

ORDINANCE NO 97-292

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A REVISED REAL ESTATE CONTRACT---OPTION TO ACQUIRE ADDITIONAL REAL PROPERTY WHEREIN THE CITY OF DENTON, TEXAS OBTAINS RIGHTS TO ACQUIRE A CERTAIN 18 969 ACRE TRACT OF LAND SITUATED IN THE DAVID HOUGH SURVEY, ABSTRACT NO 646, FOR PUBLIC USE, AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY TO CONSUMMATE THE PURCHASE OR ACQUISITION OF REAL PROPERTY IN ACCORDANCE WITH SAID CONTRACT, AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR, AUTHORIZING THE ESTABLISHMENT OF A SINKING FUND THEREFOR, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council approved and enacted Ordinance No 97-276 on September 9, 1997 which provided for the purchase, by the City, of a certain one acre tract of land situated adjacent to Mayhill Road, being part of a 19.969 acre tract of land situated in the David Hough Survey, Abstract No 646, for the future widening of Mayhill Road in accordance with the terms of the Real Estate Contract attached to said ordinance, and

WHEREAS, said Ordinance No 97-276 further provided that the City is authorized to acquire additional real property, as may be required, consisting of the remaining 18 969 acres of land which are part of the 19 969 acre tract described in the preceding paragraph, and in furtherance thereof, a certain Real Estate Contract---Option To Acquire Additional Real Property was attached to said ordinance for execution by the parties, and

WHEREAS, since the approval of said Ordinance on September 9, 1997, further discussions have occurred between the City and the Owner of the remaining 18 969 acre tract of land hereinabove described, respecting several provisions of the Real Estate Contract---Option To Acquire Additional Real Property document, and the parties determined that several changes of wording in said contract were necessary and appropriate to properly reflect and to clarify the obligations of the City and the Owner of the said remaining 18 969 acre tract of land, to each other; and

WHEREAS, the City and said Owner have prepared, and said Owner has executed and delivered that certain revised "Real Estate Contract---Option To Acquire Additional Real Property" which is attached hereto as Exhibit "A" and is incorporated herewith by reference NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS

SECTION I. That the City Manager is hereby authorized to execute a revised Real Estate Contract---Option To Acquire Additional Real Property by and between the City of Denton as optionee and Robert P. Donnelly as optionor, a copy of which contract is attached hereto as Exhibit "A" and is incorporated by reference herewith

SECTION II. That the City Manager is hereby authorized to execute any and all documents necessary to consummate purchase or acquisition of real property in accordance with said contract

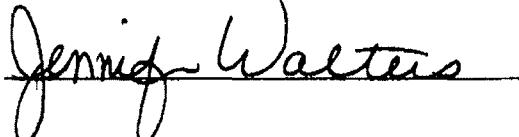
SECTION III That the City Council hereby authorizes the expenditure of funds as provided in said contract, as well as the establishment of a sinking fund providing for the possible exercise of any option or right to acquire real property contained in said contract

SECTION IV That this ordinance shall become effective immediately upon its passage and approval

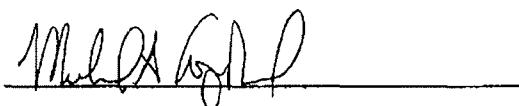
PASSED AND APPROVED this the 23<sup>rd</sup> day of September, 1997

  
\_\_\_\_\_  
JACK MILLER, MAYOR

ATTEST  
JENNIFER WALTERS, CITY SECRETARY

BY 

APPROVED AS TO LEGAL FORM  
HERBERT L PROUTY, CITY ATTORNEY

BY 

**REAL ESTATE CONTRACT  
OPTION TO ACQUIRE ADDITIONAL REAL PROPERTY**

STATE OF TEXAS                   §  
   §  
COUNTY OF DENTON               §

THIS AGREEMENT is made by and between Robert P. Donnelly, hereinafter referred to as "Optionor" and the City of Denton, Texas, a home rule municipality of Denton County, Texas, hereinafter referred to as "Optionee," upon the terms and conditions set forth herein

**RECITALS**

WHEREAS, Optionor is the owner of certain real property consisting of approximately 19 969 acres located in the City of Denton, Denton County, Texas. A map of said 19 969 acre tract is attached hereto as Exhibit "A" and incorporated herein by reference for all purposes. Optionor, by a Real Estate Contract, has agreed to sell and convey to Optionee, that certain 10 acre tract of land more particularly described in Exhibit "B" attached hereto and incorporated herein by reference for all purposes. Optionor, by this Agreement desires to grant Optionee a right and option upon the terms and specified conditions set forth hereinbelow to acquire the remaining 18 969 acre tract of land (said tract being hereinafter referred to as the "Optioned Tract") more particularly described in Exhibit "C" attached hereto and incorporated herein by reference for all purposes, and

WHEREAS, Optionor and Optionee intend in the limited circumstances described in Article I(B) hereof, to obligate Optionee to purchase the Optioned Tract, and

WHEREAS, Optionee believes that the 18 969 acre tract of land which is the subject of this right to acquire and option is reasonably necessary for the public use in the future, and accordingly desires to acquire a right to acquire the Optioned Tract under the terms and special conditions set forth hereinbelow,

**THEREFORE, IT IS AGREED AS FOLLOWS**

**ARTICLE I  
GRANT OF OPTION TO ACQUIRE ADDITIONAL REAL PROPERTY**

In consideration of the sum of ten dollars (\$10.00), and the further consideration of Optionee's payment for a survey of the Optioned Tract, Optionee's payment of the cost of a preliminary plat pertaining to the Optioned Tract and the 10 acre tract described in Exhibit "B" attached hereto, Optionee's agreement to reimburse Optionor the cost of an applicable building permit pertaining to the Optioned Tract, and the agreement of Optionee to obtain and deliver, at Optionee's expense, to Optionor, before any exercise of Optionee of its right or option granted herein, a preliminary title report issued by Dentex Title Company, Denton, Texas, covering the

Optioned Tract, Optionor hereby GRANTS to Optionee the right and option to acquire title to the Optioned Tract at the prices and conditions, and within the time limitations specified below

- A In the event that Optionor receives from a third party, at any time before January 1, 2013, a bona-fide written offer supported by good and valuable consideration to purchase the Optioned Tract, then Optionee has no right of first refusal to match said third party offer, and Optionee will not be obligated to pay any sum of money to Optionor under the terms of this Agreement
- B In the event that Optionor receives from a third party, at any time between January 1, 2013 and December 31, 2027, a bona-fide written offer supported by good and valuable consideration to purchase the Optioned Tract, and the stated purchase consideration is an amount less than two dollars (\$2 00) per square foot, then Optionee shall be obligated to acquire title to the Optioned Tract by paying to Optionor the purchase consideration of two dollars (\$2 00) per square foot, subject only to the conditions contained in that certain Real Estate Sales Contract attached hereto as Exhibit "D"; Optionee shall tender said executed Real Estate Sales Contract in accordance within the provisions of Article III hereof within sixty (60) days after Optionee receives notice from the Optionor of the third party offer
- C In the event that Optionor receives from a third party, at any time between January 1, 2013 and December 31, 2027, a bona-fide written offer supported by good and valuable consideration to purchase the Optioned Tract, and the stated purchase consideration is an amount greater than two dollars (\$2 00) per square foot, then Optionee may acquire title to the Optioned Tract by paying to Optionor a total of one dollar (\$1 00) more than the purchase consideration offered by the third party. Optionee shall exercise its option by notifying Optionor in writing within sixty (60) days after Optionee receives notice from Optionor of the third party offer, PROVIDED, HOWEVER, in the event that Optionee elects not to acquire title to the Optioned Tract, then Optionee shall not be required to pay any sum of money to Optionor, and this Agreement shall be thereby terminated
- D Optionor and Optionee agree that unless earlier terminated, the rights and option of Optionee shall expire on December 31, 2027
- E Optionee represents to Optionor that it has no present, fixed, intention to condemn all or any part of the Optioned Tract at this time. Optionee is unable to lawfully agree to waive its right of eminent domain with respect to the Optioned Tract, or, for that matter, any tract of real property in the City of Denton, Texas

In the unlikely event that Optionee, because of a public necessity, seeks condemnation of all or any part of the Optioned Tract before January 1, 2013, then Optionor and Optionee shall treat such condemnation as Optionee's early exercise of its option to acquire the Optioned Tract and Optionor and Optionee each agree to designate a licensed real estate appraiser of the State of Texas, with the M A I (Member of Appraisal Institute) designation, who will in turn select a licensed real estate appraiser of the State of Texas with the M A I designation, which selected appraiser shall maintain his or her principal office in

Denton County, Texas Thereafter, the selected appraiser shall prepare a written appraisal report and determine the appraised fair market value of the Optioned Tract Upon determination of the appraised fair market value by this method, Optionee shall pay to Optionor the appraised market value of the subject Optioned Tract or the amount of two dollars (\$2 00) per square foot, whichever amount is greater

**ARTICLE II**  
**APPLICATION OF CONSIDERATION TO PURCHASE PRICE**

If Optionee exercises its right or option to acquire title to the Optioned Tract in accordance with the terms hereof, it is specifically understood and agreed that the consideration paid to Optionor by Optionee pursuant to the first paragraph of Article I hereof, shall not apply to any purchase price expressed in Article I hereof

**ARTICLE III**  
**EXERCISE OF OPTION TO ACQUIRE ADDITIONAL REAL PROPERTY**

Optionee must exercise its options granted herein by providing written notice to Optionor in accordance with any applicable deadline set forth in Article I hereinabove In order to exercise its option under the provisions of Article I B or Article I C hereinabove, Optionee must execute and deliver to Optionor the Real Estate Sales Contract attached hereto as Exhibit "D," which is incorporated herein for all purposes

**ARTICLE IV**  
**CONDITION PRECEDENT**

Optionor and Optionee agree that this Agreement is conditioned upon Optionee receiving Solid Waste Landfill Permit No 1590-A from the Texas Natural Resource Conservation Commission In the event that such condition is not satisfied, then this Agreement shall be null and void

**ARTICLE V**  
**RETENTION OF CONSIDERATION**

In the event that Optionee fails to exercise any or all of its rights or options granted herein, all sums and all consideration paid or provided by Optionee to Optionor shall be retained by Optionor in consideration of the granting of these rights and options to Optionee

**ARTICLE VI**  
**TERMINATION OF OPTIONEE'S RIGHTS AND OPTIONS**

If Optionee fails to meet any deadline relating to the exercise of any option or right granted hereunder, or to the terms of sale of the Optioned Tract (exclusive, however, of the obligations of Optionee set forth in Article I, paragraph B hereof), this Agreement, and the rights of Optionee shall automatically terminate on the day following the applicable deadline

**ARTICLE VII**  
**MEMORANDUM OF AGREEMENT**

Optionor and Optionee each agree to execute, within thirty (30) days from the date either party requests in writing a Memorandum of Agreement respecting the existence of this Agreement and evidencing Optionee's interest in the Optioned Tract Optionee may elect to record such Memorandum of Agreement in the Real Estate Records of Denton County, Texas

**ARTICLE VIII**  
**ASSIGNABILITY**

No assignment of this Agreement, or of any right, duty, or option accruing under this Agreement shall be made, in whole or in part, by either party, without the prior written consent of the other party. It is contemplated by Optionor and Optionee that Optionor will probably desire to assign his rights and obligations respecting this Agreement to a member of his immediate family, or a family partnership, or a limited partnership, or an inter-vivos trust, or any other entity which Optionor has a controlling interest, and to whom/which the Optioned Tract has been conveyed without the exchange of valuable consideration. Optionee shall not unreasonably withhold its consent respecting any such assignment by Optionor

**ARTICLE IX**  
**NOTICES**

Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by either party to the other may be effected in writing by personal delivery or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received as of the date of actual receipt. Mailed notice shall be addressed as set forth below, but each party may change his address in accordance with this paragraph

To Optionor

Robert P. Donnelly

To Optionee

City of Denton, Texas  
Ted Benavides, City Manager  
215 East McKinney  
Denton, Texas 76201

With a copy to

Herbert L. Prouty  
City Attorney  
215 East McKinney  
Denton, Texas 76201

ARTICLE X  
ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties relating to the option and rights herein granted. Any oral representations or modifications concerning this Agreement shall be of no force and effect, excepting a subsequent modification, in writing, signed by the parties.

ARTICLE XI  
BINDING EFFECT

This Agreement shall bind and inure to the benefit of all the respective heirs, personal representatives, successors, and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the  
23rd day of September, 1997

OPTIONEE  
CITY OF DENTON, TEXAS

BY Ted Benavides  
TED BENAVIDES, CITY MANAGER

ATTEST  
JENNIFER WALTERS, CITY SECRETARY

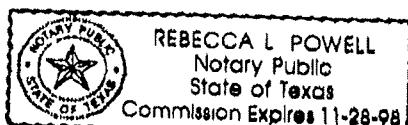
BY Jennifer Walters

APPROVED AS TO LEGAL FORM  
HERBERT L PROUTY, CITY ATTORNEY

BY Herbert L Prouty

OPTIONOR  
ROBERT P. DONNELLY

Robert P. Donnelly  
ROBERT P. DONNELLY

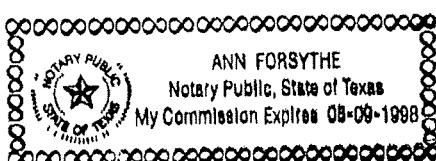


Rebecca L Powell

STATE OF TEXAS §  
COUNTY OF DENTON §

BEFORE ME the undersigned authority, a Notary Public in and for said State of Texas, on this day personally appeared Ted Benavides, City Manager of the City of Denton, Texas, known to me to be the person who signed and executed the foregoing instrument, and acknowledged to me that this instrument was executed for the purposes and consideration therein expressed

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 23<sup>rd</sup> day of  
September, 1997



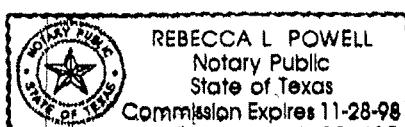
Ann Forsythe  
Notary Public in and for the  
State of Texas

My Commission Expires 5-9-98

STATE OF TEXAS §  
COUNTY OF DENTON §

BEFORE ME the undersigned authority, a Notary Public in and for said State of Texas, on this day personally appeared Robert P. Donnelly, known to me to be the person who signed and executed the foregoing instrument, and acknowledged to me that this instrument was executed for the purposes and consideration therein expressed

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 12 day of  
September, 1997



Rebecca L. Powell  
Notary Public in and for the  
State of Texas

My Commission Expires 11-28-98



**EXHIBIT "B"**

Being a 10 acre tract of land, more or less, being situated in the DAVID HOUGH SURVEY, Abstract No 646, in the City of Denton, Denton County, Texas, and being part of a certain 19.969 acre tract of land described in Special Warranty Deed from the Federal Deposit Insurance Corporation as Receiver of Western Bank as grantor, to Robert P. Donnelly, as grantee, executed on November 19, 1992, said deed being recorded in Volume 3384, Page 0905 of the Real Property Records of Denton County, Texas, and being further described as a tract of land West of and adjacent to the existing Mayhill Road prescriptive right of way, running approximately 869.5 feet along the present location of Mayhill Road, and being 50 feet in width

Seller and Purchaser agree that upon completion of a ground survey of the above tract in connection with the closing of this transaction, that a metes and bounds legal description of said tract will be substituted for the above description

## EXHIBIT "C"

BEING 19 969 acres of land located in the DAVID HOUGH SURVEY, Abstract No 646, Denton County, Texas, being the same tract of land as conveyed to Rozella A Putnam by the deed recorded in Volume 1586, Page 45 of the Deed Records of Denton County, Texas Said 19 969 acres being more particularly described by metes and bounds as follows

BEGINNING at a  $\frac{1}{2}$  inch iron rod in the centerline of Mayhill Road at the Southeast corner of said Putnam Tract, also being the Northeast corner of a tract of land conveyed to Andrew Corporation, by the deed recorded in Volume 912, Page 797, Deed Records of Denton County, Texas, also being the Southeast corner of said Hough Survey,

THENCE, South 87 degrees 13 minutes 28 seconds West, 744 08 feet along the North line of said Andrew Corporation Tract and the South line of said Hough Survey to a  $\frac{1}{2}$  inch iron rod in the Northeast right-of-way line of the M K T Railroad,

THENCE, along said Northeast right-of-way line as follows

- 1 North 47 degrees 59 minutes 44 seconds West, 87 69 feet to a  $\frac{1}{2}$  inch iron rod,
- 2 North 50 degrees 49 minutes 23 seconds West, 101 67 feet to a  $\frac{1}{2}$  inch iron rod,
- 3 North 53 degrees 56 minutes 53 seconds West, 101 75 feet to a  $\frac{1}{2}$  inch iron rod,
- 4 North 57 degrees 13 minutes 33 seconds West, 67 68 feet to a  $\frac{1}{2}$  inch iron rod at the Southwest corner of aforesaid Putnam Tract, also being the Southeast corner of a tract of land conveyed to Don V Cunningham and wife, by Deed recorded in Volume 653, Page 146, Deed Records of Denton County, Texas,

THENCE, North 00 degrees 00 minutes 04 seconds East, 641 34 feet to a  $\frac{1}{2}$  inch iron rod in the South line of a tract of land conveyed to E P Jeske by the deed recorded in Volume 1386, Page 377, Deed Records of Denton County, Texas, also being the Northeast corner of said Cunningham Tract,

THENCE, North 87 degrees 34 minutes 46 seconds East, 1,051 76 feet to a  $\frac{1}{2}$  inch iron rod in the center line of aforesaid Mayhill Road, also lying in the West survey line of the G Walker Survey, Abstract No 1330,

THENCE, South 01 degrees 36 minutes 49 seconds West, 869 50 feet along said survey line and the East boundary line of said Putnam Tract to the PLACE OF BEGINNING and containing 19 969 acres of land, more or less, LESS AND EXCEPT that certain 1 0 acre tract of land described in Exhibit "B" hereto, leaving 18 969 acres, more or less, remaining in this tract

## EXHIBIT "D"

### REAL ESTATE SALES CONTRACT

STATE OF TEXAS

COUNTY OF DENTON

THIS CONTRACT OF SALE is made by and between ROBERT P. DONNELLY (hereinafter referred to as "Seller") and the CITY OF DENTON, TEXAS, a home rule municipality, of Denton County, Texas (hereinafter referred to as "Purchaser"), upon the terms and conditions set forth herein

#### PURCHASE AND SALE

Seller hereby sells and agrees to convey, and Purchaser hereby purchases and agrees to pay for that certain tract of land located in the City of Denton, Denton County, Texas, containing 18.969 acres of land, more or less, and being more particularly described in Exhibit "1" attached hereto and incorporated herein by reference for all purposes, together with all and singular the rights and appurtenances pertaining to the property, including any right, title and interest of Seller in and to adjacent streets, alleys or rights-of-way (all of such real property, rights, and appurtenances being hereinafter referred to as the "Property"), together with any improvements, fixtures, and personal property situated on and attached to the Property, for the consideration and upon and subject to the terms, provisions, and conditions hereinafter set forth

#### PURCHASE PRICE

- 1 Amount of Purchase Price The purchase price for the Property shall be the sum of \$ \_\_\_\_\_ as determined in that certain Real Estate Contract-Option To Acquire Additional Real Property executed by Seller, as Optionor and Purchaser as Optionee, on the \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_
- 2 Payment of Purchase Price The full amount of the purchase price shall be payable in cash at the closing

#### PURCHASER'S OBLIGATIONS

The obligations of Purchaser hereunder to consummate the transactions contemplated hereby are subject to the satisfaction of each of the following conditions any of which may be waived in whole or in part by Purchaser at or prior to the closing

- 1 Preliminary Title Report Within twenty (20) days after the date hereof, Seller, at Seller's sole cost and expense, shall have caused the Title Company (hereinafter defined) to issue a preliminary title report (the "Title Report") accompanied by

copies of all recorded documents relating to easements, rights-of-way, etc., affecting the Property. Purchaser shall give Seller written notice on or before the expiration of ten (10) days after Purchaser receives the Title Report that the condition of title as set forth in the title binder is or is not satisfactory, and in the event Purchaser states that the condition is not satisfactory, Seller shall, at Seller's option, promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of Purchaser. In the event Seller is unable to do so within ten (10) days after receipt of written notice, this Agreement shall thereupon be null and void for all purposes, otherwise, this condition shall be deemed to be acceptable and any objection thereto shall be deemed to have been waived for all purposes.

- 2 Survey Purchaser may, at Purchaser's sole cost and expense, obtain a current survey of the Property, prepared by a duly licensed Texas land surveyor chosen by and acceptable to Purchaser. The survey shall be staked on the ground, and shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, easements, 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 and shall set forth the number of total acres comprising the Property, together with a metes and bounds description thereof.

Purchaser will have ten (10) days after receipt of the survey to review and approve the survey. In the event the survey is unacceptable, then Purchaser shall within the ten (10) day period, give Seller written notice of this fact. Seller shall, at Seller's option, promptly undertake to eliminate or modify the unacceptable portions of the survey to the reasonable satisfaction of Purchaser. In the event Seller is unable to do so within ten (10) days after receipt of written notice, Purchaser may terminate this Agreement, and the Agreement shall thereupon be null and void for all purposes. Purchaser's failure to give Seller this written notice shall be deemed to be Purchaser's acceptance of the survey.

- 3 Seller's Compliance Seller shall have performed, observed, and complied with all of the covenants, agreements, and conditions required by this Agreement to be performed, observed, and complied with by Seller prior to or as of the closing.

#### REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser as follows, which representations and warranties shall be deemed made by Seller to Purchaser also as of the closing date:

- 1 There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or trespassers.

- 2 Except for the prior actions of Purchaser, there is no pending or threatened condemnation or similar proceeding or assessment affecting the Property, or any part thereof, nor to the best knowledge and belief of Seller is any such proceeding or assessment contemplated by any governmental authority
- 3 Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the Property, or any part thereof
- 4 To the best of the Seller's knowledge, there are no toxic or hazardous wastes or materials on or within the Property. Such toxic or hazardous wastes or materials include, but are not limited to, hazardous materials or wastes as same are defined by the Resource Conservation and Recovery Act (RCRA), as amended, and the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended

#### CLOSING

The closing shall be held at the office of Dentex Title Company, Denton, Texas, at such title company, time, date, and place as Seller and Purchaser may mutually agree upon (which date is herein referred to as the "closing date")

#### CLOSING REQUIREMENTS

- 1 Seller's Requirements At the closing Seller shall
  - A Deliver to Purchaser a duly executed and acknowledged General Warranty Deed conveying good and marketable title in fee simple to all of the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions except for the following
    - 1 General real estate taxes for the year of closing and subsequent years not yet due and payable,
    - 2 Any exceptions approved by Purchaser pursuant to Purchaser's Obligations hereof, and
    - 3 Any exceptions approved by Purchaser in writing
  - B Deliver to Purchaser a Texas Owner's Title Policy at Seller's sole expense, issued by Dentex Title Company, (the "Title Company"), or such title company as Seller and Purchaser may mutually agree upon, in Purchaser's favor of the full amount of the purchase price, insuring Purchaser's fee simple title to the Property, subject only to those title exceptions listed in Closing Requirements hereof, such other exceptions as may be approved in writing by Purchaser, and the standard printed

exceptions contained in the usual form of Texas Owner's Title Policy, provided, however

- 1 The boundary and survey exceptions shall be deleted if required by Purchaser and if so required, the costs associated with same shall be borne by Seller,
- 2 The exception as to restrictive covenants shall be endorsed "None of Record",
- 3 The exception for taxes shall be limited to the year of closing and shall be endorsed "Not Yet Due and Payable", and
- 4 The exception as to liens encumbering the Property shall be endorsed "None of Record"

C Deliver to Purchaser possession of the Property on the day of closing

- 2 Purchaser's Requirements Purchaser shall pay the consideration as referenced in the Purchase Price section of this contract at Closing in immediately available funds
- 3 Closing Costs Seller shall pay all taxes assessed by any tax jurisdiction through the date of Closing All other costs and expenses of closing in consummating the sale and purchase of the Property not specifically allocated herein shall be equally shared by Purchaser and Seller

#### REAL ESTATE COMMISSION

Any real estate commissions occasioned by the consummation of this Agreement shall be the sole responsibility of Seller, and Seller agrees to indemnify and hold harmless Purchaser from any and all claims for any such commissions

#### BREACH BY SELLER

In the event Seller shall fail to fully and timely perform any of its obligations hereunder or shall fail to consummate the sale of the Property except at Purchaser's default, Purchaser may either enforce specific performance of this Agreement or terminate this Agreement

#### BREACH BY PURCHASER

In the event Purchaser should fail to consummate the purchase of the Property, the conditions to Purchaser's obligations set forth in PURCHASER'S OBLIGATIONS

having been satisfied and Purchaser being in default, Seller may either enforce specific performance of this Agreement, or terminate this Agreement

## MISCELLANEOUS

- 1 **Assignment of Agreement** This Agreement may not be assigned by Purchaser without the express written consent of Seller
- 2 **Survival of Covenants** Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the closing of the transactions contemplated hereby shall survive the closing and shall not be merged therein
- 3 **Notice** Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address set forth beneath the signature of the party
- 4 **Texas Law to Apply** This Agreement 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 Denton County, Texas
- 5 **Parties Bound** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement
- 6 **Legal Construction** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, said invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein
- 7 **Prior Agreements Superseded** This Agreement constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter
- 8 **Time of Essence** Time is of the essence in this Agreement
- 9 **Gender** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise
- 10 **Memorandum of Contract** Upon request of either party, both parties shall promptly execute a memorandum of this Agreement suitable for filing of record

- 11 **Compliance** In accordance with the requirements of the Texas Real Estate License Act, Purchaser is hereby advised that it should be furnished with or obtain a policy of title insurance or Purchaser should have the abstract covering the Property examined by an attorney of Purchaser's own selection
- 12 **Time Limit** In the event a fully executed copy of this Agreement has not been returned to Seller within thirty (30) days after Seller executes this Agreement and delivers same to Purchaser, Seller shall have the right to terminate this Agreement upon written notice to Purchaser

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

PURCHASER

THE CITY OF DENTON, TEXAS

By \_\_\_\_\_  
City Manager  
215 E McKinney  
Denton, Texas 76201

ATTEST

By \_\_\_\_\_

APPROVED AS TO LEGAL FORM  
CITY ATTORNEY, CITY OF DENTON, TEXAS

By \_\_\_\_\_

SELLER

ROBERT P. DONNELLY

By \_\_\_\_\_  
Robert P. Donnelly

STATE OF TEXAS  
COUNTY OF DENTON

This instrument was acknowledged before me on this the \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_ by Robert P. Donnelly

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Notary Public in and for the State of Texas

STATE OF TEXAS  
COUNTY OF DENTON

This instrument was acknowledged before me, on this the \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, City Manager  
of the City of Denton, Texas, a municipal corporation, known to me to be the person and  
officer whose name is subscribed to the foregoing instrument and acknowledged to me  
that the same was the act of the said City of Denton, Texas, a municipal corporation, that  
he was duly authorized to perform the same by appropriate ordinance of the City Council  
of the City of Denton and that he executed the same as the act of said City for purposes  
and consideration therein expressed, and in the capacity therein stated

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Notary Public in and for the State of Texas

**EXHIBIT "1"**

BEING 19 969 acres of land located in the DAVID HOUGH SURVEY, Abstract No 646, Denton County, Texas, being the same tract of land as conveyed to Rozella A Putnam by the deed recorded in Volume 1586, Page 45 of the Deed Records of Denton County, Texas Said 19 969 acres being more particularly described by metes and bounds as follows

BEGINNING at a  $\frac{1}{2}$  inch iron rod in the centerline of Mayhill Road at the Southeast corner of said Putnam Tract, also being the Northeast corner of a tract of land conveyed to Andrew Corporation, by the deed recorded in Volume 912, Page 797, Deed Records of Denton County, Texas, also being the Southeast corner of said Hough Survey,

THENCE, South 87 degrees 13 minutes 28 seconds West, 744 08 feet along the North line of said Andrew Corporation Tract and the South line of said Hough Survey to a  $\frac{1}{2}$  inch iron rod in the Northeast right-of-way line of the M K T Railroad,

THENCE, along said Northeast right-of-way line as follows

- 1 North 47 degrees 59 minutes 44 seconds West, 87 69 feet to a  $\frac{1}{2}$  inch iron rod,
- 2 North 50 degrees 49 minutes 23 seconds West, 101 67 feet to a  $\frac{1}{2}$  inch iron rod,
- 3 North 53 degrees 56 minutes 53 seconds West, 101 75 feet to a  $\frac{1}{2}$  inch iron rod,
- 4 North 57 degrees 13 minutes 33 seconds West, 67 68 feet to a  $\frac{1}{2}$  inch iron rod at the Southwest corner of aforesaid Putnam Tract, also being the Southeast corner of a tract of land conveyed to Don V Cunningham and wife, by Deed recorded in Volume 653, Page 146, Deed Records of Denton County, Texas,

THENCE, North 00 degrees 00 minutes 04 seconds East, 641 34 feet to a  $\frac{1}{2}$  inch iron rod in the South line of a tract of land conveyed to E P Jeske by the deed recorded in Volume 1386, Page 377, Deed Records of Denton County, Texas, also being the Northeast corner of said Cunningham Tract,

THENCE, North 87 degrees 34 minutes 46 seconds East, 1,051 76 feet to a  $\frac{1}{2}$  inch iron rod in the center line of aforesaid Mayhill Road, also lying in the West survey line of the G Walker Survey, Abstract No 1330,

THENCE, South 01 degrees 36 minutes 49 seconds West, 869 50 feet along said survey line and the East boundary line of said Putnam Tract to the PLACE OF BEGINNING and containing 19 969 acres of land, more or less, LESS AND EXCEPT that certain 1 0 acre tract of land previously conveyed by Robert P Donnelly to the City of Denton, Texas by General Warranty Deed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, which deed is recorded at Volume \_\_\_\_\_, Page \_\_\_\_\_ of the Real Estate Records of Denton County, Texas, leaving 18 969 acres, more or less, remaining in this tract

# Ordinance

Agenda No. 97-041  
Agenda Item 5516  
Date 9-23-97

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A REVISED REAL ESTATE CONTRACT---OPTION TO ACQUIRE ADDITIONAL REAL PROPERTY WHEREIN THE CITY OF DENTON, TEXAS OBTAINS RIGHTS TO ACQUIRE A CERTAIN 18.969 ACRE TRACT OF LAND SITUATED IN THE DAVID HOUGH SURVEY, ABSTRACT NO. 646, FOR PUBLIC USE; AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY TO CONSUMMATE THE PURCHASE OR ACQUISITION OF REAL PROPERTY IN ACCORDANCE WITH SAID CONTRACT; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; AUTHORIZING THE ESTABLISHMENT OF A SINKING FUND THEREFOR; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council approved and enacted Ordinance No. \_\_\_\_\_ on September 9, 1997 which provided for the purchase, by the City, of a certain one acre tract of land situated adjacent to Mayhill Road, being part of a 19.969 acre tract of land situated in the David Hough Survey, Abstract No. 646, for the future widening of Mayhill Road in accordance with the terms of the Real Estate Contract attached to said ordinance; and

WHEREAS, said Ordinance No. \_\_\_\_\_ further provided that the City is authorized to acquire additional real property, as may be required, consisting of the remaining 18.969 acres of land which are part of the 19.969 acre tract described in the preceding paragraph, and in furtherance thereof, a certain Real Estate Contract---Option To Acquire Additional Real Property was attached to said ordinance for execution by the parties; and

WHEREAS, since the approval of said Ordinance on September 9, 1997, further discussions have occurred between the City and the Owner of the remaining 18.969 acre tract of land hereinabove described, respecting several provisions of the Real Estate Contract---Option To Acquire Additional Real Property document, and the parties determined that several changes of wording in said contract were necessary and appropriate to properly reflect and to clarify the obligations of the City and the Owner of the said remaining 18.969 acre tract of land, to each other; and

WHEREAS, the City and said Owner have prepared, and said Owner has executed and delivered that certain revised "Real Estate Contract---Option To Acquire Additional Real Property" which is attached hereto as Exhibit "A" and is incorporated herewith by reference. NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION I. That the City Manager is hereby authorized to execute a revised Real Estate Contract---Option To Acquire Additional Real Property by and between the City of Denton as optionee and Robert P. Donnelly as optionor, a copy of which contract is attached hereto as Exhibit "A" and is incorporated by reference herewith.

SECTION II. That the City Manager is hereby authorized to execute any and all documents necessary to consummate purchase or acquisition of real property in accordance with said contract.

SECTION III. That the City Council hereby authorizes the expenditure of funds as provided in said contract, as well as the establishment of a sinking fund providing for the possible exercise of any option or right to acquire real property contained in said contract.

SECTION IV. That this ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 1997.

JACK MILLER, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
HERBERT L. PROUTY, CITY ATTORNEY

BY: Herb L. Prouty

**REAL ESTATE CONTRACT  
OPTION TO ACQUIRE ADDITIONAL REAL PROPERTY**

STATE OF TEXAS  
COUNTY OF DENTON

THIS AGREEMENT is made by and between Robert P. Donnelly, hereinafter referred to as "Optionor" and the City of Denton, Texas, a home rule municipality of Denton County, Texas, hereinafter referred to as "Optionee," upon the terms and conditions set forth herein.

## RECITALS

WHEREAS, Optionor is the owner of certain real property consisting of approximately 19.969 acres located in the City of Denton, Denton County, Texas. A map of said 19.969 acre tract is attached hereto as Exhibit "A" and incorporated herein by reference for all purposes. Optionor, by a Real Estate Contract, has agreed to sell and convey to Optionee, that certain 1.0 acre tract of land more particularly described in Exhibit "B" attached hereto and incorporated herein by reference for all purposes. Optionor, by this Agreement desires to grant Optionee a right and option upon the terms and specified conditions set forth hereinbelow to acquire the remaining 18.969 acre tract of land (said tract being hereinafter referred to as the "Optioned Tract") more particularly described in Exhibit "C" attached hereto and incorporated herein by reference for all purposes; and

WHEREAS, Optionor and Optionee intend in the limited circumstances described in Article I(B) hereof, to obligate Optionee to purchase the Optioned Tract; and

WHEREAS, Optionee believes that the 18.969 acre tract of land which is the subject of this right to acquire and option is reasonably necessary for the public use in the future, and accordingly desires to acquire a right to acquire the Optioned Tract under the terms and special conditions set forth hereinbelow:

THEREFORE, IT IS AGREED AS FOLLOWS:

**ARTICLE I.**  
**GRANT OF OPTION TO ACQUIRE ADDITIONAL REAL PROPERTY**

In consideration of the sum of ten dollars (\$10.00), and the further consideration of Optionee's payment for a survey of the Optioned Tract; Optionee's payment of the cost of a preliminary plat pertaining to the Optioned Tract and the 1.0 acre tract described in Exhibit "B" attached hereto; Optionee's agreement to reimburse Optionor the cost of an applicable building permit pertaining to the Optioned Tract; and the agreement of Optionee to obtain and deliver, at Optionee's expense, to Optionor, before any exercise of Optionee of its right or option granted herein, a preliminary title report issued by Dentex Title Company, Denton, Texas, covering the

Optioned Tract; Optionor hereby GRANTS to Optionee the right and option to acquire title to the Optioned Tract at the prices and conditions, and within the time limitations specified below:

- A. In the event that Optionor receives from a third party, at any time before January 1, 2013, a bona-fide written offer supported by good and valuable consideration to purchase the Optioned Tract, then Optionee has no right of first refusal to match said third party offer; and Optionee will not be obligated to pay any sum of money to Optionor under the terms of this Agreement.
- B. In the event that Optionor receives from a third party, at any time between January 1, 2013 and December 31, 2027, a bona-fide written offer supported by good and valuable consideration to purchase the Optioned Tract, and the stated purchase consideration is an amount less than two dollars (\$2.00) per square foot, then Optionee shall be obligated to acquire title to the Optioned Tract by paying to Optionor the purchase consideration of two dollars (\$2.00) per square foot; subject only to the conditions contained in that certain Real Estate Sales Contract attached hereto as Exhibit "D". Optionee shall tender said executed Real Estate Sales Contract in accordance within the provisions of Article III hereof within sixty (60) days after Optionee receives notice from the Optionor of the third party offer.
- C. In the event that Optionor receives from a third party, at any time between January 1, 2013 and December 31, 2027, a bona-fide written offer supported by good and valuable consideration to purchase the Optioned Tract, and the stated purchase consideration is an amount greater than two dollars (\$2.00) per square foot, then Optionee may acquire title to the Optioned Tract by paying to Optionor a total of one dollar (\$1.00) more than the purchase consideration offered by the third party. Optionee shall exercise its option by notifying Optionor in writing within sixty (60) days after Optionee receives notice from Optionor of the third party offer; PROVIDED, HOWEVER, in the event that Optionee elects not to acquire title to the Optioned Tract, then Optionee shall not be required to pay any sum of money to Optionor, and this Agreement shall be thereby terminated.
- D. Optionor and Optionee agree that unless earlier terminated, the rights and option of Optionee shall expire on December 31, 2027.
- E. Optionee represents to Optionor that it has no present, fixed, intention to condemn all or any part of the Optioned Tract at this time. Optionee is unable to lawfully agree to waive its right of eminent domain with respect to the Optioned Tract, or, for that matter, any tract of real property in the City of Denton, Texas.

In the unlikely event that Optionee, because of a public necessity, seeks condemnation of all or any part of the Optioned Tract before January 1, 2013, then Optionor and Optionee shall treat such condemnation as Optionee's early exercise of its option to acquire the Optioned Tract and Optionor and Optionee each agree to designate a licensed real estate appraiser of the State of Texas, with the M.A.I. (Member of Appraisal Institute) designation, who will in turn select a licensed real estate appraiser of the State of Texas with the M.A.I. designation, which selected appraiser shall maintain his or her principal office in

Denton County, Texas. Thereafter, the selected appraiser shall prepare a written appraisal report and determine the appraised fair market value of the Optioned Tract. Upon determination of the appraised fair market value by this method, Optionee shall pay to Optionor the appraised market value of the subject Optioned Tract or the amount of two dollars (\$2.00) per square foot, whichever amount is greater.

**ARTICLE II.**  
**APPLICATION OF CONSIDERATION TO PURCHASE PRICE**

If Optionee exercises its right or option to acquire title to the Optioned Tract in accordance with the terms hereof, it is specifically understood and agreed that the consideration paid to Optionor by Optionee pursuant to the first paragraph of Article I hereof, shall not apply to any purchase price expressed in Article I hereof.

**ARTICLE III.**  
**EXERCISE OF OPTION TO ACQUIRE ADDITIONAL REAL PROPERTY**

Optionee must exercise its options granted herein by providing written notice to Optionor in accordance with any applicable deadline set forth in Article I hereinabove. In order to exercise its option under the provisions of Article I.B. or Article I.C. hereinabove, Optionee must execute and deliver to Optionor the Real Estate Sales Contract attached hereto as Exhibit "D," which is incorporated herein for all purposes.

**ARTICLE IV.**  
**CONDITION PRECEDENT**

Optionor and Optionee agree that this Agreement is conditioned upon Optionee receiving Solid Waste Landfill Permit No. 1590-A from the Texas Natural Resource Conservation Commission. In the event that such condition is not satisfied, then this Agreement shall be null and void.

**ARTICLE V.**  
**RETENTION OF CONSIDERATION**

In the event that Optionee fails to exercise any or all of its rights or options granted herein, all sums and all consideration paid or provided by Optionee to Optionor shall be retained by Optionor in consideration of the granting of these rights and options to Optionee.

**ARTICLE VI.**  
**TERMINATION OF OPTIONEE'S RIGHTS AND OPTIONS**

If Optionee fails to meet any deadline relating to the exercise of any option or right granted hereunder, or to the terms of sale of the Optioned Tract (exclusive, however, of the obligations of Optionee set forth in Article I, paragraph B hereof), this Agreement, and the rights of Optionee shall automatically terminate on the day following the applicable deadline.

ARTICLE VII.  
MEMORANDUM OF AGREEMENT

Optionor and Optionee each agree to execute, within thirty (30) days from the date either party requests in writing a Memorandum of Agreement respecting the existence of this Agreement and evidencing Optionee's interest in the Optioned Tract. Optionee may elect to record such Memorandum of Agreement in the Real Estate Records of Denton County, Texas.

ARTICLE VIII.  
ASSIGNABILITY

No assignment of this Agreement, or of any right, duty, or option accruing under this Agreement shall be made, in whole or in part, by either party, without the prior written consent of the other party. It is contemplated by Optionor and Optionee that Optionor will probably desire to assign his rights and obligations respecting this Agreement to a member of his immediate family, or a family partnership, or a limited partnership, or an inter-vivos trust, or any other entity which Optionor has a controlling interest, and to whom/which the Optioned Tract has been conveyed without the exchange of valuable consideration. Optionee shall not unreasonably withhold its consent respecting any such assignment by Optionor.

ARTICLE IX.  
NOTICES

Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by either party to the other may be effected in writing by personal delivery or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received as of the date of actual receipt. Mailed notice shall be addressed as set forth below, but each party may change his address in accordance with this paragraph:

To Optionor:

Robert P. Donnelly

To Optionee:

City of Denton, Texas  
Ted Benavides, City Manager  
215 East McKinney  
Denton, Texas 76201

With a copy to:

Herbert L. Prouty  
City Attorney  
215 East McKinney  
Denton, Texas 76201

ARTICLE X.  
ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties relating to the option and rights herein granted. Any oral representations or modifications concerning this Agreement shall be of no force and effect, excepting a subsequent modification, in writing, signed by the parties.

ARTICLE XI.  
BINDING EFFECT

This Agreement shall bind and inure to the benefit of all the respective heirs, personal representatives, successors, and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the  
\_\_\_\_ day of \_\_\_\_\_ 1997.

OPTIONEE  
CITY OF DENTON, TEXAS

BY: \_\_\_\_\_  
TED BENAVIDES, CITY MANAGER

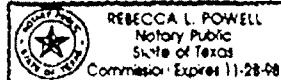
ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_

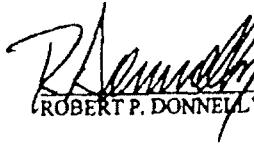
APPROVED AS TO LEGAL FORM:  
HERBERT L. PROUTY, CITY ATTORNEY

BY: Herb L. Prouty

OPTIONOR  
ROBERT P. DONNELLY



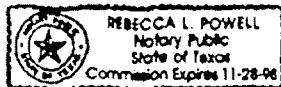
*Rebecca L. Powell*

  
ROBERT P. DONNELLY

STATE OF TEXAS §  
COUNTY OF DENTON §

BEFORE ME the undersigned authority, a Notary Public in and for said State of Texas, on this day personally appeared Ted Benavides, City Manager of the City of Denton, Texas, known to me to be the person who signed and executed the foregoing instrument, and acknowledged to me that this instrument was executed for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 12 day of  
September, 1997.



Rebecca L. Powell  
Notary Public in and for the  
State of Texas

My Commission Expires: 11-28-98

STATE OF TEXAS §  
COUNTY OF DENTON §

BEFORE ME the undersigned authority, a Notary Public in and for said State of Texas, on this day personally appeared Robert P. Donnelly, known to me to be the person who signed and executed the foregoing instrument, and acknowledged to me that this instrument was executed for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the        day of  
19      

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My Commission Expires: \_\_\_\_\_

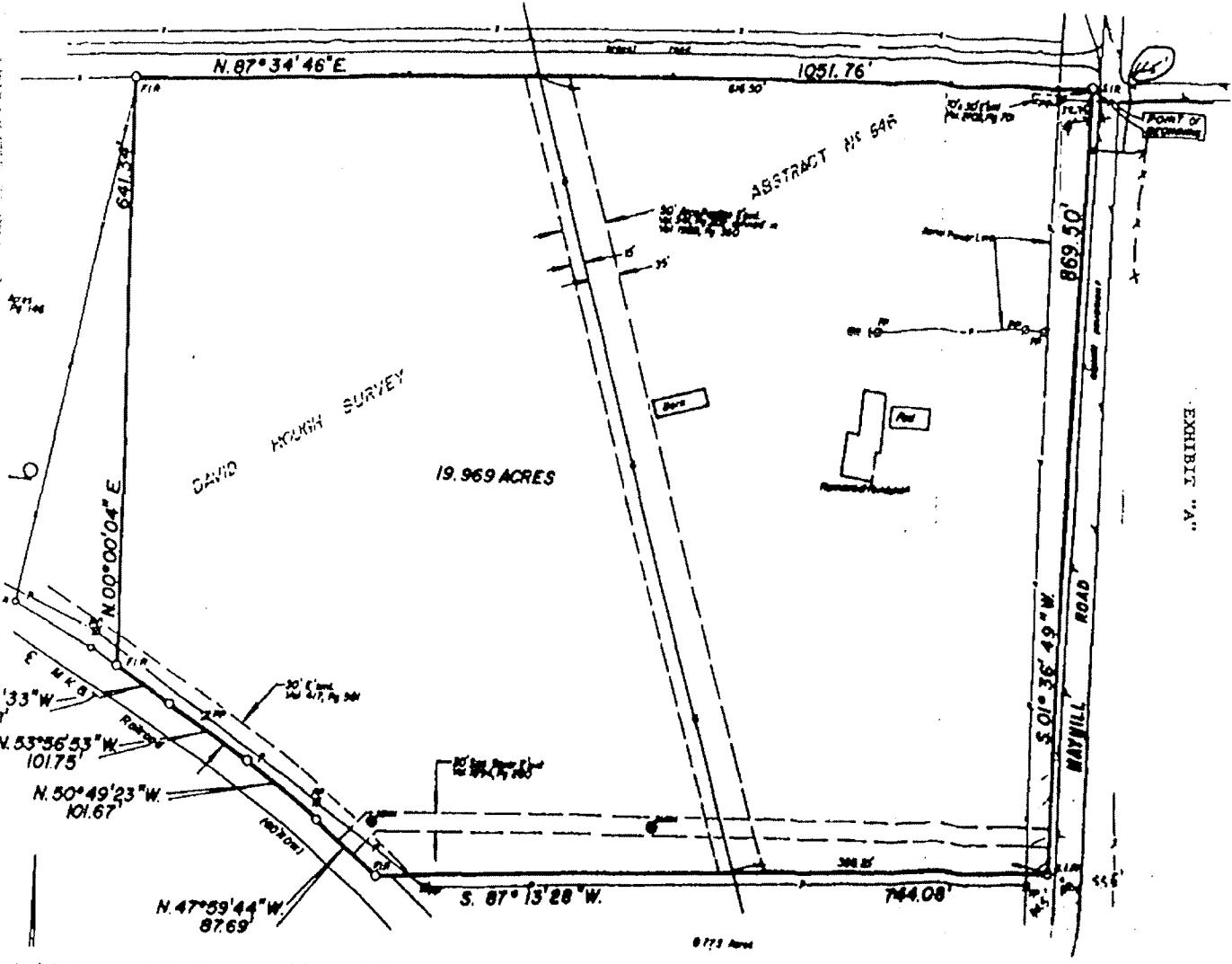


EXHIBIT "B"

Being a 1.0 acre tract of land, more or less, being situated in the DAVID HOUGH SURVEY, Abstract No. 646, in the City of Denton, Denton County, Texas; and being part of a certain 19.969 acre tract of land described in Special Warranty Deed from the Federal Deposit Insurance Corporation as Receiver of Western Bank as grantor, to Robert P. Donnelly, as grantees, executed on November 19, 1992, said deed being recorded in Volume 3384, Page 0905 of the Real Property Records of Denton County, Texas; and being further described as a tract of land West of and adjacent to the existing Mayhill Road prescriptive right of way, running approximately 869.5 feet along the present location of Mayhill Road, and being 50 feet in width.

Seller and Purchaser agree that upon completion of a ground survey of the above tract in connection with the closing of this transaction, that a metes and bounds legal description of said tract will be substituted for the above description.

EXHIBIT "C"

BEING 19.969 acres of land located in the DAVID HOUGH SURVEY, Abstract No. 646, Denton County, Texas, being the same tract of land as conveyed to Rozella A. Putnam by the deed recorded in Volume 1586, Page 45 of the Deed Records of Denton County, Texas. Said 19.969 acres being more particularly described by metes and bounds as follows:

BEGINNING at a  $\frac{1}{2}$  inch iron rod in the centerline of Mayhill Road at the Southeast corner of said Putnam Tract, also being the Northeast corner of a tract of land conveyed to Andrew Corporation, by the deed recorded in Volume 912, Page 797, Deed Records of Denton County, Texas, also being the Southeast corner of said Hough Survey;

THENCE, South 87 degrees 13 minutes 28 seconds West, 744.08 feet along the North line of said Andrew Corporation Tract and the South line of said Hough Survey to a  $\frac{1}{2}$  inch iron rod in the Northeast right-of-way line of the M. K. T. Railroad;

THENCE, along said Northeast right-of-way line as follows:

1. North 47 degrees 59 minutes 44 seconds West, 87.69 feet to a  $\frac{1}{2}$  inch iron rod;
2. North 50 degrees 49 minutes 23 seconds West, 101.67 feet to a  $\frac{1}{2}$  inch iron rod;
3. North 53 degrees 56 minutes 53 seconds West, 101.75 feet to a  $\frac{1}{2}$  inch iron rod;
4. North 57 degrees 13 minutes 33 seconds West, 67.68 feet to a  $\frac{1}{2}$  inch iron rod at the Southwest corner of aforesaid Putnam Tract, also being the Southeast corner of a tract of land conveyed to Don V. Cunningham and wife, by Deed recorded in Volume 653, Page 146, Deed Records of Denton County, Texas;

THENCE, North 00 degrees 00 minutes 04 seconds East, 641.34 feet to a  $\frac{1}{2}$  inch iron rod in the South line of a tract of land conveyed to E. P. Jeske by the deed recorded in Volume 1386, Page 377, Deed Records of Denton County, Texas, also being the Northeast corner of said Cunningham Tract;

THENCE, North 87 degrees 34 minutes 46 seconds East, 1,051.76 feet to a  $\frac{1}{2}$  inch iron rod in the center line of aforesaid Mayhill Road, also lying in the West survey line of the G. Walker Survey, Abstract No. 1330;

THENCE, South 01 degrees 36 minutes 49 seconds West, 869.50 feet along said survey line and the East boundary line of said Putnam Tract to the PLACE OF BEGINNING and containing 19.969 acres of land, more or less; LESS AND EXCEPT that certain 1.0 acre tract of land described in Exhibit "B" hereto, leaving 18.969 acres, more or less, remaining in this tract.

EXHIBIT "D"

REAL ESTATE SALES CONTRACT

STATE OF TEXAS

COUNTY OF DENTON

THIS CONTRACT OF SALE is made by and between ROBERT P. DONNELLY (hereinafter referred to as "Seller") and the CITY OF DENTON, TEXAS, a home rule municipality, of Denton County, Texas (hereinafter referred to as "Purchaser"), upon the terms and conditions set forth herein.

PURCHASE AND SALE

Seller hereby sells and agrees to convey, and Purchaser hereby purchases and agrees to pay for that certain tract of land located in the City of Denton, Denton County, Texas, containing 18.969 acres of land, more or less, and being more particularly described in Exhibit "1" attached hereto and incorporated herein by reference for all purposes; together with all and singular the rights and appurtenances pertaining to the property, including any right, title and interest of Seller in and to adjacent streets, alleys or rights-of-way (all of such real property, rights, and appurtenances being hereinafter referred to as the "Property"), together with any improvements, fixtures, and personal property situated on and attached to the Property, for the consideration and upon and subject to the terms, provisions, and conditions hereinafter set forth.

PURCHASE PRICE

1. Amount of Purchase Price. The purchase price for the Property shall be the sum of \$\_\_\_\_\_ as determined in that certain Real Estate Contract-Option To Acquire Additional Real Property executed by Seller, as Optionor and Purchaser as Optionee, on the \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_.
2. Payment of Purchase Price. The full amount of the purchase price shall be payable in cash at the closing.

PURCHASER'S OBLIGATIONS

The obligations of Purchaser hereunder to consummate the transactions contemplated hereby are subject to the satisfaction of each of the following conditions any of which may be waived in whole or in part by Purchaser at or prior to the closing.

1. Preliminary Title Report. Within twenty (20) days after the date hereof, Seller, at Seller's sole cost and expense, shall have caused the Title Company (hereinafter defined) to issue a preliminary title report (the "Title Report") accompanied by

copies of all recorded documents relating to easements, rights-of-way, etc., affecting the Property. Purchaser shall give Seller written notice on or before the expiration of ten (10) days after Purchaser receives the Title Report that the condition of title as set forth in the title binder is or is not satisfactory; and in the event Purchaser states that the condition is not satisfactory, Seller shall, at Seller's option, promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of Purchaser. In the event Seller is unable to do so within ten (10) days after receipt of written notice, this Agreement shall thereupon be null and void for all purposes; otherwise, this condition shall be deemed to be acceptable and any objection thereto shall be deemed to have been waived for all purposes.

2. **Survey.** Purchaser may, at Purchaser's sole cost and expense, obtain current survey of the Property, prepared by a duly licensed Texas land surveyor chosen by and acceptable to Purchaser. The survey shall be staked on the ground, and shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, easements, 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 and shall set forth the number of total acres comprising the Property, together with a metes and bounds description thereof.

Purchaser will have ten (10) days after receipt of the survey to review and approve the survey. In the event the survey is unacceptable, then Purchaser shall within the ten (10) day period, give Seller written notice of this fact. Seller shall, at Seller's option, promptly undertake to eliminate or modify the unacceptable portions of the survey to the reasonable satisfaction of Purchaser. In the event Seller is unable to do so within ten (10) days after receipt of written notice, Purchaser may terminate this Agreement, and the Agreement shall thereupon be null and void for all purposes. Purchaser's failure to give Seller this written notice shall be deemed to be Purchaser's acceptance of the survey.

3. **Seller's Compliance.** Seller shall have performed, observed, and complied with all of the covenants, agreements, and conditions required by this Agreement to be performed, observed, and complied with by Seller prior to or as of the closing.

#### REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser as follows, which representations and warranties shall be deemed made by Seller to Purchaser also as of the closing date:

1. There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or trespassers.

2. Except for the prior actions of Purchaser, there is no pending or threatened condemnation or similar proceeding or assessment affecting the Property, or any part thereof, nor to the best knowledge and belief of Seller is any such proceeding or assessment contemplated by any governmental authority.
3. Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the Property, or any part thereof.
4. To the best of the Seller's knowledge, there are no toxic or hazardous wastes or materials on or within the Property. Such toxic or hazardous wastes or materials include, but are not limited to, hazardous materials or wastes as same are defined by the Resource Conservation and Recovery Act (RCRA), as amended, and the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended.

#### CLOSING

The closing shall be held at the office of Dentex Title Company, Denton, Texas, at such title company, time, date, and place as Seller and Purchaser may mutually agree upon (which date is herein referred to as the "closing date").

#### CLOSING REQUIREMENTS

1. Seller's Requirements. At the closing Seller shall:
  - A. Deliver to Purchaser a duly executed and acknowledged General Warranty Deed conveying good and marketable title in fee simple to all of the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions except for the following:
    1. General real estate taxes for the year of closing and subsequent years not yet due and payable;
    2. Any exceptions approved by Purchaser pursuant to Purchaser's Obligations hereof; and
    3. Any exceptions approved by Purchaser in writing.
  - B. Deliver to Purchaser a Texas Owner's Title Policy at Seller's sole expense, issued by Dentex Title Company, (the "Title Company"), or such title company as Seller and Purchaser may mutually agree upon, in Purchaser's favor of the full amount of the purchase price, insuring Purchaser's fee simple title to the Property, subject only to those title exceptions listed in Closing Requirements hereof, such other exceptions as may be approved in writing by Purchaser, and the standard printed

exceptions contained in the usual form of Texas Owner's Title Policy, provided, however:

1. The boundary and survey exceptions shall be deleted if required by Purchaser and if so required, the costs associated with same shall be borne by Seller;
2. The exception as to restrictive covenants shall be endorsed "None of Record";
3. The exception for taxes shall be limited to the year of closing and shall be endorsed "Not Yet Due and Payable"; and
4. The exception as to liens encumbering the Property shall be endorsed "None of Record".

C. Deliver to Purchaser possession of the Property on the day of closing.

2. **Purchaser's Requirements.** Purchaser shall pay the consideration as referenced in the Purchase Price section of this contract at Closing in immediately available funds.
3. **Closing Costs.** Seller shall pay all taxes assessed by any tax jurisdiction through the date of Closing. All other costs and expenses of closing in consummating the sale and purchase of the Property not specifically allocated herein shall be equally shared by Purchaser and Seller.

#### REAL ESTATE COMMISSION

Any real estate commissions occasioned by the consummation of this Agreement shall be the sole responsibility of Seller, and Seller agrees to indemnify and hold harmless Purchaser from any and all claims for any such commissions.

#### BREACH BY SELLER

In the event Seller shall fail to fully and timely perform any of its obligations hereunder or shall fail to consummate the sale of the Property except at Purchaser's default, Purchaser may either enforce specific performance of this Agreement or terminate this Agreement.

#### BREACH BY PURCHASER

In the event Purchaser should fail to consummate the purchase of the Property, the conditions to Purchaser's obligations set forth in PURCHASER'S OBLIGATIONS

having been satisfied and Purchaser being in default, Seller may either enforce specific performance of this Agreement, or terminate this Agreement.

#### MISCELLANEOUS

1. Assignment of Agreement. This Agreement may not be assigned by Purchaser without the express written consent of Seller.
2. Survival of Covenants. Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the closing of the transactions contemplated hereby shall survive the closing and shall not be merged therein.
3. Notice. Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address set forth beneath the signature of the party.
4. Texas Law to Apply. This Agreement 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 Denton County, Texas.
5. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
6. Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, said invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
7. Prior Agreements Superseded. This Agreement constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.
8. Time of Essence. Time is of the essence in this Agreement.
9. Gender. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.
10. Memorandum of Contract. Upon request of either party, both parties shall promptly execute a memorandum of this Agreement suitable for filing of record.

11. **Compliance.** In accordance with the requirements of the Texas Real Estate License Act, Purchaser is hereby advised that it should be furnished with or obtain a policy of title insurance or Purchaser should have the abstract covering the Property examined by an attorney of Purchaser's own selection.
12. **Time Limit.** In the event a fully executed copy of this Agreement has not been returned to Seller within thirty (30) days after Seller executes this Agreement and delivers same to Purchaser, Seller shall have the right to terminate this Agreement upon written notice to Purchaser.

DATED this \_\_\_\_\_ day of \_\_\_\_\_.

PURCHASER

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
City Manager  
215 E. McKinney  
Denton, Texas 76201

ATTEST:

By: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
CITY ATTORNEY, CITY OF DENTON, TEXAS

By: \_\_\_\_\_

SELLER

ROBERT P. DONNELLY

By: \_\_\_\_\_  
Robert P. Donnelly

STATE OF TEXAS  
COUNTY OF DENTON

This instrument was acknowledged before me on this the \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_ by Robert P. Donnelly.

Notary Public in and for the State of Texas

STATE OF TEXAS  
COUNTY OF DENTON

This instrument was acknowledged before me, on this the \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_, City Manager  
of the City of Denton, Texas, a municipal corporation, known to me to be the person and  
officer whose name is subscribed to the foregoing instrument and acknowledged to me  
that the same was the act of the said City of Denton, Texas, a municipal corporation, that  
he was duly authorized to perform the same by appropriate ordinance of the City Council  
of the City of Denton and that he executed the same as the act of said City for purposes  
and consideration therein expressed, and in the capacity therein stated.

Notary Public in and for the State of Texas

EXHIBIT "1"

BEING 19.969 acres of land located in the DAVID HOUGH SURVEY, Abstract No. 646, Denton County, Texas, being the same tract of land as conveyed to Rozella A. Putnam by the deed recorded in Volume 1586, Page 45 of the Deed Records of Denton County, Texas. Said 19.969 acres being more particularly described by metes and bounds as follows:

BEGINNING at a  $\frac{1}{2}$  inch iron rod in the centerline of Mayhill Road at the Southeast corner of said Putnam Tract, also being the Northeast corner of a tract of land conveyed to Andrew Corporation, by the deed recorded in Volume 912, Page 797, Deed Records of Denton County, Texas, also being the Southeast corner of said Hough Survey;

THENCE, South 87 degrees 13 minutes 28 seconds West, 744.08 feet along the North line of said Andrew Corporation tract and the South line of said Hough Survey to a  $\frac{1}{2}$  inch iron rod in the Northeast right-of-way line of the M. K. T. Railroad;

THENCE, along said Northeast right-of-way line as follows:

1. North 47 degrees 59 minutes 44 seconds West, 87.69 feet to a  $\frac{1}{2}$  inch iron rod;
2. North 50 degrees 49 minutes 23 seconds West, 101.67 feet to a  $\frac{1}{2}$  inch iron rod;
3. North 53 degrees 56 minutes 53 seconds West, 101.75 feet to a  $\frac{1}{2}$  inch iron rod;
4. North 57 degrees 13 minutes 33 seconds West, 67.68 feet to a  $\frac{1}{2}$  inch iron rod at the Southwest corner of aforesaid Putnam Tract, also being the Southeast corner of a tract of land conveyed to Don V. Cunningham and wife, by Deed recorded in Volume 653, Page 146, Deed Records of Denton County, Texas;

THENCE, North 00 degrees 00 minutes 04 seconds East, 641.34 feet to a  $\frac{1}{2}$  inch iron rod in the South line of a tract of land conveyed to E. P. Jeske by the deed recorded in Volume 1386, Page 377, Deed Records of Denton County, Texas, also being the Northeast corner of said Cunningham Tract;

THENCE, North 87 degrees 34 minutes 46 seconds East, 1,051.76 feet to a  $\frac{1}{2}$  inch iron rod in the center line of aforesaid Mayhill Road, also lying in the West survey line of the G. Walker Survey, Abstract No. 1330;

THENCE, South 01 degrees 36 minutes 49 seconds West, 869.50 feet along said survey line and the East boundary line of said Putnam Tract to the PLACE OF BEGINNING and containing 19.969 acres of land, more or less; LESS AND EXCEPT that certain 1.0 acre tract of land previously conveyed by Robert P. Donnelly to the City of Denton, Texas by General Warranty Deed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, which deed is recorded at Volume \_\_\_\_\_, Page \_\_\_\_\_ of the Real Estate Records of Denton County, Texas; leaving 18.969 acres, more or less, remaining in this tract.