

RESOLUTION NO. 61-2020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING AN AGREEMENT FOR THE SALE AND EXCHANGE OF REAL PROPERTY BETWEEN THE CITY OF MESQUITE, TEXAS AND DFW-MESQUITE DISTRIBUTION CENTER LLC (THE “AGREEMENT”); APPROVING THE SALE BY THE CITY TO DFW-MESQUITE DISTRIBUTION CENTER LLC (“DFW-MESQUITE DISTRIBUTION”) OF AN APPROXIMATELY 0.3570 ACRE TRACT COMMONLY KNOWN AS 1212 MILITARY PARKWAY, MESQUITE, TEXAS (“TRACT A”); APPROVING THE PURCHASE BY THE CITY FROM DFW-MESQUITE DISTRIBUTION OF AN APPROXIMATELY 0.3856 ACRE TRACT (“TRACT B”) WHICH IS A PORTION OF A LARGER TRACT COMMONLY KNOWN AS 1420 MILITARY PARKWAY, MESQUITE, TEXAS; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE THE AGREEMENT; AUTHORIZING THE CITY MANAGER TO TAKE ALL ACTIONS AND EXECUTE ALL DOCUMENTS NECESSARY OR ADVISABLE TO COMPLETE THE SALE OF TRACT A AND THE PURCHASE OF TRACT B; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, the City of Mesquite, Texas (the “**City**”), is the owner of an approximately 0.3570-acre tract of land commonly known as 1212 Military Parkway, Mesquite, Texas and being more particularly described and depicted in Exhibit A attached hereto and made a part hereof for all purposes (“**Tract A**”); and

WHEREAS, Huntington Industrial Partners-Southwest II, LLC has entered into that certain Commercial Contract of Sale dated March 13, 2020 (the “**Lacy Contract**”), with Billy Lacy and Cathy Jane Swafford Lacy (together, “**Lacy Seller**”) to purchase, inter alia, an approximately 0.3856 acre tract of land (“**Tract B**”) which is a portion of a larger tract commonly known as 1420 Military Parkway, Mesquite, Texas; and

WHEREAS, Tract B is more particularly described and depicted in Exhibit B attached hereto and made a part hereof for all purposes; and

WHEREAS, Huntington Industrial Partners-Southwest II, LLC has assigned its interest in the Lacy Contract to DFW-Mesquite Distribution Center LLC (“**DFW-Mesquite Distribution**”); and

WHEREAS, Tract A was originally acquired by the City as part of an approximately 10.38-acre tract generally located south of the northeast corner of Military Parkway and the service road of Interstate Highway 635 in Mesquite, Dallas County, Texas (the “**10.38 Acre Tract**”), to provide

street or right-of-way access from Military Parkway to the remaining portion of the 10.38-acre tract; and

WHEREAS, DFW-Mesquite Distribution desires to develop approximately 19.53 acres commonly known as 1204-1420 Military Parkway as an industrial development (collectively the “**Industrial Tract**”); and

WHEREAS, it is necessary for DFW-Mesquite Distribution to acquire Tract A in order to develop the Industrial Tract; and

WHEREAS, the development of the Industrial Tract is expected to (i) create new employment opportunities in the City, (ii) increase ad valorem real and personal property taxes assessed and collected by the City, and (iii) promote development and stimulate business and commercial activity in the City; and

WHEREAS, if the City sells Tract A to DFW-Mesquite Distribution, it will be necessary for the City to purchase Tract B from DFW-Mesquite Distribution in order to have street and right-of-way access to the remaining portion of the 10.38 Acre Tract; and

WHEREAS, the City has been presented with an Agreement for the Sale and Exchange of Real Property between the City and DFW-Mesquite Distribution relating to: (i) the sale of Tract A by the City to DFW-Mesquite Distribution; and (ii) the purchase of Tract B by the City from DFW-Mesquite Distribution (the “**Agreement**”), a true and correct copy of the Agreement being attached hereto as Exhibit C and made a part hereof for all purposes; and

WHEREAS, the exchange of Tract A and Tract B as more fully set forth herein and in the Agreement: (i) is being made pursuant to §272.001(b)(3) of the Texas Local Government Code; and (ii) is for the public purpose of creating new employment opportunities in the City, increasing the City’s tax base and promoting development and stimulating business and commercial activity in the City, and

WHEREAS, the City Council finds and determines that the Agreement, and the sale of Tract A and purchase of Tract B, will benefit the City and its citizens.

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

SECTION 1. That the statements, facts, findings and recitals set forth above are hereby found and declared to be true and correct and are incorporated into this resolution and adopted as part of this resolution for all purposes.

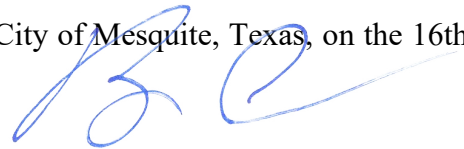
SECTION 2. That the City Council hereby approves the terms and provisions of the Agreement attached hereto as Exhibit C and authorizes the City to: (i) sell Tract A to DFW-Mesquite Distribution for such price and upon such terms and conditions as more fully set forth in the Agreement; and (ii) purchase Tract B from DFW-Mesquite Distribution for such price and upon such terms and conditions as more fully set forth in the Agreement.

SECTION 3. That the City Manager is hereby authorized to finalize and execute the Agreement and to take all actions and execute all documents necessary or advisable to complete the transactions contemplated by the Agreement including but not limited to, all documents necessary or advisable to: (i) sell Tract A to DFW-Mesquite Distribution; and (ii) purchase Tract B from DFW-Mesquite Distribution.

SECTION 4. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000.00; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 4 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 4 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

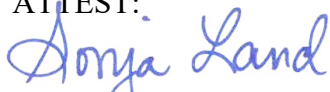
SECTION 5. That the sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 16th day of November 2020.




Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

EXHIBIT A

Legal Description and Depiction of Tract A

BEING a 0.3570 acre tract of land situated in the, Daniel S. Carver Survey, Abstract Number 342, City of Mesquite, Dallas County, Texas, and being part of a called 10.38 acre tract of land described in Warranty Deed to City of Mesquite, recorded in Volume 94010, Page 762 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch found iron rod with cap stamped "SJ&F" for corner at the intersection of the east right-of-way line of Interstate Highway 635 (also known as Lyndon B. Johnson Freeway, variable width right-of-way) and the south right-of-way line of Military Parkway (also known as State Highway 352, a variable width right-of-way);

THENCE South 87 degrees 22 minutes 39 seconds East, with the north line of a called 53.93 acre tract of land described in Executor's Special Warranty Deed to Cathy Jane Swafford Lucy, recorded in Instrument Number 201900345913 of the Official Public Records of the Dallas County, Texas (O.P.R.D.C.T.) and the south right-of-way line of Military Parkway, a distance of 1,619.88 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALFF" (hereinafter referred to as "with HALFF cap") for the northeast corner of said 53.93 acre tract, the northerly northwest corner of said 10.38 acre tract and the **POINT OF BEGINNING**;

THENCE North 89 degrees 19 minutes 21 seconds East, with the north line of said 10.38 acre tract and said south right-of-way line, a distance of 20.00 feet to a 1/2-inch found iron rod with cap stamped "SURVEYING ASSOC." for the northeast corner of said 10.38 acre tract and the northwest corner of a tract of land described in Warranty Deed with Vendor's Lien to Dr. Abdallah Adham and Hana Adham, recorded in Volume 84105, Page 3931, D.R.D.C.T.;

THENCE South 00 degrees 40 minutes 39 seconds East, departing the south right-of-way line of said Military Parkway, and with the east line of said 10.38 acre tract and the west line of said Adham tract, a distance of 777.92 feet to a found nail for an "ell" corner of said 10.38 acre tract and the southwest corner of said Adham tract, said corner being on the north line of a called 12.702 acre tract described in General Warranty Deed to Jose Noel Sorto, recorded in Instrument Number 201400259694, O.P.R.D.C.T.;

THENCE North 87 degrees 58 minutes 02 seconds West, with the south line of said 10.38 acre tract and the north line of said 12.702 acer tract, a distance of 20.02 feet to an "ell" corner of said 10.38 acre tract and said 12.702 acre tract, from which a 5/8-inch found iron rod bears South 58 degrees 54 minutes 42 seconds East, a distance of 0.11 of a foot;

THENCE North 00 degrees 40 minutes 39 seconds West, over and across said 10.38 acre tract, passing at a distance of 21.97 feet to an "ell" corner of said 10.38 acre tract and the easterly southeast corner of said 53.93 acre tract, and continuing with the east line of said 10.38 acre tract and the west line of said 53.93 acre tract, in all, a total distance of 776.97 feet to the **POINT OF BEGINNING AND CONTAINING** 0.3570 acres (15,549 square foot) of land, more or less.

EXHIBIT B

Legal Description and Depiction of Tract B

LEGAL DESCRIPTION

BEING a 0.3856 acre tract of land situated in the, S. H Miller Survey, Abstract Number 974, City of Mesquite, Dallas County, Texas, and being part of a called 53.93 acre tract of land described in Executer's Special Warranty Deed to Cathy Jane Swafford Lacy, recorded in Instrument Number 201900345913 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch found iron rod with cap stamped "SJ&F" for corner at the intersection of the east right-of-way line of Interstate Highway 635 (also known as Lyndon B. Johnson Freeway, variable width right-of-way) and the south right-of-way line of Military Parkway (also known as State Highway 352, a variable width right-of-way);

THENCE South 87 degrees 22 minutes 39 seconds East, with the north line of said 53.93 acre tract and the south right-of-way line of Military Parkway, a distance of 805.81 feet a corner (not monumented) for the **POINT OF BEGINNING**;

THENCE South 87 degrees 22 minutes 39 seconds East, continuing with said north line and said south right-of-way line, a distance of 21.76 feet to a corner (not monumented);

THENCE South 20 degrees 34 minutes 13 seconds East, departing said north line and said south right-of-way line, and over and across said 53.93 acre tract, a distance of 621.49 feet to a corner (not monumented);

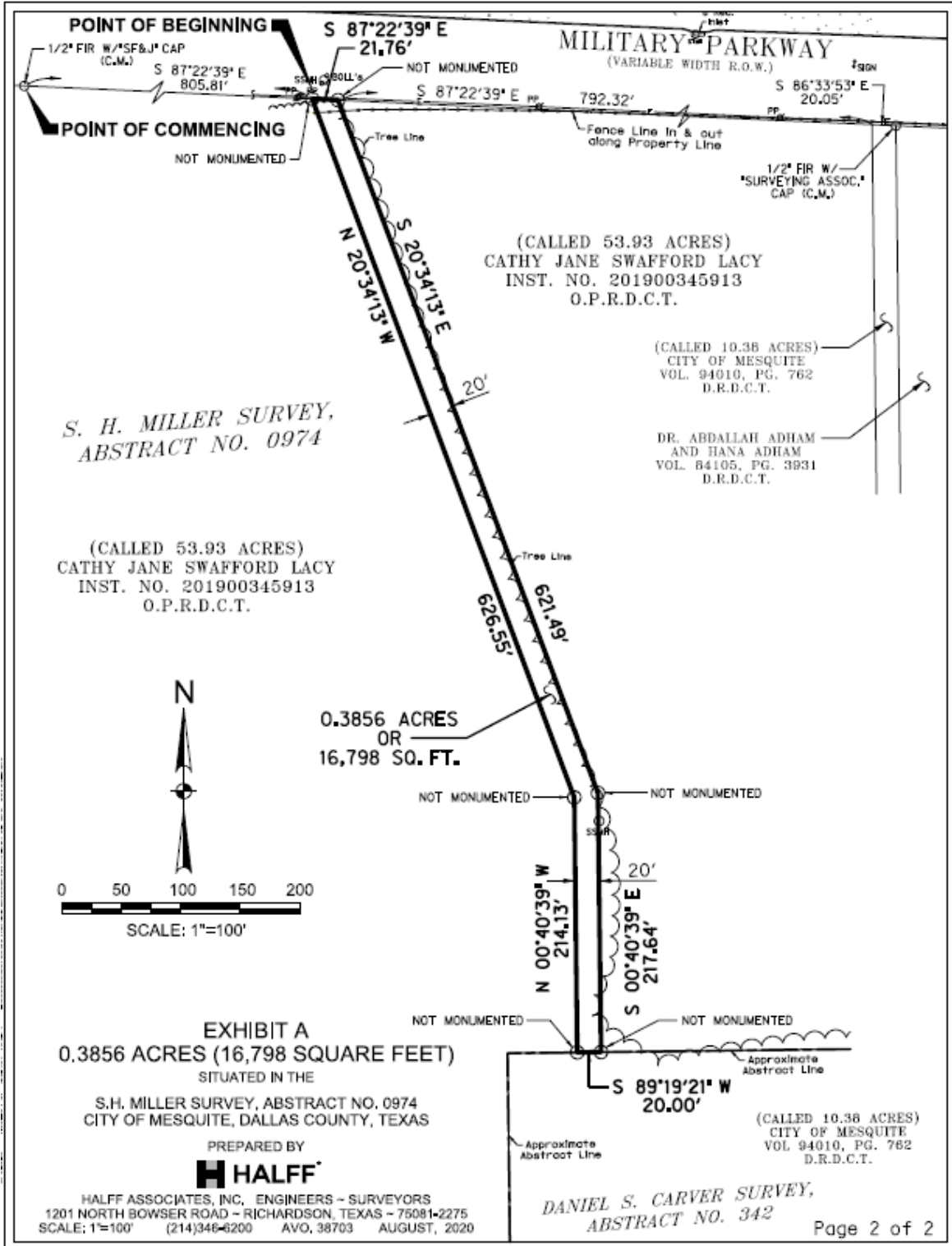
THENCE South 00 degrees 40 minutes 39 seconds East, continuing over and across said 53.93 acre tract, a distance of 217.64 feet to a corner (not monumented) on the south line of said 53.93 acre tract and the north line of a called 10.38 acre tract of land described in Warranty Deed to City of Mesquite, recorded in Volume 94010, Page 762 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);

THENCE South 89 degrees 19 minutes 21 seconds West, with the south line of said 53.93 acre tract and the north line of said 10.38 acre tract, a distance of 20.00 feet to a corner (not monumented);

THENCE North 00 degrees 40 minutes 39 seconds West, departing said north and south line, and over and across said 53.93 acre tract, a distance of 214.13 feet to a corner (not monumented);

THENCE North 20 degrees 34 minutes 13 seconds West, continuing over and across said 53.93 acre tract, a distance of 626.55 feet to the **POINT OF BEGINNING AND CONTAINING** 0.3856 acres (16,798 square foot) of land, more or less.

Depiction of Tract B



AGREEMENT FOR THE SALE AND EXCHANGE OF REAL PROPERTY

This Agreement for the Sale and Exchange of Real Property (this "**Agreement**"), is made by and between the City of Mesquite, a Texas home rule municipality (the "**City**") and DFW-Mesquite Distribution Center LLC, a Delaware limited liability company, a subsidiary of Huntington Industrial Partners (hereinafter "**Huntington**"). City and Huntington are hereinafter sometimes individually referred to as a "**Party**" and sometimes collectively referred to as the "**Parties**".

WHEREAS, City is the owner of an approximately 0.3570 acre tract of land situated in the Daniel S. Carver Survey, Abstract No. 342, City of Mesquite, Dallas County, Texas, and being more particularly described and depicted in **Exhibit A** attached hereto and made a part hereof for all purposes ("**Tract A**"); and

WHEREAS, Huntington Industrial Partners-Southwest II, LLC has entered into that certain Commercial Contract of Sale dated March 13, 2020 (the "**Lacy Contract**") with Billy Lacy and Cathy Jane Swafford Lacy (together, "**Lacy Seller**") to purchase, inter alia, an approximately 0.3856 acre tract of land situated in the S. H. Miller Survey, Abstract No. 974, City of Mesquite, Dallas County, Texas, and being more particularly described and depicted in **Exhibit B** attached hereto and made a part hereof for all purposes ("**Tract B**"); and

WHEREAS, Huntington Industrial Partners-Southwest II, LLC has assigned its interest in the Lacy Contract to DFW-Mesquite Distribution Center LLC; and

WHEREAS, Tract A was originally acquired by the City as part of an approximately 10.38-acre tract generally located south of the northeast corner of Military Parkway and the service road of Interstate Highway 635 in Mesquite, Dallas County, Texas (the "**10.38 Acre Tract**") to provide street or right-of-way access from Military Parkway to the remaining portion of the 10.38-acre tract; and

WHEREAS, Huntington desires to develop approximately 19.53 acres commonly known as 1204-1420 Military Parkway as an industrial development (collectively the "**Industrial Tract**"); and

WHEREAS, it is necessary for Huntington to acquire Tract A in order to develop the Industrial Tract; and

WHEREAS, the development of the Industrial Tract is expected to (i) create new employment opportunities in the City, (ii) increase ad valorem real and personal property taxes assessed and collected by the City, and (iii) promote development and stimulate business and commercial activity in the City; and

WHEREAS, if the City sells Tract A to Huntington, it will be necessary for the City to purchase Tract B from Huntington in order to have street and right of way access to the remaining portion of the 10.38 Acre Tract; and

WHEREAS, the exchange of Tract A and Tract B as more fully set forth herein: (i) is being made pursuant to §272.001(b)(3) of the Texas Local Government Code; (ii) is for the public purpose of creating new employment opportunities in the City, increasing the City's tax base, promoting development and stimulating business and commercial activity in the City, and (iii) will benefit the City and its citizens.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Purchase and Sale.**

A. **Tract A.** Subject to the terms and conditions set forth herein, City agrees to sell Tract A to Huntington and Huntington agrees to purchase Tract A from City.

B. **Tract B.** Subject to the terms and conditions set forth herein, Huntington agrees to sell Tract B to City and City agrees to purchase Tract B from Huntington.

2. **Purchase Price.**

A. **Tract A Purchase Price.** The purchase price to be paid by Huntington to the City for the purchase of Tract A shall be the sum of FIVE THOUSAND ONE HUNDRED SEVENTY-SIX AND 50/100 DOLLARS (\$5,176.50) (the "**Tract A Purchase Price**").

B. **Tract B Purchase Price.** The purchase price to be paid by the City to Huntington for the purchase of Tract B shall be the sum of FIVE THOUSAND FIVE HUNDRED NINETY-ONE AND 20/100 DOLLARS (\$5,591.20) (the "**Tract B Purchase Price**").

C. **Payment of Purchase Price.** The Tract A Purchase Price and the Tract B Purchase Price shall each be payable in immediately available funds acceptable to the Title Company (as hereinafter defined) at Closing (as hereinafter defined).

3. **Earnest Money and Independent Consideration.**

A. **Tract A Earnest Money.** Within seven (7) days after the Effective Date (as hereinafter defined), Huntington shall deliver the sum of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) in immediately available funds to Republic Title of Texas, Inc., Attn: Clay Arnold, Telephone 214-855-8888, Facsimile 972-516-5127, E-mail: carnold@republictitle.com (the "**Escrow Agent**"), at Republic Title of Texas, Inc., 2626 Howell Street, 10th Floor, Dallas, Texas 75204 (the "**Title Company**"), to be held by the Title Company as earnest money for the purchase of Tract A (the "**Tract A Earnest Money**") pursuant to the terms of this Agreement. TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) of the Tract A Earnest Money (the "**Tract A Independent Consideration**") has been bargained for and agreed to as consideration for Huntington's option to purchase Tract A and for City providing the Tract A Inspection Period (as hereinafter defined) to Huntington and, notwithstanding any provision in this Agreement to the contrary, the Tract A Independent Consideration shall be nonrefundable to Huntington in all circumstances and, at any time that this Agreement provides that the Tract A Earnest Money shall be returned to Huntington, the amount returned to Huntington shall be net of the Tract A Independent Consideration and, at such time, the Tract A Independent Consideration shall be delivered to City. At Closing (as hereinafter defined), all Tract A Earnest Money will be applied as a credit against the Tract A Purchase Price.

B. **Tract B Earnest Money.** Within seven (7) days after the Effective Date (as hereinafter defined), City shall deliver the sum of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) in immediately available funds to the Escrow Agent at the Title Company to be held by the Title Company as earnest money for the purchase of Tract B (the "**Tract B Earnest Money**") pursuant to the terms of this Agreement. TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) of the Tract B Earnest Money (the "**Tract B Independent Consideration**") has been bargained for and agreed to as consideration for City's option to purchase Tract B and for Huntington providing the Tract B Inspection Period (as hereinafter defined) to City and, notwithstanding any provision in this Agreement to the contrary, the Tract B Independent Consideration shall be nonrefundable to City in all circumstances and, at any time that this Agreement provides that the Tract B Earnest Money shall be returned to City, the amount returned to City shall be net of the Tract B Independent Consideration and, at such time, the Tract B Independent

Consideration shall be delivered to Huntington. At Closing (as hereinafter defined), all Tract B Earnest Money will be applied as a credit against the Tract B Purchase Price.

4. **Closing.** Unless this Agreement is sooner terminated as provided herein, the closing (“Closing”) of this Agreement shall be held at the offices of the Title Company (via mail-in escrow) on June 30, 2021, or such earlier date after the expiration of all inspections periods, title review periods and title cure periods more fully set forth herein, as may be designated by Huntington upon not less than 10 business days’ prior written notice to City (the “Closing Date”). If either Party fails to close by the Closing Date, the non-defaulting Party may exercise the remedies in Section 12 of this Agreement.

5. **Closing Costs.** All closing costs (except attorney’s fees) incurred in connection with the sale and purchase of Tract A and Tract B including, without limitation, the cost of tax certificates, Title Company escrow fees, recording fees, the premium for an Owner’s Title Policy covering Tract A issued to Huntington in the amount of the Tract A Purchase Price and the premiums for an Owner’s Title Policy covering Tract B issued to the City in the amount of the Tract B Purchase Price shall be paid by Huntington.

6. **Survey, Title Policy and Title Review Period.**

A. **Survey for Tract A.**

Huntington, at Huntington’s sole cost and expense, has obtained an on-the-ground survey of land which includes Tract A (the “Tract A Survey”) and has provided a copy of the Tract A Survey to City. The Tract A Survey shall be certified to City, Huntington and the Title Company. The Tract A Survey must conform to the current Texas Surveyors Association Standards and Specification Category 1A, Condition II Survey and must be acceptable in form and substance to the Title Company, City and Huntington prior to being deemed finalized.

B. **Title Policy for Tract A.**

City shall request that the Title Company deliver or cause to be delivered to Huntington and City, and their respective counsel, within ten (10) days after the Effective Date, the following items:

- (1) A title commitment (the “Tract A Title Commitment”) covering Tract A, binding the Title Company to issue to Huntington a Texas Owner’s Policy of Title Insurance on the standard form of policy prescribed by the Texas Department of Insurance in the full amount of the Tract A Purchase Price (the “Tract A Title Policy”),
- (2) Copies of all instruments referred to in the Tract A Title Commitment as constituting exceptions or restrictions upon the title of City (to the extent legible copies of such instruments are available); and
- (3) At Closing, City shall instruct the Title Company to issue the Tract A Title Policy to Huntington pursuant to the Tract A Title Commitment, subject to the Tract A Permitted Exceptions (as hereinafter defined) within a reasonable period after Closing and, at Closing, the Title Company must be irrevocably committed to issue such Tract A Title Policy. Huntington hereby authorizes the Title Company to provide City with a photocopy of the Tract A Title Policy after Closing, and this authorization shall survive Closing.

C. **Title Review Period for Tract A.**

Huntington shall have ten (10) days after the receipt of the Tract A Title Commitment and the Tract A Title Exception Documents to review such documents and to deliver in writing to City such objections as Huntington may have to any matters contained in the Tract A Survey, the Tract A Title Commitment and the Tract A Title Exception Documents (the "**Tract A Title Review Period**"). Any item or matter shown on the Tract A Survey and/or the Tract A Title Commitment to which Huntington does not timely object, or to which Huntington objects and City does not cure on before the expiration of the Tract A Inspection Period (as hereinafter defined), shall be deemed "**Tract A Permitted Exceptions.**" The standard title policy exceptions and the lien for any taxes not due and payable at the time of Closing shall also be deemed Tract A Permitted Exceptions. City may, at its sole election, attempt to cure Huntington's timely objections within the earlier of: (i) ten (10) calendar days after City receives the objections; or (ii) five (5) business days prior to the Closing Date (the "**Tract A Title Cure Period**"). City shall not be required to expend any funds to cure Huntington's objections and any failure by the City to cure Huntington's objections shall not be a default of the City. If City fails to cure Huntington's objections by the end of the Tract A Title Cure Period, Huntington may as its exclusive remedy either (i) waive such objections and proceed to Closing; or (ii) terminate this Agreement by written notice to City, which written notice shall be delivered by Huntington to City on or before the expiration of the Tract A Inspection Period. If Huntington terminates this Agreement pursuant to this Section 6(C), the Tract A Earnest Money, less the Tract A Independent Consideration, will be refunded to Huntington and neither Party hereto shall have any further rights or obligations under this Agreement except for those that expressly survive the termination of this Agreement. In the event Huntington fails to timely notify City of Huntington's election to terminate as provided in this Section 6(C), Huntington shall be deemed to have waived all uncured title objections to Tract A, the Tract A Survey, the Tract A Title Commitment and the Tract A Exception Documents and all uncured title objections shall be deemed Tract A Permitted Exceptions.

D. **Survey for Tract B.**

Huntington, at Huntington's expense, has obtained an on-the-ground survey of Tract B (the "**Tract B Survey**") and has provided a copy of the Tract B Survey to City. The Tract B Survey shall be certified to City, Huntington and the Title Company. The Tract B Survey must conform to the current Texas Surveyors Association Standards and Specification Category 1A, Condition II Survey and must be acceptable in form and substance to the Title Company, City and Huntington prior to being deemed finalized.

E. **Title Policy for Tract B.**

Huntington shall request that the Title Company deliver or cause to be delivered to City and Huntington, and their respective counsel, within ten (10) days after the Effective Date, the following items:

- (1) A title commitment (the "**Tract B Title Commitment**") covering Tract B, binding the Title Company to issue to City a Texas Owner's Policy of Title Insurance on the standard form of policy prescribed by the Texas Department of Insurance in the full amount of the Tract B Purchase Price (the "**Tract B Title Policy**"),
- (2) Copies of all instruments referred to in the Tract B Title Commitment as constituting exceptions or restrictions upon the title of Huntington (to the extent legible copies of such instruments are available); and

- (3) At Closing, Huntington shall instruct the Title Company to issue the Tract B Title Policy to the City pursuant to the Tract B Title Commitment, subject to the Tract B Permitted Exceptions (as hereinafter defined) within a reasonable period after Closing, and at Closing, the Title Company must be irrevocably committed to issue such Tract B Title Policy. City hereby authorizes the Title Company to provide Huntington with a photocopy of the Tract B Title Policy after Closing, and this authorization shall survive Closing.

F. **Title Review Period for Tract B.**

City shall have ten (10) days after the receipt of the Tract B Title Commitment and the Tract B Title Exception Documents to review such documents and to deliver in writing to Huntington such objections as City may have to any matters contained in the Tract B Survey, the Tract B Title Commitment and the Tract B Title Exception Documents (the "**Tract B Title Review Period**"). Any item or matter shown on the Tract B Survey and/or the Tract B Title Commitment to which City does not timely object, or to which City objects and Huntington does not cure on before the expiration of the Tract B Inspection Period (as hereinafter defined), shall be deemed "**Tract B Permitted Exceptions.**" The standard title policy exceptions and the lien for any taxes not due and payable at the time of Closing shall also be deemed Tract B Permitted Exceptions. Huntington may, at its sole election, attempt to cure City's timely objections within the earlier of: (i) ten (10) calendar days after Huntington receives the objections; or (ii) five (5) business days prior to the Closing Date (the "**Tract B Title Cure Period**"). Huntington shall not be required to expend any funds to cure City's objections and any failure by Huntington to cure City's objections shall not be a default of Huntington. If Huntington fails to cure City's objections by the end of the Tract B Title Cure Period, City may as its exclusive remedy either (i) waive such objections and proceed to Closing; or (ii) terminate this Agreement by written notice to Huntington, which written notice shall be delivered by City to Huntington on or before the expiration of the Tract B Inspection Period. If City terminates this Agreement pursuant to this Section 6(F), the Tract B Earnest Money, less the Tract B Independent Consideration, will be refunded to City and neither Party hereto shall have any further rights or obligations under this Agreement except for those that expressly survive the termination of this Agreement. In the event City fails to timely notify Huntington of City's election to terminate as provided in this Section 6(F), City shall be deemed to have waived all uncured title objections to Tract B, the Tract B Survey, the Tract B Title Commitment and the Tract B Exception Documents and all uncured title objections shall be deemed Tract B Permitted Exceptions.

7. **Inspection.**

A. **Tract A Inspection.** Huntington shall have the right to enter on and inspect Tract A from the Effective Date until 5:00 p.m. central time on the date that is thirty (30) days after the Effective Date (the "**Tract A Inspection Period**"). Huntington may perform, or have performed on Huntington's behalf, such noninvasive tests, engineering reports, surveys, soils and other studies as Huntington may determine in Huntington's sole discretion (subject to Huntington's indemnification and restoration obligations as set forth below). Notwithstanding the foregoing, Huntington shall not conduct invasive testing without City's prior written consent. Before Huntington, or its surveyors, engineers, consultants, representatives and agents (collectively "**Huntington's Consultants**") enter Tract A, Huntington shall provide evidence to City of Huntington's insurance policies and Huntington's Consultants' insurance policies covering personal injury and property damage claims resulting from Huntington's and/or Huntington's Consultants' entry on or about Tract A, which insurance shall be subject to approval by the City. All such insurance policies shall be issued by insurance companies licensed in the State of Texas, shall provide coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence, and shall name City as an additional insured. Huntington shall provide City with copies of all surveys, soils tests, geotechnical studies, and other environmental tests, studies and reports excluding any internal work product (collectively, "**Huntington's Studies**") obtained or generated by Huntington or Huntington's Consultants in connection with its

investigation of Tract A; provided, however, Huntington will not make any representations or warranties to City as to the accuracy or correctness of Huntington's Studies. Should Huntington determine for any reason whatsoever that it does not want to purchase Tract A, Huntington shall have the right in Huntington's sole discretion to terminate this Agreement by providing written notice thereof to City before the expiration of the Tract A Inspection Period, whereupon the Tract A Earnest Money, less the Tract A Independent Consideration, shall be refunded to Huntington, this Agreement shall terminate, and neither Party shall have any further rights or obligations under this Agreement except for those provisions hereof which expressly survive termination of this Agreement. If Huntington does not terminate this Agreement by written notice before the expiration of the Tract A Inspection Period, then (i) it shall be deemed that Huntington is satisfied with Tract A and the results of its inspections (subject to and without waiving the express obligations of City set forth in this Agreement), (ii) this Agreement shall remain and continue in full force and effect, and (iii) the Tract A Earnest Money shall be non-refundable to Huntington except in the event of a default hereunder by City and Huntington's resulting termination of this Agreement due to such City default.

B. Huntington's Restoration Obligation. HUNTINGTON AGREES TO DEFEND, INDEMNIFY, SAVE AND HOLD CITY HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COURT COSTS) INCURRED OR SUSTAINED BY CITY ARISING FROM OR IN CONNECTION WITH HUNTINGTON'S INSPECTION OF TRACT A OR ANY ENTRY ONTO TRACT A BY HUNTINGTON AND/OR HUNTINGTON'S CONSULTANTS, EXCEPT TO THE EXTENT OF CITY'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; PROVIDED, HOWEVER, IN NO EVENT SHALL HUNTINGTON BE LIABLE FOR THE MERE DISCOVERY OF PRE-EXISTING CONDITIONS AT TRACT A. In the event that Huntington elects to terminate this Agreement for any reason permitted in this Agreement, or if Closing does not occur, Huntington agrees to (i) restore Tract A, at Huntington's sole cost and expense, to substantially the same state and condition existing prior to the activities thereon of Huntington and/or Huntington's Consultants, and (ii) provide City, without representation or warranty, with a copy of all of Huntington's Studies which have not theretofore been provided to City. Until Closing, Huntington agrees to maintain in confidence the information discovered in any reports relating to Tract A unless Huntington is required by law to make any disclosures thereof; provided, however, Huntington may disclose such information to Huntington's lenders, investors, attorneys, consultants and other similar professional advisors who have a need to know such information. Such portion of the Tract A Earnest Money as is required to be returned to Huntington pursuant to the terms of this Agreement shall not be returned to Huntington unless and until Huntington has complied with the terms of (i) and (ii) set forth above in this Section 7(B). Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 7(B) shall prevail over all other terms and provisions of this Agreement which may conflict herewith, and the provisions of this Section 7(B) shall survive Closing or any termination of this Agreement for any reason.

C. Tract B Inspection. Within five (5) days after the Effective Date, Huntington shall deliver or cause to be delivered to City at the address stated below, copies of any and all surveys, soil tests, geotechnical studies, and other environmental tests, studies and reports generated, prepared or conducted by Huntington and Huntington's Consultants (as hereinafter defined), excluding any internal work product, relating to Tract B or any portion of the Industrial Tract containing Tract B provided, however, Huntington will not make any representations or warranties to City as to the accuracy or correctness of such reports, tests and inspections. Subject to complying with the Lacy Contract (and obtaining any necessary consents required thereunder), City shall have the right to enter on and inspect Tract B from the Effective Date until 5:00 p.m. central time on the date that is thirty (30) days after the Effective Date (the "**Tract B Inspection Period**"). City may perform, or have performed on City's behalf, such noninvasive tests, engineering reports, surveys, soils and other studies as City may determine in City's sole discretion (subject to City's

restoration obligations as set forth below). Notwithstanding the foregoing, City shall not conduct invasive testing without Huntington's and Lacy Seller's prior written consent. Before City, or its surveyors, engineers, consultants, representatives and agents (collectively "**City's Consultants**") enter Tract B, City shall provide evidence to Huntington and Lacy of City's insurance policies and City's Consultants' insurance policies covering personal injury and property damage claims resulting from City's and/or City's Consultants' entry on or about Tract B, which insurance shall be subject to approval by Lacy Seller. All such insurance policies shall be issued by insurance companies licensed in the State of Texas, shall provide coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence, and shall name Huntington and Lacy Seller as an additional insured. City shall provide Huntington with copies of all surveys, soils tests, geotechnical studies, and other environmental tests, studies and reports excluding any internal work product (collectively, "**City's Studies**") obtained or generated by City or City's Consultants in connection with its investigation of Tract B; provided, however, City will not make any representations or warranties to Huntington as to the accuracy or correctness of City's Studies. Should City determine for any reason whatsoever that it does not want to purchase Tract B, City shall have the right in City's sole discretion to terminate this Agreement by providing written notice thereof to Huntington before the expiration of the Tract B Inspection Period, whereupon the Tract B Earnest Money, less the Tract B Independent Consideration, shall be refunded to City, this Agreement shall terminate, and neither Party shall have any further rights or obligations under this Agreement except for those provisions hereof which expressly survive termination of this Agreement. If City does not terminate this Agreement by written notice to Huntington before the expiration of the Tract B Inspection Period, then (i) it shall be deemed that City is satisfied with Tract B and the results of its inspections (subject to and without waiving the express obligations of Huntington set forth in this Agreement), (ii) this Agreement shall remain and continue in full force and effect, and (iii) the Tract B Earnest Money shall be non-refundable to City except in the event of a default hereunder by Huntington and City's resulting termination of this Agreement due to such Huntington default.

D. **City's Restoration Obligation.** In the event that the City elects to terminate this Agreement for any reason permitted in this Agreement, or if Closing does not occur, City agrees to (i) restore Tract B, at City's sole cost and expense, to substantially the same state and condition existing prior to the activities thereon of City and/or City's Consultants and (ii) provide Huntington, without representation or warranty, with a copy of all of City's Studies which have not theretofore been provided to Huntington. Until Closing, City agrees to maintain in confidence the information discovered in any reports relating to Tract B unless City is required by law to make any disclosures thereof; provided, however, City may disclose such information to City's lenders, investors, attorneys, consultants and other similar professional advisors who have a need to know such information. Such portion of the Tract B Earnest Money as is required to be returned to City pursuant to the terms of this Agreement shall not be returned to City unless and until City has complied with the terms of (i) and (ii) set forth above in this **Section 7(D)**. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this **Section 7(D)** shall prevail over all other terms and provisions of this Agreement which may conflict herewith, and the provisions of this **Section 7(D)** shall survive Closing or any termination of this Agreement for any reason.

8. **Closing Documents and Escrow.**

A. **City's Deliveries at Closing.** At the Closing, provided Huntington fulfills its obligations under this Agreement, the City shall deliver to Huntington: (i) a deed without warranty containing the legal description of Tract A reflected on the final Tract A Survey approved by City, Huntington and the Title Company, which deed shall be in the form attached hereto as **Exhibit C** and made a part hereof for all purposes, subject to the Tract A Permitted Exceptions (the "**Tract A Deed**"); (ii) a Non-Foreign Affidavit complying with Section 1445 of the Internal Revenue Code; and (iii) all notices, statements, certificates,

affidavits and other documents reasonably required by the Title Company or by law to issue the Tract A Title Policy and/or to consummate the transactions contemplated in this Agreement.

B. **Huntington's Deliveries at Closing.** At the Closing, provided City fulfills its obligations under this Agreement, Huntington shall deliver to City: (i) a deed without warranty containing the legal description of Tract B reflected on the final Tract B Survey approved by City, Huntington and the Title Company, which deed shall be in the form attached hereto as **Exhibit D** and made a part hereof for all purposes, subject to the Tract B Permitted Exceptions (the "**Tract B Deed**"); (ii) a Non-Foreign Affidavit complying with Section 1445 of the Internal Revenue Code; and (iii) all notices, statements, certificates, affidavits and other documents reasonably required by the Title Company or by law to issue the Tract B Title Policy and/or to consummate the transactions contemplated in this Agreement.

9. **Escrow.**

A. **Tract A.** If this Agreement closes, the Tract A Earnest Money will be applied first to Huntington's closing costs relating to Tract A with any remainder to be applied to the Tract A Purchase Price. If this Agreement does not close and either Party makes written demand for the Tract A Earnest Money, Escrow Agent will provide a copy of the demand to the other Party by certified mail, return receipt requested, addressed to the other Party at the address set forth in Section 15 of this Agreement. If the Escrow Agent does not receive written objection to the demand from the other Party within ten (10) calendar days, Escrow Agent may disburse the Tract A Earnest Money to the Party making the demand. If Escrow Agent complies with this Section 9(A), each Party hereby releases Escrow Agent from all claims relating to the disbursement of the Tract A Earnest Money.

B. **Tract B.** If this Agreement closes, the Tract B Earnest Money will be applied to the Tract B Purchase Price. If this Agreement does not close and either Party makes written demand for the Tract B Earnest Money, Escrow Agent will provide a copy of the demand to the other Party by certified mail, return receipt requested, addressed to the other Party at the address set forth in Section 15 of this Agreement. If the Escrow Agent does not receive written objection to the demand from the other Party within ten (10) calendar days, Escrow Agent may disburse the Tract B Earnest Money to the Party making the demand. If Escrow Agent complies with this Section 9(B), each Party hereby releases Escrow Agent from all claims relating to the disbursement of the Tract B Earnest Money.

10. **Disclaimer of Representations and Warranties; Release; Waiver, Covenants and Agreements; Representations and Warranties – Tract A.**

A. **Disclaimer of Representations and Warranties – Tract A.** City makes no representation or warranty, express or implied or arising by operation of law or otherwise with respect to any matter concerning Tract A, including, without limitation, the following: (i) title to Tract A; (ii) the habitability, marketability, merchantability, or suitability or fitness of Tract A for a particular purpose or use; (iii) the nature and condition of Tract A including, without limitation, water, drainage and grading, soil and geology, zoning, annexation, extraterritorial jurisdiction and other zoning and jurisdictional issues, location of cemeteries, utility availability or hook-up, easement rights, flood plains (or portions of Tract A in a flood plain) and the costs and requirements of same, access to streets, costs of utilities, location of curb cuts and median breaks in streets, sewage facilities (including, without limitation, availability or non-availability of appropriate water and sewer capacity) or other governmental rights or obligations; (iv) the completeness, accuracy or approval of permits, surveys, plats, preliminary plats, pollution abatement plans, subdivision plans or reports concerning Tract A; (v) tax consequences; (vi) the compliance of all or any part of Tract A with applicable environmental laws, rules or regulations with respect to health, the environment, and endangered species and wetlands (collectively, "Environmental Laws") including, without limitation,

the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §9601, et. seq.), as amended, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901, et. seq.), as amended, the Endangered Species Act (16 U.S.C. §1531, et seq.), as amended, the Texas Water Code, as amended, the Texas Natural Resource Code, as amended, the Texas Solid Waste Disposal Act, as amended, and all other federal, state and local laws, statutes, ordinances, rules and regulations, as amended, that regulate the use, storage, treatment, generation, disposal, transportation, discharge, release, threatened release and/or remediation of hazardous wastes, hazardous materials, hazardous substances, pollutants, toxic waste, toxic materials and toxic substances; (vii) the existence of asbestos, oil, arsenic, petroleum or chemical liquids or solids, liquid or gaseous products or hazardous substances as those terms and similar terms are defined or used in applicable Environmental Laws; (viii) the nature and extent of access to rights-of-way or utilities, availability of permits to access rights-of-way or utilities on Tract A, other property owned by City (if any), or any land owned by third parties; (ix) easements, mineral interests, encumbrances, licenses, reservations, conditions or other similar matters affecting Tract A; (x) compliance with any law, ordinance or regulation of any governmental entity or body; and/or (xi) claims, demands, or other matters relating to any restrictive covenants encumbering Tract A. The Parties agree the sale of Tract A will be made on an "AS IS, WHERE IS" and "WITH ALL FAULTS" basis. The Parties agree the warranties and covenants set forth in Section 5.023 of the Texas Property Code do not apply to this transaction and that any warranties arising at common law or implied as a result of Section 5.023 of the Texas Property Code, as amended, or any successor statute, shall be excluded and excepted from the Tract A Deed. Huntington acknowledges that Huntington has the full, complete and unfettered right to inspect Tract A to Huntington's satisfaction and that the Tract A Purchase Price is in part based upon the fact that the sale of Tract A by the City to Huntington shall be without warranty or representation. Huntington agrees to rely only upon Huntington's own investigations, assessments and inspections as to the condition of Tract A, or Huntington's own decision not to inspect any matter and Huntington agrees that it is not relying on any representation, warranty, statement or non-assertion of City or City's officers, agents, representatives, employees, consultants, or independent contractors in making Huntington's decision to purchase Tract A.

B. Release – Tract A. CITY SHALL NOT BE LIABLE TO HUNTINGTON FOR ANY LATENT OR PATENT DEFECTS OF TRACT A OR FOR ANY ERRORS, OMISSIONS, OR ON ACCOUNT OF ANY OTHER CONDITION AFFECTING TRACT A INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN SECTION 10(A)(I) THROUGH AND INCLUDING SECTION 10(A)(XI) ABOVE, AND HUNTINGTON, AND ANYONE CLAIMING BY, THROUGH OR UNDER HUNTINGTON, HEREBY FULLY RELEASES CITY AND CITY'S EMPLOYEES, OFFICERS, ELECTED OFFICIALS, AGENTS, REPRESENTATIVES, ATTORNEYS AND INSURERS (EACH A "CITY RELATED PARTY") FROM ANY AND ALL CLAIMS AGAINST CITY AND EACH CITY RELATED PARTY FOR ANY COST, LOSS, LIABILITY, DAMAGE, EXPENSE, DEMAND, ACTION OR CAUSE OF ACTION (INCLUDING, WITHOUT LIMITATION, ANY RIGHTS OF CONTRIBUTION) ARISING FROM OR RELATED TO ANY LATENT OR PATENT DEFECTS OF TRACT A OR FOR ANY ERRORS, OMISSIONS, OR OTHER CONDITIONS AFFECTING TRACT A, INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN SECTION 10(A)(I) THROUGH AND INCLUDING SECTION 10(A)(XI) ABOVE AND ANY ALLEGED NEGLIGENCE OF CITY OR ANY CITY RELATED PARTY. THIS COVENANT RELEASING CITY AND EACH CITY RELATED PARTY SHALL BE SET FORTH IN THE TRACT A DEED AS A COVENANT RUNNING WITH THE TRACT A PROPERTY AND SHALL BE BINDING UPON HUNTINGTON, HUNTINGTON'S SUCCESSORS AND ASSIGNS, AND ALL FUTURE OWNERS OF ALL OR ANY PORTION OF TRACT A.

C. **Waiver – Tract A.** HUNTINGTON HEREBY WAIVES HUNTINGTON’S RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, SECTION 17.41 ET. SEQ., BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF HUNTINGTON’S OWN SELECTION, HUNTINGTON VOLUNTARILY CONSENTS TO THIS WAIVER.

D. **Covenant and Agreement of Huntington – Tract A.** Huntington represents and warrants to City that Huntington is acquiring Tract A for investment, has knowledge and experience in financial and business real estate matters that enable Huntington to evaluate the merits and risks of the transactions herein contemplated, and has bargained for and obtained a purchase price and agreement terms which make the limitations of Huntington’s recourse against City acceptable. Huntington acknowledges that the limitations of Huntington’s recourse against City as set forth herein is a material part of the consideration for the execution and delivery of the Tract A Deed by the City and is an integral part of the basis of the bargain between the City and Huntington relating to the sale by the City and the purchase by Huntington of Tract A.

E. **Covenant and Agreement of City – Tract A.** City hereby covenants and agrees that, within ten (10) days after obtaining actual knowledge thereof (specifically excluding any constructive knowledge), City shall notify Huntington in writing of the pendency or the institution of foreclosure proceedings or any proceedings for the condemnation of Tract A, or any portion thereof, and any other proceedings alleging injury or damage to, or violations with respect to, Tract A, or any portion thereof, of which City receives actual notice of during the term of this Agreement.

F. **Survival.** The provisions of this Section 10 shall be set forth in the Tract A Deed. The waivers, releases, disclaimers and other matters set forth in this Section 10 and all obligations of the Parties pursuant to this Section 10 shall survive Closing or any termination of this Agreement.

11. **Disclaimer of Representations and Warranties; Release; Waiver, Covenants and Agreements; Representations and Warranties – Tract B.**

A. **Disclaimer of Representations and Warranties – Tract B.** Huntington makes no representation or warranty, express or implied or arising by operation of law or otherwise with respect to any matter concerning Tract B, including, without limitation, the following: (i) title to Tract B; (ii) the habitability, marketability, merchantability, or suitability or fitness of Tract B for a particular purpose or use; (iii) the nature and condition of Tract B including, without limitation, water, drainage and grading, soil and geology, zoning, annexation, extraterritorial jurisdiction and other zoning and jurisdictional issues, location of cemeteries, utility availability or hook-up, easement rights, flood plains (or portions of Tract B in a flood plain) and the costs and requirements of same, access to streets, costs of utilities, location of curb cuts and median breaks in streets, sewage facilities (including, without limitation, availability or non-availability of appropriate water and sewer capacity) or other governmental rights or obligations; (iv) the completeness, accuracy or approval of permits, surveys, plats, preliminary plats, pollution abatement plans, subdivision plans or reports concerning Tract B; (v) tax consequences; (vi) the compliance of all or any part of Tract B with applicable environmental laws, rules or regulations with respect to health, the environment, and endangered species and wetlands (collectively, “Environmental Laws”) including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §9601, et. seq.), as amended, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901, et. seq.), as amended, the Endangered Species Act (16 U.S.C. §1531, et seq.), as amended, the Texas Water Code, as amended, the Texas Natural Resource Code, as amended, the Texas Solid Waste Disposal Act, as amended, and all other federal, state and local laws, statutes, ordinances, rules and

regulations, as amended, that regulate the use, storage, treatment, generation, disposal, transportation, discharge, release, threatened release and/or remediation of hazardous wastes, hazardous materials, hazardous substances, pollutants, toxic waste, toxic materials and toxic substances; (vii) the existence of asbestos, oil, arsenic, petroleum or chemical liquids or solids, liquid or gaseous products or hazardous substances as those terms and similar terms are defined or used in applicable Environmental Laws; (viii) the nature and extent of access to rights-of-way or utilities, availability of permits to access rights-of-way or utilities on Tract B, other property owned by City (if any), or any land owned by third parties; (ix) easements, mineral interests, encumbrances, licenses, reservations, conditions or other similar matters affecting Tract B; (x) compliance with any law, ordinance or regulation of any governmental entity or body; and/or (xi) claims, demands, or other matters relating to any restrictive covenants encumbering Tract B. The Parties agree the sale of Tract B will be made on an "AS IS, WHERE IS" and "WITH ALL FAULTS" basis. The Parties agree the warranties and covenants set forth in Section 5.023 of the Texas Property Code do not apply to this transaction and that any warranties arising at common law or implied as a result of Section 5.023 of the Texas Property Code, as amended, or any successor statute, shall be excluded and excepted from the Tract B Deed. City acknowledges that City has the full, complete and unfettered right to inspect Tract B to City's satisfaction and that the Tract B Purchase Price is in part based upon the fact that the sale of Tract B by Huntington to the City shall be without warranty or representation. City agrees to rely only upon City's own investigations, assessments and inspections as to the condition of Tract B, or City's own decision not to inspect any matter and City agrees that it is not relying on any representation, warranty, statement or non-assertion of Huntington or Huntington's officers, agents, representatives, employees, consultants, or independent contractors in making City's decision to purchase Tract B.

B. Release – Tract B. HUNTINGTON SHALL NOT BE LIABLE TO CITY FOR ANY LATENT OR PATENT DEFECTS OF TRACT B OR FOR ANY ERRORS, OMISSIONS, OR ON ACCOUNT OF ANY OTHER CONDITION AFFECTING TRACT B INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN SECTION 11(A)(I) THROUGH AND INCLUDING SECTION 11(A)(XI) ABOVE, AND CITY, AND ANYONE CLAIMING BY, THROUGH OR UNDER CITY, HEREBY FULLY RELEASES HUNTINGTON AND HUNTINGTON'S EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES, ATTORNEYS AND INSURERS (EACH A "HUNTINGTON RELATED PARTY") FROM ANY AND ALL CLAIMS AGAINST HUNTINGTON AND EACH HUNTINGTON RELATED PARTY FOR ANY COST, LOSS, LIABILITY, DAMAGE, EXPENSE, DEMAND, ACTION OR CAUSE OF ACTION (INCLUDING, WITHOUT LIMITATION, ANY RIGHTS OF CONTRIBUTION) ARISING FROM OR RELATED TO ANY LATENT OR PATENT DEFECTS OF TRACT B OR FOR ANY ERRORS, OMISSIONS, OR OTHER CONDITIONS AFFECTING TRACT B, INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN SECTION 11(A)(I) THROUGH AND INCLUDING SECTION 11(A)(XI) ABOVE AND ANY ALLEGED NEGLIGENCE OF HUNTINGTON OR ANY HUNTINGTON RELATED PARTY. THIS COVENANT RELEASING HUNTINGTON AND EACH HUNTINGTON RELATED PARTY SHALL BE SET FORTH IN THE TRACT B DEED AS A COVENANT RUNNING WITH THE TRACT B PROPERTY AND SHALL BE BINDING UPON CITY, CITY'S SUCCESSORS AND ASSIGNS, AND ALL FUTURE OWNERS OF ALL OR ANY PORTION OF TRACT B.

C. Waiver – Tract B. CITY HEREBY WAIVES CITY'S RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, SECTION 17.41 ET. SEQ., BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF CITY'S OWN SELECTION, CITY VOLUNTARILY CONSENTS TO THIS WAIVER.

D. **Covenant and Agreement of City – Tract B.** City represents and warrants to Huntington that City is acquiring Tract B for access to property currently owned by the City, that the City has knowledge and experience in financial and business real estate matters that enable City to evaluate the merits and risks of the transactions herein contemplated, and has bargained for and obtained a purchase price and agreement terms which make the limitations of City’s recourse against Huntington acceptable. City acknowledges that the limitations of City’s recourse against Huntington as set forth herein is a material part of the consideration for the execution and delivery of the Tract B Deed by Huntington and is an integral part of the basis of the bargain between Huntington and the City relating to the sale by Huntington and the purchase by the City of Tract B.

E. **Covenant and Agreement of Huntington – Tract B.** Huntington hereby covenants and agrees that, within ten (10) days after obtaining actual knowledge thereof (specifically excluding any constructive knowledge), Huntington shall notify City in writing of the pendency or the institution of foreclosure proceedings or any proceedings for the condemnation of Tract B, or any portion thereof, and any other proceedings alleging injury or damage to, or violations with respect to, Tract B, or any portion thereof, of which Huntington receives actual notice of during the term of this Agreement.

F. **Survival.** The provisions of this **Section 11** shall be set forth in the Tract B Deed. The waivers, releases, disclaimers and other matters set forth in this **Section 11** and all obligations of the Parties pursuant to this **Section 11** shall survive Closing or any termination of this Agreement.

12. **Default and Remedies.**

A. **Huntington’s Default and City’s Remedies.** In the event Huntington fails to fulfill any of its obligations hereunder, except as a result of City’s default hereunder or the termination of this Agreement by Huntington pursuant to any provision hereof giving Huntington the right to terminate this Agreement, City shall have the right, as City’s exclusive remedies: (i) to terminate this Agreement, in which event the Tract A Earnest Money and the Tract B Earnest Money (less the Tract B Independent Consideration) shall be delivered to City and neither Party shall thereafter have any further rights, obligations or liabilities hereunder except for those that expressly survive the termination of this Agreement; and (ii) the right to sue Huntington for damages arising from (A) Huntington’s restoration obligations set forth in Section 7(B) herein, (B) Huntington’s agreement to indemnify, defend and hold City harmless pursuant to Section 7(B), and (C) any other provision of this Agreement that expressly survives Closing or the termination of this Agreement. In this regard, the Parties agree that the Tract A Earnest Money and the Tract B Earnest Money (less the Tract B Independent Consideration) shall constitute agreed upon liquidated damages for any default by Huntington under this Agreement. The provisions of this **Section 12(A)** shall expressly survive the termination of this Agreement.

B. **City’s Default and Huntington’s Remedies.** In the event City fails to fulfill any of its obligations hereunder, except as a result of Huntington’s default hereunder or the termination of this Agreement by City pursuant to any provision hereof giving City the right to terminate this Agreement, Huntington shall have the right, as Huntington’s exclusive remedies: (i) to terminate this Agreement, in which event the Tract A Earnest Money and the Tract B Earnest Money (less the Tract A Independent Consideration) shall be delivered to Huntington and neither Party shall thereafter have any further rights, obligations or liabilities hereunder except for those that expressly survive the termination of this Agreement; and (ii) the right to sue City for damages arising from (A) City’s restoration obligations set forth in Section 7(D) herein, and (B) any other provision of this Agreement that expressly survives Closing or the termination of this Agreement. In this regard, the Parties agree that the Tract A Earnest Money and the Tract B Earnest Money (less the Tract A Independent Consideration) shall constitute agreed upon liquidated damages for any default by City under this Agreement. The provisions of this **Section 12(B)** shall expressly survive the termination of this Agreement.

C. **Waiver of Consequential, Punitive, Exemplary and Speculative Damages.** The Parties agree that, in connection with any action, suit or proceeding arising from or relating to this Agreement, each Party mutually waives to the fullest extent permitted by applicable law, all rights to sue the other Party for consequential, punitive, exemplary or speculative damages. The provisions of this **Section 12(C)** shall expressly survive the Closing or termination of this Agreement.

D. **Notice and Opportunity to Cure.** City and Huntington covenant and agree, each with the other, to give to the other written notice of any default occurring, and such Party in default shall have a period of thirty (30) days to cure such default prior to the exercise of any right or remedy provided in this Agreement by the non-defaulting Party **provided, however,** notwithstanding the foregoing: (i) neither Party shall be required to notify the other Party to close this Agreement on the Closing Date and in the event a Party fails to close this Agreement on the Closing Date, such Party shall not have any cure period within which to cure such default; (ii) City shall not be required to notify Huntington to deposit the Tract A Earnest Money and City may terminate this Agreement if Huntington fails to timely deposit the Tract A Earnest Money as required by this Agreement; and (iii) Huntington shall not be required to notify City to deposit the Tract B Earnest Money and Huntington may terminate this Agreement if City fails to timely deposit the Tract B Earnest Money as required by this Agreement.

13. **Possession.**

A. **Tract A.** City will deliver possession of Tract A to Huntington upon closing and funding of the sale of Tract A in its present condition, ordinary wear and tear excepted, subject to the Tract A Permitted Exceptions.

B. **Tract B.** Huntington will deliver possession of Tract B to City upon closing and funding of the sale of Tract B in its present condition, ordinary wear and tear excepted, subject to the Tract B Permitted Exceptions.

14. **Taxes.** Taxes for the year of Closing for Tract A will be prorated and Huntington shall be responsible for all taxes for Tract A from and after the Closing Date. Taxes for the year of Closing for Tract B will be prorated and Huntington shall be responsible for all taxes prior to the Closing Date. The City is exempt from taxes and accordingly, taxes shall not accrue on Tract B from and after the Closing Date unless the Dallas County Appraisal District cannot apply the tax exemption until the next tax year in which event Huntington shall be responsible for taxes on Tract B from the date of Closing through the remainder of the year of Closing. The provisions of this **Section 14** shall expressly survive Closing.

15. **Notices.** Any notice or communication required or permitted hereunder shall be in writing and shall be deemed to be delivered, (i) upon e-mail transmission addressed to the intended recipient at the e-mail address set forth below, (ii) whether actually received or not, on the date deposited in the United States mail, postage fully prepaid, registered or certified mail, addressed to the intended recipient at the address set forth below, or (iii) when received via local hand courier service, or (iv) the next business day after deposit by the sender with a national service such as Federal Express or United Parcel Service. Any address for notice may be changed by written notice delivered as provided herein.

If Intended for City:

City of Mesquite, a Texas home rule municipality
Attention: Cliff Keheley, City Manager
1515 N. Galloway
Mesquite, Texas 75149
Email: ckeheley@cityofmesquite.com

With a copy to:

City of Mesquite, a Texas home rule municipality
Attention: David Paschall, City Attorney
1515 N. Galloway
Mesquite, Texas 75149
Email: dpaschall@cityofmesquite.com

With a copy to:

City of Mesquite, a Texas home rule municipality
Attention: Paula Anderson, Deputy City Attorney
1515 N. Galloway
Mesquite, Texas 75149
Email: panderson@cityofmesquite.com

If Intended for Huntington:

DFW-Mesquite Distribution Center, LLC
385 Inverness Parkway, Suite 460
Englewood, CO 80112
Attn: W. Jeffrey Jones
Phone: 720.233.6966
Email: jjones@huntingtonindustrial.com

16. **Applicable Law.** This Agreement shall be construed in accordance with the laws of the State of Texas. Venue shall be in Dallas County, Texas.

17. **Entire Agreement.** This Agreement and all attached exhibits shall constitute the entire agreement between City and Huntington and shall supersede any other written or oral agreements between City and Huntington relating to the matters set forth herein. This Agreement may be modified only in writing signed by City and Huntington.

18. **Broker's Commission.** City and Huntington both acknowledge and represent to the other that there are no brokers entitled to a commission in connection with the sale and purchase of Tract A and/or Tract B.

19. **Effective Date.** If the City and Huntington execute this Agreement on the same date, any reference to the "Effective Date" or the "date of this Agreement" shall mean the date this Agreement is executed by both the City and Huntington. If the City and Huntington execute this Agreement on different dates, any reference to "Effective Date" or the "date of this Agreement" shall refer to the later of the two dates this Agreement is executed by the City and Huntington.

20. **Date for Performance.** If the last day to perform under a provision of this Agreement falls on a Saturday, Sunday or legal holiday, the time for performance shall be automatically extended through the close of business on the next regularly scheduled business day.

21. **Attorneys' Fees.** Each Party hereto shall pay their own attorney's fees in connection with the negotiation and consummation of the transactions contemplated herein. If either Party shall be required to employ an attorney to enforce or defend the rights of such Party hereunder, the prevailing party shall not

be entitled to recover reasonable attorney's fees incurred in connection therewith. The provisions of this Section shall survive the Closing or earlier termination of this Agreement.

22. **Severability.** If any term or provision of this Agreement shall be held to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and shall remain valid and enforceable.

23. **Captions.** The section captions herein are for reference purposes only and are not a part of this Agreement and in no way define, describe, extend, or limit the scope or intent of this Agreement.

24. **Counterparts.** This Agreement may be executed in any number of original or electronically scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument. This Agreement, the closing documents and all transactions contemplated herein shall be subject to the Texas Uniform Electronic Transactions Act.

25. **Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party which may be withheld in the sole discretion of the Party's whose consent is required.

26. **Waivers.** No failure by either Party to insist upon the strict, timely performance of any covenant or agreement of this Agreement or failure to exercise any right or remedy upon a breach thereof shall constitute a waiver of such breach, right or remedy.

27. **Authority.** Huntington represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. Huntington represents that Huntington has the full power and authority to enter into and fulfill Huntington's obligations under this Agreement and that the person signing this Agreement on behalf of Huntington has the authority to sign this Agreement on behalf of Huntington. City represents that the City has the full power and authority to enter into and fulfill the City's obligations under this Agreement and that the person signing this Agreement on behalf of the City has the authority to sign this Agreement on behalf of the City. The provisions of this Section 27 shall expressly survive the Closing.

28. **Abstract or Title Policy.**

A. **Tract A.** Huntington should have an abstract covering Tract A examined by an attorney of Huntington's selection, or Huntington should be furnished with or obtain a title policy for Tract A.

B. **Tract B.** The City should have an abstract covering Tract B examined by an attorney of City's selection, or City should be furnished with or obtain a title policy for Tract B.

29. **Statutory Tax Districts.**

A. **Tract A.** If Tract A is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires City to deliver and Huntington to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this Agreement.

B. **Tract B.** If Tract B is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Huntington to deliver and City to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this Agreement.

30. **Immunity.** The Parties agree that this is not a contract for goods and services. The Parties further agree that City does not waive or surrender any of its governmental powers, immunities or rights and, notwithstanding any provision of this Agreement, this Agreement does not control, waive, limit or supplant the legislative authority or discretion of the City Council of the City. The provisions of this **Section 30** shall expressly survive the Closing or any termination of this Agreement and in the event of any conflict between this provision and any other provision of this Agreement, this **Section 30** shall control.

31. **Form 1295 Certificate.** In the event this Agreement is subject to V.T.C.A., Government Code, §2252.908, Huntington agrees to comply with V.T.C.A., Government Code, §2252.908 by going online with the Texas Ethics Commission to complete a Form 1295 Certificate and by printing, executing and delivering the completed certificate in such form as is required by V.T.C.A, Government Code, §2252.908 and the rules of the Texas Ethics Commission and providing to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

32. **Anti-Boycott Verification.** Huntington hereby verifies that it and its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is construed to be a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, but only to the extent such section is applicable, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, ‘boycott Israel’ means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Huntington understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with Huntington and exists to make a profit.

33. **Iran, Sudan and Foreign Terrorist Organizations.** Huntington represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes Huntington and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. Huntington understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with Huntington and exists to make a profit.

34. **Conditions Precedent.**

A. **Closing by Huntington on the Purchase of Tract B.** The Parties’ obligations to close on the sale and purchase of Tract A and Tract B shall expressly be conditioned upon the closing and funding of the purchase of Tract B by Huntington pursuant to the Lacy Contract on or before the Closing Date. If Huntington fails to close on the purchase of Tract B pursuant to the Lacy Contract on or before the Closing Date, either Party shall have the right to terminate this Agreement in which event (i) the Tract A Earnest Money (less the Tract A Independent Consideration) shall be delivered to Huntington; (ii) the Tract B Earnest Money (less the Tract B Independent Consideration) shall be delivered to City; and (iii) neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement.

B. **Purchase of Tract A.** The purchase of Tract A by Huntington is conditioned upon the contemporaneous purchase of Tract B by the City pursuant to this Agreement. Without limiting Section 12(B), if the City fails to purchase Tract B on or before the Closing Date, Huntington shall have the right to terminate this Agreement in which event: (i) the Tract A Earnest Money (less the Tract A Independent Consideration) shall be delivered to Huntington; (ii) the Tract B Earnest Money shall be delivered to Huntington; and (iii) neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement.

C. **Sale of Tract A.** The sale of Tract A by the City to Huntington is conditioned upon the contemporaneous sale of Tract B by Huntington to the City pursuant to this Agreement. Without limiting Section 12(A), if Huntington fails to close on the sale of Tract B to the City on or before the Closing Date, the City shall have the right to terminate this Agreement in which event: (i) the City shall not be obligated to close on the sale of Tract A to Huntington; (ii) the City shall not be obligated to close on the purchase of Tract B from Huntington; (iii) the Tract A Earnest Money shall be delivered to City; (iv) the Tract B Earnest Money (less the Tract B Independent Consideration) shall be delivered to the City; and (v) neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement.

D. **Purchase of Tract B.** The purchase of Tract B by the City is conditioned upon the contemporaneous purchase of Tract A by Huntington pursuant to this Agreement. Without limiting Section 12(A), if Huntington fails to purchase Tract A on or before the Closing Date, the City shall have the right to terminate this Agreement in which event: (i) the Tract A Earnest Money shall be delivered to City; (ii) the Tract B Earnest Money (less the Tract B Independent Consideration) shall be delivered to City; and (iii) neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement.

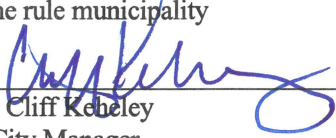
E. **Sale of Tract B.** The sale of Tract B by Huntington to the City is conditioned upon the contemporaneous sale of Tract A by the City to Huntington pursuant to this Agreement. Without limiting Section 12(B), if the City fails to close on the sale of Tract A to Huntington on or before the Closing Date, Huntington shall have the right to terminate this Agreement in which event: (i) Huntington shall not be obligated to close on the sale of Tract B to the City; (ii) Huntington shall not be obligated to close on the purchase of Tract A from the City; (iii) the Tract B Earnest Money shall be delivered to Huntington; (iv) the Tract A Earnest Money (less the Tract A Independent Consideration) shall be delivered to Huntington; and (v) neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement.

35. **Time is of the Essence.** THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

36. **Operation Prior to Closing.** From the Effective Date of this Agreement to the Closing Date, neither Party shall execute any contracts, leases or other agreements or encumbrances affecting Tract A or Tract B, as applicable, that would be binding on the other Party following the Closing, without the written consent of the other Party, which consent may be withheld for any reason or no reason.

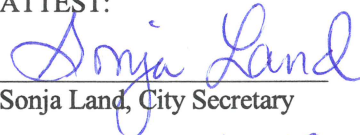
IN WITNESS WHEREOF, the City and Huntington have executed this Agreement on the date(s) set forth below.

CITY OF MESQUITE,
a Texas home rule municipality

By: 
Name: Cliff Keheley
Title: City Manager

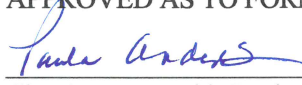
Execution Date: 11.19, 2020

ATTEST:

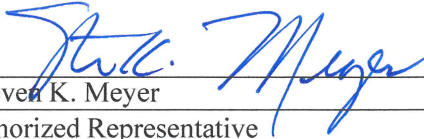

Sonja Land, City Secretary

Execution Date: 11.19, 2020

APPROVED AS TO FORM:


City Attorney or his Designee

DFW-Mesquite Distribution Center LLC,
a Delaware limited liability company

By 
Name: Steven K. Meyer
Title: Authorized Representative

Executed the 10th day of November, 2020

ESCROW RECEIPT

The undersigned Title Company hereby acknowledges receipt of a fully executed copy (or executed counterparts) of the foregoing Agreement on the date below and accepts the obligations of the Title Company as set forth in the foregoing Agreement.

REPUBLIC TITLE OF TEXAS, INC.

By: _____
Name: Clay Arnold
Title: Escrow Agent

Date: _____, 2020

Title Company Address:

2626 Howell Street, 10th Floor
Dallas, Texas 75204
Telephone 214-855-8888
E-mail: carnold@republictitle.com

EXHIBIT A

Legal Description and Depiction of Tract A

BEING a 0.3570 acre tract of land situated in the, Daniel S. Carver Survey, Abstract Number 342, City of Mesquite, Dallas County, Texas, and being part of a called 10.38 acre tract of land described in Warranty Deed to City of Mesquite, recorded in Volume 94010, Page 762 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch found iron rod with cap stamped "SJ&F" for corner at the intersection of the east right-of-way line of Interstate Highway 635 (also known as Lyndon B. Johnson Freeway, variable width right-of-way) and the south right-of-way line of Military Parkway (also known as State Highway 352, a variable width right-of-way);

THENCE South 87 degrees 22 minutes 39 seconds East, with the north line of a called 53.93 acre tract of land described in Executor's Special Warranty Deed to Cathy Jane Swafford Lucy, recorded in Instrument Number 201900345913 of the Official Public Records of the Dallas County, Texas (O.P.R.D.C.T.) and the south right-of-way line of Military Parkway, a distance of 1,619.88 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALFF" (hereinafter referred to as "with HALFF cap") for the northeast corner of said 53.93 acre tract, the northerly northwest corner of said 10.38 acre tract and the **POINT OF BEGINNING**;

THENCE North 89 degrees 19 minutes 21 seconds East, with the north line of said 10.38 acre tract and said south right-of-way line, a distance of 20.00 feet to a 1/2-inch found iron rod with cap stamped "SURVEYING ASSOC." for the northeast corner of said 10.38 acre tract and the northwest corner of a tract of land described in Warranty Deed with Vendor's Lien to Dr. Abdallah Adham and Hana Adham, recorded in Volume 84105, Page 3931, D.R.D.C.T.;

THENCE South 00 degrees 40 minutes 39 seconds East, departing the south right-of-way line of said Military Parkway, and with the east line of said 10.38 acre tract and the west line of said Adham tract, a distance of 777.92 feet to a found nail for an "ell" corner of said 10.38 acre tract and the southwest corner of said Adham tract, said corner being on the north line of a called 12.702 acre tract described in General Warranty Deed to Jose Noel Sorto, recorded in Instrument Number 201400259694, O.P.R.D.C.T.;

THENCE North 87 degrees 58 minutes 02 seconds West, with the south line of said 10.38 acre tract and the north line of said 12.702 acer tract, a distance of 20.02 feet to an "ell" corner of said 10.38 acre tract and said 12.702 acre tract, from which a 5/8-inch found iron rod bears South 58 degrees 54 minutes 42 seconds East, a distance of 0.11 of a foot;

THENCE North 00 degrees 40 minutes 39 seconds West, over and across said 10.38 acre tract, passing at a distance of 21.97 feet to an "ell" corner of said 10.38 acre tract and the easterly southeast corner of said 53.93 acre tract, and continuing with the east line of said 10.38 acre tract and the west line of said 53.93 acre tract, in all, a total distance of 776.97 feet to the **POINT OF BEGINNING AND CONTAINING 0.3570 acres (15,549 square foot) of land, more or less.**

Depiction of Tract A

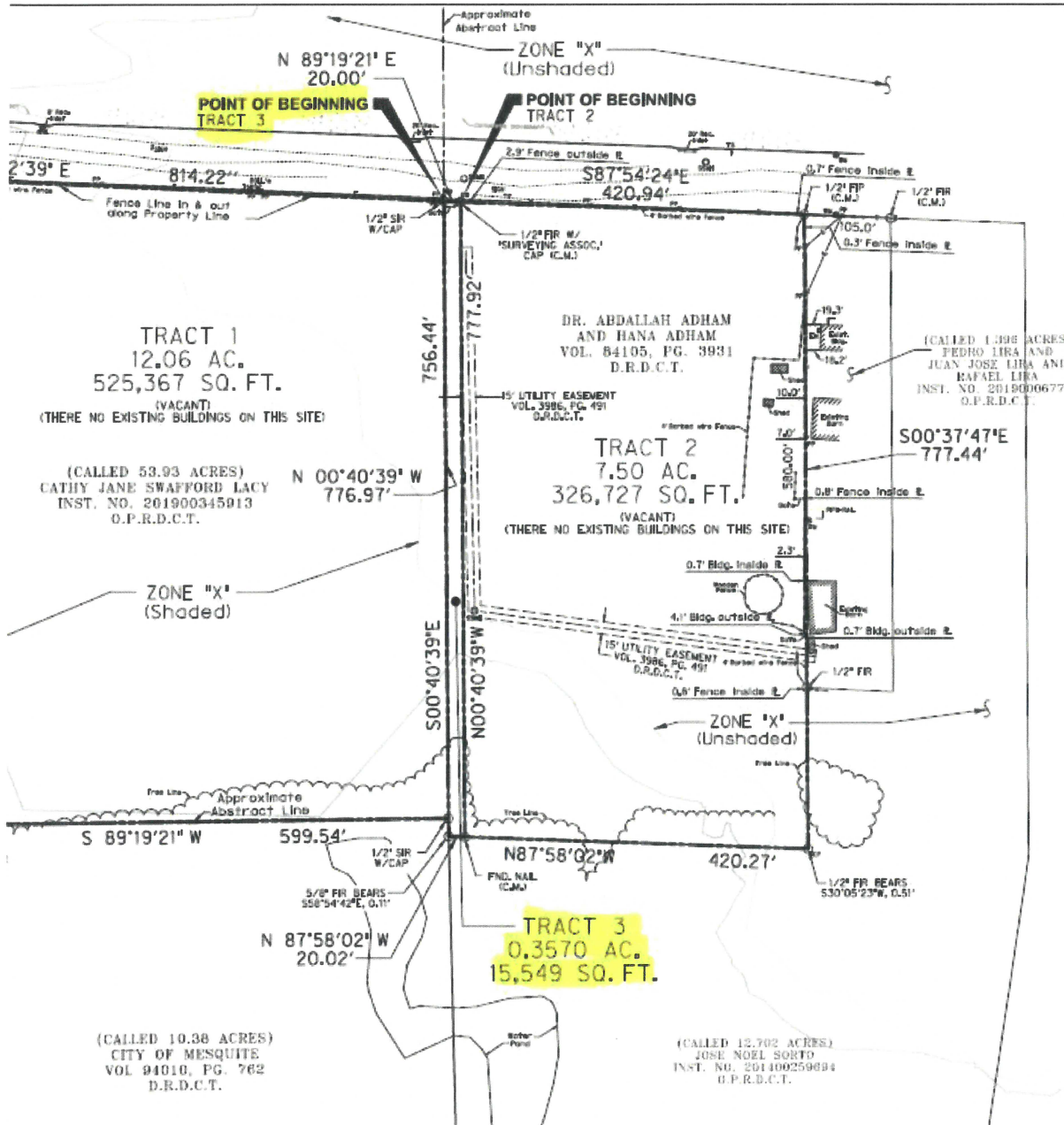


EXHIBIT B

Legal Description and Depiction of Tract B

LEGAL DESCRIPTION

BEING a 0.3856 acre tract of land situated in the, S. H Miller Survey, Abstract Number 974, City of Mesquite, Dallas County, Texas, and being part of a called 53.93 acre tract of land described in Executer's Special Warranty Deed to Cathy Jane Swafford Lacy, recorded in Instrument Number 201900345913 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch found iron rod with cap stamped "SJ&F" for corner at the intersection of the east right-of-way line of Interstate Highway 635 (also known as Lyndon B. Johnson Freeway, variable width right-of-way) and the south right-of-way line of Military Parkway (also known as State Highway 352, a variable width right-of-way);

THENCE South 87 degrees 22 minutes 39 seconds East, with the north line of said 53.93 acre tract and the south right-of-way line of Military Parkway, a distance of 805.81 feet a corner (not monumented) for the **POINT OF BEGINNING**;

THENCE South 87 degrees 22 minutes 39 seconds East, continuing with said north line and said south right-of-way line, a distance of 21.76 feet to a corner (not monumented);

THENCE South 20 degrees 34 minutes 13 seconds East, departing said north line and said south right-of-way line, and over and across said 53.93 acre tract, a distance of 621.49 feet to a corner (not monumented);

THENCE South 00 degrees 40 minutes 39 seconds East, continuing over and across said 53.93 acre tract, a distance of 217.64 feet to a corner (not monumented) on the south line of said 53.93 acre tract and the north line of a called 10.38 acre tract of land described in Warranty Deed to City of Mesquite, recorded in Volume 94010, Page 762 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);

THENCE South 89 degrees 19 minutes 21 seconds West, with the south line of said 53.93 acre tract and the north line of said 10.38 acre tract, a distance of 20.00 feet to a corner (not monumented);

THENCE North 00 degrees 40 minutes 39 seconds West, departing said north and south line, and over and across said 53.93 acre tract, a distance of 214.13 feet to a corner (not monumented);

THENCE North 20 degrees 34 minutes 13 seconds West, continuing over and across said 53.93 acre tract, a distance of 626.55 feet to the **POINT OF BEGINNING AND CONTAINING** 0.3856 acres (16,798 square foot) of land, more or less.

Depiction of Tract B

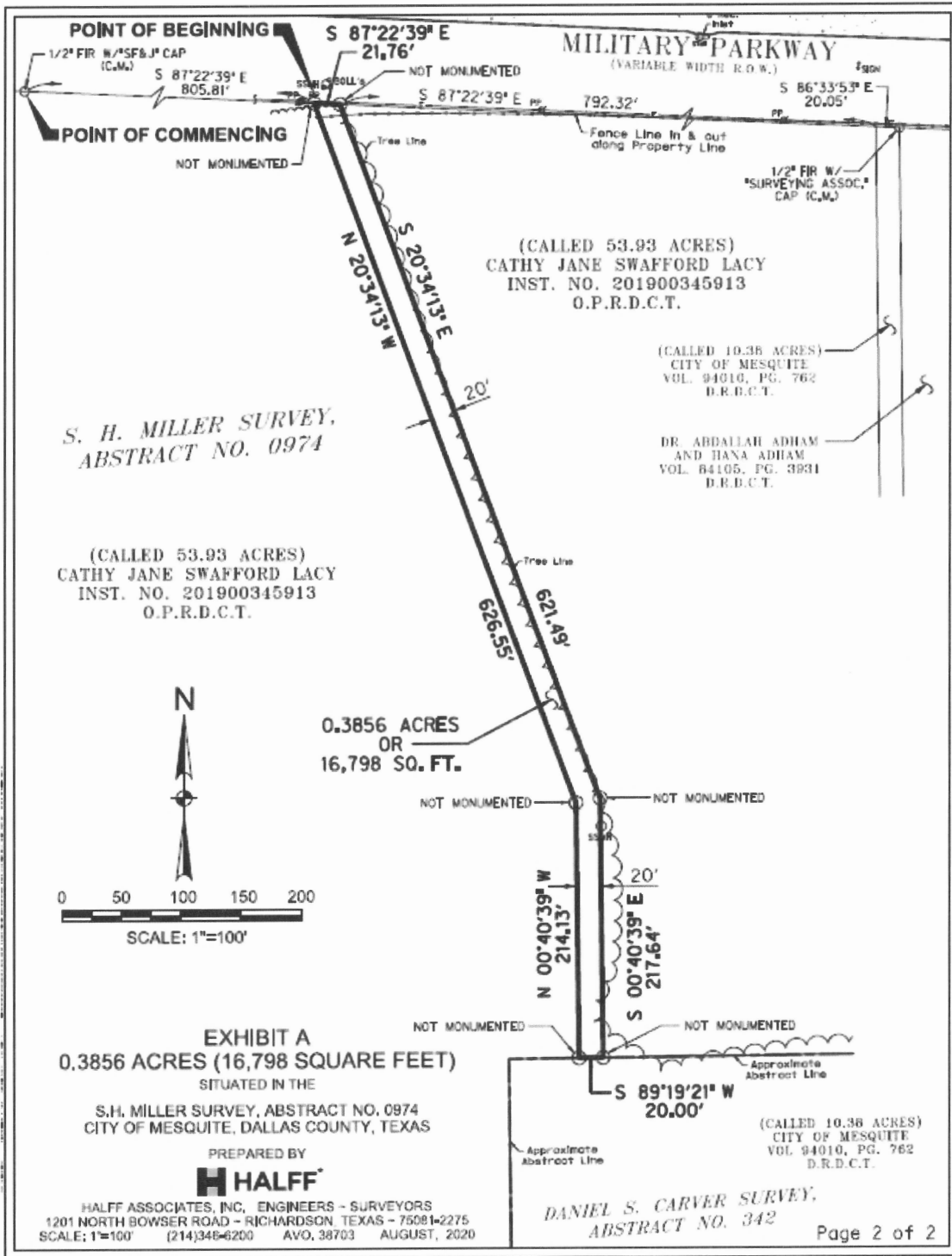


EXHIBIT C

Form of Tract A Deed

DEED WITHOUT WARRANTY

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

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

THAT, the City of Mesquite, a Texas home rule municipality ("**Grantor**"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, paid to Grantor by DFW-Mesquite Distribution Center LLC, a Delaware limited liability company having an address at 385 Inverness Parkway, Suite 460 Englewood, CO 80112 ("**Grantee**"), has GRANTED and by these presents does hereby GRANT unto Grantee, **WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW OR OTHERWISE**, all of Grantor's right, title and interest, if any, in and to that certain approximately 0.3570 acre tract of land situated in the Daniel S. Carver Survey, Abstract No. 342, City of Mesquite, Dallas County, Texas, and being more particularly described and depicted in **Exhibit A** attached hereto and made a part hereof for all purposes (the "**Property**"), together with all of Grantor's rights, titles, powers, privileges, licenses and interests, if any, appurtenant to the Property but specifically not including any easements, rights-of-way or interests in any streets, highways or roadways in front of, abutting or adjacent to the Property.

Without limiting the foregoing disclaimer of warranty, this deed is expressly made subject to those certain encumbrances, easements and other matters more particularly described on **Exhibit B** attached hereto and incorporated herein by reference (the "**Permitted Exceptions**"), but only to the extent that such Permitted Exceptions are valid, subsisting and, in fact, affect the Property.

GRANTOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW OR OTHERWISE WITH RESPECT TO ANY MATTER CONCERNING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE FOLLOWING: (I) TITLE TO THE PROPERTY; (II) THE HABITABILITY, MARKETABILITY, MERCHANTABILITY, OR SUITABILITY OR FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE OR USE; (III) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, WATER, DRAINAGE AND GRADING, SOIL AND GEOLOGY, ZONING, ANNEXATION, EXTRATERRITORIAL JURISDICTION AND OTHER ZONING AND JURISDICTIONAL ISSUES, LOCATION OF CEMETERIES, UTILITY AVAILABILITY OR HOOK-UP, EASEMENT RIGHTS, FLOOD PLAINS (OR PORTIONS OF THE PROPERTY IN A FLOOD PLAIN) AND THE COSTS AND REQUIREMENTS OF SAME, ACCESS TO STREETS, COSTS OF UTILITIES, LOCATION OF CURB CUTS AND MEDIAN BREAKS IN STREETS, SEWAGE FACILITIES (INCLUDING, WITHOUT LIMITATION, AVAILABILITY OR NON-AVAILABILITY OF APPROPRIATE WATER AND SEWER CAPACITY) OR OTHER GOVERNMENTAL RIGHTS OR OBLIGATIONS; (IV) THE COMPLETENESS, ACCURACY OR APPROVAL OF PERMITS, SURVEYS, PLATS, PRELIMINARY PLATS, POLLUTION ABATEMENT PLANS, SUBDIVISION PLANS OR REPORTS CONCERNING

THE PROPERTY; (V) TAX CONSEQUENCES; (VI) THE COMPLIANCE OF ALL OR ANY PART OF THE PROPERTY WITH APPLICABLE ENVIRONMENTAL LAWS, RULES OR REGULATIONS WITH RESPECT TO HEALTH, THE ENVIRONMENT, AND ENDANGERED SPECIES AND WETLANDS (COLLECTIVELY, "ENVIRONMENTAL LAWS") INCLUDING, WITHOUT LIMITATION, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980 (42 U.S.C. §9601, ET. SEQ.), AS AMENDED, THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 (42 U.S. C. §6901, ET. SEQ.), AS AMENDED, THE ENDANGERED SPECIES ACT (16 U.S.C. §1531, ET SEQ.), AS AMENDED, THE TEXAS WATER CODE, AS AMENDED, THE TEXAS NATURAL RESOURCE CODE, AS AMENDED, THE TEXAS SOLID WASTE DISPOSAL ACT, AS AMENDED, AND ALL OTHER FEDERAL, STATE AND LOCAL LAWS, STATUTES, ORDINANCES, RULES AND REGULATIONS, AS AMENDED, THAT REGULATE THE USE, STORAGE, TREATMENT, GENERATION, DISPOSAL, TRANSPORTATION, DISCHARGE, RELEASE, THREATENED RELEASE AND/OR REMEDIATION OF HAZARDOUS WASTES, HAZARDOUS MATERIALS, HAZARDOUS SUBSTANCES, POLLUTANTS, TOXIC WASTE, TOXIC MATERIALS AND TOXIC SUBSTANCES; (VII) THE EXISTENCE OF ASBESTOS, OIL, ARSENIC, PETROLEUM OR CHEMICAL LIQUIDS OR SOLIDS, LIQUID OR GASEOUS PRODUCTS OR HAZARDOUS SUBSTANCES AS THOSE TERMS AND SIMILAR TERMS ARE DEFINED OR USED IN APPLICABLE ENVIRONMENTAL LAWS; (VIII) THE NATURE AND EXTENT OF ACCESS TO RIGHTS-OF-WAY OR UTILITIES, AVAILABILITY OF PERMITS TO ACCESS RIGHTS-OF-WAY OR UTILITIES ON THE PROPERTY, OTHER PROPERTY OWNED BY GRANTOR (IF ANY), OR ANY LAND OWNED BY THIRD PARTIES; (IX) EASEMENTS, MINERAL INTERESTS, ENCUMBRANCES, LICENSES, RESERVATIONS, CONDITIONS OR OTHER SIMILAR MATTERS AFFECTING THE PROPERTY; (X) COMPLIANCE WITH ANY LAW, ORDINANCE OR REGULATION OF ANY GOVERNMENTAL ENTITY OR BODY; AND (XI) CLAIMS, DEMANDS, OR OTHER MATTERS RELATING TO ANY RESTRICTIVE COVENANTS ENCUMBERING THE PROPERTY. THE SALE OF THE PROPERTY BY GRANTOR TO GRANTEE IS MADE ON AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" BASIS. GRANTEE ACKNOWLEDGES THAT GRANTEE HAS HAD THE FULL, COMPLETE AND UNFETTERED RIGHT TO INSPECT THE PROPERTY TO GRANTEE'S SATISFACTION AND THAT THE PURCHASE PRICE PAID FOR THE PROPERTY WAS IN PART BASED UPON THE FACT THAT THE TRANSFER OF THE PROPERTY BY GRANTOR TO GRANTEE IS WITHOUT WARRANTY OR REPRESENTATION. BY ACCEPTANCE OF THIS DEED, GRANTEE ACKNOWLEDGES THAT GRANTEE HAS RELIED ONLY UPON GRANTEE'S OWN INVESTIGATIONS, ASSESSMENTS AND INSPECTIONS AS TO THE CONDITION OF THE PROPERTY, OR GRANTEE'S OWN DECISION NOT TO INSPECT ANY MATTER AND GRANTEE ACKNOWLEDGES THAT GRANTEE DID NOT RELY ON ANY REPRESENTATION, WARRANTY, STATEMENT OR NON-ASSERTION OF GRANTOR OR GRANTOR'S OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, CONSULTANTS, OR INDEPENDENT CONTRACTORS IN MAKING GRANTEE'S DECISION TO PURCHASE THE PROPERTY. IN ADDITION, BY ACCEPTANCE OF THIS DEED, GRANTEE AND ANYONE CLAIMING BY, THROUGH OR UNDER GRANTEE, HEREBY FULLY RELEASES GRANTOR, AND GRANTOR'S EMPLOYEES, OFFICERS, ELECTED OFFICIALS, AGENTS, REPRESENTATIVES, ATTORNEYS AND INSURERS (EACH A "GRANTOR RELATED PARTY") FROM ANY AND ALL CLAIMS AGAINST GRANTOR AND EACH GRANTOR RELATED PARTY FOR ANY COST, LOSS, LIABILITY, DAMAGE, EXPENSE, DEMAND, ACTION OR CAUSE OF ACTION (INCLUDING, WITHOUT LIMITATION, ANY RIGHTS OF CONTRIBUTION) ARISING FROM OR RELATED TO ANY LATENT OR PATENT DEFECTS OF THE PROPERTY OR FOR ANY ERRORS, OMISSIONS, OR OTHER CONDITIONS AFFECTING THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN CLAUSES (I) THROUGH (XI) ABOVE AND ANY ALLEGED NEGLIGENCE OF GRANTOR OR ANY GRANTOR RELATED PARTY. THIS COVENANT RELEASING GRANTOR AND EACH GRANTOR RELATED PARTY SHALL BE A COVENANT

RUNNING WITH THE PROPERTY AND SHALL BE BINDING UPON GRANTEE, GRANTEE'S SUCCESSORS AND ASSIGNS, AND ALL FUTURE OWNERS OF ALL OR ANY PORTION OF THE PROPERTY.

EXCLUDED AND EXCEPTED FROM THIS DEED ARE ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PROPERTY INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES ARISING AT COMMON LAW OR IMPLIED AS A RESULT OF §5.023 OF THE TEXAS PROPERTY CODE, AS AMENDED, OR ANY SUCCESSOR STATUTE.

TO HAVE AND TO HOLD the Property (subject to the foregoing) unto Grantee and Grantee's successors and assigns forever.

EXECUTED to be effective as of the ____ day of _____, 20____.

GRANTOR:

CITY OF MESQUITE,
a Texas home rule municipality

By: _____
Name: Cliff Keheley
Title: City Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me, the undersigned officer, on this day personally appeared Cliff Keheley, City Manager of the City of Mesquite, a Texas home rule municipality, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this ____ day of _____, 20____.

Notary Public, In and for the State of Texas

Notary Seal

AFTER RECORDING, SEND TO:
DFW-Mesquite Distribution Center LLC
385 Inverness Parkway, Suite 460
Englewood, CO 80112
Attn: W. Jeffrey Jones

SEND TAX NOTICES TO:
DFW-Mesquite Distribution Center, LLC
385 Inverness Parkway, Suite 460
Englewood, CO 80112
Attn: W. Jeffrey Jones

Exhibit A – Legal Description
Exhibit B – Permitted Exceptions

Exhibit A

Legal Description and Depiction of the Property

BEING a 0.3570 acre tract of land situated in the, Daniel S. Carver Survey, Abstract Number 342, City of Mesquite, Dallas County, Texas, and being part of a called 10.38 acre tract of land described in Warranty Deed to City of Mesquite, recorded in Volume 94010, Page 762 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch found iron rod with cap stamped "SJ&F" for corner at the intersection of the east right-of-way line of Interstate Highway 635 (also known as Lyndon B. Johnson Freeway, variable width right-of-way) and the south right-of-way line of Military Parkway (also known as State Highway 352, a variable width right-of-way);

THENCE South 87 degrees 22 minutes 39 seconds East, with the north line of a called 53.93 acre tract of land described in Executor's Special Warranty Deed to Cathy Jane Swafford Lucy, recorded in Instrument Number 201900345913 of the Official Public Records of the Dallas County, Texas (O.P.R.D.C.T.) and the south right-of-way line of Military Parkway, a distance of 1,619.88 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALFF" (hereinafter referred to as "with HALFF cap") for the northeast corner of said 53.93 acre tract, the northerly northwest corner of said 10.38 acre tract and the **POINT OF BEGINNING**;

THENCE North 89 degrees 19 minutes 21 seconds East, with the north line of said 10.38 acre tract and said south right-of-way line, a distance of 20.00 feet to a 1/2-inch found iron rod with cap stamped "SURVEYING ASSOC." for the northeast corner of said 10.38 acre tract and the northwest corner of a tract of land described in Warranty Deed with Vendor's Lien to Dr. Abdallah Adham and Hana Adham, recorded in Volume 84105, Page 3931, D.R.D.C.T.;

THENCE South 00 degrees 40 minutes 39 seconds East, departing the south right-of-way line of said Military Parkway, and with the east line of said 10.38 acre tract and the west line of said Adham tract, a distance of 777.92 feet to a found nail for an "ell" corner of said 10.38 acre tract and the southwest corner of said Adham tract, said corner being on the north line of a called 12.702 acre tract described in General Warranty Deed to Jose Noel Sorto, recorded in Instrument Number 201400259694, O.P.R.D.C.T.;

THENCE North 87 degrees 58 minutes 02 seconds West, with the south line of said 10.38 acre tract and the north line of said 12.702 acer tract, a distance of 20.02 feet to an "ell" corner of said 10.38 acre tract and said 12.702 acre tract, from which a 5/8-inch found iron rod bears South 58 degrees 54 minutes 42 seconds East, a distance of 0.11 of a foot;

THENCE North 00 degrees 40 minutes 39 seconds West, over and across said 10.38 acre tract, passing at a distance of 21.97 feet to an "ell" corner of said 10.38 acre tract and the easterly southeast corner of said 53.93 acre tract, and continuing with the east line of said 10.38 acre tract and the west line of said 53.93 acre tract, in all, a total distance of 776.97 feet to the **POINT OF BEGINNING AND CONTAINING** 0.3570 acres (15,549 square foot) of land, more or less.

Exhibit B

Permitted Exceptions

EXHIBIT D

Form of Tract B Deed

DEED WITHOUT WARRANTY

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

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

THAT, DFW-Mesquite Distribution Center LLC, a Delaware limited liability company ("**Grantor**"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, paid to Grantor by the City of Mesquite, Texas, having an address at 1515 N. Galloway, Mesquite, Texas 75149 ("**Grantee**"), has GRANTED and by these presents does hereby GRANT unto Grantee, **WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW OR OTHERWISE**, all of Grantor's right, title and interest, if any, in and to that certain approximately 0.3856 acre tract of land situated in the S. H. Miller Survey, Abstract No. 974, City of Mesquite, Dallas County, Texas, and being more particularly described and depicted in **Exhibit A** attached hereto and made a part hereof for all purposes (the "**Property**"), together with all of Grantor's rights, titles, powers, privileges, easements, licenses, rights-of-way and interests, if any, appurtenant to the Property.

Without limiting the foregoing disclaimer of warranty, this deed is expressly made subject to those certain encumbrances, easements and other matters more particularly described on **Exhibit B** attached hereto and incorporated herein by reference (the "**Permitted Exceptions**"), but only to the extent that such Permitted Exceptions are valid, subsisting and, in fact, affect the Property.

GRANTOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW OR OTHERWISE WITH RESPECT TO ANY MATTER CONCERNING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE FOLLOWING: (I) TITLE TO THE PROPERTY; (II) THE HABITABILITY, MARKETABILITY, MERCHANTABILITY, OR SUITABILITY OR FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE OR USE; (III) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, WATER, DRAINAGE AND GRADING, SOIL AND GEOLOGY, ZONING, ANNEXATION, EXTRATERRITORIAL JURISDICTION AND OTHER ZONING AND JURISDICTIONAL ISSUES, LOCATION OF CEMETERIES, UTILITY AVAILABILITY OR HOOK-UP, EASEMENT RIGHTS, FLOOD PLAINS (OR PORTIONS OF THE PROPERTY IN A FLOOD PLAIN) AND THE COSTS AND REQUIREMENTS OF SAME, ACCESS TO STREETS, COSTS OF UTILITIES, LOCATION OF CURB CUTS AND MEDIAN BREAKS IN STREETS, SEWAGE FACILITIES (INCLUDING, WITHOUT LIMITATION, AVAILABILITY OR NON-AVAILABILITY OF APPROPRIATE WATER AND SEWER CAPACITY) OR OTHER GOVERNMENTAL RIGHTS OR OBLIGATIONS; (IV) THE COMPLETENESS, ACCURACY OR APPROVAL OF PERMITS, SURVEYS, PLATS, PRELIMINARY PLATS, POLLUTION ABATEMENT PLANS, SUBDIVISION PLANS OR REPORTS CONCERNING THE PROPERTY; (V) TAX CONSEQUENCES; (VI) THE COMPLIANCE OF ALL OR ANY PART OF THE PROPERTY WITH APPLICABLE ENVIRONMENTAL LAWS, RULES OR REGULATIONS

WITH RESPECT TO HEALTH, THE ENVIRONMENT, AND ENDANGERED SPECIES AND WETLANDS (COLLECTIVELY, "ENVIRONMENTAL LAWS") INCLUDING, WITHOUT LIMITATION, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980 (42 U.S.C. §9601, ET. SEQ.), AS AMENDED, THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 (42 U.S. C. §6901, ET. SEQ.), AS AMENDED, THE ENDANGERED SPECIES ACT (16 U.S.C. §1531, ET SEQ.), AS AMENDED, THE TEXAS WATER CODE, AS AMENDED, THE TEXAS NATURAL RESOURCE CODE, AS AMENDED, THE TEXAS SOLID WASTE DISPOSAL ACT, AS AMENDED, AND ALL OTHER FEDERAL, STATE AND LOCAL LAWS, STATUTES, ORDINANCES, RULES AND REGULATIONS, AS AMENDED, THAT REGULATE THE USE, STORAGE, TREATMENT, GENERATION, DISPOSAL, TRANSPORTATION, DISCHARGE, RELEASE, THREATENED RELEASE AND/OR REMEDIATION OF HAZARDOUS WASTES, HAZARDOUS MATERIALS, HAZARDOUS SUBSTANCES, POLLUTANTS, TOXIC WASTE, TOXIC MATERIALS AND TOXIC SUBSTANCES; (VII) THE EXISTENCE OF ASBESTOS, OIL, ARSENIC, PETROLEUM OR CHEMICAL LIQUIDS OR SOLIDS, LIQUID OR GASEOUS PRODUCTS OR HAZARDOUS SUBSTANCES AS THOSE TERMS AND SIMILAR TERMS ARE DEFINED OR USED IN APPLICABLE ENVIRONMENTAL LAWS; (VIII) THE NATURE AND EXTENT OF ACCESS TO RIGHTS-OF-WAY OR UTILITIES, AVAILABILITY OF PERMITS TO ACCESS RIGHTS-OF-WAY OR UTILITIES ON THE PROPERTY, OTHER PROPERTY OWNED BY GRANTOR (IF ANY), OR ANY LAND OWNED BY THIRD PARTIES; (IX) EASEMENTS, MINERAL INTERESTS, ENCUMBRANCES, LICENSES, RESERVATIONS, CONDITIONS OR OTHER SIMILAR MATTERS AFFECTING THE PROPERTY; (X) COMPLIANCE WITH ANY LAW, ORDINANCE OR REGULATION OF ANY GOVERNMENTAL ENTITY OR BODY; AND (XI) CLAIMS, DEMANDS, OR OTHER MATTERS RELATING TO ANY RESTRICTIVE COVENANTS ENCUMBERING THE PROPERTY. THE SALE OF THE PROPERTY BY GRANTOR TO GRANTEE IS MADE ON AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" BASIS. GRANTEE ACKNOWLEDGES THAT GRANTEE HAS HAD THE FULL, COMPLETE AND UNFETTERED RIGHT TO INSPECT THE PROPERTY TO GRANTEE'S SATISFACTION AND THAT THE PURCHASE PRICE PAID FOR THE PROPERTY WAS IN PART BASED UPON THE FACT THAT THE TRANSFER OF THE PROPERTY BY GRANTOR TO GRANTEE IS WITHOUT WARRANTY OR REPRESENTATION. BY ACCEPTANCE OF THIS DEED, GRANTEE ACKNOWLEDGES THAT GRANTEE HAS RELIED ONLY UPON GRANTEE'S OWN INVESTIGATIONS, ASSESSMENTS AND INSPECTIONS AS TO THE CONDITION OF THE PROPERTY, OR GRANTEE'S OWN DECISION NOT TO INSPECT ANY MATTER AND GRANTEE ACKNOWLEDGES THAT GRANTEE DID NOT RELY ON ANY REPRESENTATION, WARRANTY, STATEMENT OR NON-ASSERTION OF GRANTOR OR GRANTOR'S OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, CONSULTANTS, OR INDEPENDENT CONTRACTORS IN MAKING GRANTEE'S DECISION TO PURCHASE THE PROPERTY. IN ADDITION, BY ACCEPTANCE OF THIS DEED, GRANTEE AND ANYONE CLAIMING BY, THROUGH OR UNDER GRANTEE, HEREBY FULLY RELEASES GRANTOR, AND GRANTOR'S EMPLOYEES, OFFICERS, REPRESENTATIVES, AGENTS, ATTORNEYS AND INSURERS (EACH A "GRANTOR RELATED PARTY") FROM ANY AND ALL CLAIMS AGAINST GRANTOR AND EACH GRANTOR RELATED PARTY FOR ANY COST, LOSS, LIABILITY, DAMAGE, EXPENSE, DEMAND, ACTION OR CAUSE OF ACTION (INCLUDING, WITHOUT LIMITATION, ANY RIGHTS OF CONTRIBUTION) ARISING FROM OR RELATED TO ANY LATENT OR PATENT DEFECTS OF THE PROPERTY OR FOR ANY ERRORS, OMISSIONS, OR OTHER CONDITIONS AFFECTING THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN CLAUSES (I) THROUGH (XI) ABOVE AND ANY ALLEGED NEGLIGENCE OF GRANTOR OR ANY GRANTOR RELATED PARTY. THIS COVENANT RELEASING GRANTOR AND EACH GRANTOR RELATED PARTY SHALL BE A COVENANT RUNNING WITH THE PROPERTY AND SHALL BE BINDING UPON GRANTEE, GRANTEE'S SUCCESSORS AND ASSIGNS, AND ALL FUTURE OWNERS OF ALL OR ANY PORTION OF THE PROPERTY.

Exhibit A

Legal Description and Depiction of the Property

LEGAL DESCRIPTION

BEING a 0.3856 acre tract of land situated in the, S. H Miller Survey, Abstract Number 974, City of Mesquite, Dallas County, Texas, and being part of a called 53.93 acre tract of land described in Executer's Special Warranty Deed to Cathy Jane Swafford Lacy, recorded in Instrument Number 201900345913 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch found iron rod with cap stamped "SJ&F" for corner at the intersection of the east right-of-way line of Interstate Highway 635 (also known as Lyndon B. Johnson Freeway, variable width right-of-way) and the south right-of-way line of Military Parkway (also known as State Highway 352, a variable width right-of-way);

THENCE South 87 degrees 22 minutes 39 seconds East, with the north line of said 53.93 acre tract and the south right-of-way line of Military Parkway, a distance of 805.81 feet a corner (not monumented) for the **POINT OF BEGINNING**;

THENCE South 87 degrees 22 minutes 39 seconds East, continuing with said north line and said south right-of-way line, a distance of 21.76 feet to a corner (not monumented);

THENCE South 20 degrees 34 minutes 13 seconds East, departing said north line and said south right-of-way line, and over and across said 53.93 acre tract, a distance of 621.49 feet to a corner (not monumented);

THENCE South 00 degrees 40 minutes 39 seconds East, continuing over and across said 53.93 acre tract, a distance of 217.64 feet to a corner (not monumented) on the south line of said 53.93 acre tract and the north line of a called 10.38 acre tract of land described in Warranty Deed to City of Mesquite, recorded in Volume 94010, Page 762 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);

THENCE South 89 degrees 19 minutes 21 seconds West, with the south line of said 53.93 acre tract and the north line of said 10.38 acre tract, a distance of 20.00 feet to a corner (not monumented);

THENCE North 00 degrees 40 minutes 39 seconds West, departing said north and south line, and over and across said 53.93 acre tract, a distance of 214.13 feet to a corner (not monumented);

THENCE North 20 degrees 34 minutes 13 seconds West, continuing over and across said 53.93 acre tract, a distance of 626.55 feet to the **POINT OF BEGINNING AND CONTAINING** 0.3856 acres (16,798 square foot) of land, more or less.

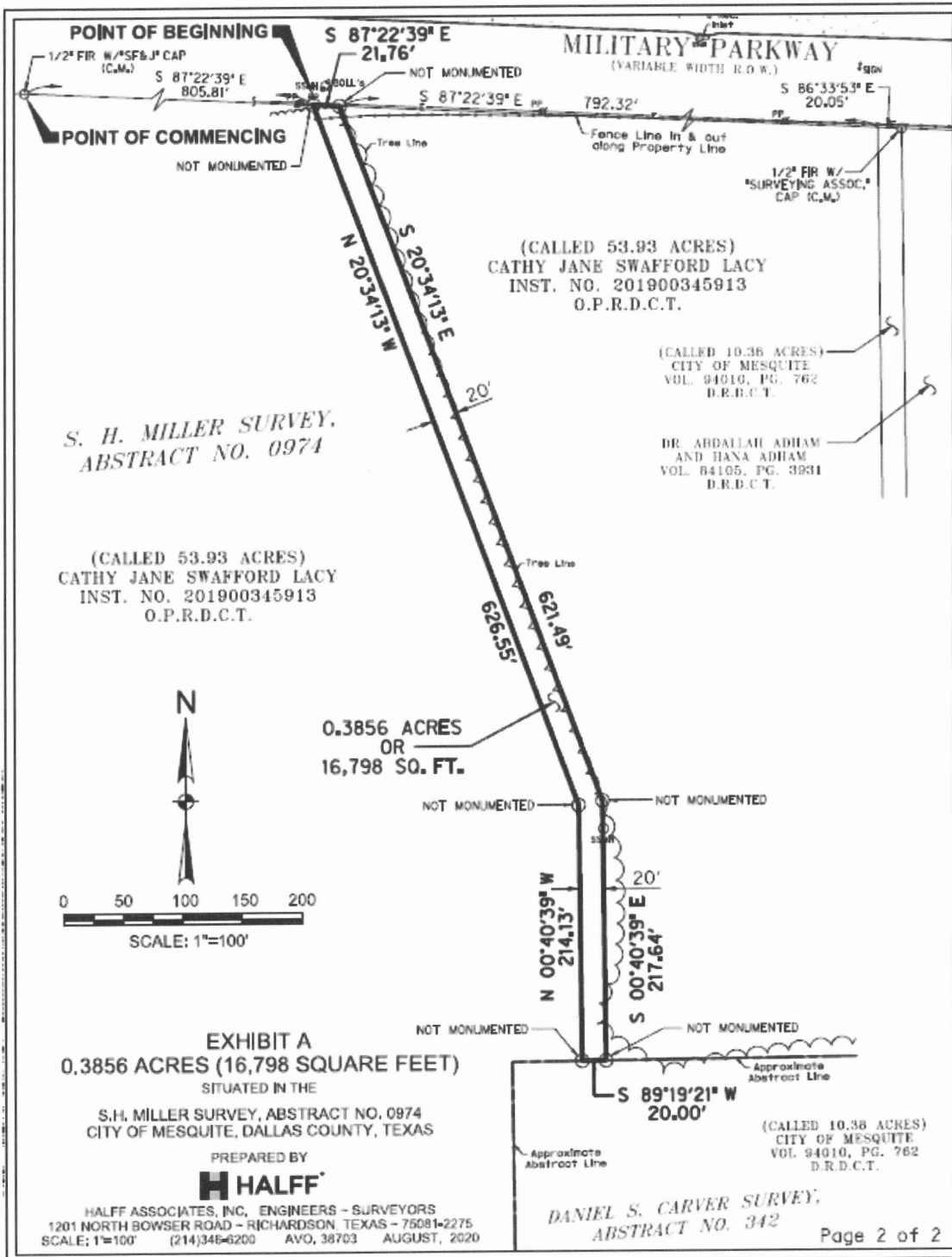


Exhibit B

Permitted Exceptions