

SELLING MUNICIPAL PROPERTY FOR ECONOMIC DEVELOPMENT

PETER G. SMITH

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Peter G. Smith was born on September 4, 1952, in Providence, Rhode Island. He pursued his preparatory and legal education at Texas Tech University obtaining his B.A. in 1974 and J.D. in 1976. He is a member of Delta Theta Phi, Pi Sigma Alpha (Political Science Honorary), and the State Bar of Texas, State Bar of Texas Property Tax Committee.

Mr. Smith holds memberships in various professional associations including: Texas Municipal League; Texas City Attorneys Association; Texas Association of Assessing Officers; and Texas Association of Appraisal District. He is a member of the Advisory Board of Municipal Legal Studies Center, Center for American and International Law and frequently lectures and authors articles on municipal law, economic development and ad valorem taxation.

Mr. Smith is a partner in the law firm of Nichols, Jackson, Dillard, Hager & Smith, L.L.P., Dallas, Texas, with areas of expertise in municipal law, land use, economic development, ad valorem taxation, municipal law, administrative, and zoning law. His practice is devoted almost entirely to the representation of political subdivisions including trial and appellate litigation on behalf of appraisal districts, property and units of government throughout the State. The firm was initially formed in 1895, making it one of the oldest continuing law firms in Dallas, Texas. The firm has over fifty years experience in municipal law. The firm serves as counsel for municipalities, appraisal districts, and political subdivisions throughout the State. Currently, Mr. Smith is City Attorney for the Cities of Richardson, DeSoto, Allen, Farmers Branch and Sachse. He is also general counsel for the Denton County Transportation Authority and the Dallas, Tarrant and Williamson Central Appraisal Districts.

Economic Development Projects

The promotion of economic development projects sometimes requires city participation in the acquisition and disposition of land for the developer or business prospect. Often, the City (and/or Type A or Type B corporation under Texas Local Government Code, Chapters 501-505) has surplus property or already owns the land desired for the project or the business prospect. Cities also sometimes acquire property to hold for future desired development. The types of projects can range from acquisition of land for retail, commercial and industrial projects to the conveyance of abandoned or unused right-of-way, streets or alleys.ⁱ The goal, of course, is to ensure that title to the target real estate interest ends up in the hands of the desired end user. The problem is figuring out how to achieve that goal without (1) having to conduct the sale pursuant to the statutory process requiring notice and competitive bidding or conducting an auction and (2) in some instances, selling the property interest for less than fair market value.

Sale or Exchange of Land

With limited exceptions, land owned by a city may only be sold at auction or pursuant to notice and competitive bidding, and at fair market value according to an appraisal obtained by the city.ⁱⁱ Some of the exceptions can be effectively used to allow a municipality to transfer land to a desired business prospect without notice and competitive bidding or auction, and for less than fair market value.

The exceptions among others include:

- land that cannot be used independently because of its size, shape or lack of access to public roads § 272.001 (b) (1);
- sale of streets or alleys owned in fee or used by easement or acquired for such purposes § 272.001 (b) (2);
- exchange land or other real property interest originally acquired for streets, rights-of-way or easements for other land to be used for streets, rights-of-way, easements or other public purposes; § 272.001 (b) (3);
- land that the city wants developed by an independent foundation § 272.001 (b) (4);
- sale of land to another unit of government that has eminent domain power § 272.001 (b) (5)ⁱⁱⁱ; and
- land that is located in a reinvestment zone that the city desires to have developed under a project plan adopted by the city for the zone (*Tax Increment Reinvestment Zone*) § 272.001 (b) (6).

Undevelopable Tracts

A city may in a private sale convey to a business prospect narrow strips of land, or land that because of its shape, lack of access to public roads, or small areas that cannot be used independently. When a city acquires fee simple title for right-of-way or other purposes, it often ends up with a remnant tract or left over piece of land that cannot be developed independently. The remnant just sits there, exempt from taxation, and worse, costs the city money for

maintenance. To cure this ill, the city may convey the remnant tract to an adjoining property owner (commercial, industrial and even residential) for expansion of the adjoining tract.

However, I have one word of advice to avoid future headaches related to conveying unusable remnants. Make sure that in the conveyance agreement, the city requires the purchaser/grantee to re-plot the adjoining property to incorporate the orphan tract. This will avoid questions that may arise months or even decades later regarding ownership of the remnant, whether or not the property can or should be counted for minimum frontage or square footage in relation to buildable lot requirements, etc.

Transfer of Streets and Alleys

A city may also convey streets or alleys owned in fee or used by easement in a private sale to the abutting property owner. Thus, if a business wants to expand its operations and requests the city abandon an existing street or alley, the city can do so without notice and competitive bidding or auction.

Exchange of Land Originally Acquired for Streets, Rights-of-Way or Easements for Other Land to be Used for Streets, Rights-of-Way, Easements or Other Public Purposes.

A city may also exchange land or other real property interest originally acquired for streets, rights-of-way or easements for other land to be used for streets, rights-of-way, easements or other public purposes. Thus, in a transaction with a private entity, a city can exchange such property with a business prospect, including a residential property owner, for other land to be dedicated for streets, rights-of-way, easements or used for other public purposes. Streets or alleys owned in fee or used as easements or narrow strips of land can be sold to the abutting property owners without payment of the fair market value for the property.

A question remains as to the meaning of the term “other public purpose”. Traditionally “public purpose” has been construed by the courts to mean public infrastructure, streets, alleys, water and sewer, parks, fire and police station and other public buildings and facilities. However, in 1987, Article III of the Texas Constitution was amended to add section 52-a, which provides that the promotion of economic development constitutes a public purpose.^{iv} Article III, section 52-a, expanded the constitutional definition of public purpose to include economic development and the diversification, elimination of unemployment and underemployment, stimulation and growth of agriculture, and the expansion of state transportation and commerce. *See* Atty. Gen. Op. JM-1255 (1990). Chapter 380 of the Texas Local Government Code is the enabling legislation for Article III, Section 52-a. By enacting Section 380.001, the legislature authorized municipalities to perform any of the functions that article III, section 52-a permitted the legislature to delegate. Section 380.001 of the Texas Local Government Code implements article III, section 52-a, and is therefore constitutional. *See* Tex. Atty. Gen. Op. DM-185 (1992) (Texas Attorney General held that Section 380.001 is constitutional).^v Thus a city may exchange land that was originally acquired not only for streets and alleys, but also economic development purposes for other land for an economic development project. Simply stated, Article III, Section 52-a expanded the definition of public purpose for purposes of § 272.001 (b) (3) beyond the

historical and outdated Texas Supreme Court definitions. The business prospect may have some land (or could acquire a tract for the city) that a city desires or could use for some other economic development project that could be exchanged for a city-owned tract. If the city-owned land abuts the land owned in fee simple by the business prospect, the exchange need not be for fair market value.

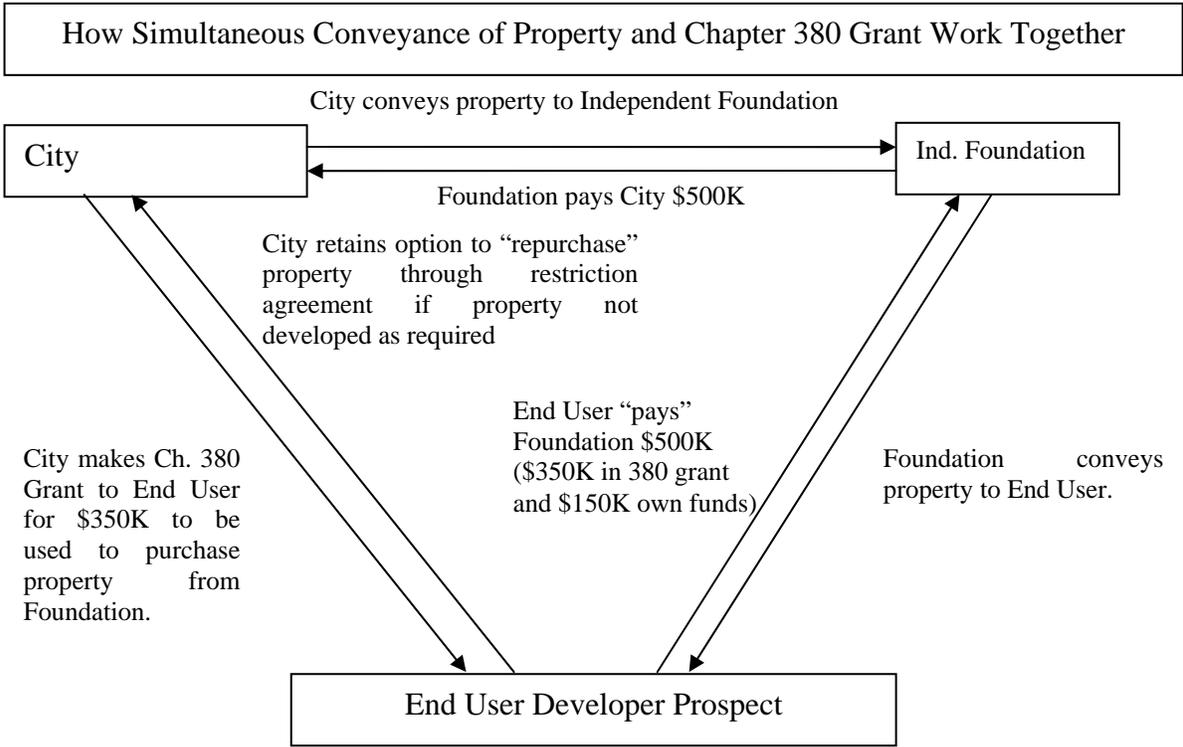
Independent Foundation

A city may acquire land and then transfer the land to a specific end user for an economic development project without conducting an auction or notice and competitive bidding if the transfer is passed to and through an independent foundation.^{vi} What constitutes an “independent foundation” is not defined by statute. It may be the local chamber of commerce, a Type A or Type B development corporation under the Development Corporation Act, or even a non-profit corporation, such as a local government corporation, formed by the City.^{vii}

In order for the statutory exception for notice and bidding to apply, the city’s conveyance to the independent foundation must include a requirement that the property be developed by the foundation. Note that the statute, specifically Tex. Loc. Govt. Code §272.001(b)(4), does not set forth any requirements that a city must impose regarding the nature, or even the timing, of the development to be required by the contract. It only states that the property is to be developed by the independent foundation pursuant to the contract. Nor does the statute provide that the independent foundation cannot further assign or convey its obligation to a third-party. Thus, the foundation is free to sell the property to the targeted end user business prospect, subject to the initial development obligation.

Furthermore, because most “independent foundations” (particularly Type A and Type B corporations) are not subject to Ch. 272 of the Texas Local Government Code, the foundation is able to sell or convey the land to the targeted business prospect without having to comply with the notice and competitive bidding requirements. However, as noted above, the contract of sale between the independent foundation and the business prospect must require the business prospect to develop the land in accordance with the city specifications set out in the contract between the city and the foundation.

Note that the independent foundation can also could sell or convey the property to the business prospect with or without payment of the fair market value. Under Ch. 272, the independent foundation must still pay the city the fair market value of the land; however, a city can use the authority of Chapter 380 of the Texas Local Government Code to provide a loan or grant to the independent foundation to fund all or a portion of the purchase from the city or provide a Chapter 380 grant to fund all or a portion of the developer’s acquisition of the property from the independent foundation, which in turn uses the grant funds to make the purchase from the city. Thus, if you are following the money, the funds never have to leave the city’s accounts. The following illustrates how this transaction is structured assuming fair market value of \$500,000 and End User Developer to pay \$150,000 toward property purchase:



Typically, there is a purchase and sale agreement for the land between the city and the independent foundation which includes a restriction agreement requiring the subsequent transfer of the land to the end user business prospect and which further requires the end user to develop the land in a certain manner. The restriction agreement may also contain (1) an option to repurchase the land if the business prospect does not develop the land in accordance with the city specifications set forth in the restriction agreement and/or (2) a right of first refusal in favor of the city in the event the end user elects to sell all or portion of the land to a third party within a certain time period. The option to repurchase typically allows the city to repurchase the property at the price paid by the business prospect including any Chapter 380 reduction in the original purchase price, plus the market value of any improvements constructed on the land. The right of first refusal typically allows the city the right to purchase the land or portion thereof in the event the end user elects to sell the land or portion thereof, including any improvements at the lesser of the third party price or the price originally paid by the end user. The specific terms of both the option and right of first refusal may vary depending on the prospect and the nature of the improvements to be constructed.

The purchase of the land by the independent foundation and the subsequent transfer to the end user is done in a simultaneous closing to reduce closing costs. For example, if the closings are in fact simultaneous, a pass-through agreement and acknowledgment^{viii} can be signed by the parties so that only a single title policy need be purchased. The purchase and sale agreement between the independent foundation and the city (or there may be a Chapter 380 agreement

directly between the city and the end user to reduce all or a portion of the fair market value purchase price) will typically provide that the land is being sold to the independent foundation for purposes of resale to the end user pursuant to § 272.001 (b)(4) for the fair market value according to an appraisal obtained by the city less an economic development grant which is defined as the difference between the fair market value of the land and the actual price to be paid typically \$100.00. ^{ix}

Assignment of Option to Purchase or Purchase Agreement

As an alternative to the process to the transfer of property to an independent foundation, a city may in an appropriate circumstance negotiate and sign a purchase agreement for the targeted development site, and then assign the city's right to purchase the land under the purchase agreement to the business prospect. Since the city does not acquire title to the land or any interest in the land, the city never becomes the seller and § 271.001 will not apply to the transaction. As part of the transaction, the city may provide a Chapter 380 incentive grant to fund the purchase price to be paid by the business prospect, the terms of which grant would be set forth in a separate Chapter 380 agreement or in the terms of the assignment of the purchase agreement between the city and the business prospect. Of course, the purchase agreement with the third party seller must allow the city to assign the purchase or option agreement to a third party buyer without the prior consent of the seller.

Recently, Cabela's identified a site in the Village at Allen retailing shopping complex in Allen, Texas, on which it wanted to develop a new 100,000 square foot store. The target property was one on which the City had an existing option to repurchase as part of a previous economic development transaction. Because of the need to create an incentive for the owner of the target property to sell at less than a full cash market value, the city-to-foundation-to-end user structure would not work. Therefore, to accomplish the transaction, the City of Allen negotiated a purchase agreement with the third party owner, the terms of which Cabela's reviewed and approved. Concurrently, the City and Cabela's negotiated an assignment of the purchase agreement that contained additional provisions, such as a development restriction agreement to ensure the property was ultimately developed as required by the City. The transfer of the tract land to Cabela's for nominal consideration was a part of a larger economic development incentive package. The Chapter 380 incentive for reduction of the purchase price to be paid by Cabela's pursuant to the assignment of the option agreement was also set forth in the assignment and in a separate master Chapter 380 agreement with the City which contained the various economic development incentives. ^x

Fair Market Value according to an Appraisal obtained by the City

As has been previously discussed, in most instances, a city must sell property for fair market value even when the property is not subject to the notice and bidding requirements. Fair market value can be determined by either an appraisal or the high bid at an auction. However, while many of us often naturally assume that the city must engage an MAI appraiser to prepare a formal report, Chapter 272 does not prescribe the type, of appraisal that the city must obtain to determine the fair market value of the property to be sold. While the appraisal may be a formal

appraisal prepared by a licensed appraiser, the property tax value according to the appraisal district or a real estate broker's opinion of value can also be used to satisfy the statute.

Private Sale within a TIRZ

A city may also convey real property that is located within a Tax Increment Reinvestment Zone ("TIRZ") in a private sale on any terms. The TIRZ Board and/or city may acquire and sell real property within a TIRZ to implement the project plan on any terms. Thus, the city may sell real property it owns within a TIRZ, without auction, or notice and competitive bidding as required by § 272.001; **and for any price** if the sale is necessary to implement the project plan for the TIRZ. *See* Tax Code § 311.008 (b) (2).^{xi} It unclear whether the exception for the sale of real property within a TIRZ is limited to the sale of the real property for a TIRZ project, which is generally limited to public improvements and infrastructure, and certain educational and transportation facilities, or for other public purposes. In some cases, it may be necessary to sell real property owned by the city located within a TIRZ to a developer or business prospect for a non TIRZ type project (non public improvements) in order to implement the project plan. The TIRZ Board of Directors with the approval of the city council has Chapter 380 powers and may expend municipal tax increment contributed to the TIRZ funds for projects which promote economic development projects. *See* Tax Code § 311.010 (h). Thus, if the property intended for the business prospect is located within a TIRZ, the sale or exchange would not be subject to notice and competitive bidding or auction pursuant to § 271.001 (b) and may not be limited to a TIRZ project promoted such transfer is necessary to implement the project plan.

Transfer to Political Subdivision with Eminent Domain Power

A city may also transfer property to another political subdivision with eminent domain power without notice and competitive bidding or auction. Unlike the other exceptions, property may not be conveyed or exchanged pursuant to § 271.0001(b) (5) for less than the fair market value. *See* Tex. Att'y Gen. Op. No. DM-441 (1997) (concluding that § 272.001 (b) (5) requires fixed, ascertainable consideration). This exception should not be used for the purpose of transferring land to an economic development prospect.

Section 272.001 (b) (5) does not authorize transfer of land to a private party for that private party's private use utilizing a governmental entity as a pass-through. *See* Tex. Atty Gen. Op. No. GA-0004 (2002). There the Texas Attorney General considered whether the Eules Economic Development Corporation, a private non profit Texas corporation organized under the Development Corporation Act , is a governmental entity for purposes of § 272.001 (b) (5). The Texas Attorney General held that § 272.001(b) (5) exempts the transfer of property conveyed to a governmental entity that has the power of eminent domain; that the Eules Economic Development Corporation is not a "governmental entity" for the purposes of § 272.001(b) (5); and that the exception does not authorize a political subdivision to transfer land to a private party by using a "governmental entity" as a pass-through.^{xiii} This Attorney General Opinion is often erroneously cited for the proposition that a city may not transfer property to an independent foundation for subsequent transfer and development by a specific end user under § 272.001 (b) (4). The opinion never discusses the application of §272.001 (b)(4), and there is no indication in

the fact statement that the political subdivisions, in this case cities of Dallas and Fort Worth, acting through and in conjunction with DFW Airport Board, sought to impose any requirements to development of the land they were seeking to swap with the private developer using the Euless EDC as the conduit.

ⁱ Streets and alleys have been abandoned or conveyed to abutting property owners for enlargement of the existing business sites or for incorporation into the consolidation of lots for a project.

ⁱⁱ Sec. 272.001. NOTICE OF SALE OR EXCHANGE OF LAND BY POLITICAL SUBDIVISION; EXCEPTIONS. (a) Except for the types of land and interests covered by Subsection (b), (g), (h), (i), or (j), and except as provided by Section 253.008, before land owned by a political subdivision of the state may be sold or exchanged for other land, notice to the general public of the offer of the land for sale or exchange must be published in a newspaper of general circulation in either the county in which the land is located or, if there is no such newspaper, in an adjoining county. The notice must include a description of the land, including its location, and the procedure by which sealed bids to purchase the land or offers to exchange the land may be submitted. The notice must be published on two separate dates and the sale or exchange may not be made until after the 14th day after the date of the second publication.

(b) The notice and bidding requirements of Subsection (a) do not apply to the types of land and real property interests described by this subsection and owned by a political subdivision. The land and those interests described by this subsection may not be conveyed, sold, or exchanged for less than the fair market value of the land or interest unless the conveyance, sale, or exchange is with one or more abutting property owners who own the underlying fee simple. The fair market value is determined by an appraisal obtained by the political subdivision that owns the land or interest or, in the case of land or an interest owned by a home-rule municipality, the fair market value may be determined by the price obtained by the municipality at a public auction for which notice to the general public is published in the manner described by Subsection (a). The notice of the auction must include, instead of the content required by Subsection (a), a description of the land, including its location, the date, time, and location of the auction, and the procedures to be followed at the auction. The appraisal or public auction price is conclusive of the fair market value of the land or interest, regardless of any contrary provision of a home-rule charter. This subsection applies to:

- (1) narrow strips of land, or land that because of its shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or other development control ordinances;
- (2) streets or alleys, owned in fee or used by easement;
- (3) land or a real property interest originally acquired for streets, rights-of-way, or easements that the political subdivision chooses to exchange for other land to be used for streets, rights-of-way, easements, or other public purposes, including transactions partly for cash;
- (4) land that the political subdivision wants to have developed by contract with an independent foundation;
- (5) a real property interest conveyed to a governmental entity that has the power of eminent domain;

(6) a municipality's land that is located in a reinvestment zone designated as provided by law and that the municipality desires to have developed under a project plan adopted by the municipality for the zone; or

(7) a property interest owned by a defense base development authority established under Chapter 378, Local Government Code, as added by Chapter 1221, Acts of the 76th Legislature, Regular Session, 1999.

(c) The land or interests described by Subsections (b) (1) and (2) may be sold to:

- (1) abutting property owners in the same subdivision if the land has been subdivided; or
- (2) abutting property owners in proportion to their abutting ownership, and the division between owners must be made in an equitable manner.

(d) This section does not require the governing body of a political subdivision to accept any bid or offer or to complete a sale or exchange.

(e) This section does not apply to land in the permanent school fund that is authorized by legislation to be exchanged for other land of at least equal value.

(f) The fair market value of land, an easement, or other real property interest in exchange for land, an easement, or other real property interest as authorized by Subsection (b)(3) is conclusively determined by an appraisal obtained by the political subdivision. The cost of any streets, utilities, or other improvements constructed on the affected land or to be constructed by an entity other than the political subdivision on the affected land may be considered in determining that fair market value.

(g) A political subdivision may acquire or assemble land or real property interest, except by condemnation, and sell, exchange, or otherwise convey the land or interests to an entity for the development of low-income or moderate-income housing. The political subdivision shall determine the terms and conditions of the transactions so as to effectuate and maintain the public purpose. If conveyance of land under this subsection serves a public purpose, the land may be conveyed for less than its fair market value. In this subsection, "entity" means an individual, corporation, partnership, or other legal entity.

(h) A municipality having a population of 575,000 or less and owning land within 5,000 feet of where the shoreline of a lake would be if the lake were filled to its storage capacity may, without notice or the solicitation of bids, sell the land to the person leasing the land for the fair market value of the land as determined by a certified appraiser. While land described by this subsection is under lease, the municipality owning the land may not sell the land to any person other than the person leasing the land. To protect the public health, safety, or welfare and to ensure an adequate municipal water supply, property sold by the municipality under this subsection is not eligible for and the owner is not entitled to the exemption provided by Section 11.142(a), Water Code. The instrument conveying property under this subsection must include a provision stating that the exemption does not apply to the conveyance. In this subsection, "lake" means an inland body of standing water, including a reservoir formed by impounding the water of a river or creek but not including an impoundment of salt water or brackish water, that has a storage capacity of more than 10,000 acre-feet.

(i) A political subdivision that acquires land or a real property interest with funds received for economic development purposes from the community development block grant nonentitlement program authorized by Title I of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.) may lease or convey the land or interest, without the solicitation of bids, to a private, for-profit entity or a nonprofit entity that is a party to a contract with the political subdivision if the land or interest will be used by the private, for-profit entity or the nonprofit entity in carrying out the purpose of the entity's grant or contract. The land or interest may be leased or conveyed without the solicitation of bids if the political subdivision adopts a resolution stating the conditions and circumstances for the lease or conveyance and the public purpose that will be achieved by the lease or conveyance.

(j) A political subdivision may donate, exchange, convey, sell, or lease land, improvements, or any other interest in real property to an institution of higher education, as that term is defined by Section 61.003, Education Code, to promote a public purpose related to higher education. The political subdivision shall determine the terms and conditions of the transaction so as to effectuate and maintain the public purpose. A political subdivision may donate, exchange, convey, sell, or lease the real property interest for less than its fair market value and without complying with the notice and bidding requirements of Subsection (a).

(k) This section does not apply to sales or exchanges of land owned by a municipality operating a municipally owned electric or gas utility if the land is held or managed by the municipally owned utility, or by a division of the municipally owned electric or gas utility that constitutes the unbundled electric or gas operations of the utility, provided that the governing body of the municipally owned utility shall adopt a resolution stating the conditions and circumstances for the sale or exchange and the public purpose that will be achieved by the sale or exchange. For purposes of this subsection, "municipally owned utility" includes a river authority engaged in the generation, transmission, or distribution of electric energy to the public, and "unbundled" operations are those operations of the utility that have, in the discretion of the utility's governing body, been functionally separated.

ⁱⁱⁱ If a unit of government, such as a transportation authority must obtain approval of a city to exercise eminent domain within that city then that unit of government probably does not possess eminent domain authority for purposes of § 272.001 (b) (5).

^{iv} Article III, section 52-a, provides:

“Notwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of loans and grants of public money, other than money otherwise dedicated by this constitution to use for a different purpose, for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state. Any bonds or other obligations of a county, municipality, or other political subdivision of the state that are issued for the purpose of making loans or grants in connection with a program authorized by the legislature under this section and that are payable from ad valorem taxes must be approved by a vote of the majority of the registered voters of the county, municipality, or political subdivision voting on the issue. A program created or a loan or grant made as provided by this section that is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the political subdivision does not constitute or create a debt for the purpose of any provision of this constitution. An enabling law enacted by the legislature in anticipation of the adoption of this amendment is not void because of its anticipatory character.”

^v Article III, section 52-a by its terms creates exceptions to the preexisting constitutional prohibitions against the use of public funds and resources to aid private persons and promote economic development. *See* House Research Org., Bill Analysis, Tex. H.J. Res. 5, 70th Leg., R.S. (1987) at 1-2 (stating that the amendment is “necessary to override certain current constitutional provisions that might be construed as prohibiting economic development investments by state or local governments that aided individual companies”); Texas Legislative Council, Analyses of Proposed Constitutional Amendments and Referenda 14 (Sept. 1987) (stating that proposed amendment would resolve questions under article III, sections 51 and 52, and make clear that public funds could be used to make loans and grants to private businesses to aid economic development).

^{vi} An independent foundation is not defined by the statute. The Texas Attorney General in its opinions as well as in its Economic Development Handbook 2008 has recognized the authority of a municipality to convey property to an independent foundation for purposes of economic development and that such term is not defined. *See* Texas Attorney General Economic Development Handbook 2008 available at the Texas Attorney General Web site. <http://www.oag.state.tx.us/>.

^{vii} Long ago the Texas Attorney General interpreted the law applicable to § 272.001(b) (4) in Texas Attorney General Opinion MW-46 (1979). There Texas Attorney General considered whether, under the predecessor statute, a city could sell land at fair market value to a private, nonprofit neighborhood-oriented corporation so that low cost housing may be constructed thereon through this corporation for resale, at cost, to low income citizens. No actual development of the land for a particular purpose would be required by the contract of sale. The Texas Attorney General noted that the term “independent foundation” is not defined but did construe the language of the bidding exception strictly to require the contract of sale to include the city's specifications for the land's development. The reasoning of Attorney General Opinion MW-46 remains sound and has been consistently followed. Moreover, the language of the statutory exception has remained essentially unchanged for over 20 years. Accordingly, any contract of sale under § 272.001(b) (4) between a political subdivision and an independent foundation for the development of a parcel of land owned by the city must include an undertaking that the foundation will develop or cause the land to be developed as the city determines.

^{viii} Most title companies will provide an acceptable form for this purpose. You just need to be sure to alert the title company that you want the pass-through to occur.

^{ix} Copies of representative samples of the purchase and sale agreements and restriction agreement are appear in the appendix.

^x Copies of the purchase agreement and assignment appears in the appendix.

^{xi} “A municipality or county may exercise any power necessary and convenient to carry out this chapter, including the power to: ... (2) acquire real property by purchase, condemnation, or other means to implement project plans and sell that property on the terms and conditions and in the manner it considers advisable.”

^{xii} §272.001(b) (5) exception was intended to codify Attorney General Opinion M-788’s determination that the exchange of real property between two political subdivisions for their public purposes, pursuant to which publicly owned land is changed from one public use to another, is not subject to the public notice and bidding requirements of the predecessor statute to section 272.001. *Id*

APPENDIX A: Real Estate Sales Contract between Andrews Family Properties, LLC and City of Allen (Cabela's)

APPENDIX B: Assignment of Real Estate Contract between City of Allen and Cabela's Wholesale, Inc.

APPENDIX C: Sample Purchase and Sale Agreement (City to Independent Foundation)

APPENDIX D: Sample Purchase and Sale Agreement (Independent Foundation to Developer)

**APPENDIX A: Real Estate Sales Contract between
Andrews Family Properties, LLC and
City of Allen (Cabela's)**

Real Estate Sales Contract

This **Real Estate Sales Contract** ("the Contract") to buy and sell real property is entered between Seller and Buyer as identified below and is effective on the date ("Effective Date") of the last of the signatures by Seller and Buyer as parties to this Contract, acknowledgement by Title Company of receipt of the Earnest Money and Contract, **and approval of the Contract by Buyer's city council.** Buyer must deliver the Earnest Money to Title Company and obtain Title Company's signature before the Earnest Money Deadline provided in section A.1. for this Contract to be effective. If the Earnest Money is paid by check and payment on presentation is refused, Buyer is in default.

Seller: Andrews Family Properties, LLC, a Texas limited liability company
Attn: Barry G. Andrews
2730 Irving Boulevard
Dallas, Texas 75207
Phone: 214-905-7548
Fax: 214-525-9400
E-Mail: jjernigan@andrewsdistributing.com

Seller's Attorney: Rick Rogers
Porter, Rogers, Dahlman & Gordon, P.C.
One Shoreline Plaza
800 North Shoreline Blvd., Suite 800
Corpus Christi, Texas 78401
Phone: 361-880-5820
Fax: 361-880-5844
E-Mail: rrogers@prdg.com

Buyer: City of Allen, a Texas home rule municipality ("City")
Attn: Peter H. Vargas, City Manager
305 Century Parkway
Allen, Texas 75013
Phone: 214-509-4100
Fax: 214-509-4118
E-Mail: pvargas@cityofallen.org

Buyer's Attorneys: Peter G. Smith
Kevin B. Laughlin
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Lincoln Plaza
500 N Akard
Dallas, Texas 75201
Telephone: 214-965-9900
Facsimile: 214-965-0010
E-mail: psmith@njdhs.com
klaughlin@njdhs.com

Property: Surface Estate Only of an approximately 14 acre tract out of Lot 1, Block 1, Allen Station Business Park, Phase II, an addition to the City of Allen, Texas, according to the plat thereof filed as Instrument No. 20051227001805170, Land Records, Collin County, Texas, said 14 acre tract being more particularly described in Exhibit "A," attached hereto and incorporated herein by reference.

Title Company: Republic Title of Texas, Inc.
2626 Howell Street, 10th Floor
Dallas, Texas 75204
Telephone: (214) 855-8863
Fax: (214) 855-8898
Escrow Officer: Janine Barber
Email: jbarber@republictitle.com

Purchase Price: \$4.50 per square foot. Based on 14 acres (609,840 sq.ft.), the Purchase Price will be \$2,744,280.00; provided, however, the final Purchase Price will be adjusted based upon the actual square footage actually purchased as determined by a survey prior to Closing obtained by Buyer.

Earnest Money: \$1000.00

Option Fee: \$500.00

County for Performance: Collin County, Texas

A. Deadlines and Other Dates

All deadlines in this Contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1. Earnest Money Deadline: Delivery of the Earnest Money shall be made to the Escrow Agent at the Title Company not later than five (5) business days following the date this Contract has been approved by Buyer's city council and signed by all parties.
2. Delivery of Title Commitment by Seller: Not later than fifteen (15) calendar days after the Effective Date.
3. Delivery of Survey by Seller: Not later than fifteen (15) calendar days after the Effective Date.
4. Delivery of legible copies of instruments referenced in the Title Commitment and Survey: To the extent not delivered to Buyer prior to execution of this Contract, delivery shall be with the Title Commitment.
5. Delivery of Title Objections: Not later than fifteen (15) calendar days after delivery of the Title Commitment, Survey, and legible copies of the instruments referenced in them.
6. Delivery by Seller of Seller's records as specified Section G.1: Not later than twenty (20) calendar days after the Effective Date.
7. End of Inspection Period: Ninety (90) calendar days after the Effective Date, unless extended as provided in Section G.5 or earlier approved or waived by Buyer.
8. Closing Date: August 1, 2010, or at such earlier date as agreed by the Parties.
9. Closing Time: As agreed by the Parties.

B. Closing Documents

1. At closing, Seller will deliver the following items:
 - a. A special warranty deed, in form and substance reasonably acceptable to Seller and Buyer, conveying good and indefeasible title to the Property to Seller, free and clear of any and all encumbrances except the Permitted Exceptions, excluding the mineral rights, such mineral rights having been previously reserved by prior grantors;
 - b. IRS Non-foreign Person Affidavit
 - c. Evidence of Seller's authority to close this transaction
 - d. Settlement statement, and such other documents as Title Company may reasonably require, specifically a customary Seller's Affidavit,
2. At Closing, Buyer will deliver or cause to be delivered:
 - a. the Purchase Price;
 - b. evidence of Buyer's authority to consummate this transaction;
 - c. settlement statement;
 - d. if applicable, the Economic Development Agreements described Section L.2, below; and
 - e. such other documents as Title Company may reasonably require

The documents listed in this Section B are collectively known as the "Closing Documents."

C. Exhibits

All exhibits attached hereto are expressly made a part of this Contract.

D. Purchase and Sale of Property

Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. The promises by Buyer and Seller stated in this Contract are the consideration for the formation of this Contract.

E. Intentionally omitted.

F. Title and Survey

1. *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: **Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.**

2. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company stating the condition of title to the Property. The "effective date" stated in the Title Commitment must be after the Effective Date of this Contract. "Title

Policy” means an Owner Policy of Title Insurance issued by Title Company in conformity with the last Title Commitment delivered to and approved by Buyer.

3. *Survey.* Not later than the date set forth in Section A.3., above, Buyer shall have the right to obtain, at no cost to Seller (even if the Closing does not occur), shall have an ALTA/ASCM survey (the “Survey”) of the Property prepared by a duly licensed Texas Registered Public Land Surveyor. The Survey shall be staked on the ground, and the plat shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, easements, surface, overhead and underground utilities, and rights-of-way on or adjacent to the Property, if any, and shall contain the surveyor's certification that there are no encroachments on the Property other than what are listed on the Title Report and shall set forth a metes and bounds description of the Property. The legal description contained in said Survey shall be used by the Parties as the legal description to be contained in the Special Warranty Deed and the other Closing Documents at Closing.

4. *Delivery of Title Commitment and Legible Copies.* Seller must deliver a Title Commitment that reflects the terms of this Contract to Buyer by the deadline stated in Section A.2., and legible copies of the instruments referenced in the Title Commitment and Survey by the deadline stated in section A.4.

5. *Title Objections.* Buyer has until the deadline stated in section A.5. (“Title Objection Deadline”) to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller in writing of Buyer’s objections to any of them (“Title Objections”). In the event Buyer states that the condition of title is not satisfactory, the Title Objection Notice shall specify Buyer's objections to title, and Seller may, at Seller’s option and cost, elect to undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of Buyer. In the event Seller elects not to or is unable to eliminate all Title Objections within fifteen (15) calendar days after Seller’s receipt of the Title Objection Notice from Buyer, Seller shall give Buyer written notice to this effect, and Buyer shall have ten (10) business days after receipt of such notice from Seller to elect, in writing, either to (1) waive its objections and proceed to Closing or (2) extend the Closing Date for an additional period of time (not to exceed thirty (30) days) in order to provide Seller with additional time to cure the Title Objections. Any title matter that is shown on Schedule B of the Title Report to which Buyer: (1) does not object in accordance with this Section F.5, (2) is not required to object as provided below, or (3) objects as provided herein, but such objection is subsequently waived or deemed waived by Buyer, shall be considered to be “Permitted Exceptions.” Seller and Buyer understand and agree that the Title Company will delete from the Title Policy (as defined herein):

a. the standard printed exceptions to the Title Commitment to the extent permitted by applicable law, and

b. all items shown on Schedule C of the Title Commitment, without the necessity of Buyer objecting thereto under the Title Objection Notice.

Notwithstanding anything to the contrary herein, as a condition of Closing, Seller must resolve the items that are listed on Schedule C of the Title Commitment which are by their nature Seller’s responsibility, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this Contract, and use due diligence to cure the Title Objections that Seller has agreed to cure.

G. Inspection Period

1. *Review of Seller’s Records.* By the deadline stated in section A.6, Seller will deliver or otherwise make available to Buyer copies of the following records relating to the Property prepared by or on behalf of Seller that are otherwise in the possession of Seller or are legally accessible and obtainable

by Seller: records of any regulatory proceedings or alleged or determined violations, soil reports, environmental assessment reports, water rights agreements, engineering or topographical reports or data, and/or on the ground surveys, as well as all unrecorded contracts, leases, and/or occupancy agreements that affect the Property.

2. *Entry onto the Property.* During the Inspection Period, Buyer and its agents or employees shall have the right to enter upon the Property during regular business hours upon reasonable notice and conduct such inspections, tests and studies as they may deem necessary; provided, any intrusive testing shall require the prior written consent of Seller, not to be unreasonably withheld.

3. *Indemnity.* To the extent allowed by law, Buyer will **INDEMNIFY**, defend and hold Seller **HARMLESS** from any and all loss, attorney's fees, expenses, or claims for property damage, personal injury or death to any person arising out of Buyer's investigation and inspection of the Property, except for repair or remediation of existing conditions discovered by Buyer's inspector. The obligation of Buyer under this provision shall survive termination of this Contract and closing.

4. *Release.* Buyer releases Seller and those persons acting on Seller's behalf from any and all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's, or Buyer's agents, entry on the Property during Buyer's investigation of the Property.

5. *Buyer's Right to Terminate.* Buyer may terminate this Contract for any or no reason without liability to Seller before the end of the Inspection Period by notifying Seller in writing. If Buyer does not notify Seller of Buyer's termination of the Contract before the end of the Inspection Period, Buyer waives the right to terminate this Contract pursuant to this provision. **If Buyer terminates this Contract pursuant to this Section G.5., the Earnest Money plus all interest that has accrued thereon, less the Option Fee shall be delivered to Buyer . The Option Fee, which shall become the property of Seller, shall be delivered to Seller.**

6. *Option Fee.* The Option Fee paid to Seller is separate consideration for the right of Buyer to inspect the Property during the Inspection Period and to terminate this Contract on or before the end of the Inspection Period without further liability to Buyer as provided in Section G.5., above. Upon the Closing, the amount of the Option Fee shall be credited to the Purchase Price.

H. Representations

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date:

1. *Authority.* Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to (a) conduct business as a limited liability company in the State of Texas and (b) convey the Property to Buyer. This Contract is, and all documents required by this Contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller;

2. *Litigation.* There is no litigation pending or to the best of Seller's knowledge threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this Contract;

3. *Violation of Laws.* Seller has not received notice of violation of any law, ordinance, regulation, or governmental requirements affecting the Property or Seller's use of the Property;

4. *Condemnation; Zoning; Land Use, Hazardous Materials.* Seller has not received notice of nor has any actual knowledge of, any condemnation, zoning, or land-use proceedings affecting the

Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property;

5. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this Contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound;

6. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent;

7. *No Property Owners Association.* The Property is not subject to mandatory membership in a property owners' association; and

I. Condition of the Property until Closing; Cooperation; No Recording of Contract

1. *Maintenance and Operation.* Until closing, Seller will (a) maintain the Property substantially as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; and (b) comply with all contracts and governmental regulations affecting the Property. After the Effective Date, Seller will not enter into, amend, or terminate any contract that affects the Property, provided that Seller will terminate any leases, occupancy agreements, service contracts or other agreements that would extend beyond the Closing unless accepted by Buyer in writing.

2. *Casualty Damage.* Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before Closing. Buyer may terminate this Contract if the casualty damage that occurs before Closing would materially affect Buyer's intended use of the Property, by giving notice to Seller not later than fifteen (15) days after receipt of Seller's notice of the casualty (or before Closing if Seller's notice of the casualty is received less than fifteen (15) days before closing). If Buyer does not terminate this Contract, Seller will (a) convey the Property to Buyer in its damaged condition, (b) assign to Buyer all of Seller's rights under any property insurance policies covering the Property, and (c) pay to Buyer the amount of the deductibles and coinsurance provisions under any insurance policies covering the Property, but not in excess of the cost to repair the casualty damage and less any amounts previously paid by Seller to repair the Property. If Seller has not insured the Property and Buyer does not elect to terminate this Contract in accordance with this section, the Purchase Price will be reduced by the cost to repair the casualty damage.

3. *Claims; Hearings.* Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that involves or directly affects the Property.

4. *Property Sold "AS IS".* Buyer acknowledges that, except as set forth in this Agreement, Seller has made no representation to Buyer relating to the condition of the Property, the marketability of the Property or the highest and best use of the Property. Buyer assumes all responsibility for making an investigation of the Property and the best uses for the Property and will be relying only upon the investigation made by its agents or representatives with respect to its decision to close this transaction. The Purchase Price was bargained on the basis of an "AS IS, WHERE IS" transaction and reflects the agreement of the parties that there are no representations, disclosures, or express or implied warranties, except for the warranty of title stated in the closing documents and Seller's representations to Buyer set forth in Section H of this Contract.

J. Termination

1. *Disposition of Earnest Money after Termination*

a. *To Buyer.* If Buyer terminates this Contract in accordance with any of Buyer's rights to terminate or as expressly forth in this Contract, Seller will, within five days after receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money to Buyer, less the Option Fee, which will be paid to Seller as consideration for the right granted by Seller to Buyer to terminate this Contract.

b. *To Seller.* If Seller terminates this Contract in accordance with any of Seller's rights to terminate, Buyer will, within five days after receipt of Seller's termination notice, authorize Title Company to pay and deliver the Earnest Money to Seller.

2. *Duties after Termination.* If this Contract is terminated, Buyer will promptly return to Seller all original documents relating to the Property that Seller has delivered to Buyer. After return of the documents, neither party will have further duties or obligations to the other under this Contract, except for those obligations that cannot be or were not performed before termination of this Contract and those obligations that survive termination under the express terms of this Contract. The provisions of this Section J. shall survive the termination of this Contract and the obligations of the parties created hereunder shall not be affected by any such termination.

K. Closing

1. *Closing.* This transaction will close at Title Company's offices at the Closing Date and Closing Time. At Closing, the following will occur:

a. *Closing Documents.* The parties will execute and deliver the Closing Documents.

b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this Contract to Title Company in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price and any interest accruing thereon while on deposit with the Escrow Agent, if any.

c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this Contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.

d. *Delivery of Originals.* Seller will deliver to Buyer the originals of Seller's Records.

e. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions.

2. *Transaction Costs*

a. *Seller's Costs.* Seller will pay and be responsible for the following closing cost:

(1) all fees and premiums for the Basic Owner's Policy of Title Insurance including, including, but not limited to, the additional premium for the "survey/area and boundary deletion" in the Title Policy;

(2) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Property;

(3) One-half (½) of the Title Company's escrow fees;

(4) all costs, expenses, fees, or commissions incurred by or on behalf of Seller, including those of Seller's attorneys, agents, accountants, or agents, and consultants;

(5) all costs related to obtaining a release of any deed of trust liens, security interests, or other encumbrances on the Property, including, but not limited to, any prepayment penalties; and

(6) such other incidental costs and fees customarily paid by sellers of real property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

b. *Buyer's Costs.* Buyer will pay and be responsible for the following closing cost:

(1) all fees and premiums for any optional endorsements to the Basic Owner's Policy of Title Insurance requested by Buyer excepted as expressly required to be paid by Seller pursuant to Section K.2.a., above,;

(2) all fees and premiums for the Survey(s) except as otherwise stated herein;

(3) costs for preparing the deed;

(4) recording fees for the deed;

(5) one-half (½) of the Title Company's escrow fees;

(6) all costs and expenses incurred by or on behalf of Buyer, including those of Buyer's attorneys, agents, accountants, and consultants; and

(7) such other incidental costs and fees customarily paid by purchasers of property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

c. *Ad Valorem Taxes.* Ad valorem taxes for the Property for the calendar year of Closing will be prorated between Buyer and Seller as of the Closing Date. Seller's portion of the prorated taxes will be paid to Buyer at Closing as an adjustment to the Purchase Price. If the assessment for the calendar year of Closing is not known at the Closing Date, the proration will be based on taxes for the previous tax year, and Buyer and Seller will adjust the prorations in cash within thirty days of when the actual assessment and taxes are known. Seller will promptly notify Buyer of all notices of proposed or final tax valuations and assessments that Seller receives after the Effective Date and after Closing. All taxes due as of Closing will be paid at Closing.

d. *Brokers' Commissions.* The parties acknowledge and represent they have not been represented in whole or in part by a licensed Texas Real Estate broker or agent in the negotiation or execution of this Agreement. To the extent allowed by law, the parties hereto hereby indemnify and agree to defend and hold the other party harmless from any loss, attorney's

fees, and court and other costs arising out of a claim by any person or entity claiming by, through, or under the Buyer or Seller, respectively, for a broker's, agent's, or finder's fee or commission because of this transaction or this Contract, whether or not the claimant is disclosed to the other party.

3. *Issuance of Title Policy.* Seller will cause Title Company to issue the Title Policy to Buyer as soon as practicable after Closing.

L. Special Provisions:

1. *Platting and Zoning.* Buyer and Seller understand and acknowledge as of the Effective Date the Property constitutes only a portion of an existing platted parcel and that it is not reasonable to obtain a replat of the property on or before the Closing Date. Buyer and Seller further understand and agree that it is in the best interest of the Parties to obtain a replat of Seller's property in accordance with the provisions of City of Allen Land Development Code, as amended ("the ALDC"), even if the conveyance of the Property to Buyer is exempt from a requirement to obtain a replat pursuant to the provisions of the ALDC. Buyer, at Buyer's cost, agrees to be solely responsible for replatting Seller's property, inclusive of the Property, after the Closing. Seller agrees to reasonably cooperate and participate with Buyer in the prosecution of any plat application for the replat of Allen Station Business Park Phase II so that the Property is identified as a separate and distinct lot. Seller further agrees to join in and hereby consents to any application to the City of Allen submitted prior to Closing for the rezoning of the Property for the purposes for which Buyer intends to use the Property; provided, however, Seller shall not be responsible for any costs related to the prosecution of such rezoning application. This provision shall survive the Closing.

2. *Condition of Closing.* Notwithstanding anything to the contrary herein, including, but not limited to, the provisions of Section G.5, above, Seller understands and agrees that as a condition of Closing, Buyer, if at the time of Closing the Buyer is not the City of Allen, shall have signed an economic development agreements with the City of Allen, Texas, and/or the Allen Economic Development Corporation, (the "Economic Development Agreements") related to the development of a Cabela's retail store containing not less than 100,000 square feet of retail space and other ancillary facilities, such a parking.. If the Economic Development Agreements are not signed on or before the Closing Date, the Closing Date shall be extended for an additional sixty (60) days; provided, however, such agreements are not successfully negotiated and signed as described in this Section L.2. on or before the extended Closing Date, this Agreement shall terminate and Seller's sole remedy shall be receipt of the Earnest Money.

M. Escrow

1. *Escrow Agent.* The Escrow Agent is not (i) a party to this Contract and does not have liability for the performance or nonperformance of any party to this Contract, (ii) liable for interest on the Earnest Money and (iii) liable for the loss of any Earnest Money caused by the failure of any financial institution in which the Earnest Money has been deposited unless the financial institution is acting as escrow agent.

2. *Expenses.* At Closing, the Earnest Money must be applied first to any cash down payment, then to Buyer's Closing Costs and any excess refunded to Buyer. If no Closing occurs, Escrow Agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of Escrow Agent from all parties.

N. Default and Remedies

1. *Seller's Default.* If Seller fails to perform any of its obligations under this Contract or if any of Seller's representations are not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may elect either of the following as its sole and exclusive remedy:

a. *Termination; Liquidated Damages.* Buyer may terminate this Contract by giving notice to Seller on or before the Closing Date and Closing Time and have the Earnest Money, plus all interest accrued thereon, less the Option Fee, returned to Buyer. In addition, Seller shall reimburse Buyer for Buyer's out-of-pocket expenses relating to investigating the Property incurred by Buyer after the Effective Date.

b. *Specific Performance.* Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, Buyer may enforce specific performance of Seller's obligations under this Contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

2. *Buyer's Default.* If Buyer fails to substantially perform any of its obligations under this Contract that can be fully performed prior to Closing ("Buyer's Default"), Seller may, as its sole and exclusive remedy, deliver written notice to Buyer, setting forth the nature of the Buyer's Default. In the event that Buyer has not cured the Buyer's default within fifteen (15) days of Seller's written notice, Seller may terminate this Contract and have the Earnest Money paid to Seller as liquidated damages. The parties agree that just compensation for the harm that would be caused by Buyer's default cannot be accurately estimated or would be very difficult to accurately estimate and that Seller's Liquidated Damages is a reasonable forecast of just compensation to the Seller for the harm that would be caused by Buyer's default.

3. *Attorney's Fees.* If either party retains an attorney to enforce this Contract, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

4. *Mediation.* Any dispute between Seller and Buyer related to this Contract which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider for non-binding mediation prior to the filing of any lawsuit. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

O. Miscellaneous Provisions

1. *Notices.* Any notice required by or permitted under this Contract must be in writing and provided to the party to whom the notice is intended and the party's attorney. Any notice required by this Contract will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Contract. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, electronic mail, or other commercially reasonable means and will be effective when actually received, except notices terminating this Contract may not be sent by electronic mail. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given.

2. *Entire Contract.* This Contract, together with its exhibits, and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Property by Seller to Buyer not incorporated in writing in this Contract.

3. *Amendment.* This Contract may be amended only by an instrument in writing signed by the parties.

4. *Assignment.* Buyer may assign this Contract and all of Buyer's rights under it without Seller's prior written consent prior to or at Closing provided that the assignee of this Contract assumes all of Buyer's obligations pursuant to this Contract. This Contract binds, benefits, and may be enforced by the parties and their respective successors, and permitted assigns.

5. *Survival.* The obligations of this Contract that cannot be performed before termination of this Contract or before Closing, including any obligations to indemnify the other party with respect to claims described herein, will survive termination of this Contract or Closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this Contract, the Closing Documents will control.

6. *Choice of Law; Venue; Alternative Dispute Resolution.* This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas, wherein exclusive venue of any action to enforce any provision hereof shall lie.

7. *Waiver of Default.* It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays taking any action with respect to the default.

8. *No Third-Party Beneficiaries.* There are no third-party beneficiaries of this Contract.

9. *Severability.* The provisions of this Contract are severable. If a court of competent jurisdiction finds that any provision of this Contract is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

10. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

11. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

12. *Counterparts.* This Contract may be executed in multiple counterparts. If this Contract is executed in multiple counterparts, all counterparts taken together will constitute this Contract.

13. *Confidentiality.* The parties will keep confidential this Contract, this transaction, and all information learned in the course of this transaction, except to the extent disclosure is required by law or court order or to enable third parties to advise or assist Buyer to investigate the Property or either party to close this transaction.

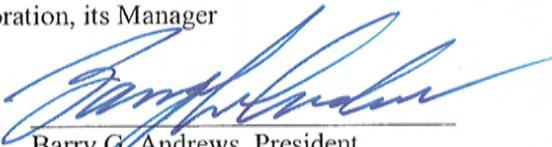
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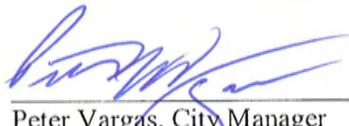
SIGNED AND AGREED on the dates indicated below.

SELLER:
ANDREWS FAMILY PROPERTIES, LLC ,
A Texas Limited Liability Company

BUYER:
CITY OF ALLEN, TEXAS, a Texas home
rule municipality

By: Greenbriar Investments, Inc., a Texas
corporation, its Manager

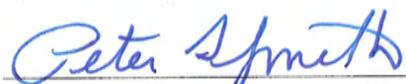
By: 
Barry G. Andrews, President

By: 
Peter Vargas, City Manager

Signed: 13th day of April, 2010

Signed: 13th day of April, 2010.

Approved as to Form:


Peter G. Smith, City Attorney

RECEIPT OF EARNEST MONEY AND CONTRACT

Title Company acknowledges receipt of Earnest Money in the amount of \$1000.00 and a copy of
this Contract executed by both Buyer and Seller.

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A

Description of Property

CITY OF ALLEN
ALLEN STATION BUSINESS PARK
14.000 ACRE PARCEL

DESCRIPTION

BEING A 14.000 ACRE PARCEL OF LAND OUT OF THE L.K. PEGUES SURVEY, ABSTRACT NO. 702, THE F.C. WILMETH SURVEY, ABSTRACT NO. 999, AND THE HENRY WETSEL SURVEY, ABSTRACT NO. 1026, COLLIN COUNTY, TEXAS, BEING PART OF LOT 1, BLOCK 1, ALLEN STATION BUSINESS PARK, PHASE II, AN ADDITION TO THE CITY OF ALLEN AS RECORDED IN CABINET R, SLIDE 229 OF THE DEED RECORDS OF COLLIN COUNTY, TEXAS (DRCCT), AND BEING ALL OF A 1.120 ACRE TRACT OF LAND AS DEEDED TO THE CITY OF ALLEN AND RECORDED IN CC FILE NO. 20071116001556210, DRCCT, AND BEING PART OF THE 20.7275 ACRE TRACT OF LAND AS DEEDED TO ANDREWS FAMILY PROPERTIES, LLC AND RECORDED IN COUNTY CLERKS FILE NO. 20080303000247380 DRCCT, AS SHOWN ON THE ATTACHED EXHIBIT "A" AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

IT IS THE INTENT TO DESCRIBE A TRACT OF LAND BEING BOUNDED ON THE NORTH BY THE SOUTH LINE OF THE RIGHT OF WAY FOR VILLAGE DRIVE, BEING BOUNDED ON THE EAST BY THE WEST LINE OF THE RIGHT OF WAY FOR ALLEN STATION PARKWAY, BEING BOUNDED ON SOUTH BY A LINE WHICH MARKS THE SOUTH LINE OF THE NORTH 14 ACRES OF SAID ANDREWS FAMILY TRACT, AND BEING BOUNDED ON THE WEST BY THE EAST LINE OF THE RIGHT OF WAY FOR THE DALLAS AREA RAPID TRANSIT (DART);

The POINT OF BEGINNING is the northwest corner of said Andrews Family tract, being on the south line of the Right of Way for Village Drive, and being on the east line of the Right of Way for the Dallas Area Rapid Transit (DART);

THENCE South 70° 38' 14" East, with the north line of said Andrews Family tract, being the south line of the Right of Way for Village Drive, a distance of 561.77 feet to a point at the beginning of a non-tangent curve to the right;

THENCE continue with said common line, with said curve to the right, having a radius of 1055.00 feet, through a central angle of 07° 37' 08", an arc distance of 140.29 feet, and having a chord which bears South 66° 52' 14" East, a distance of 140.19 feet to a point at the beginning of a non-tangent compound curve;

THENCE continue with said common line, with said curve to the right, having a radius of 38.50 feet, through a central angle of 09° 39' 30", an arc distance of 6.49 feet, and having a chord which bears South 59° 36' 07" East, a distance of 6.48 feet to a point;

THENCE, South 54° 46' 19" East, continue with said common line, a distance of 109.94 feet to a point at the beginning of a non-tangent curve to the left;

THENCE continue with said common line, with said curve to the left, having a radius of 261.50 feet, through a central angle of $01^{\circ} 34' 00''$, an arc distance of 7.15 feet, and having a chord which bears South $55^{\circ} 33' 18''$ East, a distance of 7.15 feet to a point at the beginning of a tangent reverse curve;

THENCE continue with said common line, with said curve to the right, having a radius of 1045.00 feet, through a central angle of $06^{\circ} 09' 37''$, an arc distance of 112.36 feet and having a chord which bears South $53^{\circ} 16' 21''$ East, a distance of 112.30 feet to a point;

THENCE continue with said common line, South $50^{\circ} 07' 01''$ East, a distance of 62.29 feet to a point at the beginning of a corner clip for the southwest corner of the intersection of Village Drive with Allen Station Parkway;

THENCE South $01^{\circ} 14' 34''$ East, with said corner clip, a distance of 32.89 feet to a point on the east line of the curving Right of Way of Allen Station Parkway;

THENCE South $49^{\circ} 12' 08''$ East, with said corner clip, a distance of 0.63 feet to a point at the beginning of a non-tangent curve;

THENCE with said curving west line of the Right of Way for Allen Station Parkway to the right, having a radius of 1095.00 feet, through a central angle of $00^{\circ} 52' 19''$, an arc distance of 16.67 feet, and having a chord which bears South $41^{\circ} 14' 02''$ West, a distance of 16.67 feet to a point on a corner clip;

THENCE South $00^{\circ} 47' 07''$ East, with said corner clip, a distance of 22.98 feet to a point at the beginning of a non-tangent curve;

THENCE along the west line of the Right of Way for Allen Station Parkway with said curve to the right having a radius of 616.00 feet, through a central angle of $16^{\circ} 44' 37''$, an arc distance of 180.02 feet, and having a chord which bears South $60^{\circ} 03' 58''$ West, a distance of 179.38 feet to a point at the beginning of a tangent compound curve;

THENCE continue with said Right of Way line with said curve to the right, having a radius of 287.00 feet, through a central angle of $08^{\circ} 59' 23''$, an arc distance of 45.03 feet, and having a chord which bears South $72^{\circ} 56' 00''$ West, a distance of 44.98 feet to a point of tangent;

THENCE continue with said Right of Way line South $77^{\circ} 25' 41''$ West, a distance of 59.58 feet to a point at the beginning of a tangent curve;

THENCE continue with said Right of Way line with said curve to the left, having a radius of 336.00 feet, through a central angle of $10^{\circ} 22' 16''$, an arc distance of 60.82 feet, and having a chord which bears South $72^{\circ} 14' 34''$ West, a distance of 60.74 feet to a point of tangent;

THENCE continue with said Right of Way line South $67^{\circ} 03' 26''$ West, a distance of 8.13 feet to a point at the beginning of a tangent curve;

THENCE continue with said Right of Way line with said curve to the left, having a radius of 669.28 feet, through a central angle of $09^{\circ} 32' 33''$, an arc distance of 111.47 feet, and having a chord which bears South $62^{\circ} 11' 44''$ West, a distance of 111.34 feet to a point at the beginning of a non-tangent compound curve;

THENCE continue with said Right of Way line with said curve to the left, having a radius of 645.00 feet, through a central angle of $33^{\circ} 41' 08''$, an arc distance of 379.21 feet, and having a chord which bears South $40^{\circ} 04' 09''$ West, a distance of 373.77 feet to a point;

THENCE North $78^{\circ} 40' 00''$ West, crossing said Andrews Family tract, a distance of 449.42 feet to a point on the west line of said Andrews Family tract, being on the east line of the Right of Way for DART;

THENCE North $11^{\circ} 20' 00''$ East, with said common line, a distance of 290.81 feet to a point at the beginning of a tangent curve to the right;

THENCE with said Right of Way curve to the right, having a radius of 6812.41 feet, through a central angle of $03^{\circ} 37' 13''$, an arc distance of 430.43 feet, and having a chord which bears North $13^{\circ} 04' 22''$ East, a distance of 430.36 feet to a point at the beginning of a compound curve to the right;

THENCE continue with said Right of Way curve to the right, having a radius of 2814.79 feet, through a central angle of $03^{\circ} 40' 26''$, an arc distance of 180.48 feet, and having a chord which bears North $18^{\circ} 57' 53''$ East, a distance of 180.45 feet to the POINT OF BEGINNING, and containing 14.000 acres of land.

NOTE: Bearings are based on the north line of the Final Plat for Allen Station Business Park Phase I. No field survey was performed for the creation of this description.

**APPENDIX B: Assignment of Real Estate Contract
between City of Allen and Cabela's
Wholesale, Inc.**

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

ASSIGNMENT OF
REAL ESTATE SALES CONTRACT

This ASSIGNMENT OF REAL ESTATE SALES CONTRACT (“Assignment”) is made by and between the City of Allen (“City”), a Texas home rule municipality and Cabela’s Wholesale, Inc, a Nebraska corporation (“Company”), acting by and through their respective authorized officers.

RECITALS:

WHEREAS, City has signed and entered into that certain *Real Estate Sales Contract* with Andrews Family Properties, LLC, (“Seller”) effective April 13, 2010, for the purchase of an approximately 14 acre tract of land in Allen, Texas (“the Real Estate Contract”), a true and correct copy of which is attached hereto and incorporated herein by reference; and

WHEREAS, pursuant to that certain *Economic Development Agreement* between City and Company effective April 13, 2010 (“the Economic Development Agreement”), City has agreed to assign to Company the Real Estate Contract for certain consideration described in the Economic Development Agreement; and

WHEREAS, City and Company intend this Assignment to constitute the assignment of real estate contract contemplated in the Economic Development Agreement;

NOW, THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and the promises, covenants, and agreements made in this Assignment; City and Company agree as follows:

1. **Assignment of Real Estate Contract.** City does hereby sell, assign, and transfer to Company the Real Estate Contract and all of City’s right, title and interest in and to the Real Estate Contract.

2. **Acceptance and Assumption of Real Estate Contract; Exceptions.** Company does hereby accept the assignment of the Real Estate Contract as provided in Section 1, above, and agrees to assume and perform all the duties and obligations to be performed by the Buyer as set forth in the Real Estate Contract and arising from and after the effective date of this Assignment to the same extent as if Company had originally been named as the Buyer, and agrees to indemnify and hold City harmless from any liability for the performance or nonperformance of the duties and obligations assumed by Company; provided, however:

(a) except as provided in this Assignment, nothing herein shall relieve City of its agreement pursuant to Section 3.6 of the Economic Development Agreement to provide an economic development grant in an amount equal to:

- (i) the Purchase Price as set forth in the Real Estate Contract; plus
- (ii) the Buyer's closing costs as set forth in Section K.2.b. of the Real Estate Contract;

but not including Company's costs related to Company's attorneys, agents, accountants, and consultants as described in Section K.2.b.(6) of the Real Estate Contract, which costs shall remain the responsibility of Company; and

(b) City shall be responsible, at City's cost, of prosecuting to final approval an application for final plat of the property to be purchased by Company as set forth in Section L.1. of the Real Estate Contract; and

(c) The City shall be entirely responsible for all obligations and duties pursuant to that certain Economic Development Agreement between the City and the Seller relating to the Property dated April 13, 2010. Further, to the extent allowed by law, the City will indemnify and defend the Company for any loss, cost or damage arising out of the City's obligations to Seller pursuant to the Economic Development Agreement referred to above in this Section.

3. **City Consent to Amendments.** Company shall not, without the prior written consent of the City, have the right to amend the Real Estate Contract in any manner that (1) increases the Purchase Price, (2) increases the amount of Closing Costs to be paid by Buyer, (3) extends the Closing Date to later than October 1, 2010, (4) increases the square footage of the Property to be purchased except as the result of adjustments made based on the Survey acquired pursuant to the Real Estate Contract, (5) seeks to amend or delete Section L.2. or (6) in any other manner increases the City's financial obligation pursuant to the Economic Development Agreement or otherwise has a material negative impact on the City's obligations to Seller under the Real Estate Contract or the Economic Development Agreement.

4. **Restriction Agreement.** As additional consideration for this Assignment and the Assignment Incentive to be provided pursuant to Section 3.6 of the Economic Development Agreement, Company agrees to sign and have filed in the Real Property Records of Collin County, Texas, concurrently with the Closing of the Real Estate Contract and the purchase of the real property described therein, a Restriction Agreement, the provisions of which shall be substantially as set forth in Exhibit "B," attached hereto and incorporated herein by reference and which shall constitute restrictive covenants running with the land. The City acknowledges and agrees that the Restriction Agreement is subject to early termination in accordance with the terms therein.

5. **Copies of Notices to City.** Not later than three (3) business days after receipt by Company, Company agrees to deliver to City a copy of any notice received from Seller related to and provided in accordance with the Real Estate Contract. Furthermore, Company agrees to deliver to City a copy of any notice the Company provides to Seller in relation to the Real Estate Contract concurrently with delivery of the notice to Seller and using a method of delivery

calculated to result in delivery of said notice copy to City on the same or earlier date as the notice is received by Seller. Conversely, not later than three (3) business days after receipt by City, City agrees to deliver to Company a copy of any notice received from Seller related to and provided in accordance with the Real Estate Contract. Furthermore, City agrees to deliver to Company a copy of any notice the City provides to Seller in relation to the Real Estate Contract concurrently with delivery of the notice to Seller and using a method of delivery calculated to result in delivery of said notice copy to Company on the same or earlier date as the notice is received by Seller.

6. **Records Regarding Sale.** As soon as practical after the Effective Date, and to the extent not already provided by City to Company, City agrees to deliver to Company:

(a) a copy of any of Seller's records obtained by City from Seller pursuant to Section G.1. of the Real Estate Contract;

(b) a copy of any ALTA/ASCM survey obtained by or prepared by City in the sixty (60) days prior to the Effective Date; and

(c) a copy of any title commitment and/or copies of recorded documents relating to the property described in the Real Estate Contract.

7. **No Further Assignments.** Notwithstanding the provisions of Section O.4 of the Real Estate Contract, Company shall not have the right to further assign the Real Estate Contract without the prior written consent of City. Any assignment or attempted assignment of the Real Estate Contract by Company contrary to this Section 7 shall constitute a default of the Economic Development Agreement and shall be grounds for termination of the Economic Development Agreement pursuant to Section 5.1(g) of the Economic Development Agreement.

8. **Termination of Real Estate Contract.** Company understands, acknowledges, and agrees that the closing on the purchase of the property described in the Real Estate Contract is integral to Company's ability to perform its obligations pursuant to the Economic Development Agreement and constitutes a condition precedent to City's obligation to perform pursuant to the provisions of the Economic Development Agreement. If after the Effective Date of this Assignment the Real Estate Contract is terminated prior to the Closing for any reason, the Economic Development Agreement and the Related Agreements as defined in the Economic Development Agreement shall also terminate without further action of the parties being required, in which case:

(a) any funds advanced by City to Company prior to Closing pursuant to the Economic Development Agreement or any Related Agreement, if any, shall be refunded to City not later than five (5) business after the termination of the Real Estate Contract; and

(b) City shall be relieved of any obligations to reimburse the Company for any Impact Fees or Development Fees pursuant to Sections 3.2 and 3.3, respectively, of the

Economic Development Agreement that may have been expended by Company prior to termination of the Real Estate Contract, provided, however, City agrees to refund to Company any such fees that have been paid but not yet earned by City as the result of services provided by City.

Notwithstanding the foregoing, in the event that the Real Estate Contract is terminated due to a default by the Seller, the Company may be damaged thereby. City agrees that to the extent that the Company has expended monies in furtherance of the acquisition and development of the Property that have been reimbursed by the City or the AEDC pursuant to the Economic Development Agreements between Company, the City and the AEDC, the Company shall have the right to retain one half of the reimbursement Grant monies (as defined in the Economic Development Agreements) up to the amount of Fifty Thousand Dollars (\$50,000.00).

9. **Termination of this Assignment by Company.** It shall be a condition of Company's obligations to Close pursuant to the Real Estate Contract and all of Company's obligations pursuant to this Assignment that the City shall have:

- (a) completed the re-zoning of the Property to allow for Company's intended use prior to Closing;
- (b) delivered to the Company a waiver of all surface rights related to the extraction of minerals from the Property prior to Closing pursuant to the Real Estate Contract.
- (c) delivered all items required pursuant to section B.2 of the Real Estate Contract prior to or concurrent with the Closing Date which are the responsibility of the City pursuant to this Assignment;
- (d) delivered, at no cost to Company, the ALTA/ASCM Survey to Company's specifications within 20 days of the Effective Date.

In the event that the City shall have failed in its satisfaction of any of the items in this Section 9, the Company shall have the right to terminate and revoke this Assignment, and the Company shall have no further obligation to the City hereunder if City fails to deliver such items within ten (10) days after receiving written notice from the Company notifying the City of City's failure to comply with this Section 9, except such right to cure shall not apply to delivery of the Assignment Incentive at Closing as required by the Economic Development Agreement with City or to delivery of the waiver of surface rights as provided in (b), above. Any Costs reimbursed to the Company by the City pursuant to the Economic Development Agreements shall be retained by the Company. To the extent allowed by law, the City will indemnify and hold the Company harmless for any costs or damages sought by Seller relating to the failure to close upon the purchase of the Property under the terms of the Real Estate Contract to the extent such failure is not the result of the intentional or negligent act or omission of the Company.

10. **No Joint Venture, etc.** It is acknowledged and agreed by the parties that the provisions hereof are not intended to and shall not be deemed to create a partnership or joint

venture among the parties. It is understood and agreed between the parties that Company, in satisfying the conditions of this Assignment, has acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

11. **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that is granted and assumed under this Assignment.

12. **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or on the day actually received as sent by courier or otherwise hand delivered.

If intended for City, to:
City of Allen
Attn: City Manager
305 Century Parkway
Allen, Texas 75013

With a copy to:
Peter G. Smith
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If intended for Company:

Cabela's Wholesale, Inc.
Attn: Director of Real Estate
One Cabela Drive
Sidney, Nebraska 69160

With a copy to:
Cabela's Incorporated
Attn: Legal Department-Real Estate
One Cabela Drive
Sidney, Nebraska 69160

13. **Entire Agreement.** This Assignment is the entire agreement between the parties with respect to the subject matter covered in this Assignment. There is no other collateral oral or written agreement between the parties that in any manner relates to the subject matter of this Assignment.

14. **Governing Law.** This Assignment shall be governed by the laws of the State of Texas, and venue for any action concerning this Assignment shall be in the State District Court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

15. **Amendment.** This Assignment may be amended by the mutual written agreement of the parties.

16. **Legal Construction.** In the event any one or more of the provisions contained in this Assignment shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Assignment that in lieu of each provision that is found to be

illegal, invalid, or unenforceable, a provision be added to this Assignment which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

17. **Recitals.** The recitals to this Assignment are incorporated herein.

18. **Counterparts.** This Assignment may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

19. **Exhibits.** Any exhibits to this Assignment are incorporated herein by reference for the purposes wherever reference is made to the same.

20. **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Assignment shall survive termination.

21. **Effective Date.** This Assignment shall be effective upon the date it is signed by authorized representatives all parties hereto ("the Effective Date").

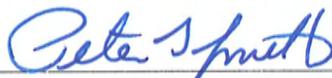
(Signatures on Following Page)

SIGNED AND AGREED this 13th day of April, 2010.

CITY OF ALLEN, TEXAS

By: 
Peter H. Vargas, City Manager

Approved as to Form:


Peter G. Smith, City Attorney

SIGNED AND AGREED this 13th day of April, 2010.

CABELA'S WHOLESALE, INC.

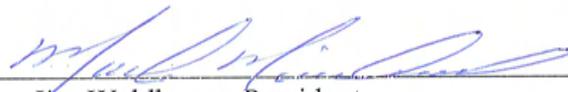
By: 
~~Jim Waldbauer, President~~
Mark Nienhueser, Vice President

EXHIBIT "A"
COPY OF REAL ESTATE CONTRACT

Real Estate Sales Contract

This Real Estate Sales Contract ("the Contract") to buy and sell real property is entered between Seller and Buyer as identified below and is effective on the date ("Effective Date") of the last of the signatures by Seller and Buyer as parties to this Contract, acknowledgement by Title Company of receipt of the Earnest Money and Contract, and approval of the Contract by Buyer's city council. Buyer must deliver the Earnest Money to Title Company and obtain Title Company's signature before the Earnest Money Deadline provided in section A.1. for this Contract to be effective. If the Earnest Money is paid by check and payment on presentation is refused, Buyer is in default.

Seller: Andrews Family Properties, LLC, a Texas limited liability company
Attn: Barry G. Andrews
2730 Irving Boulevard
Dallas, Texas 75207
Phone: 214-905-7548
Fax: 214-525-9400
E-Mail: jjernigan@andrewsdistributing.com

Seller's Attorney: Rick Rogers
Porter, Rogers, Dahlman & Gordon, P.C.
One Shoreline Plaza
800 North Shoreline Blvd., Suite 800
Corpus Christi, Texas 78401
Phone: 361-880-5820
Fax: 361-880-5844
E-Mail: rrogers@prdg.com

Buyer: City of Allen, a Texas home rule municipality ("City")
Attn: Peter H. Vargas, City Manager
305 Century Parkway
Allen, Texas 75013
Phone: 214-509-4100
Fax: 214-509-4118
E-Mail: pvargas@cityofallen.org

Buyer's Attorneys: Peter G. Smith
Kevin B. Laughlin
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Lincoln Plaza
500 N Akard
Dallas, Texas 75201
Telephone: 214-965-9900
Facsimile: 214-965-0010
E-mail: psmith@njdhs.com
klaughlin@njdhs.com

Property: Surface Estate Only of an approximately 14 acre tract out of Lot 1, Block 1, Allen Station Business Park, Phase II, an addition to the City of Allen, Texas, according to the plat thereof filed as Instrument No. 20051227001805170, Land Records, Collin County, Texas, said 14 acre tract being more particularly described in Exhibit "A," attached hereto and incorporated herein by reference.

Title Company: Republic Title of Texas, Inc.
2626 Howell Street, 10th Floor
Dallas, Texas 75204
Telephone: (214) 855-8863
Fax: (214) 855-8898
Escrow Officer: Janine Barber
Email: jbarber@republictitle.com

Purchase Price: \$4.50 per square foot. Based on 14 acres (609,840 sq.ft.), the Purchase Price will be \$2,744,280.00; provided, however, the final Purchase Price will be adjusted based upon the actual square footage actually purchased as determined by a survey prior to Closing obtained by Buyer.

Earnest Money: \$1000.00

Option Fee: \$500.00

County for Performance: Collin County, Texas

A. Deadlines and Other Dates

All deadlines in this Contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1. Earnest Money Deadline: Delivery of the Earnest Money shall be made to the Escrow Agent at the Title Company not later than five (5) business days following the date this Contract has been approved by Buyer's city council and signed by all parties.
2. Delivery of Title Commitment by Seller: Not later than fifteen (15) calendar days after the Effective Date.
3. Delivery of Survey by Seller: Not later than fifteen (15) calendar days after the Effective Date.
4. Delivery of legible copies of instruments referenced in the Title Commitment and Survey: To the extent not delivered to Buyer prior to execution of this Contract, delivery shall be with the Title Commitment.
5. Delivery of Title Objections: Not later than fifteen (15) calendar days after delivery of the Title Commitment, Survey, and legible copies of the instruments referenced in them.
6. Delivery by Seller of Seller's records as specified Section G.1: Not later than twenty (20) calendar days after the Effective Date.
7. End of Inspection Period: Ninety (90) calendar days after the Effective Date, unless extended as provided in Section G.5 or earlier approved or waived by Buyer.
8. Closing Date: August 1, 2010, or at such earlier date as agreed by the Parties.
9. Closing Time: As agreed by the Parties.

B. Closing Documents

1. At closing, Seller will deliver the following items:
 - a. A special warranty deed, in form and substance reasonably acceptable to Seller and Buyer, conveying good and indefeasible title to the Property to Seller, free and clear of any and all encumbrances except the Permitted Exceptions, excluding the mineral rights, such mineral rights having been previously reserved by prior grantors;
 - b. IRS Non-foreign Person Affidavit
 - c. Evidence of Seller's authority to close this transaction
 - d. Settlement statement, and such other documents as Title Company may reasonably require, specifically a customary Seller's Affidavit,
2. At Closing, Buyer will deliver or cause to be delivered:
 - a. the Purchase Price;
 - b. evidence of Buyer's authority to consummate this transaction;
 - c. settlement statement;
 - d. if applicable, the Economic Development Agreements described Section L.2, below; and
 - e. such other documents as Title Company may reasonably require

The documents listed in this Section B are collectively known as the "Closing Documents."

C. Exhibits

All exhibits attached hereto are expressly made a part of this Contract.

D. Purchase and Sale of Property

Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. The promises by Buyer and Seller stated in this Contract are the consideration for the formation of this Contract.

E. Intentionally omitted.

F. Title and Survey

1. *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: **Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.**

2. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company stating the condition of title to the Property. The "effective date" stated in the Title Commitment must be after the Effective Date of this Contract. "Title

Policy” means an Owner Policy of Title Insurance issued by Title Company in conformity with the last Title Commitment delivered to and approved by Buyer.

3. *Survey.* Not later than the date set forth in Section A.3., above, Buyer shall have the right to obtain, at no cost to Seller (even if the Closing does not occur), shall have an ALTA/ASCM survey (the “Survey”) of the Property prepared by a duly licensed Texas Registered Public Land Surveyor. The Survey shall be staked on the ground, and the plat shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, easements, surface, overhead and underground utilities, and rights-of-way on or adjacent to the Property, if any, and shall contain the surveyor's certification that there are no encroachments on the Property other than what are listed on the Title Report and shall set forth a metes and bounds description of the Property. The legal description contained in said Survey shall be used by the Parties as the legal description to be contained in the Special Warranty Deed and the other Closing Documents at Closing.

4. *Delivery of Title Commitment and Legible Copies.* Seller must deliver a Title Commitment that reflects the terms of this Contract to Buyer by the deadline stated in Section A.2., and legible copies of the instruments referenced in the Title Commitment and Survey by the deadline stated in section A.4.

5. *Title Objections.* Buyer has until the deadline stated in section A.5. (“Title Objection Deadline”) to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller in writing of Buyer’s objections to any of them (“Title Objections”). In the event Buyer states that the condition of title is not satisfactory, the Title Objection Notice shall specify Buyer's objections to title, and Seller may, at Seller’s option and cost, elect to undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of Buyer. In the event Seller elects not to or is unable to eliminate all Title Objections within fifteen (15) calendar days after Seller’s receipt of the Title Objection Notice from Buyer, Seller shall give Buyer written notice to this effect, and Buyer shall have ten (10) business days after receipt of such notice from Seller to elect, in writing, either to (1) waive its objections and proceed to Closing or (2) extend the Closing Date for an additional period of time (not to exceed thirty (30) days) in order to provide Seller with additional time to cure the Title Objections. Any title matter that is shown on Schedule B of the Title Report to which Buyer: (1) does not object in accordance with this Section F.5, (2) is not required to object as provided below, or (3) objects as provided herein, but such objection is subsequently waived or deemed waived by Buyer, shall be considered to be “Permitted Exceptions.” Seller and Buyer understand and agree that the Title Company will delete from the Title Policy (as defined herein):

- a. the standard printed exceptions to the Title Commitment to the extent permitted by applicable law, and
- b. all items shown on Schedule C of the Title Commitment, without the necessity of Buyer objecting thereto under the Title Objection Notice.

Notwithstanding anything to the contrary herein, as a condition of Closing, Seller must resolve the items that are listed on Schedule C of the Title Commitment which are by their nature Seller’s responsibility, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this Contract, and use due diligence to cure the Title Objections that Seller has agreed to cure.

G. Inspection Period

1. *Review of Seller’s Records.* By the deadline stated in section A.6, Seller will deliver or otherwise make available to Buyer copies of the following records relating to the Property prepared by or on behalf of Seller that are otherwise in the possession of Seller or are legally accessible and obtainable

by Seller: records of any regulatory proceedings or alleged or determined violations, soil reports, environmental assessment reports, water rights agreements, engineering or topographical reports or data, and/or on the ground surveys, as well as all unrecorded contracts, leases, and/or occupancy agreements that affect the Property.

2. *Entry onto the Property.* During the Inspection Period, Buyer and its agents or employees shall have the right to enter upon the Property during regular business hours upon reasonable notice and conduct such inspections, tests and studies as they may deem necessary; provided, any intrusive testing shall require the prior written consent of Seller, not to be unreasonably withheld.

3. *Indemnity.* To the extent allowed by law, Buyer will **INDEMNIFY**, defend and hold Seller **HARMLESS** from any and all loss, attorney's fees, expenses, or claims for property damage, personal injury or death to any person arising out of Buyer's investigation and inspection of the Property, except for repair or remediation of existing conditions discovered by Buyer's inspector. The obligation of Buyer under this provision shall survive termination of this Contract and closing.

4. *Release.* Buyer releases Seller and those persons acting on Seller's behalf from any and all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's, or Buyer's agents, entry on the Property during Buyer's investigation of the Property.

5. *Buyer's Right to Terminate.* Buyer may terminate this Contract for any or no reason without liability to Seller before the end of the Inspection Period by notifying Seller in writing. If Buyer does not notify Seller of Buyer's termination of the Contract before the end of the Inspection Period, Buyer waives the right to terminate this Contract pursuant to this provision. **If Buyer terminates this Contract pursuant to this Section G.5., the Earnest Money plus all interest that has accrued thereon, less the Option Fee shall be delivered to Buyer . The Option Fee, which shall become the property of Seller, shall be delivered to Seller.**

6. *Option Fee.* The Option Fee paid to Seller is separate consideration for the right of Buyer to inspect the Property during the Inspection Period and to terminate this Contract on or before the end of the Inspection Period without further liability to Buyer as provided in Section G.5., above. Upon the Closing, the amount of the Option Fee shall be credited to the Purchase Price.

H. Representations

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date:

1. *Authority.* Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to (a) conduct business as a limited liability company in the State of Texas and (b) convey the Property to Buyer. This Contract is, and all documents required by this Contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller;

2. *Litigation.* There is no litigation pending or to the best of Seller's knowledge threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this Contract;

3. *Violation of Laws.* Seller has not received notice of violation of any law, ordinance, regulation, or governmental requirements affecting the Property or Seller's use of the Property;

4. *Condemnation; Zoning; Land Use, Hazardous Materials.* Seller has not received notice of nor has any actual knowledge of, any condemnation, zoning, or land-use proceedings affecting the

Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property;

5. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this Contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound;

6. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent;

7. *No Property Owners Association.* The Property is not subject to mandatory membership in a property owners' association; and

I. Condition of the Property until Closing; Cooperation; No Recording of Contract

1. *Maintenance and Operation.* Until closing, Seller will (a) maintain the Property substantially as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; and (b) comply with all contracts and governmental regulations affecting the Property. After the Effective Date, Seller will not enter into, amend, or terminate any contract that affects the Property, provided that Seller will terminate any leases, occupancy agreements, service contracts or other agreements that would extend beyond the Closing unless accepted by Buyer in writing.

2. *Casualty Damage.* Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before Closing. Buyer may terminate this Contract if the casualty damage that occurs before Closing would materially affect Buyer's intended use of the Property, by giving notice to Seller not later than fifteen (15) days after receipt of Seller's notice of the casualty (or before Closing if Seller's notice of the casualty is received less than fifteen (15) days before closing). If Buyer does not terminate this Contract, Seller will (a) convey the Property to Buyer in its damaged condition, (b) assign to Buyer all of Seller's rights under any property insurance policies covering the Property, and (c) pay to Buyer the amount of the deductibles and coinsurance provisions under any insurance policies covering the Property, but not in excess of the cost to repair the casualty damage and less any amounts previously paid by Seller to repair the Property. If Seller has not insured the Property and Buyer does not elect to terminate this Contract in accordance with this section, the Purchase Price will be reduced by the cost to repair the casualty damage.

3. *Claims; Hearings.* Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that involves or directly affects the Property.

4. *Property Sold "AS IS".* Buyer acknowledges that, except as set forth in this Agreement, Seller has made no representation to Buyer relating to the condition of the Property, the marketability of the Property or the highest and best use of the Property. Buyer assumes all responsibility for making an investigation of the Property and the best uses for the Property and will be relying only upon the investigation made by its agents or representatives with respect to its decision to close this transaction. The Purchase Price was bargained on the basis of an "**AS IS, WHERE IS**" transaction and reflects the agreement of the parties that there are no representations, disclosures, or express or implied warranties, except for the warranty of title stated in the closing documents and Seller's representations to Buyer set forth in Section H of this Contract.

J. Termination

1. *Disposition of Earnest Money after Termination*

a. *To Buyer.* If Buyer terminates this Contract in accordance with any of Buyer's rights to terminate or as expressly forth in this Contract, Seller will, within five days after receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money to Buyer, less the Option Fee, which will be paid to Seller as consideration for the right granted by Seller to Buyer to terminate this Contract.

b. *To Seller.* If Seller terminates this Contract in accordance with any of Seller's rights to terminate, Buyer will, within five days after receipt of Seller's termination notice, authorize Title Company to pay and deliver the Earnest Money to Seller.

2. *Duties after Termination.* If this Contract is terminated, Buyer will promptly return to Seller all original documents relating to the Property that Seller has delivered to Buyer. After return of the documents, neither party will have further duties or obligations to the other under this Contract, except for those obligations that cannot be or were not performed before termination of this Contract and those obligations that survive termination under the express terms of this Contract. The provisions of this Section J. shall survive the termination of this Contract and the obligations of the parties created hereunder shall not be affected by any such termination.

K. Closing

1. *Closing.* This transaction will close at Title Company's offices at the Closing Date and Closing Time. At Closing, the following will occur:

a. *Closing Documents.* The parties will execute and deliver the Closing Documents.

b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this Contract to Title Company in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price and any interest accruing thereon while on deposit with the Escrow Agent, if any.

c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this Contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.

d. *Delivery of Originals.* Seller will deliver to Buyer the originals of Seller's Records.

e. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions.

2. *Transaction Costs*

a. *Seller's Costs.* Seller will pay and be responsible for the following closing cost:

(1) all fees and premiums for the Basic Owner's Policy of Title Insurance including, including, but not limited to, the additional premium for the "survey/area and boundary deletion" in the Title Policy;

(2) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Property;

(3) One-half (½) of the Title Company's escrow fees;

(4) all costs, expenses, fees, or commissions incurred by or on behalf of Seller, including those of Seller's attorneys, agents, accountants, or agents, and consultants;

(5) all costs related to obtaining a release of any deed of trust liens, security interests, or other encumbrances on the Property, including, but not limited to, any prepayment penalties; and

(6) such other incidental costs and fees customarily paid by sellers of real property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

b. *Buyer's Costs.* Buyer will pay and be responsible for the following closing cost:

(1) all fees and premiums for any optional endorsements to the Basic Owner's Policy of Title Insurance requested by Buyer excepted as expressly required to be paid by Seller pursuant to Section K.2.a., above,;

(2) all fees and premiums for the Survey(s) except as otherwise stated herein;

(3) costs for preparing the deed;

(4) recording fees for the deed;

(5) one-half (½) of the Title Company's escrow fees;

(6) all costs and expenses incurred by or on behalf of Buyer, including those of Buyer's attorneys, agents, accountants, and consultants; and

(7) such other incidental costs and fees customarily paid by purchasers of property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

c. *Ad Valorem Taxes.* Ad valorem taxes for the Property for the calendar year of Closing will be prorated between Buyer and Seller as of the Closing Date. Seller's portion of the prorated taxes will be paid to Buyer at Closing as an adjustment to the Purchase Price. If the assessment for the calendar year of Closing is not known at the Closing Date, the proration will be based on taxes for the previous tax year, and Buyer and Seller will adjust the prorations in cash within thirty days of when the actual assessment and taxes are known. Seller will promptly notify Buyer of all notices of proposed or final tax valuations and assessments that Seller receives after the Effective Date and after Closing. All taxes due as of Closing will be paid at Closing.

d. *Brokers' Commissions.* The parties acknowledge and represent they have not been represented in whole or in part by a licensed Texas Real Estate broker or agent in the negotiation or execution of this Agreement. To the extent allowed by law, the parties hereto hereby indemnify and agree to defend and hold the other party harmless from any loss, attorney's

fees, and court and other costs arising out of a claim by any person or entity claiming by, through, or under the Buyer or Seller, respectively, for a broker's, agent's, or finder's fee or commission because of this transaction or this Contract, whether or not the claimant is disclosed to the other party.

3. *Issuance of Title Policy.* Seller will cause Title Company to issue the Title Policy to Buyer as soon as practicable after Closing.

L. Special Provisions:

1. *Platting and Zoning.* Buyer and Seller understand and acknowledge as of the Effective Date the Property constitutes only a portion of an existing platted parcel and that it is not reasonable to obtain a replat of the property on or before the Closing Date. Buyer and Seller further understand and agree that it is in the best interest of the Parties to obtain a replat of Seller's property in accordance with the provisions of City of Allen Land Development Code, as amended ("the ALDC"), even if the conveyance of the Property to Buyer is exempt from a requirement to obtain a replat pursuant to the provisions of the ALDC. Buyer, at Buyer's cost, agrees to be solely responsible for replatting Seller's property, inclusive of the Property, after the Closing. Seller agrees to reasonably cooperate and participate with Buyer in the prosecution of any plat application for the replat of Allen Station Business Park Phase II so that the Property is identified as a separate and distinct lot. Seller further agrees to join in and hereby consents to any application to the City of Allen submitted prior to Closing for the rezoning of the Property for the purposes for which Buyer intends to use the Property; provided, however, Seller shall not be responsible for any costs related to the prosecution of such rezoning application. This provision shall survive the Closing.

2. *Condition of Closing.* Notwithstanding anything to the contrary herein, including, but not limited to, the provisions of Section G.5, above, Seller understands and agrees that as a condition of Closing, Buyer, if at the time of Closing the Buyer is not the City of Allen, shall have signed an economic development agreements with the City of Allen, Texas, and/or the Allen Economic Development Corporation, (the "Economic Development Agreements") related to the development of a Cabela's retail store containing not less than 100,000 square feet of retail space and other ancillary facilities, such a parking.. If the Economic Development Agreements are not signed on or before the Closing Date, the Closing Date shall be extended for an additional sixty (60) days; provided, however, such agreements are not successfully negotiated and signed as described in this Section L.2. on or before the extended Closing Date, this Agreement shall terminate and Seller's sole remedy shall be receipt of the Earnest Money.

M. Escrow

1. *Escrow Agent.* The Escrow Agent is not (i) a party to this Contract and does not have liability for the performance or nonperformance of any party to this Contract, (ii) liable for interest on the Earnest Money and (iii) liable for the loss of any Earnest Money caused by the failure of any financial institution in which the Earnest Money has been deposited unless the financial institution is acting as escrow agent.

2. *Expenses.* At Closing, the Earnest Money must be applied first to any cash down payment, then to Buyer's Closing Costs and any excess refunded to Buyer. If no Closing occurs, Escrow Agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of Escrow Agent from all parties.

N. Default and Remedies

1. *Seller's Default.* If Seller fails to perform any of its obligations under this Contract or if any of Seller's representations are not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may elect either of the following as its sole and exclusive remedy:

a. *Termination; Liquidated Damages.* Buyer may terminate this Contract by giving notice to Seller on or before the Closing Date and Closing Time and have the Earnest Money, plus all interest accrued thereon, less the Option Fee, returned to Buyer. In addition, Seller shall reimburse Buyer for Buyer's out-of-pocket expenses relating to investigating the Property incurred by Buyer after the Effective Date.

b. *Specific Performance.* Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, Buyer may enforce specific performance of Seller's obligations under this Contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

2. *Buyer's Default.* If Buyer fails to substantially perform any of its obligations under this Contract that can be fully performed prior to Closing ("Buyer's Default"), Seller may, as its sole and exclusive remedy, deliver written notice to Buyer, setting forth the nature of the Buyer's Default. In the event that Buyer has not cured the Buyer's default within fifteen (15) days of Seller's written notice, Seller may terminate this Contract and have the Earnest Money paid to Seller as liquidated damages. The parties agree that just compensation for the harm that would be caused by Buyer's default cannot be accurately estimated or would be very difficult to accurately estimate and that Seller's Liquidated Damages is a reasonable forecast of just compensation to the Seller for the harm that would be caused by Buyer's default.

3. *Attorney's Fees.* If either party retains an attorney to enforce this Contract, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

4. *Mediation.* Any dispute between Seller and Buyer related to this Contract which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider for non-binding mediation prior to the filing of any lawsuit. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

O. Miscellaneous Provisions

1. *Notices.* Any notice required by or permitted under this Contract must be in writing and provided to the party to whom the notice is intended and the party's attorney. Any notice required by this Contract will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Contract. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, electronic mail, or other commercially reasonable means and will be effective when actually received, except notices terminating this Contract may not be sent by electronic mail. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given.

2. *Entire Contract.* This Contract, together with its exhibits, and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Property by Seller to Buyer not incorporated in writing in this Contract.

3. *Amendment.* This Contract may be amended only by an instrument in writing signed by the parties.

4. *Assignment.* Buyer may assign this Contract and all of Buyer's rights under it without Seller's prior written consent prior to or at Closing provided that the assignee of this Contract assumes all of Buyer's obligations pursuant to this Contract. This Contract binds, benefits, and may be enforced by the parties and their respective successors, and permitted assigns.

5. *Survival.* The obligations of this Contract that cannot be performed before termination of this Contract or before Closing, including any obligations to indemnify the other party with respect to claims described herein, will survive termination of this Contract or Closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this Contract, the Closing Documents will control.

6. *Choice of Law; Venue; Alternative Dispute Resolution.* This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas, wherein exclusive venue of any action to enforce any provision hereof shall lie.

7. *Waiver of Default.* It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays taking any action with respect to the default.

8. *No Third-Party Beneficiaries.* There are no third-party beneficiaries of this Contract.

9. *Severability.* The provisions of this Contract are severable. If a court of competent jurisdiction finds that any provision of this Contract is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

10. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

11. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

12. *Counterparts.* This Contract may be executed in multiple counterparts. If this Contract is executed in multiple counterparts, all counterparts taken together will constitute this Contract.

13. *Confidentiality.* The parties will keep confidential this Contract, this transaction, and all information learned in the course of this transaction, except to the extent disclosure is required by law or court order or to enable third parties to advise or assist Buyer to investigate the Property or either party to close this transaction.

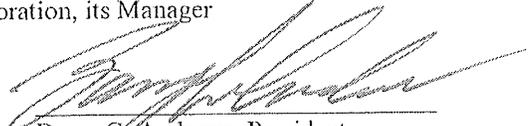
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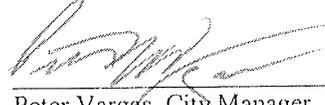
SIGNED AND AGREED on the dates indicated below.

SELLER:
ANDREWS FAMILY PROPERTIES, LLC ,
A Texas Limited Liability Company

BUYER:
CITY OF ALLEN, TEXAS, a Texas home
rule municipality

By: Greenbriar Investments, Inc., a Texas
corporation, its Manager

By: 
Barry G. Andrews, President

By: 
Peter Vargas, City Manager

Signed: 13th day of April, 2010

Signed: 13th day of April, 2010.

Approved as to Form:


Peter G. Smith, City Attorney

RECEIPT OF EARNEST MONEY AND CONTRACT

Title Company acknowledges receipt of Earnest Money in the amount of \$1000.00 and a copy of
this Contract executed by both Buyer and Seller.

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A

Description of Property

CITY OF ALLEN
ALLEN STATION BUSINESS PARK
14.000 ACRE PARCEL

DESCRIPTION

BEING A 14.000 ACRE PARCEL OF LAND OUT OF THE L.K. PEGUES SURVEY, ABSTRACT NO. 702, THE F.C. WILMETH SURVEY, ABSTRACT NO. 999, AND THE HENRY WETSEL SURVEY, ABSTRACT NO. 1026, COLLIN COUNTY, TEXAS, BEING PART OF LOT 1, BLOCK 1, ALLEN STATION BUSINESS PARK, PHASE II, AN ADDITION TO THE CITY OF ALLEN AS RECORDED IN CABINET R, SLIDE 229 OF THE DEED RECORDS OF COLLIN COUNTY, TEXAS (DRCCT), AND BEING ALL OF A 1.120 ACRE TRACT OF LAND AS DEEDED TO THE CITY OF ALLEN AND RECORDED IN CC FILE NO. 20071116001556210, DRCCT, AND BEING PART OF THE 20.7275 ACRE TRACT OF LAND AS DEEDED TO ANDREWS FAMILY PROPERTIES, LLC AND RECORDED IN COUNTY CLERKS FILE NO. 20080303000247380 DRCCT, AS SHOWN ON THE ATTACHED EXHIBIT "A" AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

IT IS THE INTENT TO DESCRIBE A TRACT OF LAND BEING BOUNDED ON THE NORTH BY THE SOUTH LINE OF THE RIGHT OF WAY FOR VILLAGE DRIVE, BEING BOUNDED ON THE EAST BY THE WEST LINE OF THE RIGHT OF WAY FOR ALLEN STATION PARKWAY, BEING BOUNDED ON SOUTH BY A LINE WHICH MARKS THE SOUTH LINE OF THE NORTH 14 ACRES OF SAID ANDREWS FAMILY TRACT, AND BEING BOUNDED ON THE WEST BY THE EAST LINE OF THE RIGHT OF WAY FOR THE DALLAS AREA RAPID TRANSIT (DART);

The POINT OF BEGINNING is the northwest corner of said Andrews Family tract, being on the south line of the Right of Way for Village Drive, and being on the east line of the Right of Way for the Dallas Area Rapid Transit (DART);

THENCE South 70° 38' 14" East, with the north line of said Andrews Family tract, being the south line of the Right of Way for Village Drive, a distance of 561.77 feet to a point at the beginning of a non-tangent curve to the right;

THENCE continue with said common line, with said curve to the right, having a radius of 1055.00 feet, through a central angle of 07° 37' 08", an arc distance of 140.29 feet, and having a chord which bears South 66° 52' 14" East, a distance of 140.19 feet to a point at the beginning of a non-tangent compound curve;

THENCE continue with said common line, with said curve to the right, having a radius of 38.50 feet, through a central angle of 09° 39' 30", an arc distance of 6.49 feet, and having a chord which bears South 59° 36' 07" East, a distance of 6.48 feet to a point;

THENCE, South 54° 46' 19" East, continue with said common line, a distance of 109.94 feet to a point at the beginning of a non-tangent curve to the left;

THENCE continue with said common line, with said curve to the left, having a radius of 261.50 feet, through a central angle of $01^{\circ} 34' 00''$, an arc distance of 7.15 feet, and having a chord which bears South $55^{\circ} 33' 18''$ East, a distance of 7.15 feet to a point at the beginning of a tangent reverse curve;

THENCE continue with said common line, with said curve to the right, having a radius of 1045.00 feet, through a central angle of $06^{\circ} 09' 37''$, an arc distance of 112.36 feet and having a chord which bears South $53^{\circ} 16' 21''$ East, a distance of 112.30 feet to a point;

THENCE continue with said common line, South $50^{\circ} 07' 01''$ East, a distance of 62.29 feet to a point at the beginning of a corner clip for the southwest corner of the intersection of Village Drive with Allen Station Parkway;

THENCE South $01^{\circ} 14' 34''$ East, with said corner clip, a distance of 32.89 feet to a point on the east line of the curving Right of Way of Allen Station Parkway;

THENCE South $49^{\circ} 12' 08''$ East, with said corner clip, a distance of 0.63 feet to a point at the beginning of a non-tangent curve;

THENCE with said curving west line of the Right of Way for Allen Station Parkway to the right, having a radius of 1095.00 feet, through a central angle of $00^{\circ} 52' 19''$, an arc distance of 16.67 feet, and having a chord which bears South $41^{\circ} 14' 02''$ West, a distance of 16.67 feet to a point on a corner clip;

THENCE South $00^{\circ} 47' 07''$ East, with said corner clip, a distance of 22.98 feet to a point at the beginning of a non-tangent curve;

THENCE along the west line of the Right of Way for Allen Station Parkway with said curve to the right having a radius of 616.00 feet, through a central angle of $16^{\circ} 44' 37''$, an arc distance of 180.02 feet, and having a chord which bears South $60^{\circ} 03' 58''$ West, a distance of 179.38 feet to a point at the beginning of a tangent compound curve;

THENCE continue with said Right of Way line with said curve to the right, having a radius of 287.00 feet, through a central angle of $08^{\circ} 59' 23''$, an arc distance of 45.03 feet, and having a chord which bears South $72^{\circ} 56' 00''$ West, a distance of 44.98 feet to a point of tangent;

THENCE continue with said Right of Way line South $77^{\circ} 25' 41''$ West, a distance of 59.58 feet to a point at the beginning of a tangent curve;

THENCE continue with said Right of Way line with said curve to the left, having a radius of 336.00 feet, through a central angle of $10^{\circ} 22' 16''$, an arc distance of 60.82 feet, and having a chord which bears South $72^{\circ} 14' 34''$ West, a distance of 60.74 feet to a point of tangent;

THENCE continue with said Right of Way line South $67^{\circ} 03' 26''$ West, a distance of 8.13 feet to a point at the beginning of a tangent curve;

THENCE continue with said Right of Way line with said curve to the left, having a radius of 669.28 feet, through a central angle of $09^{\circ} 32' 33''$, an arc distance of 111.47 feet, and having a chord which bears South $62^{\circ} 11' 44''$ West, a distance of 111.34 feet to a point at the beginning of a non-tangent compound curve;

THENCE continue with said Right of Way line with said curve to the left, having a radius of 645.00 feet, through a central angle of $33^{\circ} 41' 08''$, an arc distance of 379.21 feet, and having a chord which bears South $40^{\circ} 04' 09''$ West, a distance of 373.77 feet to a point;

THENCE North $78^{\circ} 40' 00''$ West, crossing said Andrews Family tract, a distance of 449.42 feet to a point on the west line of said Andrews Family tract, being on the east line of the Right of Way for DART;

THENCE North $11^{\circ} 20' 00''$ East, with said common line, a distance of 290.81 feet to a point at the beginning of a tangent curve to the right;

THENCE with said Right of Way curve to the right, having a radius of 6812.41 feet, through a central angle of $03^{\circ} 37' 13''$, an arc distance of 430.43 feet, and having a chord which bears North $13^{\circ} 04' 22''$ East, a distance of 430.36 feet to a point at the beginning of a compound curve to the right;

THENCE continue with said Right of Way curve to the right, having a radius of 2814.79 feet, through a central angle of $03^{\circ} 40' 26''$, an arc distance of 180.48 feet, and having a chord which bears North $18^{\circ} 57' 53''$ East, a distance of 180.45 feet to the POINT OF BEGINNING, and containing 14.000 acres of land.

NOTE: Bearings are based on the north line of the Final Plat for Allen Station Business Park Phase I. No field survey was performed for the creation of this description.

EXHIBIT "B"
FORM OF RESTRICTION AGREEMENT

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 §
 § **RESTRICTION AGREEMENT**
COUNTY OF COLLIN §

This RESTRICTION AGREEMENT ("Restriction Agreement") is made and entered into as of the Effective Date by and between the City of Allen ("City"), a Texas home rule municipality and Cabela's Wholesale, Inc, ("Company") a Nebraska corporation, acting by and through their respective authorized officers.

RECITALS

WHEREAS, as of the Effective Date, pursuant to the Purchase Contract, Company has purchased the Land; and

WHEREAS, as a condition to and in consideration of the City's assignment of the Purchase Contract to Company pursuant to the Assignment, as well as City's agreement, pursuant to the Economic Development Agreement to provide to Company an economic development grant to provide to or on behalf of Company funds for the purchase price and closing costs needed by Company to purchase the Land, Company has agreed to construct the Improvements (hereinafter defined) on the Land in accordance with this Restriction Agreement; and

WHEREAS, Company desires to grant City an option to repurchase the Land in the event Company fails to cause Commencement of Construction or Completion of Construction (hereinafter defined) of the Improvements in accordance this Restriction Agreement; or a right of first refusal to repurchase the Land or portion thereof if Company obtains an offer from a third-party, in each case subject to the terms and conditions hereafter set forth;

NOW, THEREFORE, 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, the parties hereby agree as follows:

Article I
Property Subject To Declaration

The Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Company and any subsequent owners (as such term is hereinafter defined) of all or any part of the Property, subject to the terms of this Restriction Agreement.

Article II
Definitions

For purposes of this Restriction Agreement, the following words and phrases shall have the following meanings unless the context clearly indicates a different meaning:

“Assignment” means that certain *Assignment of Real Estate Sales Contract* between City and Company effective April ___, 2010.

“City” shall mean the City of Allen, a Texas home rule municipality.

“Commencement of Construction” shall mean (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Improvements, (ii) all necessary permits for the construction of the Improvements have been issued by the applicable governmental authorities and (iii) grading of the Land or construction of the elements of the building elements of the Improvements (whether located above or below ground) has commenced.

“Company” shall mean Cabela’s Wholesale, Inc., a Nebraska corporation.

“Completion of Construction” shall mean (i) substantial completion of the Improvements on the Land has occurred, and (ii) a certificate of occupancy has been issued by the City for Company’s occupancy of the Improvements.

“Economic Development Agreement” shall mean that certain *Economic Development Agreement* between City and Company effective April 13, 2010.

“Effective Date” shall mean the date this Restriction Agreement is signed by all parties hereto.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, City delay of permits or other approvals, government or de facto governmental action (unless caused by acts of omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Improvements” shall mean a hunting, fishing and outdoor gear retail store constructed on the Land containing a minimum of a 100,000 square foot retail and showroom space

(including support space), featuring educational and entertainment attractions, décor of museum quality animal displays, aquarium and trophy animals interacting in realistic recreations of their natural habitat, and other ancillary facilities such as required parking and landscaping as more fully described in the submittals to be filed by the Company with the City from time to time in order to obtain one or more building permits.

“Improvement Value” shall mean: (i) prior to the Completion of Construction, the actual hard and soft costs incurred by the Company to construct the Improvements or so much thereof as have been completed at the time, or (ii) once the Completion of Construction has occurred, the fair market value of the Improvements constructed on the Land as determined by an appraiser selected by the parties, or, in the event the parties cannot agree upon an appraiser within ten (10) days after City’s exercise of the Option or Right of First Refusal, each party shall select an appraiser who in turn will select an appraiser who will determine the fair market value of such Improvements.

“Land” shall mean the surface estate only of a 14.0 acre tract of land, more or less, out of Lot 1, Block 1, Allen Station Business Park, Phase II, an addition to the City of Allen, Texas, according to the plat thereof filed as Instrument No. 20051227001805170, Land Records, Collin County, Texas, and being more particularly described in Exhibit “A,” attached hereto and incorporated herein by reference.

“Option Period” shall mean that period of time commencing on August 1, 2010, and ending on the earlier of (a) Completion of Construction or (b) February 1, 2012.

“Option Price” shall mean an amount equal to:

(a) the area of the Land to be repurchased by City pursuant to the Option multiplied by \$4.50 per square foot; plus

(b) the Improvement Value, if any,

less an amount equal to:

(a) the amount of the grant paid by City pursuant to Section 3.6 of the Economic Development Agreement which amount is \$_____ (**Note: This amount will be known and can be inserted at Closing of the Purchase Contract**); and

(b) all costs incurred by City relating to the prosecuting and obtaining a final replat of the Land; and

(c) all amounts paid by City to or on behalf of Company pursuant to Sections 3.1, 3.2, and 3.3 of the Economic Development Agreement.

“Property” shall collectively mean the Land and any Improvements, or portion thereof, following construction thereof on the Land.

“Purchase Contract” shall mean that certain *Real Estate Sales Contract* by and between City and Andrews Family Properties, LLC, dated and effective April ___, 2010, and assigned to Company pursuant to the Assignment.

“Required Use” shall mean the use and operation of the Improvements as a Cabela’s retail store open to the public selling merchandise to the general public and serving the citizens of the City subject to the provisions of Section 5.2.

Article III Option and Right of First Refusal

3.1. Option.

(a) Grant of Option. In consideration of TEN AND NO/100 DOLLARS (\$10.00), in hand paid by City to Company and other good and valuable consideration, the receipt of sufficiency of which is acknowledged by Company, Company hereby grants to City during the Option Period an option to repurchase the developed or undeveloped portion of the Land (the “Option”).

(b) Time for Exercising Option. Subject to 3.1(c), below, the Option may be exercised by City in its sole discretion by providing written notice to Company upon the occurrence of the following:

(i) any time after September 1, 2010, if Company has failed to cause Commencement of Construction of the Improvements to occur on the Land on or before September 1, 2010, provided Commencement of Construction has in fact still not occurred on the date of the exercise of the Option; or

(ii) any time after August 1, 2011, but before the end of the Option Period, if Commencement of Construction has occurred, but Company has failed to cause Completion of Construction by that date, provided Completion of Construction has in fact not still not occurred on the date of the exercise of the Option.

(c) Force Majeure. In the event of Force Majeure, Company shall have such additional time to cause Commencement of Construction or Completion of Construction, as the case may be, so long as Company is diligently and faithfully pursuing the same. The termination of the Option Period shall be extended for the same number days that the performance of Company with respect to Commencement of Construction or Completion of Construction is extended by Force Majeure.

(d) Exercise of the Option. In the event that the City has delivered written notice of its intent to exercise the Option, the Company shall have the right to nullify the City’s Option exercise by commencing a cure of the condition which gives rise to the City’s Option right pursuant to Section (b) above within forty-five (45) days after written receipt of the City’s notice,

provided that the Company shall continue to pursue the construction of the Improvements with reasonable diligence thereafter until complete, subject to Force Majeure.

3.2 **Right of First Refusal.**

(a) Grant of Right of First Refusal. In consideration of TEN AND NO/100 DOLLARS (\$10.00), in hand paid by City to Company and other good and valuable consideration, the receipt of sufficiency of which is acknowledged by Company, Company hereby grants to City, during the period commencing upon the Effective Date and ending on the fifteenth (15th) anniversary after date of Completion of Construction (“the ROFR Period”), a right of first refusal (the “ROFR”) to purchase the Property, or portion thereof, on the terms and conditions set forth herein.

(b) Notice of Third-Party Offer. If Company offers the Property, or portion thereof, for sale, or receives a bona fide offer for the purchase of any portion of Property that it intends to accept, or any governmental exercise of the power of condemnation or eminent domain with respect to the Property, the Company shall give notice thereof in writing to City (the “Third Party Notice”). The Third Party Notice shall include a copy of any offer to be made or any offer received by Company, the proposed purchaser, whether the purchase price is to be paid in cash, securities or evidenced by promissory notes, and the other material terms and conditions of such offer.

(c) City’s Exercise of ROFR. For a period of sixty (60) days after receipt by City of the Third Party Notice, City shall have the right to purchase the Property or portion thereof described in the Third Party Notice, upon the same terms and price as set forth in the Third Party Notice. The ROFR may be exercised by City by written notice to Company not later than sixty (60) days after City’s receipt of the Third Party Notice. City’s notice shall indicate acceptance of the terms set forth in the offer as recited in the Third Party Notice and state a closing date not more than sixty (60) days from the date of such notice from City.

(d) City Fails to Exercise ROFR. If City does not exercise the ROFR within the time required by Section 3.2(c), above, then:

(i) Company may sell the Property, or portion thereof, at the price and on the terms and conditions described in the Third Party Notice during the one hundred eighty (180) day period following the date of the Third Party Notice; and

(ii) City shall execute and deliver an acknowledgement, in recordable form, evidencing its waiver of its ROFR with respect to such sale. If the City fails to execute and deliver said acknowledgement within ten (10) days of the request therefor by the Company, the City hereby appoints the Company by and through its authorized signatory, as the City’s attorney in fact solely for the purpose of executing and delivering the acknowledgement.

Company agrees not to sell the Property, or portion thereof, during the ROFR Period at any lower price, on any material economic terms or conditions more favorable to the buyer than those set

forth in the Third Party Notice, or at any time after expiration of the one hundred eighty (180) day period described above, without first giving City the opportunity to exercise the ROFR at such different price, on such altered terms and conditions, or at such later time.

(e) Termination of ROFR. In the event that the Company has repaid the Grants or the required portion thereof, as set forth in the Economic Development Agreement, the ROFR shall terminate and be of no further force and effect. In the event of such termination, the City shall execute and deliver an acknowledgement, in recordable form, evidencing the termination of the ROFR. If the City fails to execute and deliver said acknowledgement within ten (10) days of the request therefor by the Company, the City hereby appoints the Company by and through its authorized signatory, as the City's attorney in fact solely for the purpose of executing and delivering the acknowledgement.

Article IV

Terms of Sale Upon Exercise of Option or Right of First Refusal

4.1 Effect of Exercise of the Option or the Right of First Refusal. Upon any timely exercise of the Option or the ROFR (collectively the "Right") by City in accordance with the foregoing provisions, the conveyance of the portion of the Property to be conveyed to City shall be in accordance with the provisions in this Article IV.

4.2. Title, Survey, and Environmental Reports.

(a) Not later than the fifteenth (15th) business day after the exercise of the Right, Company shall, at Company's expense, deliver to City:

(i) a current commitment for an Owner's Policy of Title Insurance from the Title Company for the portion of the Property to be conveyed to City, setting forth the state of title to the Property or portion thereof together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening the Property, together with all exceptions or conditions to such title;

(ii) legible copies of all documents referenced in the Title Commitment;

(iii) any environmental studies or reports that Company may have in its possession with respect to the Property; and,

(iv) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years.

(b) Upon any exercise of the Right, City shall have the right, at its sole option, to cause a boundary or "as-built" survey of the Property to be made by a certified land surveyor selected by it. Such survey shall be made at the sole cost and expense of City.

(c) City shall, not later than twenty (20) days after City's receipt of the last of the Survey and Title Commitment, notify Company and Title Company of any objections to the Survey or Title Commitment. If there are objections by City, Company shall in good faith attempt to satisfy them prior to Closing. If Company delivers written notice to City not later than the tenth (10th) calendar day after Company's receipt of City's objections that Company is unable to satisfy such objections, City may either waive such objections and accept title as Company is able to convey or terminate the exercise of the Right by written notice to Company and the Title Company.

4.3. **Closing.**

(a) The closing of the sale of Property identified in the notice exercising the Right shall occur not later than sixty (60) calendar days following the date of exercise of the Right unless otherwise extended by written agreement of the Company and the City.

(b) At the closing, Company shall deliver to City:

(i) a special warranty deed, in form and substance substantially similar to the form used to convey the Property to Company pursuant to the Purchase and Option Agreement, conveying good and indefeasible title to the Property described in the notice exercising the Right and/or the survey obtained by City (whichever is the most accurate description) to City, free and clear of any and all encumbrances except the Permitted Exceptions, save and except such oil, gas, and other minerals as may have been reserved by prior grantors;

(ii) an owner's policy of title insurance (or equivalent) in the amount of the Purchase Price, insuring such title to the Purchaser; and

(iii) possession of the portion of the Property described in the notice of the exercise of the Right, free of parties in possession.

(c) At closing, City shall pay in cash or by certified or cashier's check the Option Price described in Section 3.1(a), or the ROFR price as determined in Section 3.2(c), as the case may be, less all Closing Costs and other costs and expenses to be paid by Company pursuant to this Article.

4.4 **Taxes.** Ad valorem taxes, assessments, and any other charges against the property and/or improvements conveyed to the City pursuant to this Article IV shall be prorated as of the Closing Date for the current year, such that Company will be responsible for all such items which accrue prior to the Closing Date, and the City will be responsible for all such items which accrue on and after the Closing Date. Taxes and assessments for all prior years shall be paid by Company.

4.5 **Closing Costs.**

(a) Company will pay and be responsible for the following closing cost:

(i) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Property;

(ii) all fees and premiums for Basic Owner's Title Policy, and any endorsements to the Basic Owner's Title Policy;

(iii) one-half (1/2) of the Title Company's escrow fees;

(iv) all recording fees;

(v) all costs and expenses incurred by or on behalf of the Company, including Company's attorney's fees;

(vi) all costs related to obtaining any releases of liens on the portion of the Property conveyed relating to any loans secured by a deed of trust lien on said property; and

(vii) such other incidental costs and fees customarily paid by sellers of real property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

(b) City hereby agrees to pay and be responsible for the following closing cost:

(i) all fees and premiums for the Survey;

(ii) one-half (1/2) of the Title Company's escrow fees;

(iii) all costs and expenses incurred by or on behalf of the City, including City's attorneys' fees; and

(iv) such other incidental costs and fees customarily paid by purchasers of property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

4.6. **Permitted Exceptions.** City acknowledges and agrees that the property and improvements conveyed pursuant to this Article IV will be conveyed by Company at closing subject only to such easements, conditions and restrictions as have been approved or deemed approved by the City, including; (ii) utility easements granted by subdivision plat or instrument subsequent to the purchase of the Land by Company; and (iii) such other matters as City may waive.

4.7 **Conveyance As Is.** City acknowledges and agrees that the property and/or improvements conveyed pursuant to this Article IV will be conveyed "AS IS" with all faults and defects, whether patent or latent, existing as of the Closing. Except with respect to the quality of the title

being conveyed by Company as set forth in the Special Warranty Deed, City acknowledges and agrees that Company will be making no representations, warranties, guarantees, statements or information, express or implied, pertaining to the property or improvements conveyed, their condition, or any other matters whatsoever, made to or furnished to City by Company or any employee or agent of Company, except as specifically set forth in this Restriction Agreement.

Article V Restrictions

5.1 **Use of Property; Buildings.** No lot or portion of the Property shall be utilized for any use other than the development of the Improvements. Furthermore, the Improvements shall not be used for any purpose other than the Required Use. The operation and occupancy of the Improvements in conformance with the Required Use shall not cease for more than thirty (30) days except in connection with and to the extent of an event of Force Majeure. No building shall be constructed, reconstructed, erected, altered, or placed on any portion of the Land other than the Improvements or other structures that will be used in conformance with the Required Use.

5.2 **Term of Restrictions.** The restrictions set forth in Section 5.1, above, as well as any use restrictions contained in the Economic Development Agreement, shall commence on the Effective Date and continue thereafter until the earlier to occur of (a) the repayment of the Grants, or the required portion thereof, pursuant to the Economic Development Agreement, or (b) the expiration of a period of fifteen (15) years following the Completion of Construction.

Article VI Miscellaneous

6.1 **Enforcement.** City shall, have the right, but not the obligation, to enforce this Restriction Agreement and any covenants and restrictions contained herein, as the same may be amended as herein provided. Enforcement of this Restriction Agreement and the covenants and restrictions contained herein may be exercised after failure of any person or persons violating or attempting to violate any covenants or restrictions to cure such violation or breach within thirty (30) days after receipt of written notice thereof, by proceeding at law or in equity, against any person or persons violating or attempting to violate any covenants or restrictions, to restrain violation or to recover damages, and failure to enforce any covenant, restriction or condition shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. This Restriction Agreement is not intended to restrict the rights of the City Council of the City of Allen to exercise its legislative duties and powers insofar as the Property is concerned. Notwithstanding the above, for further remedy, Company, for itself, its successors, and assigns agrees that City may withhold building permits, development approvals, certificates of occupancy and/or final inspection necessary for the lawful use of any portion of the Property not then in compliance with this Restriction Agreement unless and until such noncompliance is cured. The rights of City under this Restriction Agreement may not be waived or released except pursuant to an amendment or termination approved in accordance with the provisions hereof.

6.2 **Amendment.** No amendment or any termination of this Restriction Agreement shall be effective unless and until the City has approved the same as evidenced by a resolution of the City Council executed by the Mayor and recorded in the Official Public Records in the office of the Collin County Clerk. In the event Company, or subsequent owner of the Property desires to change, amend or alter the covenants, conditions or restrictions as set forth herein, the Company, or subsequent owner, as the case may be, shall file a written application for such change or amendment with City, which shall approve or deny such application in whole or in part within thirty (30) days after receipt of such application. Any change or amendment approved by the City shall not be effective unless and until an instrument executed by the Mayor is recorded in the Official Public Records in the office of the Collin County Clerk in accordance with this Section.

6.3 **Notices.** All notices, requests, demands or other communications required or permitted hereunder shall be in writing and shall be deemed to have been fully and completely made when given by hand, by confirmed facsimile transmission by overnight delivery by Federal Express or other reliable courier or the mailing of such by registered or certified mail, addressed as follows:

If intended for City, to:

City of Allen
Attn: City Manager
305 Century Parkway
Allen, Texas 75013

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If intended for Company:

Cabela's Wholesale, Inc.
Attn: Director of Real Estate
One Cabela Drive
Sidney, Nebraska 69160

With a copy to:

Cabela's Incorporated
Attn: Legal Department-Real Estate
One Cabela Drive
Sidney, Nebraska 69160

Any party may at any time and from time to time by notice in writing to the other party hereto change the name or address of the person to who notice is to be given as hereinbefore provided.

6.4 **Successors and Assigns.** This Restriction Agreement shall bind, and inure to the benefit of, the parties and their respective successors and assigns.

6.5 **Governing Law.** This Restriction Agreement is entered into and is intended to be performed in the State of Texas, and the validity, enforceability, interpretation and construction hereof shall be determined and governed by the laws (other than conflict of laws provisions) of the State of Texas. Venue for any action shall be in the state district court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

6.6 **Recording.** The parties agree that City may record this Restriction Agreement in Official Public Records in the office of the Collin County Clerk.

6.7 **Covenants Run with the Property.** This Restriction Agreement and the restrictions, covenants, and conditions set forth herein are for the purpose of protecting the value and desirability of the Property, consequently, shall run with the Property and be binding on the Company and all parties having all right, title, or interest in the Property, in whole or in part, and their heirs, successors and assigns. These covenants, conditions and restrictions shall be for the benefit of the City of Allen, Texas. This Restriction Agreement is binding upon Company and each and every subsequent owner, tenant, subtenant, licensee, manager, and occupant of all or any portion of the Property, but only during the term of such party's ownership, tenancy, license, management or occupancy of the Property, for which such party shall remain liable and shall be binding upon and inure to the benefit of the City and its successors and assigns. It is expressly understood and agreed that acceptance of title to all or a portion of the Property shall automatically, and without further acknowledgement or confirmation from the owner, constitute such owner's assumption of the obligations of Company hereunder.

6.8 **Severability.** Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall in no way affect any other provisions, and all other provisions shall remain in full force and effect.

6.8 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no statement, promise, representation or modification hereof by any person, if any, and whether oral or written, shall be binding upon any party.

6.9 **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts; each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

(Signatures on Following Page)

SIGNED AND AGREED on this _____ day of _____, 2010.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

Approved as to Form:

By: _____
Peter G. Smith, City Attorney

EXECUTED on this _____ day of _____, 2010.

CABELA'S WHOLESALE, INC.

By: _____
Name: _____
Title: _____

City's Acknowledgment

STATE OF TEXAS §
§
COUNTY OF COLLIN §

Acknowledged before me, the undersigned authority, this _____ day of _____, 2010, by Peter H. Vargas, City Manager for the City of Allen, Texas, a Texas home rule municipality, on behalf of such municipality.

Notary Public, State of Texas

My Commission expires:

Company's Acknowledgment

STATE OF NEBRASKA §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2010, _____, _____ of Cabela's Wholesale, Inc., a Nebraska corporation, on behalf of said corporation.

Notary Public, State of Nebraska

My Commission expires:

EXHIBIT A
Legal Description of the Land

A 14.000 ACRE PARCEL OF LAND OUT OF THE L.K. PEGUES SURVEY, ABSTRACT NO. 702, THE F.C. WILMETH SURVEY, ABSTRACT NO. 999, AND THE HENRY WETSEL SURVEY, ABSTRACT NO. 1026, COLLIN COUNTY, TEXAS, BEING PART OF LOT 1, BLOCK 1, ALLEN STATION BUSINESS PARK, PHASE II, AN ADDITION TO THE CITY OF ALLEN AS RECORDED IN CABINET R, SLIDE 229 OF THE DEED RECORDS OF COLLIN COUNTY, TEXAS (DRCCT), AND BEING ALL OF A 1.120 ACRE TRACT OF LAND AS DEEDED TO THE CITY OF ALLEN AND RECORDED IN CC FILE NO. 20071116001556210, DRCCT, AND BEING PART OF THE 20.7275 ACRE TRACT OF LAND AS DEEDED TO ANDREWS FAMILY PROPERTIES, LLC AND RECORDED IN COUNTY CLERKS FILE NO. 20080303000247380 DRCCT, AS SHOWN ON THE ATTACHED EXHIBIT "A" AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

IT IS THE INTENT TO DESCRIBE A TRACT OF LAND BEING BOUNDED ON THE NORTH BY THE SOUTH LINE OF THE RIGHT OF WAY FOR VILLAGE DRIVE, BEING BOUNDED ON THE EAST BY THE WEST LINE OF THE RIGHT OF WAY FOR ALLEN STATION PARKWAY, BEING BOUNDED ON SOUTH BY A LINE WHICH MARKS THE SOUTH LINE OF THE NORTH 14 ACRES OF SAID ANDREWS FAMILY TRACT, AND BEING BOUNDED ON THE WEST BY THE EAST LINE OF THE RIGHT OF WAY FOR THE DALLAS AREA RAPID TRANSIT (DART);

The POINT OF BEGINNING is the northwest corner of said Andrews Family tract, being on the south line of the Right of Way for Village Drive, and being on the east line of the Right of Way for the Dallas Area Rapid Transit (DART);

THENCE South $70^{\circ} 38' 14''$ East, with the north line of said Andrews Family tract, being the south line of the Right of Way for Village Drive, a distance of 561.77 feet to a point at the beginning of a non-tangent curve to the right;

THENCE continue with said common line, with said curve to the right, having a radius of 1055.00 feet, through a central angle of $07^{\circ} 37' 08''$, an arc distance of 140.29 feet, and having a chord which bears South $66^{\circ} 52' 14''$ East, a distance of 140.19 feet to a point at the beginning of a non-tangent compound curve;

THENCE continue with said common line, with said curve to the right, having a radius of 38.50 feet, through a central angle of $09^{\circ} 39' 30''$, an arc distance of 6.49 feet, and having a chord which bears South $59^{\circ} 36' 07''$ East, a distance of 6.48 feet to a point;

THENCE, South $54^{\circ} 46' 19''$ East, continue with said common line, a distance of 109.94 feet to a point at the beginning of a non-tangent curve to the left;

THENCE continue with said common line, with said curve to the left, having a radius of 261.50 feet, through a central angle of $01^{\circ} 34' 00''$, an arc distance of 7.15 feet, and having a chord which bears South $55^{\circ} 33' 18''$ East, a distance of 7.15 feet to a point at the beginning of a tangent reverse curve;

THENCE continue with said common line, with said curve to the right, having a radius of 1045.00 feet, through a central angle of $06^{\circ} 09' 37''$, an arc distance of 112.36 feet and having a chord which bears South $53^{\circ} 16' 21''$ East, a distance of 112.30 feet to a point;

THENCE continue with said common line, South $50^{\circ} 07' 01''$ East, a distance of 62.29 feet to a point at the beginning of a corner clip for the southwest corner of the intersection of Village Drive with Allen Station Parkway;

THENCE South $01^{\circ} 14' 34''$ East, with said corner clip, a distance of 32.89 feet to a point on the east line of the curving Right of Way of Allen Station Parkway;

THENCE South $49^{\circ} 12' 08''$ East, with said corner clip, a distance of 0.63 feet to a point at the beginning of a non-tangent curve;

THENCE with said curving west line of the Right of Way for Allen Station Parkway to the right, having a radius of 1095.00 feet, through a central angle of $00^{\circ} 52' 19''$, an arc distance of 16.67 feet, and having a chord which bears South $41^{\circ} 14' 02''$ West, a distance of 16.67 feet to a point on a corner clip;

THENCE South $00^{\circ} 47' 07''$ East, with said corner clip, a distance of 22.98 feet to a point at the beginning of a non-tangent curve;

THENCE along the west line of the Right of Way for Allen Station Parkway with said curve to the right having a radius of 616.00 feet, through a central angle of $16^{\circ} 44' 37''$, an arc distance of 180.02 feet, and having a chord which bears South $60^{\circ} 03' 58''$ West, a distance of 179.38 feet to a point at the beginning of a tangent compound curve;

THENCE continue with said Right of Way line with said curve to the right, having a radius of 287.00 feet, through a central angle of $08^{\circ} 59' 23''$, an arc distance of 45.03 feet, and having a chord which bears South $72^{\circ} 56' 00''$ West, a distance of 44.98 feet to a point of tangent;

THENCE continue with said Right of Way line South $77^{\circ} 25' 41''$ West, a distance of 59.58 feet to a point at the beginning of a tangent curve;

THENCE continue with said Right of Way line with said curve to the left, having a radius of 336.00 feet, through a central angle of $10^{\circ} 22' 16''$, an arc distance of 60.82 feet, and having a chord which bears South $72^{\circ} 14' 34''$ West, a distance of 60.74 feet to a point of tangent;

THENCE continue with said Right of Way line South $67^{\circ} 03' 26''$ West, a distance of 8.13 feet to a point at the beginning of a tangent curve;

THENCE continue with said Right of Way line with said curve to the left, having a radius of 669.28 feet, through a central angle of $09^{\circ} 32' 33''$, an arc distance of 111.47 feet, and having a chord which bears South $62^{\circ} 11' 44''$ West, a distance of 111.34 feet to a point at the beginning of a non-tangent compound curve;

THENCE continue with said Right of Way line with said curve to the left, having a radius of 645.00 feet, through a central angle of $33^{\circ} 41' 08''$, an arc distance of 379.21 feet, and having a chord which bears South $40^{\circ} 04' 09''$ West, a distance of 373.77 feet to a point;

THENCE North 78° 40' 00" West, crossing said Andrews Family tract, a distance of 449.42 feet to a point on the west line of said Andrews Family tract, being on the east line of the Right of Way for DART;

THENCE North 11° 20 '00" East, with said common line, a distance of 290.81 feet to a point at the beginning of a tangent curve to the right;

THENCE with said Right of Way curve to the right, having a radius of 6812.41 feet, through a central angle of 03° 37' 13", an arc distance of 430.43 feet, and having a chord which bears North 13° 04' 22" East, a distance of 430.36 feet to a point at the beginning of a compound curve to the right;

THENCE continue with said Right of Way curve to the right, having a radius of 2814.79 feet, through a central angle of 03° 40' 26", an arc distance of 180.48 feet, and having a chord which bears North 18°57'53" East, a distance of 180.45 feet to the POINT OF BEGINNING, and containing 14.000 acres of land.

NOTE: Bearings are based on the north line of the Final Plat for Allen Station Business Park Phase I. No field survey was performed for the creation of this description.

**APPENDIX C: Sample Purchase and Sale Agreement
(City to Independent Foundation)**

PURCHASE AND SALE AGREEMENT

This **Purchase and Sales Agreement** (“Agreement”) to buy and sell real property is entered between Seller and Buyer as identified below and is effective on the date (“Effective Date”) of the last of the signatures by Seller and Buyer as parties to this Agreement, acknowledgement by Title Company of receipt of this Agreement.

Seller: City of Gold
Attn: City Manager

Gold, Texas 75_____

Phone: (972) _____
Fax: (972) _____

Type of entity: Texas Home Rule Municipality

Buyer: Gold Economic Development Foundation, Inc.
Attn: _____

Gold, Texas 75_____

Phone: (972) _____
Fax: (972) _____

Type of entity: A Texas non-profit corporation

Title Company: _____ Title Company

Gold, Texas 75_____

Attn: _____

Phone: (972) _____
Fax: (972) _____

Property: **Lot ____, Block ____, _____ Addition, an addition to the City of _____, Dallas County, Texas, according to the map or plat thereof recorded as Document No. xxxxxxxx Official Public Records, Dallas County, Texas**

Inspection Period: Period ending 30 calendar days after the Effective Date.

Closing Date: Concurrent with the Buyer’s closing of the sale of the Property to the Big Famous Developer, Ltd., (“BFD”) pursuant to a Purchase and Sale Agreement relating to the Property.

Purchase Price: \$_____

Additional

Consideration: None

Earnest Money: None

Effective Date: Last date of execution of this Agreement by the parties.

NOW, THEREFORE, 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, the parties hereto agree as follows:

1. **Sale and Purchase.** Seller agrees to sell, and Buyer agrees to purchase, the Property and improvements thereon as provided in this Agreement.

2. **Title, Survey, and Environmental Reports.**

(a) Not later than fifteen (15) calendar days after the Effective Date of this Agreement, shall deliver to Buyer:

(i) a current commitment for title insurance for the Land, from the Title Company setting forth the state of title to the Land together with any easements or restrictions (existing or created pursuant hereto) benefiting the Land, together with all exceptions or conditions to such title; and

(ii) legible copies of all documents referenced in the title commitments.

The cost for providing the above shall be borne by the party designated to bear such cost in the Purchase and Sale Agreement between the Buyer and BFD regarding the Property.

(b) If Buyer objects to any of the exceptions contained in the Title Commitment, Buyer's objections must be made in writing to Seller not later than ten (10) calendar days after the date Buyer receives the title commitment and the survey. Seller shall in good faith attempt to satisfy or cure the objections to title prior to closing, but Seller shall not be required to incur any cost to do so.

(c) If Seller delivers written notice to Buyer on or before the Closing Date that Seller is unable to satisfy such objections, or if Seller is unable to convey title in accordance with Section 3, below, Buyer may either waive such objections and accept such title as Seller is able to convey, or terminate this contract by written notice to Seller.

3. **Inspection Period.**

(a) During the Inspection Period, Buyer and Big Famous Developer, Ltd. ("BFD") and their respective agents or employees shall have the right to enter upon the Property during regular business hours upon reasonable notice and conduct such inspections, tests and studies as they may deem necessary.

(b) Seller understands and acknowledges that Buyer has or intends to enter an agreement to sell the Property to BFD. Buyer obtains agreement from BFD for BFD to be solely

responsible for any damages to the Property caused by BFD's inspection of the Property. Buyer shall further require and obtain agreement from BFD to repair any damage to the Property caused by BFD, its officers, employees, partners, agents or invitees, and further agree to indemnify and hold Seller harmless from and against any and all claims, liabilities or damages to the Property or against Seller caused by BFD and/or BFD's authorized agents', representatives' or employees' negligent or intentional acts or omissions during the Inspection Period or as a result of any inspection of the Property by such parties.

(c) Buyer may terminate this Agreement by notifying Seller and Title Company in writing prior to Closing if BFD terminates its Purchase and Sale Agreement with Buyer. In such event neither party shall have any further claim against the other under this Agreement.

4. **Closing.**

(a) At the Closing, Seller shall deliver to the Title Company:

(i) a special warranty deed, in form and substance reasonably acceptable to Seller and Buyer, conveying good and indefeasible title to the Property to Buyer free and clear of any and all encumbrances, except the Permitted Exceptions;

(ii) a Texas owner's policy of title insurance (or equivalent) in the amount of the Purchase Price, insuring such title to Buyer;

(iii) possession of the Property, free of parties in possession;

(iv) such other documents that the Title Company may reasonably require of Seller.

(b) At the closing, Buyer shall deliver to Seller through Title Company:

(i) the Purchase Price in cash or immediately available funds (which will reflect a credit for the Earnest Money previously paid directly to Seller);

(ii) the Restriction Agreement signed by Buyer and BFD; and

(iii) such other documents that the Title Company may reasonably require of Seller.

5. **Taxes.** Buyer understands and acknowledges the Property is presently exempt from the assessment of ad valorem taxes, which status will change upon conveyance of the Property by Buyer to BFD. Buyer shall ensure that BFD has agreed to be responsible for payment of current year taxes on the Property prorated from the date of Closing to December 31 of the year of Closing.

6. **Brokers' Commissions.** Buyer and Seller each represent that they have not been represented in whole or in part by a licensed Texas Real Estate broker or agent and that no commission or fee is to be paid at Closing to any real estate broker or agent.

7. **Closing Costs.**

To the extent not paid by BFD pursuant to the closing of the sale of the Property by Buyer to BFD, Seller hereby agrees to pay and be responsible for closing costs, including, but not limited to:

- (i) Title Company's escrow fees;
- (ii) The cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Property;
- (iii) Any fees or premiums related to issuance of a Owner's Title Policy and any endorsements made thereto; provided, however, it is understood and agreed that the parties shall execute such documents as required by the Title Company so that the cost of the Owner's Title Policy and any related endorsements are passed through to the sale of the Property by Buyer to BFD, it being the intent of Buyer and Seller that only one title policy be issued in favor of BFD following the concurrent closing of this transaction and the transaction between Buyer and BFD;
- (iv) Recording fees for the special warranty deed and the Restriction Agreement;
- (v) All fees for the preparation of any Phase I environmental study, property survey, and tree survey, to the extent such fees are not paid outside of Closing and not chargeable to BFD upon resale of the Property; and
- (vi) Such other incidental costs and fees customarily paid by sellers of real estate in Dallas County, Texas for transactions of a similar nature to the transaction contemplated herein.

8. **Permitted Exceptions.** Buyer acknowledges and agrees that the Property will be conveyed subject to the existing zoning, the statutory lien for current taxes, and the environmental condition, which shall be deemed to be Permitted Exceptions.

9. **Property Restriction:** Seller and Buyer agree and understand that the Property is being conveyed by Seller without competitive bids pursuant to TEX. LOC. GOV'T CODE §272.001(b)(4). Buyer agrees to serve as an independent foundation to have the Property developed as follows:

- (i) Buyer agrees that the Property is to be sold to BFD for the construction of a medical office building on the Property, said medical office building to contain approximately 16,421 square feet of space ("Building").
- (ii) Buyer shall retain an option to repurchase the Property from BFD if BFD should fail to commence construction of the Building within one hundred fifty (150) days after Buyer's closing of the sale of the Property to BFD, or if BFD should fail to cause completion of the construction of the Building within 15 calendar months after GEDF's closing of the sale of the Property to BFD.

(iii) Buyer agrees and covenants that the Property shall be conveyed to BFD subject to the Restriction Agreement attached hereto as Exhibit "A" and incorporated herein by reference.

10. **Representations and Covenants.**

(a) Seller represents and covenants that:

(i) Seller has authority to enter into this Agreement;

(ii) no other person has any interest in or claims against the Property (other than as reflected by the title commitment); and

(iii) Seller will not hereafter encumber the Property.

(b) Buyer represents that it has authority to enter into this Agreement.

The only representations made by any party concerning the Property and this Agreement are as set out in this Agreement.

11. **Land Sold "AS IS."**

(a) Buyer represents that as of the Closing Date that it:

(i) will have made all investigations as Buyer deems necessary or appropriate and;

(ii) will be relying solely upon Buyer's inspection and investigation of the Property for all purposes whatsoever, including, but not limited to, the determination of the condition of the structures, improvements, soils, subsurface, drainage, surface and groundwater quality, and all other physical characteristics; availability and adequacy of utilities; compliance with governmental laws and regulations; access; encroachments; acreage and other survey matters and the character and suitability of the Property.

(b) Buyer acknowledges and agrees that the Property and the improvements located thereon are being purchased and will be conveyed "AS IS" with all faults and defects, whether patent or latent, as of the Closing.

(c) Buyer further acknowledges and agrees there have been no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Property or the improvements, its condition, or any other matters whatsoever, made to or furnished to Buyer by Seller or any employee or agent of Seller, except as specifically set forth in this Agreement.

12. **Remedies.** If Buyer defaults in the provisions of this Agreement and fails to cure such default not later than ten (10) days after written notice describing the nature of the default is delivered by Seller to Buyer, Seller's sole remedy shall be to terminate this Agreement. If Seller defaults in the provisions of this Agreement and fails to cure such default not later than

ten (10) days after written notice describing the nature of the default is delivered by Buyer to Seller, Buyer's sole remedy shall be to terminate this Agreement.

13. **Notices.** Any notice required by or permitted under this Agreement must be in writing and will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, electronic mail, or other commercially reasonable means, in which case the notice will be deemed effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. In addition to providing a notice to the parties, copies of each notice must be given by to:

Attorney for Buyer:

Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 N. Akard
Dallas, Texas 75201
Attn: Peter G. Smith and Kevin B. Laughlin
Phone: (214) 965-9900
Fax: (214) 965-0010

14. **Miscellaneous.**

(a) **Entireties.** This Agreement contains the entire agreement of the parties pertaining to the Property.

(b) **Modifications.** This Agreement may only be modified by a written document signed by both parties.

(c) **Assignment.** Buyer may not assign its rights under this Agreement to any entity without the express written consent of Seller.

(d) **Time is of the Essence.** Time is of the essence with respect to the performance by the parties of their respective obligations hereunder.

(e) **Governing Law.** This Agreement shall be construed under and in accordance with the laws of the State of Texas; and venue for any action arising from this Agreement shall be in Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

(f) **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts; each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

(g) **Non-Business Day.** If the final date of any period provided herein for the performance of an obligation or for the taking of any action falls on a Saturday, Sunday, or holiday, then the end of such period shall be extended to the next business day.

(h) **Zoning.** Seller assumes no obligation to change the current zoning on the Land.

(i) **Survival of Covenants.** The provisions of Section 11, above, as well as any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the Closing shall survive.

(j). **Severability.** The provisions of this Agreement are severable. If a court of competent jurisdiction finds that any provision of this Agreement is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

(k) **Ambiguities Not to Be Construed against Party Who Drafted Contract.** The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.

(l) **No Third-Party Beneficiaries.** There are no third-party beneficiaries of this Contract.

(m) **No Special Relationship.** The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

(Signatures on Following Page)

Signed and Agreed on the dates indicated below.

SELLER:

BUYER:

CITY OF GOLD, TEXAS

**GOLD ECONOMIC DEVELOPMENT
FOUNDATION, INC.**

By: _____
City Manager

By: _____
President

Date: _____

Date: _____

EXHIBIT "A"
RESTRICTION AGREEMENT

STATE OF TEXAS §
 § **RESTRICTION AGREEMENT**
COUNTY OF DALLAS §

This Restriction Agreement ("Restriction Agreement") is made and entered into as _____, 2010, (the "Effective Date") by and between Big Famous Developer, Ltd. ("BFD"), a Texas limited partnership, and the Gold Economic Development Foundation, Inc. a Texas nonprofit corporation ("GEDF") acting by and through their authorized representatives.

WHEREAS, GEDF has, as of the Effective Date, pursuant to the Purchase and Sale Agreement conveyed to GEDF the Land, as defined below; and

WHEREAS, GEDF has, as a condition of the conveyance of the Land to BFD, restricted the use of the Land and required BFD to construct the Improvements (as defined below) on the Land; and

WHEREAS, as a condition to and in consideration of the GEDF's conveyance of the Land to BFD, BFD has agreed to construct the Improvements on the Land; and

WHEREAS, BFD desires to grant GEDF: an option to repurchase the Land in the event BFD fails to satisfy certain conditions as set forth in this Agreement;

NOW, THEREFORE, 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, the parties hereby agree as follows:

Article I
Definitions

For purposes of this Restriction Agreement, the following words and phrases shall have the following meanings unless the context clearly indicates a different meaning:

"City" shall mean the City of Gold, a Texas home rule municipality located in Dallas County, Texas.

"Commencement of Construction" shall mean: (i) the construction plans for the Improvements have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; (ii) all necessary permits for construction of the Improvements pursuant to the respective plans have been issued by all applicable governmental authorities for the construction of the Building; (iii) the contractor shall have executed a construction contract with BFD, mobilized, and made a presence on the Land with a job shack, equipment and materials; and (iv) construction of vertical elements of the Improvements have commenced.

“Completion of Construction” shall mean: (i) the substantial completion of the exterior building shell, public areas and life safety requirements and supporting site improvements such as fire lanes; and (ii) a final certificate of occupancy has been issued by City for occupancy of the Improvements by BFD or its tenants.

“Force Majeure” shall mean any contingency beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, strike, government or de facto government action unless caused by the intentionally wrongful acts or omission of the party, fires, explosions or floods, strikes, slowdowns or work stoppages and rain delays and other weather related delays caused by temperatures that are too cold to permit construction activities.

“Improvements” shall mean an office building whose tenants are involved in the medical profession or other licensed professions, as well as tenants whose services are in support of such professions, to be constructed on the Land containing approximately 16,421 square feet of space and other ancillary facilities such as reasonably required parking and landscaping more fully described in submittals filed with the BFD with City, from time to time in order to obtain a building permit.

“Improvement Value” shall mean the fair market value of the Improvements, or portion constructed thereof, as determined by an appraiser selected by the parties. In the event the parties cannot agree upon an appraiser, each party shall select an appraiser who in turn will select an appraiser who will determine the fair market value of the Improvements, or portion constructed thereof.

“Land” shall mean the real property located in Coppell, Dallas County, Texas, and more fully described as follows:

Lot 2, Block 1, Big Famous Developer Addition, an addition to the City of Gold, Dallas County, Texas, according to the map or plat thereof recorded as Document No. xxxxxxxxx, Official Public Records, Dallas County, Texas

“Option Price” shall mean the amount of the Purchase Price stated in the Purchase and Sale Agreement plus the Improvement Value less all closing costs and expenses paid or incurred by GEDF pursuant to the Purchase and Sale Agreement and pursuant to the exercise of the Option and less \$25,000.00.

“Property” shall mean the Land and the Improvements, or portion thereof, following construction thereof on the Land.

“Purchase Contract” shall mean that certain *Purchase and Sale Agreement* by and between GEDF and BFD, dated and effective _____, 2010 with respect to the sale of the Land by GEDF to BFD.

“Required Use” shall mean the development and use of the Land with the Improvements.

Article II Option

2.1. Grant. In consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by BFD, BFD hereby grants to GEDF an option to repurchase the developed and undeveloped portions of the Land (“the Option”)

2.2 Exercise. Subject to Section 2.3, below, the Option may be exercised by the GEDF in its sole discretion by providing written notice to BFD upon the occurrence of the following:

(i) BFD fails to cause Commencement of Construction to occur on the Land on or before the one hundred fiftieth (150th) calendar day after the Effective Date; provided Commencement of Construction has in fact not occur prior on or before the GEDF seeks to exercise the Option; or

(ii) BFD fails to cause the Completion of Construction within fifteen (15) calendar months after the Effective Date, provided Completion of Construction has in fact still not occurred on the date of the exercise of the Option by GEDF.

2.3 Force Majeure. In the event of Force Majeure, BFD shall have such additional time to cause Commencement of Construction or Completion of Construction, as the case may be, so long as BFD is diligently and faithfully pursuing the same. The termination of the Option Period shall be extended for the same number days that the performance of Company with respect to Commencement of Construction or Completion of Construction is extended by Force Majeure.

2.4 Breach and Right to Cure. In the event that the GEDF has delivered written notice of its intent to exercise the Option, BFD shall have the right to nullify the GEDF’s Option exercise by commencing a cure of the condition which gives rise to GEDF’s Option right pursuant to Section 2.2 within thirty (30) days after written receipt of the GEDF’s notice, provided that BFD shall continue to pursue the construction of the Improvements with reasonable diligence thereafter until complete, subject to Force Majeure. If BFD fails to cure the breach within the time period provided herein, including any extensions thereof, the GEDF in its sole discretion may proceed to exercise the Option.

Article III Terms of Sale Upon Exercise of Option

3.1 Effect of Exercise of the Option. Upon any timely exercise of the Option by GEDF in accordance with the foregoing provisions, the conveyance of the portion of the Property to be conveyed to GEDF shall be in accordance with the provisions in this Article III.

3.2. Title, Survey, and Environmental Reports.

(a) Not later than the fifteenth (15th) business day after the exercise of the Option, BFD shall, at BFD's expense, deliver to GEDF:

(i) a current commitment for an Owner's Policy of Title Insurance from the Title Company for the portion of the Property to be conveyed to GEDF, setting forth the state of title to the Property or portion thereof together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening the Property, together with all exceptions or conditions to such title;

(ii) legible copies of all documents referenced in the Title Commitment;

(iii) any environmental studies or reports that BFD may have in its possession with respect to the Property; and,

(iv) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years.

(b) Upon any exercise of the Option, GEDF shall have the right, at its sole option, to cause a boundary or "as-built" survey of the Property to be made by a certified land surveyor selected by it. Such survey shall be made at the sole cost and expense of GEDF.

(c) GEDF shall, not later than twenty (20) days after GEDF's receipt of the last of the Survey and Title Commitment, notify BFD and Title Company of any objections to the Survey or Title Commitment. If there are objections by GEDF, BFD shall in good faith attempt to satisfy them prior to Closing. If BFD delivers written notice to GEDF not later than the tenth (10th) calendar day after BFD's receipt of GEDF's objections that BFD is unable to satisfy such objections, GEDF may either waive such objections and accept title as BFD is able to convey or terminate the exercise of the Option by written notice to BFD and the Title Company.

3.3. Closing.

(a) The closing of the sale of Property identified in the notice exercising the Option shall occur not later than sixty (60) calendar days following the date of exercise of the Option unless otherwise extended by written agreement of BFD and GEDF.

(b) At the closing, BFD shall deliver to GEDF:

(i) a special warranty deed, in form and substance substantially similar to the form used to convey the Property to BFD pursuant to the Purchase Agreement, conveying good and indefeasible title to the Property described in the notice exercising the Option and/or the survey obtained by GEDF (whichever is the most accurate description) to GEDF, free and clear of any and all encumbrances except the Permitted Exceptions, save and except such oil, gas, and other minerals as may have been reserved by prior grantors;

(ii) an owner's policy of title insurance (or equivalent) in the amount of the Option Price, insuring such title to the Purchaser; and

(iii) possession of the portion of the Property described in the notice of the exercise of the Option, free of parties in possession.

(c) At Closing, GEDF shall pay in current funds the Option Price less all Closing Costs and other costs and expenses to be paid by BFD pursuant to this Article.

3.4 Taxes. Ad valorem taxes, assessments, and any other charges against the Property conveyed to GEDF pursuant to this Article III shall be prorated as of the Closing Date for the current year, such that BFD will be responsible for all such items which accrue prior to the Closing Date, and GEDF will be responsible for all such items which accrue on and after the Closing Date. Taxes and assessments for all prior years shall be paid by BFD.

3.5 Closing Costs.

(a) BFD will pay and be responsible for the following closing cost:

(i) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Property;

(ii) all fees and premiums for Basic Owner's Title Policy, and any endorsements to the Basic Owner's Title Policy;

(iii) one-half (1/2) of the Title Company's escrow fees;

(iv) all recording fees;

(v) all costs and expenses incurred by or on behalf of BFD, including BFD's attorney's fees;

(vi) all costs related to obtaining any releases of liens on the portion of the Property conveyed relating to any loans secured by a deed of trust lien on said property; and

(vii) such other incidental costs and fees customarily paid by sellers of real property in Dallas County, Texas, for transactions of a similar nature to the transaction contemplated herein.

(b) City hereby agrees to pay and be responsible for the following closing cost:

(i) all fees and premiums for the Survey;

(ii) one-half (1/2) of the Title Company's escrow fees;

(iii) all costs and expenses incurred by or on behalf of GEDF, including GEDF's attorneys' fees; and

(iv) such other incidental costs and fees customarily paid by purchasers of property in Dallas County, Texas, for transactions of a similar nature to the transaction contemplated herein.

3.6. Permitted Exceptions. GEDF acknowledges and agrees that the real property and improvements conveyed pursuant to this Article III will be conveyed by BFD at closing subject only to such easements, conditions and restrictions as have been approved or deemed approved by BFD, including; (i) utility easements granted by subdivision plat or instrument subsequent to the purchase of the Land by BFD; and (ii) such other matters as GEDF may waive.

3.7 Conveyance As Is. GEDF acknowledges and agrees that the property and/or improvements conveyed pursuant to this Article III will be conveyed "AS IS" with all faults and defects, whether patent or latent, existing as of the Closing. Except with respect to the quality of the title being conveyed by BFD as set forth in the Special Warranty Deed, GEDF acknowledges and agrees that BFD will be making no representations, warranties, guarantees, statements or information, express or implied, pertaining to the property or improvements conveyed, their condition, or any other matters whatsoever, made to or furnished to GEDF by BFD or any employee or agent of BFD, except as specifically set forth in this Restriction Agreement.

Article IV Restrictions

4.1 Use of Property; Buildings. No lot or portion of the Property shall be owned, held leased, transferred, sold,, mortgaged or conveyed for any use other than the development of the Improvements and the Required Use. The operation and occupancy of the Improvements in conformance with the Required Use shall not cease for more than thirty (30) days except in connection with and to the extent of an event of Force Majeure. No building shall be constructed, reconstructed, erected, altered, or placed on any portion of the Land other than the Improvements or other structures that will be used in conformance with the Required Use.

4.2 Ownership of the Property. BFD shall continuously own and occupy the Property for a period of at least five (5) years commencing on the day a final certificate of occupancy is issued for BFD's occupancy for the Improvements unless otherwise agreed in writing by GEDF.

Article V Miscellaneous

5.1 Enforcement. GEDF and any subsequent owner of all or any portion of the Property shall have the right, but not the obligation, to enforce this Restriction Agreement, as the same may be amended as herein provided. Enforcement of this Restriction Agreement and the covenants and restrictions contained herein may be exercised after failure of any person or persons violating or attempting to violate any covenants or restrictions to cure such violation or breach within thirty (30) days after receipt of written notice thereof by proceeding at law or in equity, against any person or persons violating or attempting to violate any covenants or restrictions, to restrain violation or to recover damages, and failure to enforce any covenant, restriction or condition shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. The rights of GEDF under this Restriction Agreement may not be waived or released except pursuant to an amendment or termination approved in accordance with the provisions hereof.

5.2 Duration. The Use Restrictions set forth herein shall be effective from the date this Restriction Agreement is recorded and continue for a period of five (5) years commencing on the date a final permanent certificate of occupancy is issued for BFD's occupancy for the Improvements.

5.3 Amendment. No amendment or any early termination of this Restriction Agreement shall be effective unless and until the Board of Directors of the GEDF has approved the same as evidenced by an instrument executed by the President and recorded in the Official Public Records of Dallas County, Texas. In the event BFD, or subsequent Owner of the Property desires to change, amend or alter the Use Restrictions set forth in Article 4 so that the Property may be used for other than "medical and professional office use," BFD, or subsequent owner, as the case may be, shall file a written application for such change or amendment to Article 4 with the President of the Board of Directors of the GEDF. The Board of Directors of GEDF shall approve or deny such application in whole or in part within thirty (30) days after receipt of such application, with the failure to act constituting a denial of the request.

5.4 Notices. All notices, requests, demands or other communications required or permitted hereunder shall be in writing and shall be deemed to have been fully and completely made when given by hand, by confirmed facsimile transmission by overnight delivery by Federal Express or other reliable courier or the mailing of such by registered or certified mail, addressed as follows:

If to BFD:

Big Famous Developer, Ltd.
Attn: President

Gold, Texas 75019

If to GEDF:

Gold Economic Development Foundation, Inc.
Attn: President

Gold, Texas 75019

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 N. Akard, Suite 1800
Dallas, Texas 75201
(214) 965-9900
(214) 965-0010 FAX
E-mail: psmith@njdhs.com

Any party may at any time and from time to time by notice in writing to the other party hereto change the name or address of the person to who notice is to be given as hereinbefore provided.

5.5. Successors and Assigns. This Agreement shall bind, and inure to the benefit of, the parties and their respective successors and assigns.

5.6. Governing Law. This Agreement is entered into and is intended to be performed in the State of Texas, and the validity, enforceability, interpretation and construction hereof shall be determined and governed by the laws (other than conflict of laws provisions) of the State of Texas. Venue for any action shall be in the state district court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

5.7. Recording. The parties agree that GEDF may record this Agreement in Official Public Records of Dallas County, Texas.

5.8. Covenants Run with the Property. This Restriction Agreement and the obligations of BFD hereunder are intended to run with the Property and shall be binding upon BFD and each and every subsequent owner, tenant, subtenant, licensee, manager, and occupant of all or any portion of the Property, but only during the term of such party's ownership, tenancy, license, management or occupancy of the Property, for which such party shall remain liable and shall be binding upon and inure to the benefit of the GEDF and its successors and assigns. It is expressly understood and agreed that acceptance of title to all or a portion of the Property shall automatically, and without further acknowledgement or conformation from the owner, constitute such owner's assumption of the obligations of BFD hereunder.

5.9. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no statement, promise, representation or modification hereof by any person, if any, and whether oral or written, shall be binding upon any party.

5.10. Assignment to City. GEDF may, in its sole discretion, assign all of its right, title, and interest in this Agreement to City, including, but not limited to, GEDF's rights to the Option, without the consent of BFD, provided such assignment shall not be effective earlier than the date notice of the assignment is delivered by GEDF to BFD.

5.11. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts; each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist

of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

(Signature Page to Follow)

SIGNED AND AGREED this the _____ day of _____, 2010.

GOLD ECONOMIC DEVELOPMENT FOUNDATION, INC.

By: _____
President

SIGNED AND AGREED this the _____ day of _____, 2010.

BIG FAMOUS DEVELOPER, LTD.

By: Really Big Developer, LLC, General Partner

By: _____
Manager

GEDF'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Acknowledged before me this _____ day of _____, 2010, by _____, President, Gold Economic Development Foundation, Inc., a Texas nonprofit corporation, on behalf of such corporation.

Notary Public, State of Texas

My Commission expires:

BFD'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2010, by _____, Manager of Really Big Developer, LLC, General Partner of Big Famous Developer, Ltd., a Texas limited partnership, on behalf of said limited partnership.

Notary Public, State of Texas

My Commission expires:

**APPENDIX D: Sample Purchase and Sale Agreement
(Independent Foundation to Developer)**

PURCHASE AND SALE AGREEMENT

This **Purchase and Sales Agreement** (“Agreement”) to buy and sell real property is entered between Seller and Buyer as identified below and is effective on the date (“Effective Date”) of the last of the signatures by Seller and Buyer as parties to this Agreement, acknowledgement by Title Company of receipt of this Agreement.

Seller: Gold Economic Development Foundation, Inc.
Attn: President

Gold, Texas 75_____

Phone: (972) _____

Fax: (972) _____

Type of entity: A Texas non-profit corporation

Seller’s Attorneys: Peter G. Smith
Kevin B. Laughlin
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Lincoln Plaza
500 N Akard
Dallas, Texas 75201

Phone: (214) 965-9900

Fax: (214) 965-0010

E-mail: psmith@njdhs.com
klaughlin@njdhs.com

Buyer: Big Famous Developer, Ltd. (“BFD”)
Attn: President

Gold, Texas 75_____

Phone:

Fax:

E-mail:

Type of entity: A Texas Limited Partnership

Buyer’s Attorneys:

Phone:

Fax:

E-mail:

Title Company: _____ Title Co.

Gold, Texas 75_____

Attn: _____

Phone: (972) _____

Fax: (972) _____

Property: **Lot 2, Block 1, Big Famous Developer Addition, an addition to the City of Gold, Dallas County, Texas, according to the map or plat thereof recorded as Document No. xxxxxxxxx, Official Public Records, Dallas County, Texas**

Inspection Period: Period ending 30 calendar days after the Effective Date.

Closing Date: Not later than thirty (30) days after the expiration of the Inspection Period, or other date agreed to by the parties.

Purchase Price: \$_____

Earnest Money: \$25,000.00 which shall be credited to the Purchase Price upon Closing.

Effective Date: Last date of signing of this Agreement by the parties.

NOW, THEREFORE, 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, the parties hereto agree as follows:

1. **Sale and Purchase.** Seller agrees to sell, and Buyer agrees to purchase, the Property and improvements thereon as provided in this Agreement.

2. **Title, Survey, and Environmental Reports.**

(a) Not later than fifteen (15) calendar days after the Effective Date of this Agreement, Seller, at Buyer's expense, shall deliver to Buyer:

(i) a current commitment for title insurance for the Land, from the Title Company setting forth the state of title to the Land together with any easements or restrictions (existing or created pursuant hereto) benefiting the Land, together with all exceptions or conditions to such title;

(ii) legible copies of all documents referenced in the title commitments;

(iii) a current Survey certified to Buyer and Title Company;

and

(iv) a tax certificate indicating the status of payment of any ad valorem taxes assessed and due on the Property.

(b) If Buyer objects to any of the exceptions contained in the Title Commitment, Buyer's objections must be made in writing to Seller not later than ten (10) calendar days after the date Buyer receives the title commitment and the survey. Seller shall in good faith attempt to satisfy or cure the objections to title prior to closing, but Seller shall not be required to incur any cost to do so.

(c) If Seller delivers written notice to Buyer on or before the Closing Date that Seller is unable to satisfy such objections, or if Seller is unable to convey title in accordance with Section 3, below, Buyer may either waive such objections and accept such title as Seller is able to convey, or terminate this contract by written notice to Seller.

3. **Inspection Period.**

(a) During the Inspection Period, Buyer and its agents or employees shall have the right to enter upon the Property during regular business hours upon reasonable notice and conduct such inspections, tests and studies as Buyer deems necessary.

(b) Buyer shall be solely responsible for any damages to the Property caused by Buyer's inspection of the Property. **Buyer shall repair any damage to the Property caused by Buyer, its officers, employees, partners, agents or invitees, and agrees to indemnify and defend Seller and the City of Coppell, Texas, and hold Seller and the City of Coppell, Texas, harmless from and against any and all claims, liabilities or damages to the Property or against Seller caused by Buyer and/or Buyer's authorized agents, representatives or employees negligent or intentional acts or omissions during the Inspection Period or as a result of any inspection of the Property by such parties.**

(c) Buyer, at Buyer's sole option and expense, may obtain a Phase I Environmental Site Assessment ("Phase I ESA") with respect to the Property. If in preparation of the Phase I ESA the investigator determines there is reason to conduct additional investigation requiring a Phase II Environmental Assessment ("Phase II ESA"), Buyer may conduct, at Buyer's sole cost, the Phase II ESA that is recommended. If the consultant preparing the Phase I ESA recommends preparation of a Phase II ESA, the Inspection Period shall be extended for a period of fifteen (15) days.

(d) Buyer may terminate this Agreement by notifying Seller and Title Company in writing prior to the expiration of the Inspection Period. In such event, neither party shall have any further claim against the other under this Agreement; provided, however, the Earnest Money shall be returned to Buyer less \$500.00. If Buyer does not timely terminate this Agreement under this Section 3, Buyer shall have no further right to do so under this Section 3; and Buyer shall have waived its right to terminate this Agreement within the Inspection Period.

4. **Closing.**

(a) The closing of the sale of Property shall occur at the Title Company on or before the thirtieth (30th) calendar day after the end of the Inspection Period, ("Closing Date") at a time

mutually agreed by the parties, or on such other date prior to the Closing Date as may be agreed by the parties.

(b) At the Closing, Seller shall deliver to the Title Company:

(i) a special warranty deed, in form and substance reasonably acceptable to Seller and Buyer, conveying good and indefeasible title to the Property to Buyer free and clear of any and all encumbrances, except the Permitted Exceptions;

(ii) a Texas owner's policy of title insurance (or equivalent) in the amount of the Purchase Price, insuring such title to Buyer;

(iii) possession of the Property, free of parties in possession;

(iv) the Restriction Agreement signed by Seller; and

(v) such other documents that the Title Company may reasonably require of Seller.

(c) At the closing, Buyer shall deliver to Seller through Title Company:

(i) the Purchase Price in cash or immediately available funds (which will reflect a credit for the Earnest Money previously paid directly to Seller);

(ii) the Restriction Agreement signed by Buyer; and

(iii) such other documents that the Title Company may reasonably require of Seller.

5. **Taxes.** Buyer understands and acknowledges the Property is presently exempt from the assessment of ad valorem taxes, which status will change upon conveyance of the Property to Buyer. Buyer shall be responsible for payment of current year taxes on the Property prorated from the date of Closing to December 31 of the year of Closing.

6. **Brokers' Commissions.** Buyer and Seller each represent that they have not been represented in whole or in part by a licensed Texas Real Estate broker or agent and that no commission or fee is to be paid at Closing to any real estate broker or agent.

7. **Closing Costs.**

(a) Seller agrees to pay and be responsible for the following closing costs:

(i) 1/2 of the Title Company's escrow fees;

(ii) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Property;

(iii) all costs and expenses incurred by or on behalf of the Seller, including Seller's attorney's fees; and

(iv) such other incidental costs and fees customarily paid by sellers of real estate in Dallas County, Texas for transactions of a similar nature to the transaction contemplated herein.

(b) Buyer hereby agrees to pay and be responsible for the following closing costs:

(i) 1/2 of the Title Company's escrow fees;

(ii) all fees and premiums for the Survey;

(iii) all costs and fees for preparing the Phase I environmental study, if not yet paid;

(iv) all fees and premiums for the Basic Owner's Title Policy, any endorsements thereto desired by Buyer, and any Mortgagee's Title Policy that may be issued concurrently with or subsequent to Closing;

(v) all costs and expenses incurred by or on behalf of the Buyer, including Buyer's attorneys' fees;

(vi) recording fees for the special warranty deed and the Restriction Agreement; and

(vii) such other incidental costs and fees customarily paid by buyers of real estate in Dallas County, Texas, for transactions of a similar nature to the transaction contemplated herein.

With respect to the issuance of the title policies, Buyer agrees to execute such documents as required by the Title Company to allow the cost of the Owner's Title Policy and any related endorsements that is required to be issued pursuant to the Purchase and Sale Agreement between Seller and the City of Coppell regarding the Property are passed through to the sale of the Property by Buyer to Seller, it being the intent of Buyer and Seller that only one title policy be issued in favor of Buyer following the concurrent closing of this transaction and the transaction between Seller and the City of Coppell.

8. **Permitted Exceptions.** Buyer acknowledges and agrees that the Property will be conveyed by Seller subject to the Restriction Agreement (attached hereto as Exhibit "A" and incorporated herein by reference) and that the Special Warranty Deed shall contain an exception to title regarding same. In addition, the zoning, the statutory lien for current taxes, and the environmental condition shall be deemed to be Permitted Exceptions.

9. **Property Restriction:** Seller and Buyer acknowledge, understand, and agree that Seller is conveying the Property to Buyer as an independent foundation for the City of Coppell, Texas, upon the condition that the Property be developed in the manner set forth and directed in the Restriction Agreement.

10. **Representations and Covenants.** Seller represents and covenants that: (a) Seller has authority to enter into this Agreement; and (b) no other person has any interest in or claims

against the Property (other than as reflected by the title commitment), and Seller will not hereafter encumber the Property. Buyer represents that it has authority to enter into this Agreement. The only representations made by any party concerning the Property and this Agreement are as set out in this Agreement.

11. **Land Sold “AS IS.”**

(a) Buyer represents that as of the Closing Date that it:

(i) will have fully inspected the Property,

(ii) will have made all investigations as Buyer deems necessary or appropriate and;

(iii) will be relying solely upon Buyer’s inspection and investigation of the Property for all purposes whatsoever, including, but not limited to, the determination of the condition of the structures, improvements, soils, subsurface, drainage, surface and groundwater quality, and all other physical characteristics; availability and adequacy of utilities; compliance with governmental laws and regulations; access; encroachments; acreage and other survey matters and the character and suitability of the Land.

(b) Buyer acknowledges and agrees that the Property and the improvements located thereon are being purchased and will be conveyed “AS IS” with all faults and defects, whether patent or latent, as of the Closing.

(c) Buyer further acknowledges and agrees there have been no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Land or the improvements, its condition, or any other matters whatsoever, made to or furnished to Buyer by Seller or any employee or agent of Seller, except as specifically set forth in this Agreement.

12. **Remedies.** If Buyer defaults in the provisions of this Agreement and fails to cure such default not later than ten (10) days after written notice describing the nature of the default is delivered by Seller to Buyer, Seller’s sole remedy shall be to terminate this Agreement. If Seller defaults in the provisions of this Agreement and fails to cure such default not later than ten (10) days after written notice describing the nature of the default is delivered by Buyer to Seller, Buyer’s sole remedy shall be to terminate this Agreement and receive the refund of the Earnest Money.

13. **Attorney’s Fees.** If either party retains an attorney to enforce this Agreement, including but not limited to any dispute relating to provisions of this Agreement that survive the Closing, the party prevailing in litigation is entitled to recover reasonable attorney’s fees and court and other costs.

14. **Mediation.** Subject to the consent of both parties, any dispute between Seller and Buyer related to this Agreement which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider prior to the filing of any lawsuit. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

15. **Notices.** Any notice required by or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, electronic mail, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given as designated above.

16. **Miscellaneous.**

(a) **Entireties.** This Agreement contains the entire agreement of the parties pertaining to the Property.

(b) **Modifications.** This Agreement may only be modified by a written document signed by both parties.

(c) **Assignment.** Buyer may not assign its rights under this Agreement to any entity without the express written consent of Seller, which shall not be unreasonably withheld. Any assignment authorized by Seller shall require an assumption of all of Buyer's rights and obligations under this Agreement, including, but not limited to, the provisions of the Restriction Agreement.

(d) **Time is of the Essence.** Time is of the essence with respect to the performance by the parties of their respective obligations hereunder.

(e) **Governing Law.** This Agreement shall be construed under and in accordance with the laws of the State of Texas; and venue for any action arising from this Agreement shall be in Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

(f) **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts; each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

(g) **Non-Business Day.** If the final date of any period provided herein for the performance of an obligation or for the taking of any action falls on a Saturday, Sunday, or holiday, then the end of such period shall be extended to the next business day.

(h) **Zoning.** Seller assumes no obligation to change the current zoning on the Land.

(i) **Survival of Covenants.** The provisions of Section 10, above, as well as any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the Closing shall survive.

(j). **Severability.** The provisions of this Agreement are severable. If a court of competent jurisdiction finds that any provision of this Agreement is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

(k) **Ambiguities Not to Be Construed against Party Who Drafted Contract.** The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.

(l) **No Third-Party Beneficiaries.** There are no third-party beneficiaries of this Contract.

(m) **No Special Relationship.** The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

(Signatures on Following Page)

Signed and Agreed on the dates indicated below.

SELLER:

BUYER:

**GOLD ECONOMIC DEVELOPMENT
FOUNDATION**

BIG FAMOUS DEVELOPER, LTD.

By: Really Big Developer, LLC, General Partner

By: _____
President

By: _____
President

Date: _____

Date: _____

EXHIBIT "A"
RESTRICTION AGREEMENT

STATE OF TEXAS §
 § **RESTRICTION AGREEMENT**
COUNTY OF DALLAS §

This Restriction Agreement ("Restriction Agreement") is made and entered into as _____, 2010, (the "Effective Date") by and between Big Famous Developer, Ltd. ("BFD"), a Texas limited partnership, and the Gold Economic Development Foundation, Inc. a Texas nonprofit corporation ("GEDF") acting by and through their authorized representatives.

WHEREAS, GEDF has, as of the Effective Date, pursuant to the Purchase and Sale Agreement conveyed to BFD the Land, as defined below; and

WHEREAS, GEDF has, as a condition of the conveyance of the Land to BFD, restricted the use of the Land and required BFD to construct the Improvements (as defined below) on the Land; and

WHEREAS, as a condition to and in consideration of the GEDF's conveyance of the Land to BFD, BFD has agreed to construct the Improvements on the Land; and

WHEREAS, BFD desires to grant GEDF an option to repurchase the Land in the event BFD fails to satisfy certain conditions as set forth in this Agreement;

NOW, THEREFORE, 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, the parties hereby agree as follows:

Article I
Definitions

For purposes of this Restriction Agreement, the following words and phrases shall have the following meanings unless the context clearly indicates a different meaning:

"City" shall mean the City of Gold, a Texas home rule municipality located in Dallas County, Texas.

"Commencement of Construction" shall mean: (i) the construction plans for the Improvements have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; (ii) all necessary permits for construction of the Improvements pursuant to the respective plans have been issued by all applicable governmental authorities for the construction of the Building; (iii) the contractor shall have executed a construction contract with BFD, mobilized, and made a presence on the Land with a job shack, equipment and materials; and (iv) construction of vertical elements of the Improvements have commenced.

“Completion of Construction” shall mean: (i) the substantial completion of the exterior building shell, public areas and life safety requirements and supporting site improvements such as fire lanes; and (ii) a final certificate of occupancy has been issued by City for occupancy of the Improvements by BFD or its tenants.

“Force Majeure” shall mean any contingency beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, strike, government or de facto government action unless caused by the intentionally wrongful acts or omission of the party, fires, explosions or floods, strikes, slowdowns or work stoppages and rain delays and other weather related delays caused by temperatures that are too cold to permit construction activities.

“Improvements” shall mean an office building whose tenants are involved in the medical profession or other licensed professions, as well as tenants whose services are in support of such professions, to be constructed on the Land containing approximately 16,421 square feet of space and other ancillary facilities such as reasonably required parking and landscaping more fully described in submittals filed with the BFD with City, from time to time in order to obtain a building permit.

“Improvement Value” shall mean the fair market value of the Improvements, or portion constructed thereof, as determined by an appraiser selected by the parties. In the event the parties cannot agree upon an appraiser, each party shall select an appraiser who in turn will select an appraiser who will determine the fair market value of the Improvements, or portion constructed thereof.

“Land” shall mean the real property located in Coppell, Dallas County, Texas, and more fully described as follows:

Lot 2, Block 1, Big Famous Developer Addition, an addition to the City of Gold, Dallas County, Texas, according to the map or plat thereof recorded as Document No. xxxxxxxxx, Official Public Records, Dallas County, Texas

“Option Price” shall mean the amount of the Purchase Price stated in the Purchase and Sale Agreement plus the Improvement Value less all closing costs and expenses paid or incurred by GEDF pursuant to the Purchase and Sale Agreement and pursuant to the exercise of the Option.

“Property” shall mean the Land and the Improvements, or portion thereof, following construction thereof on the Land.

“Purchase Contract” shall mean that certain *Purchase and Sale Agreement* by and between GEDF and BFD, dated and effective _____, 2010 with respect to the sale of the Land by GEDF to BFD.

“Required Use” shall mean the development and use of the Land with the Improvements.

Article II

Option

2.1. Grant. In consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by BFD, BFD hereby grants to GEDF an option to repurchase the developed and undeveloped portions of the Land (“the Option”)

2.2 Exercise. Subject to Section 2.3, below, the Option may be exercised by the GEDF in its sole discretion by providing written notice to BFD upon the occurrence of the following:

(i) BFD fails to cause Commencement of Construction to occur on the Land on or before the one hundred fiftieth (150th) calendar day after the Effective Date; provided Commencement of Construction has in fact not occur prior on or before the GEDF seeks to exercise the Option; or

(ii) BFD fails to cause the Completion of Construction within fifteen (15) calendar months after the Effective Date, provided Completion of Construction has in fact still not occurred on the date of the exercise of the Option by GEDF.

2.3 Force Majeure. In the event of Force Majeure, BFD shall have such additional time to cause Commencement of Construction or Completion of Construction, as the case may be, so long as BFD is diligently and faithfully pursuing the same. The termination of the Option Period shall be extended for the same number days that the performance of Company with respect to Commencement of Construction or Completion of Construction is extended by Force Majeure.

2.4 Breach and Right to Cure. In the event that the GEDF has delivered written notice of its intent to exercise the Option, BFD shall have the right to nullify the GEDF’s Option exercise by commencing a cure of the condition which gives rise to GEDF’s Option right pursuant to Section 2.2 within thirty (30) days after written receipt of the GEDF’s notice, provided that BFD shall continue to pursue the construction of the Improvements with reasonable diligence thereafter until complete, subject to Force Majeure. If BFD fails to cure the breach within the time period provided herein, including any extensions thereof, the GEDF in its sole discretion may proceed to exercise the Option.

Article III

Terms of Sale Upon Exercise of Option

3.1 Effect of Exercise of the Option. Upon any timely exercise of the Option by GEDF in accordance with the foregoing provisions, the conveyance of the portion of the Property to be conveyed to GEDF shall be in accordance with the provisions in this Article III.

3.2. Title, Survey, and Environmental Reports.

(a) Not later than the fifteenth (15th) business day after the exercise of the Option, BFD shall, at BFD’s expense, deliver to GEDF:

(i) a current commitment for an Owner's Policy of Title Insurance from the Title Company for the portion of the Property to be conveyed to GEDF, setting forth the state of title to the Property or portion thereof together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening the Property, together with all exceptions or conditions to such title;

(ii) legible copies of all documents referenced in the Title Commitment;

(iii) any environmental studies or reports that BFD may have in its possession with respect to the Property; and,

(iv) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years.

(b) Upon any exercise of the Option, GEDF shall have the right, at its sole option, to cause a boundary or "as-built" survey of the Property to be made by a certified land surveyor selected by it. Such survey shall be made at the sole cost and expense of GEDF.

(c) GEDF shall, not later than twenty (20) days after GEDF's receipt of the last of the Survey and Title Commitment, notify BFD and Title Company of any objections to the Survey or Title Commitment. If there are objections by GEDF, BFD shall in good faith attempt to satisfy them prior to Closing. If BFD delivers written notice to GEDF not later than the tenth (10th) calendar day after BFD's receipt of GEDF's objections that BFD is unable to satisfy such objections, GEDF may either waive such objections and accept title as BFD is able to convey or terminate the exercise of the Option by written notice to BFD and the Title Company.

3.3. Closing.

(a) The closing of the sale of Property identified in the notice exercising the Option shall occur not later than sixty (60) calendar days following the date of exercise of the Option unless otherwise extended by written agreement of BFD and GEDF.

(b) At the closing, BFD shall deliver to GEDF:

(i) a special warranty deed, in form and substance substantially similar to the form used to convey the Property to BFD pursuant to the Purchase Agreement, conveying good and indefeasible title to the Property described in the notice exercising the Option and/or the survey obtained by GEDF (whichever is the most accurate description) to GEDF, free and clear of any and all encumbrances except the Permitted Exceptions, save and except such oil, gas, and other minerals as may have been reserved by prior grantors;

(ii) an owner's policy of title insurance (or equivalent) in the amount of the Option Price, insuring such title to the Purchaser; and

(iii) possession of the portion of the Property described in the notice of the exercise of the Option, free of parties in possession.

(c) At Closing, GEDF shall pay in current funds the Option Price less all Closing Costs and other costs and expenses to be paid by BFD pursuant to this Article.

3.4 Taxes. Ad valorem taxes, assessments, and any other charges against the Property conveyed to GEDF pursuant to this Article III shall be prorated as of the Closing Date for the current year, such that BFD will be responsible for all such items which accrue prior to the Closing Date, and GEDF will be responsible for all such items which accrue on and after the Closing Date. Taxes and assessments for all prior years shall be paid by BFD.

3.5 Closing Costs.

(a) BFD will pay and be responsible for the following closing cost:

(i) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Property;

(ii) all fees and premiums for Basic Owner's Title Policy, and any endorsements to the Basic Owner's Title Policy;

(iii) one-half (1/2) of the Title Company's escrow fees;

(iv) all recording fees;

(v) all costs and expenses incurred by or on behalf of BFD, including BFD's attorney's fees;

(vi) all costs related to obtaining any releases of liens on the portion of the Property conveyed relating to any loans secured by a deed of trust lien on said property; and

(vii) such other incidental costs and fees customarily paid by sellers of real property in Dallas County, Texas, for transactions of a similar nature to the transaction contemplated herein.

(b) City hereby agrees to pay and be responsible for the following closing cost:

(i) all fees and premiums for the Survey;

(ii) one-half (1/2) of the Title Company's escrow fees;

(iii) all costs and expenses incurred by or on behalf of GEDF, including GEDF's attorneys' fees; and

(iv) such other incidental costs and fees customarily paid by purchasers of property in Dallas County, Texas, for transactions of a similar nature to the transaction contemplated herein.

3.6. Permitted Exceptions. GEDF acknowledges and agrees that the real property and improvements conveyed pursuant to this Article III will be conveyed by BFD at closing subject only to such easements, conditions and restrictions as have been approved or deemed approved by BFD, including; (i) utility easements granted by subdivision plat or instrument subsequent to the purchase of the Land by BFD; and (ii) such other matters as GEDF may waive.

3.7 Conveyance As Is. GEDF acknowledges and agrees that the property and/or improvements conveyed pursuant to this Article III will be conveyed “AS IS” with all faults and defects, whether patent or latent, existing as of the Closing. Except with respect to the quality of the title being conveyed by BFD as set forth in the Special Warranty Deed, GEDF acknowledges and agrees that BFD will be making no representations, warranties, guarantees, statements or information, express or implied, pertaining to the property or improvements conveyed, their condition, or any other matters whatsoever, made to or furnished to GEDF by BFD or any employee or agent of BFD, except as specifically set forth in this Restriction Agreement.

Article IV Restrictions

4.1 Use of Property; Buildings. No lot or portion of the Property shall be owned, held leased, transferred, sold,, mortgaged or conveyed for any use other than the development of the Improvements and the Required Use. The operation and occupancy of the Improvements in conformance with the Required Use shall not cease for more than thirty (30) days except in connection with and to the extent of an event of Force Majeure. No building shall be constructed, reconstructed, erected, altered, or placed on any portion of the Land other than the Improvements or other structures that will be used in conformance with the Required Use.

4.2 Ownership of the Property. BFD shall continuously own and occupy the Property for a period of at least five (5) years commencing on the day a final certificate of occupancy is issued for BFD’s occupancy for the Improvements unless otherwise agreed in writing by GEDF.

Article V Miscellaneous

5.1 Enforcement. GEDF and any subsequent owner of all or any portion of the Property shall have the right, but not the obligation, to enforce this Restriction Agreement, as the same may be amended as herein provided. Enforcement of this Restriction Agreement and the covenants and restrictions contained herein may be exercised after failure of any person or persons violating or attempting to violate any covenants or restrictions to cure such violation or breach within thirty (30) days after receipt of written notice thereof by proceeding at law or in equity, against any person or persons violating or attempting to violate any covenants or restrictions, to restrain violation or to recover damages, and failure to enforce any covenant, restriction or condition shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. The rights of GEDF under this Restriction Agreement may not be waived or released except pursuant to an amendment or termination approved in accordance with the provisions hereof.

5.2 Duration. The Use Restrictions set forth herein shall be effective from the date this Restriction Agreement is recorded and continue for a period of five (5) years commencing on the date a final permanent certificate of occupancy is issued for BFD's occupancy for the Improvements.

5.3 Amendment. No amendment or any early termination of this Restriction Agreement shall be effective unless and until the Board of Directors of the GEDF has approved the same as evidenced by an instrument executed by the President and recorded in the Official Public Records of Dallas County, Texas. In the event BFD, or subsequent Owner of the Property desires to change, amend or alter the Use Restrictions set forth in Article 4 so that the Property may be used for other than "medical and professional office use," BFD, or subsequent owner, as the case may be, shall file a written application for such change or amendment to Article 4 with the President of the Board of Directors of the GEDF. The Board of Directors of GEDF shall approve or deny such application in whole or in part within thirty (30) days after receipt of such application, with the failure to act constituting a denial of the request.

5.4 Notices. All notices, requests, demands or other communications required or permitted hereunder shall be in writing and shall be deemed to have been fully and completely made when given by hand, by confirmed facsimile transmission by overnight delivery by Federal Express or other reliable courier or the mailing of such by registered or certified mail, addressed as follows:

If to BFD:

Big Famous Developer, Ltd.
Attn: President.

Gold, Texas 75_____

If to GEDF:

Gold Economic Development Foundation, Inc.
Attn: President

Gold, Texas 75_____

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 N. Akard, Suite 1800
Dallas, Texas 75201
(214) 965-9900
(214) 965-0010 FAX
E-mail: psmith@njdhs.com

Any party may at any time and from time to time by notice in writing to the other party hereto change the name or address of the person to whom notice is to be given as hereinbefore provided.

5.5. Successors and Assigns. This Agreement shall bind, and inure to the benefit of, the parties and their respective successors and assigns.

5.6. Governing Law. This Agreement is entered into and is intended to be performed in the State of Texas, and the validity, enforceability, interpretation and construction hereof shall be determined and governed by the laws (other than conflict of laws provisions) of the State of Texas. Venue for any action shall be in the state district court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

5.7. Recording. The parties agree that GEDF may record this Agreement in Official Public Records of Dallas County, Texas.

5.8. Covenants Run with the Property. This Restriction Agreement and the obligations of BFD hereunder are intended to run with the Property and shall be binding upon BFD and each and every subsequent owner, tenant, subtenant, licensee, manager, and occupant of all or any portion of the Property, but only during the term of such party's ownership, tenancy, license, management or occupancy of the Property, for which such party shall remain liable and shall be binding upon and inure to the benefit of the GEDF and its successors and assigns. It is expressly understood and agreed that acceptance of title to all or a portion of the Property shall automatically, and without further acknowledgement or conformation from the owner, constitute such owner's assumption of the obligations of BFD hereunder.

5.9. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no statement, promise, representation or modification hereof by any person, if any, and whether oral or written, shall be binding upon any party.

5.10. Assignment to City. GEDF may, in its sole discretion, assign all of its right, title, and interest in this Agreement to City, including, but not limited to, GEDF's rights to the Option, without the consent of BFD, provided such assignment shall not be effective earlier than the date notice of the assignment is delivered by GEDF to BFD.

5.11. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts; each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

(Signature Page to Follow)

SIGNED AND AGREED this the _____ day of _____, 2010.

GOLD ECONOMIC DEVELOPMENT FOUNDATION, INC.

By: _____
President

SIGNED AND AGREED this the _____ day of _____, 2010.

BIG FAMOUS DEVELOPER, LTD.

By: Really Big Developer, LLC, General Partner

By: _____
Manager

GEDF'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Acknowledged before me this _____ day of _____, 2010, by _____, President, Gold Economic Development Foundation, Inc., a Texas nonprofit corporation, on behalf of such corporation.

Notary Public, State of Texas

My Commission expires:

BFD'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2010, by _____, Manager of Really Big Developer, LLC, General Partner of Big Famous Developer, Ltd., a Texas limited partnership, on behalf of said limited partnership.

Notary Public, State of Texas

My Commission expires:
