIVERS AND STREAMS, LAKES, BAYS, GULFS OR OCEANS, OR

   B. TO LANDS BEYOND THE LINES OF THE HARBOR OR BULKHEAD LINES AS ESTABLISHED OR CHANGED BY ANY GOVERNMENT, OR

   C. TO FILLED-IN LANDS, OR ARTIFICIAL ISLANDS, OR

   D. TO STATUTORY WATER RIGHTS, INCLUDING RIPARIAN RIGHTS, OR

   E. TO THE AREA EXTENDING FROM THE LINE OF MEAN LOW TIDE TO THE LINE OF VEGETATION, OR THE RIGHTS OF ACCESS TO THAT AREA OR EASEMENT ALONG AND ACROSS THE SEA.

5. STANDBY FEES, TAXES AND ASSESSMENTS BY ANY TAXING AUTHORITY FOR THE YEAR 1999, AND SUBSEQUENT YEARS, AND SUBSEQUENT TAXES AND ASSESSMENTS BY ANY TAXING AUTHORITY FOR PRIOR YEAR DUE TO CHANGE IN LAND USAGE OR OWNERSHIP. Cmj

6. THE FOLLOWING MATTERS AND ALL TERMS OF THE DOCUMENTS CREATING OR OFFERING EVIDENCE OF THE MATTERS:

(Continued)

COUNTERSIGNED
on and as of the date hereof.

WILSON TITLE COMPANY
By: Charles M. Jordan

This policy not valid unless duly countersigned by Agent

7. Unrecorded Lease Agreement between JNC Enterprises, Ltd., as Lessor, and Tommy Allen, as Lessee, dated November 1, 1995, as evidenced by Partial Release, Assignment and Assumption of Lease dated December 18, 1997, filed January 5, 1998, recorded in Clerk's File No. 98-671, Collin County Land Records. Cmj

TRACT ONE:

8. Location of fence along the North and West property lines as shown on surveyor's plat dated May 24, 1999, prepared by B.J. Elam, R.P.L.S. #4581, indicates that fence does not follow surveyed property line. Any conflict over title as a result of fence not following property lines is excluded from coverage under this policy. Cmj

9. Telephone pedestal and power pole as shown on the survey dated May 24, 1999, prepared by B.J. Elam, R.P.L.S. No. 4581. Cmj

10. Subject to that portion of subject property which lies within the boundaries of Eldorado Parkway, as shown on the survey dated May 24, 1999, prepared by B.J. Elam, R.P.L.S. No. 4581. Cmj

11. Rights of parties in possession. Cmj

12. Section 14 of the Conditions and Stipulations of this policy is hereby deleted. Cmj

McKINNEY™
TEXAS
Unique by nature.℠

CERTIFICATION

I, Sandy Hart, City Secretary of the City of McKinney, Texas, hereby certify that the attached document is a true and correct copy of the First Amendment to Contract of Sale between Eldorado Land Company, L.P. and the City of McKinney dated May 28, 1999.

To certify which, witness my hand and seal of office this 19th day of February, 2014.

Sandy Hart, TRMC, MMC
City Secretary

CITY OF McKINNEY
TEXAS
COLLIN COUNTY, TEXAS

FIRST AMENDMENT TO CONTRACT OF SALE

This First Amendment to Contract of Sale ("First Amendment") is made and entered into by and between **ELDORADO LAND COMPANY, L.P.** ("Seller") and the **CITY OF MCKINNEY, TEXAS** ("Purchaser") in light of the following recitals:

RECITALS:

A. Seller and Purchaser entered into a Contract of Sale ("Contract") dated effective April 22, 1999, regarding the sale and purchase of that certain tract of land, located in Collin County, Texas and described in the Contract, to which reference is hereby made for further description.

B. Seller and Purchaser desire to amend the Contract as herein provided to modify certain provisions contained therein.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser do hereby amend the Contract as follows (all references to section numbers and capitalized terms shall correspond to the section numbers and the capitalized defined terms in the Contract):

1. Section 1(a)(xv) of the Contract, entitled "Balance of the Purchase Price Due" is deleted.

2. Section 1(a)(xix) of the Contract, entitled "Closing Date" is deleted and replaced with the following provision:

Closing Date: The Closing Date shall be May 28, 1999.

3. Section 4 of the Contract is deleted and replaced with the following provision:

Payment of Purchase Price

Purchaser shall pay the Purchase Price at Closing by certified check, wire transfer of federal funds or other evidence of current funds.

4. Section 5(a) of the Contract is amended to read as follows:

Purchaser, if Purchaser elects, shall obtain a current Commitment for Owner Policy of Title Insurance for the Property in favor of the Purchaser (hereinafter referred to as the "Title Commitment") issued by the Title Company of its choice.

5. The Purchaser has obtained an updated survey of the Property. In accordance with Section 5(b) of the Contract, the legal description of the Property in this updated survey shall

constitute the legal description of the Property for purposes of the closing documents and is attached hereto as Exhibit C-1 and made a part hereof.

6. Purchaser and Seller acknowledge that because the Lease will be terminated at Purchaser's request effective as of June 30, 1999, it will not be necessary for the Seller to assign the Lease under Section 8(b)(ii) of the Contract. Seller represents to Purchaser that the Lease may be terminated by Seller at any time.

7. Section 8(d) of the Contract is deleted and replaced with the following provision:

Except as otherwise provided in this Section 8(d), Seller shall pay all reasonable closing costs that are normally assessed in connection with other transactions similar to the transaction contemplated by the Contract in the County in which the Property is located. These closing costs shall include, but not be limited to:

A. the costs of an Owner Policy of Title Insurance in favor of Purchaser (the "Policy") in the amount of $243,000. These costs shall also include the costs of any modifications or endorsements to the Policy that Purchaser may request;

B. reasonable fees and expenses charged by Wilson Title Company in connection with the closing of the transaction contemplated herein. These fees and expenses shall include, but not be limited to: escrow fees, all recording fees, costs of tax certificates, and courier or delivery expenses; and

C. the costs of the updated survey of the Property obtained by Purchaser.

Each party shall pay its own attorneys' fees and expenses; however, in the event of any litigation arising in connection with the Contract, the prevailing party shall be entitled to recover, as part of any judgment rendered, reasonable attorneys' fees and costs of suit.

8. Section 8(e) of the Contract is modified by adding the requirement that taxes shall be paid at Closing in accordance with Section 26.11 of the Texas Tax Code. Compliance with this requirement shall not delay Closing.

9. Section 8(e) of the Contract is modified by adding the following sentence:

Because of its tax-exempt status, and the fact that no rollback tax liability will attach, then in accordance with Section 23.55(f)(3) of the Texas Tax Code, Purchaser will be responsible for rollback taxes for the Property arising because of the change in land usage or ownership contemplated by the Contract. It is provided, however, that in the event that Seller exercises its re-purchase option under the Contract, then the Purchaser shall have no liability to pay any rollback taxes of any kind.

10. Section 13(q)(i) of the Contract is deleted and replaced with the following provision:

Zoning. The City shall cause the zoning of the Property to be changed to a zoning classification appropriate for a community park.

11. Section 13(q)(iii) of the Contract is deleted and replaced with the following provision:

Noise and Security Control. The Purchaser acknowledges that the development and operation of the Property as a community park, including, lighting, noise and security associated therewith could adversely impact the Eldorado Property. (The "Eldorado Property" is defined as property owned by Seller that adjoins the Property). The Purchaser agrees to use its best efforts to insure that the community park and associated recreation complexes and facilities to be located on the Property shall be designed in a manner so as not to disturb the residents or tenants of the Eldorado Property. In connection therewith, Seller and Purchaser agree to work, one with the other, to coordinate the design of a mutually acceptable acoustical and noise abatement engineering plan and lighting plan for any portion of the Property that borders or is contiguous with the Eldorado Property which plans will benefit the Property and alleviate disturbances to the Eldorado Property. The Purchaser agrees to pay all costs and expenses associated with the development of the Property, including, but not limited to, the design, engineering and construction of the community park and recreational and other facilities located thereon and any facilities contemplated by the acoustical and noise abatement engineering plan and lighting plan for the Property. Seller shall not be required to incur any cost or expense with regard to the designing, engineering, or other processes for the facilities to be located on the Property.

12. The following sentence in Section 13(q) of the Contract is deleted: "The terms and agreements set forth in this subparagraph 13(p) shall survive the Closing." This sentence shall be replaced with the following sentence: "The terms and agreements set forth in this subparagraph 13(q) shall survive the Closing."

13. Section 13(t) of the Contract, entitled "Application of Purchase Price" is deleted.

14. The First Amendment shall be governed by and construed in accordance with the laws of the State of Texas and the laws of the United States of America applicable to transactions within the State of Texas.

15. In the event any of the provisions of this First Amendment shall for any reason be held to invalid, illegal or unenforceable, the same shall not affect any other provision hereof, and this First Amendment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

16. The Contract and this First Amendment are for the sole benefit of Seller and Purchaser and not for the benefit of any third party. No third-party beneficiary rights of any kind shall be created by the Contract and this First Amendment. Seller and Purchaser agree that this disclaimer concerning third-party beneficiary rights shall constitute a covenant running with the

Property. Notwithstanding the foregoing, the terms and provisions of the Contract and First Amendment shall inure to the benefit of Purchaser and Purchaser's successors and assigns which may own all or any part of the Eldorado Property, from time to time.

17. Each party may execute and/or deliver this First Amendment via facsimile, and the receiving party may rely fully thereon as an original.

18. This First Amendment may be executed in one or more counterparts, and all so executed shall constitute one and the same agreement, binding on the parties hereto, and notwithstanding that all parties are not signatories to the same counterpart.

19. Except as expressly amended and modified hereby, all of the covenants and conditions of the Contract as amended by this First Amendment are ratified and confirmed by Seller and Purchaser.

20. Subject to the application of Section 5(b) of the Contract, the term "Property" as used in this First Amendment is intended to be synonymous with the term "Land" as defined in the Contract.

EXECUTED to be effective as of the 28th day of May, 1999.

SELLER:

ELDORADO LAND COMPANY, L.P.,
a Texas limited partnership

By: Realty Capital Corporation,
a Texas corporation,
Its General Partner

By: _____
Richard A. Myers, President

Signed and delivered this 28th day of May, 1999.

PURCHASER:

City of McKinney

By Isaac D. Turner
Isaac D. Turner, City Manager

Attest:

Jennifer G. Smith
Jennifer Smith, City Secretary

Signed and delivered this 28th day of MAY, 1999.

McKinney Eldorado Park Land Contract First Amendment (5).mls.wpd

FIELD NOTE DESCRIPTION
TRACT A

STATE OF TEXAS
COUNTY OF COLLIN

BEING a tract of land situated in the G. HERNDON SURVEY, ABSTRACT NO. 390, Collin County, Texas and being a portion of a 101.00 acre tract of land described in a deed to JNC Enterprises as recorded in County Clerk's File No. CC# 94-0058017 of the Land Records of Collin County, Texas (LRCCT) and being more particularly described as follows:

BEGINNING at a point for in the northwesterly corner of said 101.00 acre tract and in the southerly right-of-way line of ELDORADO PARKWAY (80 feet right-of-way);

THENCE along the southerly right-of-way line of ELDORADO PARKWAY South 89°31'30" East, a distance of 530.00 feet to a point for corner;

THENCE departing the southerly right-of-way line of ELDORADO PARKWAY South 00°28'30" West, a distance of 708.10 feet to a point for corner;

THENCE South 89°36'52" West, a distance of 1083.36 feet to a point for corner;

THENCE North 00°23'08" West, a distance of 521.56 feet to a 1/2 inch iron rod found for corner;

THENCE North 89°51'58" East, a distance of 361.87 feet to a 5/8 inch iron rod found for corner that bears North 43°25'11" East, 0.44 feet;

THENCE North 00°15'10" East, a distance of 186.88 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 15.318 acres or 667,269 square feet of land more or less.

FIELD NOTE DESCRIPTION
TRACT B

STATE OF TEXAS
COUNTY OF COLLIN

BEING a tract of land situated in the G. HERNDON SURVEY, ABSTRACT NO. 390, Collin County, Texas and being a portion of a 101.00 acre tract of land described in a deed to JNC Enterprises as recorded in County Clerk's File No. CC# 94-0058017 of the Land Records of Collin County, Texas (LRCCT) and being more particularly described as follows:

COMMENCING at a point for in the northwesterly corner of said 101.00 acre tract and in the southerly right-of-way line of ELDORADO PARKWAY (80 feet right-of-way);

THENCE along the southerly right-of-way line of ELDORADO PARKWAY South 89°31'30" East, a distance of 530.00 feet to a point for corner;

THENCE departing the southerly right-of-way line of ELDORADO PARKWAY South 00°28'30" West, a distance of 708.10 feet to a 1/2 inch iron rod set for the POINT OF BEGINNING;

THENCE South 00°28'30" West, a distance of 584.82 feet to a 1/2 inch iron rod set for corner;

THENCE South 41°29'58" East, a distance of 466.28 feet to a 1/2 inch iron rod set for the beginning of a curve to the left having a radius of 1000.00 feet, a chord bearing of South 46°30'02" West and a chord length of 80.00 feet;

THENCE continuing along said curve to the left through a central angle of 04°35'08" for an arc length of 80.02 feet to a point for corner;

THENCE North 41°29'58" West, a distance of 425.18 feet to a 1/2 inch iron rod set for corner;

THENCE South 89°36'52" West, a distance of 1041.33 feet to a 1/2 inch iron rod set for corner;

THENCE North 00°23'08" West, a distance of 688.42 feet to a 1/2 inch iron rod set for corner;

THENCE North 89°36'52" East, a distance of 1083.36 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 17.334 acres or 755.069 square feet of land

EXHIBIT
C-1
(2 Pages)

I hereby certify to:

City of Mckinney
Eldorado Land Company, L. P., a Texas limited partnership
Wilson Title Company
Chicago Title Insurance Company

that I made the survey on the ground on 24th day of May, 1999 of the described property shown hereon and found corner stakes as reflected on the plat and that the only visible improvements on the ground are as shown on the survey; that there are no apparent encroachments, overlapping of improvements or conflicts found during the time of this survey, except as shown on the survey plat; and this survey substantially conforms to the Minimum Standards of Practice as approved by the Texas Board of Professional Land Surveyors.

STATE OF TEXAS
REGISTERED
B. J. ELAM

B. J. Elam
Registered Professional Land Surveyor
Texas Registration No. 4581
Winkelmann & Associates, Inc.
12600 Hillcrest Road, Suite 200
Dallas, Texas 75230
(972) 490-7090

The Surveyor has not abstracted the record title and/or easements of the subject property. The Surveyor prepared this survey with the benefit of a title commitment described below, and assumes no liability for any easements, right-of-way dedications or other title matters affecting the subject property which may have been filed in the real property records but are not disclosed in said title commitment.

Title commitment provided by: WILSON TITLE COMPANY GF# 99-05-13,
Dated: April 12, 1999.

TAB 2

PLAINTIFF'S EXHIBIT 8

99-05-13 WTC - Kim

4429 4375

99- 0069816

SPECIAL WARRANTY DEED

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

THAT ELDORADO LAND COMPANY, L.P., a Texas limited partnership ("Grantor"), for and in consideration of the cash sum of **Ten and No/100 Dollars ($10.00)** and other good and valuable consideration paid by the **CITY OF MCKINNEY** ("Grantee"), whose mailing address is 308 N. Tennessee, McKinney, Texas 75070, Attn: Larry Offerdahl, Director of Parks and Recreation, the receipt and sufficiency of all of which are hereby acknowledged by the Grantor, has **GRANTED, BARGAINED, SOLD** and **CONVEYED**, and by these presents does **GRANT, BARGAIN, SELL** and **CONVEY** unto Grantee all that certain land situated in McKinney, Collin County, Texas, described on **Exhibit A** which is attached hereto and incorporated herein by reference for all purposes, together with all appurtenances thereon or in anywise appertaining thereto, as well as all of Grantor's right, title and interest, if any, in and to adjacent streets, alleys, easements, rights-of-way, and any adjacent strips or gores of real estate, and all rights, title and interests appurtenant to such land and improvements (said land, improvements and appurtenances being herein together referred to as the "Property"). Grantee acknowledges that the portion of the Property containing 15.318 acres and described in the Contract of Sale between Grantor and Grantee concerning the Property has been donated by Grantor to Grantee, at no cost to Grantee.

This conveyance is made subject to the easements, covenants and other matters and exceptions set forth in **Exhibit B** attached hereto and incorporated herein by reference for all purposes (the "Permitted Exceptions"), but only to the extent the same are valid and subsisting and affect the Property as of the date hereof, and without limitation or expansion of the scope of the special warranty herein contained.

This conveyance by Grantor to Grantee is made subject to the requirement and restriction that the Property shall be used only as a Community Park. For purposes hereof, the term "Community Park" shall mean and be defined as a park and recreational facility operated by Grantee and serving the citizens of the City of McKinney. In the event Grantee violates the foregoing restriction or should Grantee desire not to develop the Property as a Community Park, Grantor and Grantor's successors and assigns shall have the option (the "Option") to purchase the Property for a purchase price in an amount equal to the lesser of (i) the then fair market value of the Property, or (ii) the purchase price paid by Grantor to Grantee for the Property. Grantor shall have a period of thirty (30) days after receipt of written notice from Grantee that Grantee does not desire to develop the Property as a Community Park and thirty (30) days after delivery of written notice to Grantee by Grantor of a violation of the restriction contained herein above, in which to deliver written notice to Grantee of Grantor's intent to exercise the Option to purchase the Property in accordance herewith. In the event Grantor elects to exercise the Option, Grantor shall have a period of thirty (30) days after the exercise of the Option ("Inspection Period") in which to perform any and all investigations or studies Grantor deems necessary or desirable to determine whether Grantor desires to purchase the Property. In the event Grantor elects to consummate the purchase of the Property, the closing of the purchase and sale shall occur within ninety (90) days after the expiration of the Inspection Period at such location as is reasonably acceptable to Grantor and Grantee. Grantee shall convey the Property to Grantor

pursuant to the Option free and clear of any and all hazardous waste and hazardous materials contamination, if any, which arose during Grantee's ownership of the Property and which shall be remediated and abated by Grantee prior to the closing of the purchase and sale pursuant to the Option to residential environmental standards. The Option shall be in addition to any and all remedies available at law or in equity to Grantor and Grantor's successors and assigns to enforce compliance with the terms and provisions of the restriction on use contained herein.

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

Grantor hereby specifically disclaims any warranty, guaranty, or representation, oral or written past, present or future, of, as to, or concerning (i) the nature and condition of the Property, including but not by way of limitation, the water, soil, geology and the suitability thereof, and of the Property, for any and all activities and uses which Grantee may elect to conduct thereon or any improvements Grantee may elect to construct thereon, income to be derived therefrom or expenses to be incurred with respect thereto, or any obligations or any other matter or thing relating to or affecting the same; (ii) the manner of construction and condition and state of repair or lack of repair of any improvements located thereon; (iii) the nature and extent of any easement, right-of-way, lease, possession, lien, license, encumbrance or reservation or other condition; and (iv) the compliance of the Property or the operation of the Property with any laws, rules, ordinances, or regulations of any government or other body. IN CONNECTION WITH THE CONVEYANCE OF THE PROPERTY AS PROVIDED FOR HEREIN, GRANTOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY OR CONDITION OF THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON, COMPLIANCE BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SPECIFICALLY, GRANTOR DOES NOT MAKE ANY REPRESENTATIONS REGARDING HAZARDOUS WASTE, AS DEFINED BY THE LAWS OF THE STATE OF TEXAS, AND ANY REGULATIONS ADOPTED PURSUANT THERETO OR THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OF ANY HAZARDOUS WASTE OR ANY OTHER HAZARDOUS OR TOXIC SUBSTANCES IN OR ON THE PROPERTY. Grantee accepts the Property in its present AS IS condition WITH ALL FAULTS.

GRANTEE ACKNOWLEDGES AND AGREES THAT GRANTEE IS EXPERIENCED IN THE OWNERSHIP AND OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT GRANTEE, PRIOR TO THE DATE HEREOF, HAS INSPECTED THE

PROPERTY TO ITS SATISFACTION AND IS QUALIFIED TO MAKE SUCH INSPECTION. GRANTEE ACKNOWLEDGES THAT GRANTEE IS FULLY RELYING ON GRANTEE'S (OR GRANTEE'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND, NOT UPON ANY STATEMENT (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY GRANTOR OR ANY OF ITS REPRESENTATIVES. GRANTEE ACKNOWLEDGES THAT GRANTEE HAS (OR GRANTEE'S REPRESENTATIVES HAVE) THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY GRANTEE IN ORDER TO ENABLE GRANTEE TO EVALUATE THE CONDITION OF THE PROPERTY AND ALL OTHER ASPECTS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED, THE ENVIRONMENTAL CONDITION OF THE PROPERTY), AND GRANTEE ACKNOWLEDGES THAT GRANTEE IS RELYING SOLELY UPON ITS OWN (OR ITS REPRESENTATIVES') INSPECTION, EXAMINATION AND EVALUATION OF THE PROPERTY. GRANTEE HEREBY EXPRESSLY ASSUMES ALL RISKS, LIABILITIES, CLAIMS, DAMAGES AND COSTS (AND AGREES THAT SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, OR OTHER DAMAGES) RESULTING OR ARISING FROM OR RELATED TO GRANTEE'S OWNERSHIP, USE, MAINTENANCE, REPAIR OR OPERATION OF THE PROPERTY. GRANTEE ACKNOWLEDGES THAT ANY CONDITION OF THE PROPERTY THAT GRANTEE DISCOVERS OR DESIRES TO CORRECT OR IMPROVE PRIOR TO OR AFTER THE CLOSING SHALL BE AT GRANTEE'S SOLE EXPENSE. GRANTEE EXPRESSLY WAIVES (TO THE EXTENT ALLOWED BY APPLICABLE LAW) ANY CLAIMS UNDER FEDERAL, STATE OR OTHER LAW THAT GRANTEE MIGHT OTHERWISE HAVE AGAINST SELLER RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PROPERTY.

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed to be effective as of, although not necessarily on, May 28, 1999.

GRANTOR:

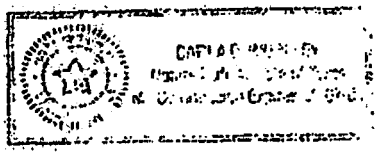
Eldorado Land Company, L.P.,
a Texas limited partnership

By: Realty Capital Corporation,
a Texas corporation
General Partner

By: _____
Richard A. Myers,
President

STATE OF TEXAS §
§
COUNTY OF TARRANT §

This instrument was acknowledged before me on May 28th, 1999, by **Richard A. Myers**, President of Realty Capital Corporation, a Texas corporation, General Partner of **Eldorado Land Company, L.P.**, a Texas limited partnership, on behalf thereof and in the capacity herein stated.

(seal) 

Notary Public, State of Texas

P:\Docs\gk\Capstone\Eldorado-GSWD.wpd

4429 4380

FIELD NOTE DESCRIPTION
TRACT A

STATE OF TEXAS
COUNTY OF COLLIN

BEING a tract of land situated in the G. HERNDON SURVEY, ABSTRACT NO. 390, Collin County, Texas and being a portion of a 101.00 acre tract of land described in a deed to JHC Enterprises as recorded in County Clerk's File No. CO# 94-0052017 of the Land Records of Collin County, Texas (LRCCT) and being more particularly described as follows:

BEGINNING at a point for in the northwesterly corner of said 101.00 acre tract and in the southerly right-of-way line of ELDORADO PARKWAY (80 feet right-of-way);

THENCE along the southerly right-of-way line of ELDORADO PARKWAY South 89°31'30" East, a distance of 530.00 feet to a point for corner;

THENCE departing the southerly right-of-way line of ELDORADO PARKWAY South 00°28'30" West, a distance of 708.10 feet to a point for corner;

THENCE South 89°36'52" West, a distance of 1083.36 feet to a point for corner;

THENCE North 00°23'08" West, a distance of 521.58 feet to a 1/2 inch iron rod found for corner;

THENCE North 89°51'58" East, a distance of 561.87 feet to a 5/8 inch iron rod found for corner that bears North 43°25'11" East, 0.44 feet;

THENCE North 00°15'10" East, a distance of 186.68 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 15.315 acres or 667,259 square feet of land more or less.

FIELD NOTE DESCRIPTION
TRACT B

STATE OF TEXAS
COUNTY OF COLLIN

BEING a tract of land situated in the G. HERNDON SURVEY, ABSTRACT NO. 390, Collin County, Texas and being a portion of a 101.00 acre tract of land described in a deed to JHC Enterprises as recorded in County Clerk's File No. CO# 94-0052017 of the Land Records of Collin County, Texas (LRCCT) and being more particularly described as follows:

COMMENCING at a point for in the northwesterly corner of said 101.00 acre tract and in the southerly right-of-way line of ELDORADO PARKWAY (80 feet right-of-way);

THENCE along the southerly right-of-way line of ELDORADO PARKWAY South 89°31'30" East, a distance of 530.00 feet to a point for corner;

THENCE departing the southerly right-of-way line of ELDORADO PARKWAY South 00°28'30" West, a distance of 708.10 feet to a 1/2 inch iron rod set for the POINT OF BEGINNING;

THENCE South 00°28'30" West, a distance of 584.92 feet to a 1/2 inch iron rod set for corner;

THENCE South 41°28'58" East, a distance of 466.28 feet to a 1/2 inch iron rod set for the beginning of a curve to the left having a radius of 1000.00 feet, a chord bearing of South 48°39'02" West and a chord length of 80.00 feet;

THENCE continuing along said curve to the left through a central angle of 04°35'08" for an arc length of 80.02 feet to a point for corner;

THENCE North 41°28'58" West, a distance of 429.18 feet to a 1/2 inch iron rod set for corner;

THENCE South 89°36'52" West, a distance of 1041.33 feet to a 1/2 inch iron rod set for corner;

THENCE North 00°23'08" West, a distance of 668.42 feet to a 1/2 inch iron rod set for corner;

THENCE North 89°36'52" East, a distance of 1083.36 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 17.334 acres or 755,089 square feet of land more or less.

EXHIBIT
A
(2 pages)

McK 000049

4429 4381

I hereby certify to:

City of McKinney
Eldorado Land Company, L. P., a Texas limited partnership
Wilson Title Company
Chicago Title Insurance Company

that I made the survey on the ground on 24th day of May, 1999 of the described property shown hereon and found corner stakes as reflected on the plat and that the only visible improvements on the ground are as shown on the survey; that there are no apparent encroachments, overlapping of improvements or conflicts found during the time of this survey, except as shown on the survey plat; and this survey substantially conforms to the Minimum Standards of Practice as approved by the Texas Board of Professional Land Surveyors.

B. J. Elam
Registered Professional Land Surveyor
Texas Registration No. 4581
Winkelmann & Associates, Inc.
12000 Forest Road, Suite 200
Dallas, Texas 75230
(214) 490-7090

STATE OF TEXAS
REGISTERED
B J ELAM
4581

The Surveyor has not abstracted the record title and/or easements of the subject property. The Surveyor prepared this survey with the benefit of a title commitment described below, and assumes no liability for any easements, right-of-way dedications or other title matters affecting the subject property which may have been filed in the real property records but are not disclosed in said title commitment.

Title commitment provided by: WILSON TITLE COMPANY GF# 99-05-13,
Dated: April 12, 1999.

4429 4383

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW

(THE STATE OF TEXAS) (COUNTY OF COLLIN)

I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas on

JUN 0 3 1999

Helen Starnes

Filed for Record in:
COLLIN COUNTY, TX
HONORABLE HELEN STARNES

On 1999/06/03

At 3:25p

Number: 99- 0069816
Type : DI 25.00

Exhibit B

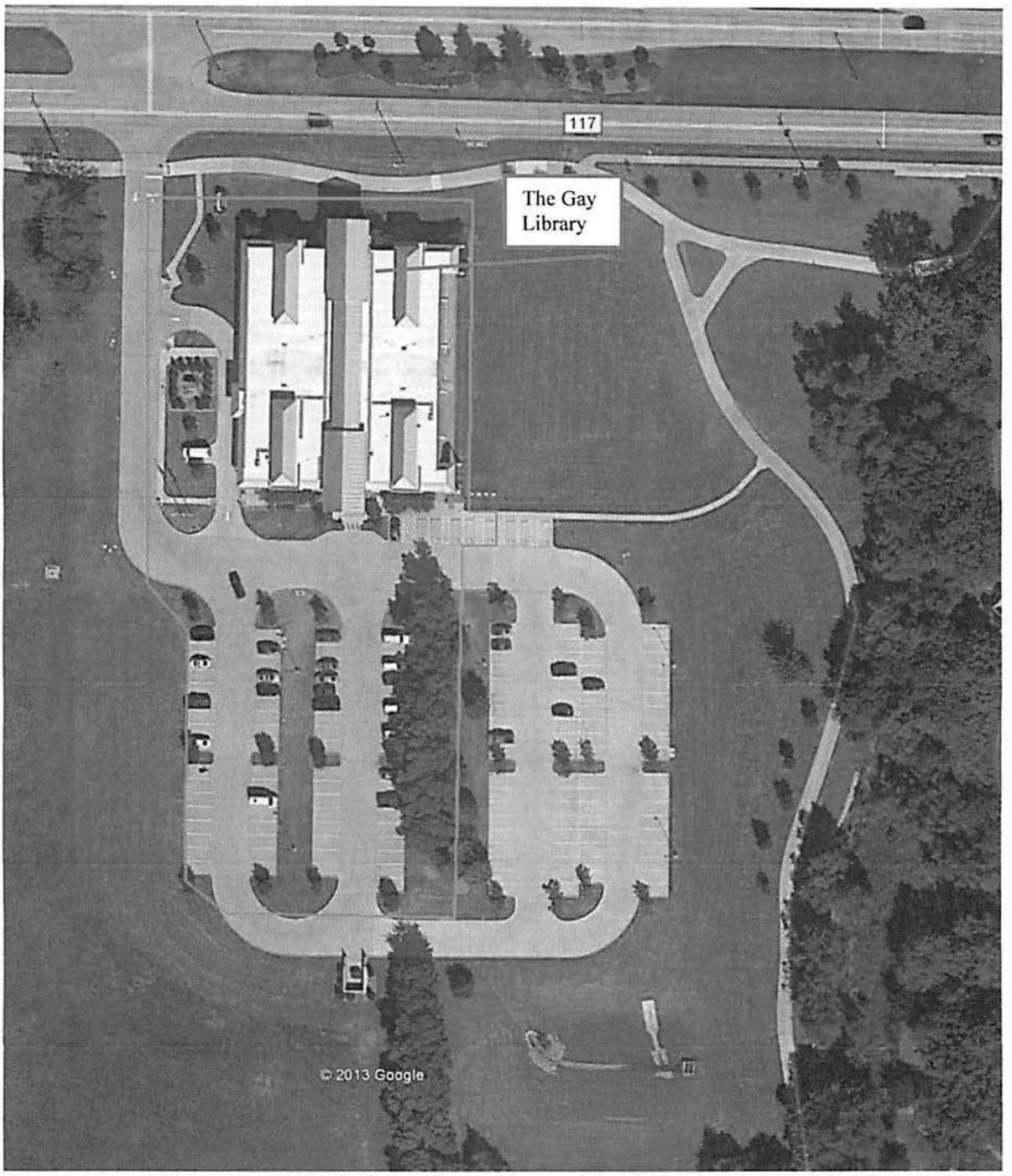
Permitted Exceptions

1. Standby fees, taxes and assessments by any taxing authority for the year 1999, and subsequent years, and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership.

After recording
please return to
City of McKinney
308 N. Tennessee
McKinney, TX 75070
Attn: Larry C. Hardcastle

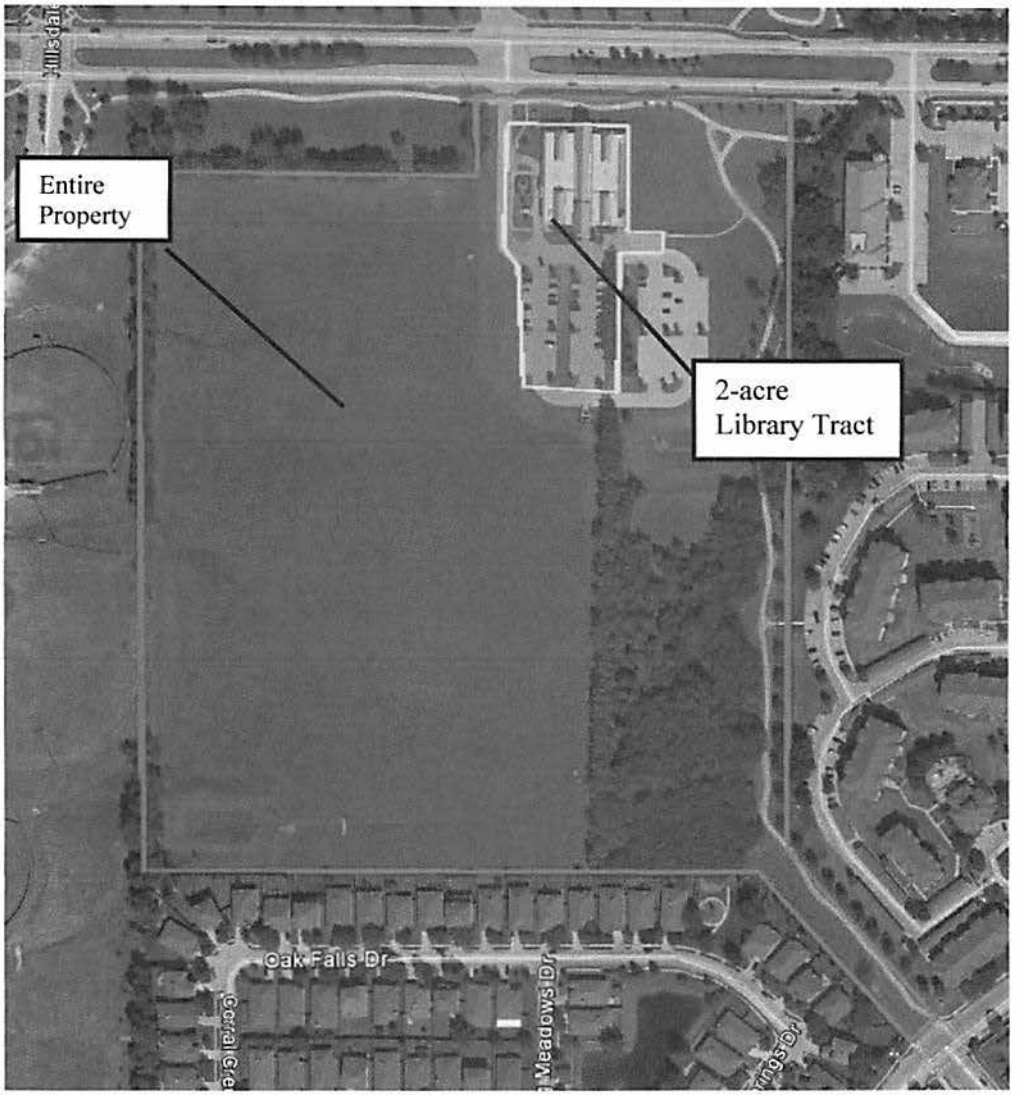
TAB 3

The Two-acre "Library Tract" outlined in orange.



The tract outlined shares the parking and the drives with the park.

DEFENDANT'S EXHIBIT


Entire
Property
2-acre
Library Tract
Oak Falls Dr

TAB 4

EXHIBIT G

Cause No. 380-03745-2009

El Dorado Land Company, LP,	§	
	§	**380th District Court**
Plaintiff,	§	
	§	
v.	§	
	§	
City of McKinney,	§	
	§	**Collin County, Texas**
Defendant.	§	

Affidavit of Galen Cranz

STATE OF CALIFORNIA §
§
COUNTY OF ALAMEDA §

BEFORE ME, the undersigned authority, on this day personally appeared Galen Cranz, who, being of lawful age and duly sworn upon her oath, deposed and stated as follows:

1. My name is Galen Cranz. I am over 21 years of age, I have never been convicted of a felony or any crime involving dishonesty or moral turpitude, and I am fully competent to testify regarding the matters stated herein. I have personal knowledge of the facts stated herein, all of which are true and correct. My knowledge of some of the facts also is based on my research in the substantive areas under consideration and I have used that knowledge in reaching my opinions and conclusions as well.

2. I have been retained by the City of McKinney ("City") as an expert in the lawsuit styled *El Dorado Land Company, LP v. City of McKinney*, Cause No. 380-03745-2009, filed in the 380th District Court of Collin County, Texas, and I am making this Affidavit in connection with Defendant's Motion for Summary Judgment Under Rule 166a(b) ("Motion") in this case.

3. I am a 1966 graduate of Reed College in Portland, Oregon, where I earned my B.A. degree in Sociology. I received my M.A. degree in Urban Sociology (1969) and my Ph.D. degree in Sociology with an emphasis on Urban Sociology (1971) from the University of Chicago. My Ph.D. Dissertation was "Models for Park Usage; Ideology and the Development of Chicago's Public Parks."

4. From 1971 to 1975 I was an assistant professor at Princeton University, where I taught Sociology in Architecture and Urban Planning. At the present time I hold the position of professor of architecture in the Department of Architecture at the University of California, Berkeley, where I have taught since 1975 (assistant professor 1975-81; associate professor 1981-97; professor 1997-present). In 2007 I was a visiting professor at universities in China and Denmark, where I taught courses on architecture and urban design.

5. My areas of specialization today include urban parks, and during my career I have written, taught, spoken, and published extensively on this subject. I have participated in award-winning competitions in park design and have been retained on numerous occasions as a juror or consultant for various park competitions and comparative analyses of park systems.

6. I am the author of *The Politics of Park Design: A History of Urban Parks in America* (Cambridge, Mass: The MIT Press, 1982), a comprehensive history of the rise and evolution of the American park system from 1850 to the time of the book's publication. In keeping with social research methods, I treated three urban park systems – those of New York City, Chicago, and San Francisco – as case studies. I combined this analysis with comparisons of other American towns and their park systems to develop certain

conclusions and an overview of the park movement in the United States. In part, what I determined in researching and writing *The Politics of Park Design* is that the development of American urban parks has been remarkably homogeneous.

7. In 1983 I was a member of Bernard Tschumi's design team, which won first place in an international competition for the design of Parc de la Villette, one of the largest parks in Paris, France, which was built in 1984-87.

8. In 1983 I also was a member of the team that submitted plans for the Design of Spectacle Island, one of Boston's Inner Harbor Islands, for which the team earned seventh place. I was the co-designer and team leader of the team that earned first place in 1985 in a competition sponsored by the National Endowment for the Arts Cityscape Design Competition for St. Paul, Minnesota.

9. Since the publication of *The Politics of Park Design* I have continued to write, speak, teach, and publish on the design and use of urban parks in the United States, including *Defining the Sustainable Park: A Fifth Model for Urban Parks* (Galen Cranz and Michael Boland), published in the Fall 2004 issue of *Landscape Journal*. This publication extended the research of *The Politics of Park Design* from 1982 to 2004.

10. A copy of my curriculum vitae, attached to this Affidavit as Exhibit A, provides a more detailed view of my background and professional career.

11. I have reviewed the relevant pleadings and any related attachments or exhibits filed with the Court in this case, including Plaintiff's Original Petition; Plaintiff's Response to Defendant's Plea to the Jurisdiction; Plaintiff's First Amended Petition ("Plaintiff's Amended Petition"); Plaintiff's Response to Defendant's Request for Disclosure;

Defendant's Original Answer and Request for Disclosure; Defendant's Brief in Support of Plea to the Jurisdiction; and Defendant's First Amended Original Answer.

12. In addition, I have reviewed other documents provided by the City relating to the John and Judy Gay Library ("Library") and Gabe Nesbitt Community Park ("Park"), where the Library is located. Those documents include concept plans, survey maps, aerial photographs, site plans, proposed master site plans, plats, and drawings related to the Park and the Library. I also have reviewed related agreements, contracts of sale, resolutions, public reports prepared by City staff for City Council meetings and work sessions, promotional literature describing programming and events offered by the Library, community library survey results and comments, and power point presentations on anticipated library facilities and potential site considerations.

13. My understanding from Plaintiff's Amended Petition is that El Dorado Land Company, L.P. ("El Dorado") alleges the City violated the Deed Restriction (as defined below) by developing the Property "as a library and not as a 'Community Park.'" I have reviewed the copy of the Special Warranty Deed of May 28, 1999 ("Deed"), attached as Exhibit A to Plaintiff's Amended Petition, and specifically the language regarding the conveyance of the "Property," as that term is defined in the Deed and as further described in Section IV of Plaintiff's Amended Petition ("Property"), by El Dorado to the City. That copy of the Deed provides that the conveyance was made subject to:

> the requirement and restriction that the Property shall be used only as a Community Park. For purposes hereof, the term "Community Park" shall mean and be defined as a park and recreational facility operated by [the City] and serving the citizens of the City of McKinney.

("Deed Restriction").

14. On Monday, November 18, 2013, I met with members of the administrative staff and legal counsel for the City, at which time I accompanied them on a tour of the Library and the area immediately surrounding the Library. I also personally viewed the entirety of the Park later that day and the various areas and amenities contained there. In addition, we drove through different parts of the City and I visited two other community parks in McKinney that day that are owned, managed, and operated by the City. I also saw the residential properties near and immediately adjacent to the Library, and observed that the residents of that neighborhood had direct access to the Park, including the Library.

15. According to the administrative staff, the mission of the City's library system is basically threefold: to provide for the educational, informational, and recreational needs of the library system's patrons. What I saw inside and outside the Library evidenced the realization of this mission.

16. On the ground floor of the Library, I saw young students seated and working at a number of computer stations available to the public. Nearby, several very young children and young adults were using a glassed-in play room, and literature available at the counter advertised pre-school and elementary school programs, including story time and music classes, and evening computer program classes. The Library also contains a large meeting room that is available for community use.

17. Outside the Library, internal, pedestrian pathways allowed school children to walk from a nearby middle school into the Park and to the Library, and provided direct access to adjacent residential areas. There are permanent bicycle racks set up outside the Library, and I understand from the administrative staff that the large open space on the

Property next to the Library is used for recreational activities such as pick-up soccer games or practice.

18. The Property is part of the Park grounds, which contain a softball complex, a baseball complex, playground facilities, a skateboard park, hike and bike trails, and a tennis complex with a clubhouse and pro shop.

19. At least since the National Parks Service ("NPS") Library System was created, national libraries and parks in the United States have partnered together, combining two of the few places that belong to the public equally. Today, NPS libraries are found in Yosemite, Yellowstone, the Grand Canyon, Ellis Island, and numerous other national parks, and they constitute a significant resource for NPS staff, researchers, educators, and the public.

20. Since the mid-nineteenth century community parks have played an integral part in how Americans live, socialize, and use their recreational time, and libraries have been incorporated into community parks since the early twentieth century. Simply stated, as the country and its cities have expanded and evolved, the role of the public park similarly has changed and evolved. Today's community parks, with amenities typically designed and built to reflect modern-day, urban interests, uses, and activities, are far removed from the original, planned "pleasure grounds" of the 1850s, which were anti-urban in nature and conceived as rural retreats from the evils of the city.

21. During the first three decades of the twentieth century there was a general shift away from this naturalistic aesthetic; a new, reform park ideal emerged that included elements, such as field houses, libraries and reading rooms, meeting rooms and small theaters, children's playgrounds, swimming pools, and interior gymnasiums. This evolution continued with the advent of the automobile and an exodus of families to the suburbs,

which ushered in a recreation facility phase for parks from approximately 1930 to 1965, an era that saw a proliferation of sports stadiums, outdoor basketball and tennis courts, and similar facilities created to meet the demand for recreational activities. Thereafter, parks tended to be squeezed into smaller urban spaces as people returned to the cities. These periods of evolution are not rigidly defined by years, and the American park system continues to evolve today.

22. Today, libraries can be found in and as part of many community parks throughout the United States. More specifically, my research has revealed that the National Recreation and Park Association conducted a survey in 2013 of approximately 275 county, city, and other state governmental parks and recreation departments in every state in the United States. One of the questions asked each department was if it operated a library. The result was that 11.05% of those who responded, or more than one in ten, affirmatively stated that they offered a library facility.

23. It is my professional opinion, based on almost 45 years of education, research, and experience as a university professor and designer of urban parks as more fully described in this Affidavit, my review of the pleadings and related documents, and my on-site observations of the Library, the Park, and the surrounding areas and neighborhoods, that the City's placement, design, construction, management, and use of the Library, which is an inseparable part of the Gabe Nesbitt Community Park, did not and does not alter the character of the Property as a Community Park as that term is defined in the Deed, and that the Property, including the Library, is being used as a park and recreational facility operated by the City and serving the citizens of the City of McKinney.

24. Further, Affiant sayeth not.

Galen Cranz

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned notary public in and for Alameda County, California, on the ___ day of February, 2014, to certify which witness my hand and official seal of office.

Notary Public in and for Alameda County, California

My Commission Expires:

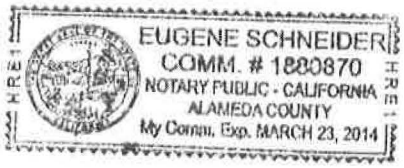
JURAT ATTACHED

State of California
County of Alameda

Subscribed and sworn to (or affirmed) before me on this -27-
day of February, 2014, by Galen Cranz ----------
,
proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.

EUGENE SCHNEIDER
COMM. # 1880870
NOTARY PUBLIC - CALIFORNIA
ALAMEDA COUNTY
My Comm. Exp. MARCH 23, 2014

(Seal) Signature



Galen Cranz, Ph.D. Professor of Architecture

Education

Certified Teacher of the Alexander Technique, a four-year training, NYC, 1990.

Department of Film and Television, Tisch School of the Arts, New York University (1982-83) to learn film and video making, part of my learning plan for the Kellogg National Fellowship (1981-84).

Ph.D., Sociology, (urban sociology and the social use of space) University of Chicago, 1971.

M.A., Sociology, University of Chicago, 1969.

B.A., Sociology, Reed College, 1966.

Exchange student, Keele University, England, 1964-65.

Academic Appointments

Professor, Department of Architecture, University of California, Berkeley, 1997-Present.

Associate Professor, Department of Architecture, University of California, Berkeley, 1981-97.

Assistant Professor, Department of Architecture, University of California, Berkeley, 1975-81.

Assistant Professor, Sociology in Architecture and Urban Planning, Princeton University, NJ, 1971-75.

Visiting Adjunct Assistant Professor, Columbia University, Department of Engineering, NY, 1973.

Visiting Assistant Professor, Department of Sociology, Illinois Institute of Technology, Chicago, IL, 1970-71.

Acting Executive Director, Metropolitan Study Center, Illinois Institute of Technology, 1969-70.

Instructor, Sociology (part-time) Columbia College, Chicago, 1969.

Administrative/Decision-making Experience at UC Berkeley

University Level

Member, Hearst gymnasium planning committee, 2005-present.

Faculty member, Committee on Student Conduct, U.C. Berkeley Student Disciplinary Committee, 2001

Member, Berkeley Division's Subcommittee on the Breadth Requirement in American Cultures, Fall 2001, Fall 2002.

Member, Housing Committee for the controversial Section B of Village Homes, 2001-03.

Member, Ad Hoc Appointment and Promotion Committees, several since 1997.

Committee on Committees, elected by the Berkeley Division, 1996-1998.

Regents Scholar Interviewer in Los Angeles, 1994; Regents Scholar Mentor, 2004.

Faculty Search Committee for Energy and Resources Group, 1993.

Departmental Faculty Advisor, Graduate Student Instructors' Affairs, 1990-1994.

Departmental Representative to the Academic Senate, Berkeley Assembly, 1981-82.

College Level

Chair, CED Executive Committee, 1995-96; Vice-Chair '94; Departmental Representative, 1983-85, 1989, 1990-1991.

Co-chair, CED Faculty Task Force on Undergraduate Program, 1992.

Chair, College of Environmental Design Evening Lecture Series, 1984-85.

Departmental Level

Member, Ph.D. Committee, Architecture, 1975-present, and Chair, 1985-86.

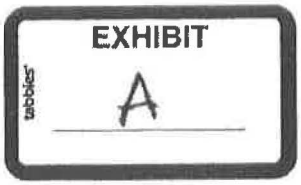
Member, GSI Committee, most years, and Chair, 1990-91, 1996, 1999.

Member, Branner Traveling Fellowship Selection Committee, 1978, 1989, 1999.

Prizes and Awards Committee, Department of Architecture, numerous years.

Delegate to American Collegiate Schools of Architecture, Teacher's Seminar, Cranbrook, Michigan, 1978, and 1994.

Chair, Ad Hoc Committee, Promotion to Tenure, 1992.



Chair, Affirmative Action Committee, 1983-86.

Selected Awards and Honors

- Environmental Design Research Association, Career Award, 2011, EDRA's highest honor.
- Environmental Design Research Association, 2004 Achievement Award, EDRA's highest honor for specific contributions, in this case the publication of *The Chair*.
- Kellogg National Fellowship for interdisciplinary leadership, 1981-84.

Design Prizes

- Editorial mention, *Competitions*, and publication in Franck & Ahrentzen, *Types*, Olympia Fields, Illinois, National competition for a park for the New American Century, Co-designer and team leader, 1992.
- First Prize, National Endowment for the Arts, Cityscape Design Competition for St. Paul, Minnesota, Head designer and team leader, $10,000, 1985.
- First Place, International Competition for Design of Parc de La Villete, Paris, Team Member with Bernard Tschumi, 1983.
- Seventh Place, Design of Spectacle Island, one of Boston's Inner Harbor Islands, Team member along with Susanna Torre, Mary Miss et al, 1983.
- Honor award (7th through 10th entries) in State of California's energy-conscious office building design competition, with Bob Swatt and Bernie Stein et al, 1977.

Grants

- Principal Investigator for the Latrobe Fellowship, the premier research award of the American Institute of Architects (AIA) for a three-way collaboration between the Kaiser Permanente Hospitals, Gordon Chong Architects in San Francisco, and the University of California's Department of Architecture to define and develop "evidence based design" in the context of health care delivery, 2005-2007.
- Hewlett grant for interdisciplinary teaching between the professions and the liberal arts. Based on the principles in *The Chair*, Psychology Professor Seth Roberts and I developed a new course, "The Office of the Future." $15,000, 1999-2000.
- Graham Foundation, Chicago, "Defining the Sustainable Park," $8000, 1996.
- Sabbatical supplement research grant from UC Berkeley, for *The Chair: Rethinking Body, Culture and Design*, 1995.
- American Cultures Program, award of $5,000 to restructure Architecture 110, "Social & Cultural Factors in Architecture & Urban Design" as an American cultures class, 1995.
- National Institute of Health, $71,755 research grant on "Residential Quality for the Oldest Old," 1986-88.
- Humanities Research Fellowships, U.C. Berkeley, 1976-2004.
- School of Architecture and Urban Planning, Princeton University Summer Research Grant, 1974.
- Graham Foundation, programming and evaluation research on rooftop use in New York City, $10,000, 1973.

Selected Publications

- Galen Cranz and Michael Boland, "Defining the Sustainable Park: A Fifth Model for Urban Parks," *Landscape Journal*, Fall 2004, pp. 102-120.
- "A New Way of Thinking about Taste," *The Nature of Craft and the Penland Experience* (Lark Books, New York, 2004), pp. 130-136.
- Galen Cranz and Michael Boland, "Defining the Ecological Park," *Places*, June 2003.

- "The Alexander Technique in the World of Design: Posture and the Common Chair, Part I: The Chair as Health Hazard," *Journal of Bodywork and Movement Therapies*, Vol. 4, No. 2 (April 2000), pp. 90-96, and "Part II: Body-conscious Design for Chairs, Interiors and Beyond," *Journal of Bodywork and Movement Therapies*, Vol. 4, No. 3 (July 2000), pp. 155-165.
- *The Chair: Rethinking Culture, Body and Design.* (Norton, New York, 1998, paperback 2000).
- "Now You Aren't Sitting Comfortably," *The Independent, UK*, Design Notes, Oct. 3, 1998, p. 11.
- "Parks" entry in *American Cities in Suburbs, An Encyclopedia*, (Larry Schumsky, Ed.) (ABC-CLIO), pp. 554-58.
- "Community and Complexity on Campus: A Post-Occupancy Evaluation of the University of California, Haas School of Business," with Amy Taylor and Anne-Marie Broudehoux, *Places, A Forum of Environmental Design*. 1997 Vol. II, No.1 pp. 38-51.
- "The Chair is Where the Body Meets the Environment," in *Curiosity Recaptured: Exploring Ways We Think and Move*, Jerry Sontag, Ed. (Mornum Time Press, San Francisco, 1996), pp. 3-20.
- "How Principles of Sustainable Development Can and Must Shape Our Cities and Parks: The Case of Riverside South," in Aristides and Cleopatra (Eds.) *International Association for Person-Environment Studies (IAPS) 12 Conference Proceedings* (Aristotle University, Thessaloniki, Greece, 1992), pp. 85-89.
- "Four Models of Municipal Park Design in the United States," *Denatured Visions: Landscape and Culture in the Twentieth Century*, Wrede, S. and Adams, W. Eds. (NY: Museum of Modern Art: Abrams distributor, 1992), pp. 118-123.
- "Berkeley's Free Speech Controversy," Op. ed., *Oakland Tribune*, Jan. 31, 1990.
- "What MacArthur Park Tells Us about Our Own Time," *How the Arts Made a Difference*, (Los Angeles, Hennessy & Ingalls, 1989).
- "Public Housing for the Elderly: A Study of Eight Housing Projects in New Jersey" in *Housing for the Elderly: Design Directives and Policy Considerations*, (Elsevier, New York, 1985).
- *The Politics of Park Design: A History of Urban Parks in America* (Cambridge, Mass.: The MIT Press, 1982; paperback 1989).
- "Women in Urban Parks," *Signs: Journal of Women in Culture and Society*, Vol. 5 No. 3; reprinted in Stimpson (Ed.) *Women and the American City* (University of Chicago, 1981).
- "The Useful and the Beautiful: Urban Parks in China," *Landscape*, Volume 23 No. 2 (1979).
- "Sociological Research for Urban Planning: Methodological and Conceptual Problems in a Spanish New Town for Leisure," Working Paper for the Center for Environmental Research, School of Architecture and Urban Planning, Princeton University, 1973.

Radio and Television Appearances

- Australian Broadcasting Corp. (ABC), "The Trouble with Sitting," Kerry Stewart, June 18, 2005.
- British Broadcasting Corp. (BBC), "Glued to Our Seats," Chris Bowlby, Feb. 21, 2005.
- Panelist in Television Show "Community Conversations on Parks" hosted by Friends of Recreation and Parks, San Francisco, February 2, 2001.
- Appearance on Channel 7, 6 o'clock News, December 19, 2000 to discuss body language of George Bush, Jr.
- Interviewed on CNN World Today, "Seat Sizes Expanding along with American Waistlines," aired on April 10, 2000.
- 30-minute interview about *The Chair* with Judith Strasser, Senior Producer and Interviewer, "To the Best of Our Knowledge," on Wisconsin Public Radio, aired nationally on August 22, 1999 on NPR, National Public Radio.
- NPR, Scott Simon, interviewer, "Weekend Edition," *The Chair*, April 17, 1999.

- Health segment of 6 O'clock news, Channel 4 KRON-TV, San Francisco, produced by Kevin McCormack, March 5, 1999 (4 minutes) about *The Chair.*
- NPR, Terry Gross, interviewer, "Fresh Air," subject: *The Chair*, February 9, 1999.
- WCSX, WRIF and WXDG Radio FM, Peter Werbe, interviewer, Detroit, Mich., January 1999, subject: *The Chair*, (30 minutes), 3 different broadcasts.
- WGN Radio, interview about *The Chair*, "Extension 720 with Milt Rosenburg," Producer, Chicago, Ill., December 8, 1998.
- Australian National Radio, interview about *The Chair*, Sept. & Oct., 1998.
- KGO TV, Channel 7, September 30, 1998, subject: *The Chair*, on evening news segment, "Wayne Friedman's Notebook."

Selected Public Lectures on *The Chair* and Body Conscious Design

- Invited Lecture Series, Museum of Art, Raleigh-Durham, NC, 2005.
- Special Lecture Series, Penland School of Crafts, NC, 2003.
- Furniture Society Conference, Savannah GA, 2004.
- Keynote, "Body Conscious Design," Technology & the Body Conference, Ottawa, 2004.
- Special Lecture Series, Carnegie Museum, Pittsburgh PA, 2003.
- Invited Lecture Series, University of Mississippi, Tri-cities, MI, 2003.
- Special Lecture Series, University of NC at Greensboro, NC, 2001.
- Invited Lecture Series, Stanford University Joint Program in Product Design, 2001.
- Featured Lecture, Cooper Hewitt Smithsonian Design Museum, NY, 2000.
- Architecture Special Lecture Series, University of Illinois at Champaign-Urbana, 2000.
- Architecture Evening Lecture Series, MIT, MA, 2000.
- Architecture Evening Lecture Series, University of Washington, Seattle, 1999.
- UC Berkeley, Engineering, 1999.
- UC Berkeley, Statistics, 1999.
- Public Lecture Series, Los Angles Public Library, 1999.
- RSI (Repetitive Strain Injury) Bay Area Professionals, 1999.
- Invited Speaker, Roger Williams College, RI, 1998.
- Special Lecture Series, Cooper Union, NY, 1998.
- International Conference on Design at Aspen, Big Tent, 1994 and 2001.

Consultation in Ergonomics, Somatics, and Body-conscious Design

- Penland School of Crafts, NC, Woodworking workshop with Curtis Buchanan, traditional Appalachian chair maker, to reinterpret the Windsor from a body-conscious point of view, 2004.
- Keilhauer, Toronto, Canada regarding the design of a new office chair, 2003.
- Herman Miller, consultation with staff and renowned Aeron chair designer Bill Stumpf regarding the sociology of seating design, 2002.
- Continental Airlines, assessment of new business class recumbent seats, 2002.
- NEOCON, Chicago, June 2000: lecture evaluating current task chairs, including Aeron, Leap, Capisco.
- HAG, Inc., lectures on the value of perch seating to staff at Greensboro, NC; Seattle, WA; Portland, OR; Mountain View, CA; San Jose, CA.
- M&K Engineers, Montreal, Sept 98: Evaluation of recumbent seating in prototype automobile design.
- **Service to the Profession**

- Juror for 14 national & local design selection juries regarding parks & public art.
- Manuscript reviewer for several academic journals in environmental design research.
- Vice-President, Berkeley Art Project, 1988-94.